

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

May 26, 2006

Committee
Report No.

_____ 06-63

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

Chair and Members:

Your Committee of the Whole, having met on March 14, 2006 and March 16, 2006, makes reference to County Communication No. 05-25, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated March 6, 2006, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL REINWALD O'CONNOR & PLAYDON IN THE PROPOSED EMINENT DOMAIN PROCEEDINGS FOR REAL PROPERTY SITUATED AT KIHEI, MAUI, HAWAII". The purpose of the proposed resolution is to authorize the employment of Reinwald O'Connor & Playdon as special counsel in the proposed eminent domain proceedings, for a total compensation of \$75,000.

Your Committee notes that eminent domain proceedings would allow the County to acquire real property situated at Kihei, Maui, Hawaii, that is needed in order to complete a section of the North-South Collector Road between Walua Place and Keonekai Road.

Your Committee further notes that your Public Works Committee recommended adoption of a revised proposed resolution authorizing the subject proceedings in eminent domain at its meeting of March 13, 2006 (Committee Report No. 06-61). At its meeting of May 5, 2006, the Council adopted Resolution No. 06-41, as amended. Your Committee further notes that the resolution authorizing such proceedings must pass two readings under Section 4-2 of the Revised Charter of the County of Maui (1983), as amended.

At its meeting of March 14, 2006, your Committee met with the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Takeshi Matsukata, Vice President, Towne Development of Hawaii, Inc. (Towne Development); and Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc.

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There was no public testimony.

Due to the shortage of time, your Committee deferred discussion on the matter and recessed its meeting to March 16, 2006.

At its reconvened meeting of March 16, 2006, your Committee met with the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Takeshi Matsukata, Vice President, Towne Development; and Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc.

The Deputy Corporation Counsel provided a factual overview of the case. She also provided background information on the proposed special counsel.

The Director identified portions of two parcels of land that are proposed for condemnation: 1) TMK: (2) 3-9-20:004 (portion), owned by NoKaOi Development, LLC (NoKaOi), consisting of a 60-foot wide right-of-way; and 2) TMK: (2) 3-9-20:016 (portion), owned by Kihei Alii Kai, consisting of a 31.55-foot wide right-of-way.

Your Committee received a copy of a map of the area from Mr. Matsukata.

Your Committee notes that Towne Development received a Special Management Area (SMA) use permit to construct its Ke Alii Kai II and Ke Alii Villas projects. Your Committee further notes that Towne Development is required to construct a two-lane north-south collector roadway between Kealii Alanui (now known as Alanui Ke Alii) and Keonekai Roads as part of the SMA use permit. Your Committee further notes that Towne Development has been unable to reach agreements on the two remaining parcels owned by NoKaOi and Kihei Alii Kai.

Your Committee questioned whether the two parcels of land are developed. The Director indicated that the parcels remain largely undeveloped, with the exception of a condominium that is located on a portion of the Kihei Alii Kai property.

Your Committee questioned whether Kihei Alii Kai had been required to provide an easement when an entitlement to develop the property was granted. The Director stated that he was unaware whether an easement had been required.

Your Committee further questioned the need to employ special counsel for these proceedings. The Deputy Corporation Counsel stated that the proceedings are

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complicated by considerations such as condominium bylaws, which warrant the employment of special counsel in this case. She further stated that it would be advantageous for the County if one attorney handled the eminent domain proceedings for both parcels.

Your Committee notes that the proposed resolution references a memorandum of understanding that requires private entities, Ke Alii Villas, Kihei Alii Kai, and their affiliates, to reimburse the County for its attorneys' fees and costs for these proceedings.

Your Committee voted to recommend that the second "Whereas" paragraph of the proposed resolution be revised to indicate that the Council adopt the recommendation of the Department of the Corporation Counsel, and to read as follows: "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 REINWALD O'CONNOR & PLAYDON as special counsel to represent the County of Maui in the proposed eminent domain proceedings for real property situated at Kihei, Maui, Hawaii, more particularly described in Exhibit "1", because of the complexity of litigation issues; and".

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

Your Committee is in receipt of a revised proposed resolution incorporating your Committee's revisions and nonsubstantive revisions for clarity and consistency.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL REINWALD O'CONNOR & PLAYDON IN THE PROPOSED EMINENT DOMAIN PROCEEDINGS FOR REAL PROPERTY SITUATED AT KIHEI, MAUI, HAWAII" be **ADOPTED**.

Adoption of this report is respectfully requested.

