

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006

**Committee
Report No.**

06-120

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 June 20, 2006 and October 3, 2006, makes reference to County Communication No. 01-193, from former Councilmember Alan M. Arakawa, requesting consideration of the matter of the development of single-family homes near Baldwin Beach in Paia, Maui.

Your Committee notes that the subject development is known as the Montana Beach Condominium Project.

By correspondence dated May 9, 2006, the Department of the Corporation Counsel requested the opportunity to discuss the current status of the settlement negotiations in an executive meeting.

Your Committee notes that it previously reported on this matter through the following committee reports:

1. Committee Report No. 05-25, which recommended that a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL, THE LAW OFFICES OF ASHFORD AND WRISTON, FOR THE INTERLOCUTORY APPEALS IN HOLLAND, ET AL. V. JAMES H. APANA, ET AL., CV03-00296 HG/BMK AND DENNIS P. HOLLAND, ETC., ET AL. V. COUNTY OF MAUI, ET AL., CV02-00071 HG/BMK" be adopted. At its meeting of March 11, 2005, the Council adopted Committee Report No. 05-25 (Resolution No. 05-40).
2. Committee Report No. 05-49, as amended, which recommended that a proposed resolution entitled, "AUTHORIZING SETTLEMENT OF ALL CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII" be adopted. At its meeting of March 23, 2005, the Council adopted Committee Report No. 05-49, as amended (Resolution No. 05-62).

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006
Page 2

Committee
Report No. 06-120

3. Committee Report No. 05-83, which recommended that the following proposed resolutions be adopted:
 - A. A proposed resolution entitled “AUTHORIZING ADDITIONAL TERMS FOR SETTLEMENT OF ALL CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII”;
 - B. A proposed resolution entitled “AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL, THE LAW OFFICES OF ASHFORD AND WRISTON, FOR THE INTERLOCUTORY APPEALS IN HOLLAND, ET AL. V. JAMES H. APANA, ET AL., CV03-00296 HG/BMK AND DENNIS P. HOLLAND, ETC., ET AL. V. COUNTY OF MAUI, ET AL., CV02-00071 HG/BMK”;
 - C. A proposed resolution entitled “AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL, THE LAW OFFICES OF AYABE, CHONG, NISHIMOTO, SIA & NAKAMURA, FOR JAMES B. TAKAYESU, FORMER CORPORATION COUNSEL, IN LEGAL PROCEEDINGS ARISING OUT OF THE MONTANA BEACH CONDOMINIUM PROJECT DISPUTE”;
 - D. A proposed resolution entitled “AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL, THE LAW OFFICES OF CROCKETT AND NAKAMURA, FOR JOHN MIN, FORMER PLANNING DIRECTOR, IN LEGAL PROCEEDINGS ARISING OUT OF THE MONTANA BEACH CONDOMINIUM PROJECT DISPUTE”;
 - E. A proposed resolution entitled “AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL, THE LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN LEGAL PROCEEDINGS ARISING OUT OF THE MONTANA BEACH CONDOMINIUM PROJECT DISPUTE”; and

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006
Page 3

Committee
Report No. 06-120

- F. A proposed resolution entitled "AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL, THE LAW OFFICES OF ROECA, LOUIE & HIRAOKA, FOR RICHARD K. MINATOYA, FORMER DEPUTY CORPORATION COUNSEL, IN LEGAL PROCEEDINGS ARISING OUT OF THE MONTANA BEACH CONDOMINIUM PROJECT DISPUTE".

At its meeting of July 1, 2005, the Council adopted Committee Report No. 05-83 (Resolution Nos. 05-97 through 05-102).

At its meeting of June 20, 2006, your Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided an overview of the matter noting that the current dispute involves the appeal of a Circuit Court determination regarding the rescission of a special management area exemption. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting.

Your Committee noted that five years prior, the Mayor, as a former Council member, felt that the single-family homes constructed along Baldwin Beach should be removed.

Your Committee briefly discussed the possibility of enacting an ordinance that would provide the legal uses of the subject property.

Your Committee noted that the deeded owner to the subject property is Montana Beach, LLC.

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 a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006
Page 4

Committee
Report No. 06-120

Your Committee agreed to defer the matter pending further discussion.

By correspondence dated June 21, 2006, Councilmember Robert Carroll transmitted a copy of a June 21, 2006 news article from *The Maui News* entitled "What a difference five years can make".

By correspondence dated July 5, 2006, Councilmember Robert Carroll transmitted a copy of a July 5, 2006 news article from *The Maui News* entitled "County being hypocritical in plan to use illegal house".

By correspondence dated September 22, 2006, the Department of the Corporation Counsel transmitted a proposed resolution entitled "INDEMNIFYING MICHAEL W. FOLEY, RANSOM PILTZ, BERNICE LU, PATRICIA EASON, JOHANNA AMORIN, DIANE SHEPHERD, NICANOR CASUMPANG, JR., AND SUZANNE FREITAS IN ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV 06-00430 ACK KSC", and a copy of the complaint.

At its meeting of October 3, 2006, your Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the matter indicating that a new case has been filed in Federal court by property owner Asghar R. Sadri naming the Planning Director and various former and current members of the Maui Planning Commission, as defendants in their official capacities as County employees and in their individual capacities, claiming equitable estoppel, constitutional violations, and conspiracy to violate civil rights. She recommended that Michael W. Foley, Ransom Piltz, Bernice Lu, Patricia Eason, Johanna Amorin, Diane Shepherd, Nicanor Casumpang, Jr., and Suzanne Freitas be indemnified by the County in this case.

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.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006
Page 5

Committee
Report No. 06-120

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING MICHAEL W. FOLEY, RANSOM PILTZ, BERNICE LU, PATRICIA EASON, JOHANNA AMORIN, DIANE SHEPHERD, NICANOR CASUMPANG, JR., AND SUZANNE FREITAS IN ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV 06-00430 ACK KSC" be ADOPTED.

Adoption of this report is respectfully requested.

cow:cr:0614ad:rkk

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 20, 2006
Page 6

Committee
Report No. 06-120

MICHAEL J. MOLINA Chair

JO ANNE JOHNSON Member

DAIN P. KANE Vice-Chair

DANNY A. MATEO Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

ROBERT CARROLL Member

CHARMAINE TAVARES Member

G. RIKI HOKAMA Member