

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 6, 2007

Committee

Report No.

_____ 07-60 _____

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

Chair and Members:

Your Policy Committee, having met on June 12, 2007, makes reference to County Communication No. 07-9, from the Department of the Corporation Counsel, regarding indemnification authorization.

Your Committee is in receipt of correspondence dated May 24, 2007, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING MICHAEL W. FOLEY, CHARLES VILLALON, TY FUKUROKU, AND JAY ARAKAWA 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 present and former County officials and employees Michael W. Foley, Charles Villalon, Ty Fukuroku, and Jay Arakawa in Lothar Kuster v. Michael W. Foley et al., Civil No. CV 07-00264 SOM BMK.

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

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

There was no public testimony. A Deputy Corporation Counsel provided a brief overview of the case.

A Deputy Corporation Counsel stated that the named individuals were found to be working within the scope of their employment; therefore, indemnification is appropriate. She noted that should the Council decide not to indemnify the individuals, special counsel would likely be hired to represent them. She stated that the County must file an answer to the complaint before or on July 13, 2007.

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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.

At its executive meeting, your Committee met with the Corporation Counsel and two 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 proposed resolution.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING MICHAEL W. FOLEY, CHARLES VILLALON, TY FUKUROKU, AND JAY ARAKAWA 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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Resolution

No. _____

INDEMNIFYING MICHAEL W. FOLEY, CHARLES VILLALON, TY FUKUROKU,
AND JAY ARAKAWA 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 Michael W. Foley, Charles Villalon, Ty Fukuroku, and Jay Arakawa as defendants, sued in their individual capacities; and

WHEREAS, the Complaint alleges that the 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, 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 these Defendants for any damages that may be assessed against them in the above-referenced lawsuit, said damages being requested within the Complaint are: general, special, consequential and/or continuing damages, and punitive

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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 these
Defendants in the above-referenced lawsuit; now, therefore,

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

1. That Michael W. Foley, Charles Villalon, Ty
Fukuroku, and Jay Arakawa are indemnified by the County of Maui for
any damages that may be assessed against them 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:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

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