

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

October 19, 2007

**Committee
Report No.**

07-116

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

Chair and Members:

Your Policy Committee, having met on October 2, 2007, makes reference to County Communication No. 07-12, from the Council Chair, regarding requests for authorization of special counsel submitted by the Department of the Corporation Counsel.

By correspondence dated August 16, 2007, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ALSTON HUNT FLOYD & ING TO ADVISE THE COUNTY ON LEGAL ISSUES AND LEGAL STRATEGIES RELATING TO THE POTENTIAL ACQUISITION OF NĀ WAI 'EHĀ WATERSHED LANDS AND/OR WATER-RELATED ASSETS OWNED BY WAILUKU WATER COMPANY". The purpose of the proposed resolution is to authorize the employment of Alston Hunt Floyd & Ing as the County's special counsel for the possible acquisition of Na Wai Eha watershed lands and/or water-related assets owned by Wailuku Water Company, for a total compensation of up to \$75,000.

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

Your Committee received public testimony from one individual in support of the proposed resolution. The testifier stated that Central Maui is running out of water, and urged your Committee to authorize the Department of the Corporation Counsel to begin the process of acquiring Na Wai Eha watershed lands.

The Deputy Corporation Counsel provided a brief overview of the matter. She noted that the proposed resolution merely authorizes the employment of special counsel, and does not authorize the actual acquisition of the subject property.

The Deputy Corporation Counsel explained that the Department of the Corporation Counsel intends to seek Council approval for matters relating to the possible acquisition of Na Wai Eha watershed lands, and/or water-related assets, in phases. The Department expects to request funding for each phase of the process, rather than make a

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single request for funding that could carry the matter through final acquisition. Your Committee was informed that the proposed resolution to hire special counsel to assist with obtaining an appraisal is considered the first phase in this process.

Your Committee noted that \$200,000 is appropriated in the Fiscal Year 2008 Budget for “acquisition costs of Wailuku Water Company watershed and water-related assets, including an appraisal and to hire special counsel”. The Deputy Corporation Counsel explained that the legal process must begin with an accurate appraisal before the next step can be determined. She further explained that when the Department is ready to take the next step, they will submit the appropriate resolution to the Council.

The Deputy Corporation Counsel informed your Committee that the appraisal process would not prevent a negotiated settlement, and that an appraisal is required by the Maui County Code if the Council decides to acquire the property. She further stated that Wailuku Water Company holds a unique bundle of assets, including approximately 13,000 acres of watershed lands with a complex ditch system. She also noted that because of the uniqueness of the subject property, great skill and creativity would be required to appraise the property. An accurate appraisal is essential to obtain the best possible result, whether through settlement or trial.

The Corporation Counsel noted that Paul Alston is a partner in the firm of Alston, Hunt, Floyd and Ing, and is highly regarded throughout the legal community. He indicated that Mr. Alston has many years of experience. He also noted that the parties currently involved in the Na Wai Eha contested case hearings hold Mr. Alston in high esteem. The Deputy Corporation Counsel expressed that the need to hire special counsel with Mr. Alston’s expertise is critical because of the complex legal issues pertaining to this acquisition. She assured your Committee that Mr. Alston has the ability to locate and employ a highly qualified appraiser.

Your Committee discussed whether an appraisal for the subject property had ever been previously completed. The Deputy Corporation Counsel noted that she is not aware of a completed appraisal of the property. She explained that approximately six years ago, the Board of Water Supply initiated, but never completed, the appraisal process.

Your Committee also discussed the blended hourly rate provided in the resolution. The Deputy Corporation Counsel noted that a blended rate allows a law firm to offer competitive pricing, which averages the hourly rate charged by the most expensive partners in the firm with the lowest hourly rate charged by associates. She also explained

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that with the blended rate, the County will be paying less for Mr. Alston's time, and more for the time of the associates in the firm. However, she assured your Committee that Mr. Alston, as lead counsel, will perform the majority of work on this case.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Committee is in receipt of a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ALSTON HUNT FLOYD & ING TO ADVISE THE COUNTY ON LEGAL ISSUES AND LEGAL STRATEGIES RELATING TO THE POTENTIAL ACQUISITION OF NĀ WAI 'EHĀ WATERSHED LANDS AND/OR WATER-RELATED ASSETS OWNED BY WAILUKU WATER COMPANY", containing nonsubstantive revisions.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto and revised herein, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ALSTON HUNT FLOYD & ING TO ADVISE THE COUNTY ON LEGAL ISSUES AND LEGAL STRATEGIES RELATING TO THE POTENTIAL ACQUISITION OF NĀ WAI 'EHĀ WATERSHED LANDS AND/OR WATER-RELATED ASSETS OWNED BY WAILUKU WATER COMPANY" be ADOPTED.


Adoption of this report is respectfully requested.

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Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF
SPECIAL COUNSEL ALSTON HUNT FLOYD & ING TO ADVISE
THE COUNTY ON LEGAL ISSUES AND LEGAL STRATEGIES RELATING
TO THE POTENTIAL ACQUISITION OF NĀ WAI 'EHĀ WATERSHED LANDS
AND/OR WATER-RELATED ASSETS OWNED BY WAILUKU WATER COMPANY

WHEREAS, the Council has considered whether to acquire Nā Wai 'Ehā watershed lands and water-related assets owned by Wailuku Water Company, and has budgeted monies to obtain an appraisal for that purpose; and

WHEREAS, the Council has appropriated \$7 million in general obligation bond funds for said acquisition, subject to further Council approval; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS, the Department of the Corporation Counsel has advised the Council that there is a real necessity to retain the firm of ALSTON HUNT FLOYD & ING as special counsel because of the complexity of the legal issues and legal strategies pertaining to said acquisition, whether by negotiation or eminent domain, and the retention of a qualified appraiser; and

WHEREAS, ALSTON HUNT FLOYD & ING and the Department of the Corporation Counsel shall work as a team in this matter and shall

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take reasonable steps to minimize the level of attorneys' fees and costs; and

WHEREAS, the conduct of ALSTON HUNT FLOYD & ING in this matter shall reflect ALSTON HUNT FLOYD & ING's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

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

1. That the Council finds that there is a real necessity to retain special counsel because of the complexity of the legal issues and legal strategies relating to the potential acquisition of Nā Wai 'Ehā watershed lands and water-related assets owned by Wailuku Water Company and the retention of a qualified appraiser; and

2. That the Council hereby authorizes the employment of the firm ALSTON HUNT FLOYD & ING as special counsel to advise the County of Maui on legal issues and legal strategies relating to the potential acquisition of Nā Wai 'Ehā watershed lands and water-related assets owned by Wailuku Water Company, whether by negotiation or eminent domain, and the retention of a qualified appraiser; and

3. That total compensation for the employment of the firm ALSTON HUNT FLOYD & ING as special counsel shall not exceed \$75,000.00; and

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4. That partner Paul Alston, Esq., shall provide the bulk of the legal services in this matter; and

5. That the blended hourly rate for all attorneys, including both partners and associates, shall not exceed \$270.00; and

6. That the blended hourly rate for all paralegals shall not exceed \$125.00; and

7. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshall; (4) fees of the court reporter for necessary transcripts; (5) docket fees; (6) compensation of court-appointed experts and interpreters; (7) messenger charges; and (8) fees for computerized legal research; and

8. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) investigative expenses; and (5) other costs reasonably considered part of a law firm's overhead; and


9. That, in instances of travel, both inter-island and out-of-state travel shall be on a regular coach economy fare basis and shall be pre-approved by the Corporation Counsel; and

10. That expenditure of additional funds or substantial changes to the responsibilities of the parties shall require Council approval; and

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11. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, the Director of the Department of Water Supply, and the Board of Water Supply.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

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