

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 26, 2007

**Committee
Report No.**

07-73

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. 07-12, from the Council Chair, regarding requests for authorization of special counsel submitted by the Department of the Corporation Counsel.

Your Committee is in receipt of correspondence dated May 25, 2007, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ASHFORD & WRISTON LLP FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2 OF THE MONTANA BEACH CONDOMINIUM". The purpose of the proposed resolution is to authorize the employment of Ashford & Wriston LLP as the County's special counsel for the possible acquisition of land, situated at Paia, Maui, Hawaii, known as Unit 2 of the Montana Beach Condominium, for a total compensation of \$250,000.

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

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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 request. She explained that the recommended special counsel has expertise and experience with contentious eminent domain proceedings and noted that the requested \$250,000 amount does not include the cost of the appraisal of the subject property.

She further noted that the appraisal amount will probably be contested by the current owner of the property, and may need to be litigated in the future, as the parties' perceived values vary greatly.

Your Committee requested the following information from a Deputy Corporation Counsel:

1. The estimated cost of an appraisal of the property and the budget appropriation from which the appraisal cost will be paid;
2. The total cost of the litigation and land purchases for the Montana Beach properties to date; and
3. The original purchase price of the entire Montana Beach property.

Your Committee recommended revising the resolution to reduce the compensation amount to \$125,000. Your Committee decided that requiring the Department of the Corporation Counsel to return to the Council for additional funding, as needed, will allow for better reporting on the progress of the eminent domain proceedings.

Your Committee voted to recommend adoption of the revised proposed resolution.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality, incorporating your Committee's suggested revisions.

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.

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Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ASHFORD & WRISTON LLP FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2 OF THE MONTANA BEACH CONDOMINIUM" be ADOPTED.

Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

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MICHAEL J. MOLINA Member

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GLADYS C. BAISA Member



MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
ASHFORD & WRISTON LLP FOR THE ACQUISITION OF REAL PROPERTY
SITUATED AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2
OF THE MONTANA BEACH CONDOMINIUM

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

WHEREAS, the Council adopts the recommendation of the Department of the Corporation Counsel and finds that there is a real necessity to retain the firm of ASHFORD & WRISTON LLP as special counsel to represent the County of Maui for the acquisition of real property situated at Paia, Maui, Hawaii, more particularly described as Unit 2 of the Montana Beach Condominium, Tax Map Key (2) 2-5-005-04-002, whether by negotiation or eminent domain, because of the complexity of the relevant legal issues; and

WHEREAS, ASHFORD & WRISTON LLP and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the level of attorneys' fees and costs; and

WHEREAS, the conduct of ASHFORD & WRISTON LLP in this matter shall reflect ASHFORD & WRISTON LLP'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,

Resolution No. _____

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

1. That the Council hereby authorizes the employment of the firm ASHFORD & WRISTON LLP as special counsel to represent the County of Maui in the proposed eminent domain proceedings of real property situated at Paia, Maui, Hawaii, more particularly described as Unit 2 of the Montana Beach Condominium, Tax Map Key (2) 2-5-005-04-002; and

2. That total compensation for the employment of the firm ASHFORD & WRISTON LLP as special counsel shall not exceed \$125,000.00; and

3. That partner Rosemary T. Fazio, Esq., shall provide the bulk of the legal services in this matter; and

4. That the hourly rate for partners shall not exceed \$250.00; and

5. That the hourly rate for associates shall not exceed \$135.00; and

6. That the hourly rate for paralegal staff shall not exceed \$95.00; 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)

Resolution No. _____

messenger charges; and (8) fees for computerized legal research; and

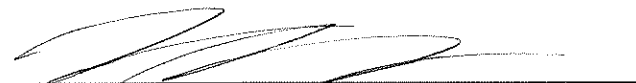
8. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) investigative expenses; and (5) other costs reasonably considered part of a law firm's overhead; and

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

11. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, 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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