

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 5, 2008

**Committee
Report No.**

08-152

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

Chair and Members:

Your Policy Committee, having met on November 18, 2008, makes reference to County Communication No. 07-128, from Councilmember Jo Anne Johnson, transmitting a proposed resolution entitled "URGING THE ADMINISTRATION TO NEGOTIATE FOR THE COUNTY'S ACQUISITION OF LAND AT LIPOA POINT, WEST MAUI".

The purpose of the proposed resolution is to support the acquisition and preservation of land at and around Lipoa Point and to urge the Administration to enter into negotiations with the landowner, Maui Land & Pineapple Company, Inc. (ML&P) to facilitate the County's purchase of land.

By correspondence dated April 23, 2007, the Council Chair transmitted a copy of correspondence dated April 16, 2007, from Dawn Plants, a non-resident visitor, to the Maui Planning Department, expressing support for the acquisition of land to preserve the Honolua Bay and Lipoa Point area.

By correspondence dated June 27, 2007, the Chair of your Committee informed Councilmember Johnson that the Council appropriated a \$1 million grant in the Fiscal Year (FY) 2008 Budget (Open Space, Natural Resources, and Cultural Resources, and Scenic Views Preservation Fund) for the acquisition of land at and around Lipoa Point and, therefore, the Administration would not be able to negotiate a purchase price with the landowner.

By correspondence dated October 8, 2008, Councilmember Johnson requested that an evening committee meeting be held in Lahaina.

By correspondence dated October 22, 2008, the Council Chair transmitted correspondence dated October 21, 2008, from the Mayor, describing meetings that have occurred with her Administration; ML&P; and the community groups, Save Honolua Coalition (SHC) and the Honolua Advisory Council (HAC). The Mayor also transmitted a copy of ML&P's Conservation Plan dated April 15, 2008 entitled "HONOLUA/LIPOA POINT CONSERVATION PLAN".

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By correspondence dated October 24, 2008, the Council Chair transmitted correspondence dated October 23, 2008, from David Kapaku, representative of SHC, and Richard Moon, representative of HAC, describing the collaboration between the two community groups, ML&P, and the Administration. Mr. Kapaku requested that your Committee schedule a meeting to discuss the matter.

By correspondence dated October 28, 2008, Councilmember Johnson transmitted a copy of an article from the Fourth Quarter, 2008 edition of *Coastal Views* entitled "LANDSCAPES WORTH FIGHTING FOR".

By correspondence dated November 6, 2008 and November 7, 2008, David Kapaku urged your Committee to schedule a meeting to discuss the matter.

By separate correspondence dated November 7, 2008, 17 individuals urged your Committee to schedule a meeting and 1 individual provided comments.

By separate correspondence dated November 8, 2008, 5 individuals urged your Committee to schedule a meeting.

By separate correspondence dated November 9, 2008, 2 individuals urged your Committee to schedule a meeting and 1 individual provided comments.

By correspondence dated November 10, 2008, the Chair of your Committee transmitted a document dated August 6, 2008, from ML&P, entitled "LIPOA POINT/HONOLUA CONSERVATION COMPROMISE". In the document, ML&P proposes to set aside approximately 3,467 acres of land at Lipoa Point and surrounding areas for conservation purposes in exchange for zoning enhancements at ML&P's Kapalua Mauka resort development and park credits from the County.

By separate correspondence dated November 10, 2008, 5 individuals urged your Committee to schedule a meeting.

By separate correspondence dated November 11, 2008, 5 individuals urged your Committee to schedule a meeting.

By correspondence dated November 12, 2008, the Chair of your Committee transmitted a proposed resolution entitled "URGING THE ADMINISTRATION TO

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NEGOTIATE FOR THE PRESERVATION OF HONOLUA BAY AND LIPOA POINT FOR PARK, OPEN SPACE, AND CONSERVATION PURPOSES". The purpose of the proposed resolution is to urge the Administration to negotiate for the preservation of Honolua Bay and Lipoa Point for park, open space, and conservation purposes.

Your Committee notes that because ML&P is now requesting zoning enhancements and park credits in exchange for conservation lands, the Administration has the responsibility to negotiate those benefits with ML&P and then make a recommendation to the Council.

By correspondence dated November 17, 2008, Hannah Bernard, President of the Hawaii Wildlife Fund, attached testimony of David Kapaku and expressed her support of his testimony.

By correspondence dated November, 18, 2008, David C. Cole, Chairman, President, and CEO of ML&P, indicated that ML&P continues to honor its "Compromise for Conservation" proposal, but only until December 31, 2008, when the offer expires.

At its meeting, your Committee met with the Mayor; a Deputy Corporation Counsel; and Teri Freitas Gorman, Vice President, Corporate Communications, ML&P.

Your Committee received public testimony from 4 individuals in support of the proposed resolution submitted by correspondence dated November 12, 2008, from the Chair of your Committee. While supporting the proposed resolution, the testifiers called into question ML&P's proclaimed deadline for its proposal, as well as the benefits ML&P has requested. In addition, your Committee received written testimony and a "Petition to Save Honolua" from David Kapaku, representing the SHC. Mr. Kapaku stated that the petition contains approximately 16,000 signatures.

Councilmember Johnson provided comments on her proposed resolution transmitted by County Communication No. 07-128. She explained the proposed resolution was in response to ML&P's plans to develop Lipoa Point in 2007. As a result of the public's outcry, ML&P withdrew its development plans and began discussions with the community in an attempt to reach a compromise. She stated that the Council expressed its commitment to preserve Honolua Bay and Lipoa Point by setting aside \$1 million in the FY 2008 and FY 2009 Budgets for the acquisition of land at Lipoa Point. She noted that the Administration brought the community groups and ML&P

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together in an effort to achieve consensus. Councilmember Johnson suggested revisions to the proposed resolution submitted by the Chair of your Committee.

The Mayor informed your Committee that her Administration worked hard to get the community groups together and come to a consensus on where to begin negotiations with ML&P. The groups now agree that ML&P's proposal is a starting point from which negotiations can begin. She expressed her support for ML&P's proposal and noted that if the plan is effectuated, Lipoa Point will be the largest reserve in the State of Hawaii.

The Mayor acknowledged that it is the Administration's responsibility to negotiate the details of a final plan with ML&P, but discussions with the Council should also take place. She further stated that the Council may need to pass legislation in order to facilitate the acquisition of land at Lipoa Point and Honolua Bay.

Your Committee noted that the zoning enhancements requested by ML&P for its Kapalua Mauka resort development will require approval by ordinance and that it would not be possible to pass such an ordinance by ML&P's December 31, 2008 deadline, according to the Council's procedure for the passage of ordinances.

Ms. Gorman indicated that ML&P's deadline of December 31, 2008, is not flexible and the proposal will expire on that date unless the Mayor and the Council express its support for the proposal, including the zoning enhancements and park credits ML&P has requested.

Your Committee commended the Administration, the community groups, and ML&P for their hard work in reaching a consensus and expressed its willingness to facilitate the process so that Honolua Bay, Lipoa Point, and the surrounding areas can be preserved for the benefit of present and future generations.

Your Committee voted to recommend adoption of the proposed resolution submitted by the Chair of your Committee, entitled "URGING THE ADMINISTRATION TO NEGOTIATE FOR THE PRESERVATION OF HONOLUA BAY AND LIPOA POINT FOR PARK, OPEN SPACE, AND CONSERVATION PURPOSES".

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "URGING THE ADMINISTRATION TO NEGOTIATE FOR THE

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PRESERVATION OF HONOLUA BAY AND LIPOA POINT FOR PARK, OPEN SPACE, AND CONSERVATION PURPOSES” be ADOPTED.

Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

Resolution

No. _____

URGING THE ADMINISTRATION TO NEGOTIATE FOR THE PRESERVATION OF HONOLUA BAY AND LIPOA POINT FOR PARK, OPEN SPACE, AND CONSERVATION PURPOSES

WHEREAS, the Honolua area in West Maui—comprised of Honolua Bay, Lipoa Point, and adjacent shoreline areas—has great cultural, spiritual, historical, and archeological significance; and

WHEREAS, Honolua Bay and Lipoa Point are threatened by potential commercial and private development; and

WHEREAS, the preservation of land at Honolua Bay, Lipoa Point, and adjacent shoreline areas would be in the public interest; and

WHEREAS, Maui County residents have demonstrated a strong desire to preserve Honolua Bay, Lipoa Point, and adjacent shoreline areas, in perpetuity, in order to conserve sensitive natural, historical, and environmental areas; to improve public access for sustainable ocean recreation uses; and to ensure adequate governance and resources for permanent stewardship; and

WHEREAS, Maui Land & Pineapple Company, Inc. (“ML&P”), the property owner, has met with community groups and representatives from the County Administration in an effort to come to an agreement in order to preserve Honolua Bay, Lipoa Point, and adjacent shoreline areas; and

WHEREAS, the various community groups, the Administration, and ML&P should be commended for their efforts to meet and seek a plan to preserve Honolua Bay, Lipoa Point, and adjacent shoreline areas; and

WHEREAS, in the Fiscal Year 2009 Budget, the Council appropriated \$1 million to acquire approximately 583.4 acres at Lipoa Point; and

WHEREAS, pursuant to Section 7-5, Revised Charter of the County of Maui (1983), as amended (“Charter”), the Mayor is the County’s “chief executive officer”; and

Resolution No. _____

WHEREAS, pursuant to Section 3.44.015(B), Maui County Code, the Director of Finance may “negotiate for the purchase of real property for purposes in the public interest ...”; and

WHEREAS, County Code Section 3.44.015(B) further states: “In the case of real property with a purchase price that exceeds \$100,000, the County council shall authorize the acquisition by the passage of a resolution, approved by a majority of its members;...”; and

WHEREAS, Charter Section 3-6 provides that the Council is the County’s “legislative body”; and

WHEREAS, Charter Section 4-1 states: “Every legislative act of the council shall be by ordinance ...”; and

WHEREAS, being the legislative body of the County, the Council generally does not have the capability or authority to negotiate with private entities, as that is inherently an executive function; and

WHEREAS, the Council has not received a comprehensive proposal and recommendation from the Administration to facilitate the acquisition and preservation of Honolua Bay, Lipoa Point, and adjacent shorelines; and

WHEREAS, the Council looks forward to the opportunity to work with the community, the Administration, and ML&P when it does receive a proposal and recommendation from the Administration, with the goal of preserving Honolua Bay, Lipoa Point; now, therefore,

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

1. That it hereby urges the Administration to negotiate an agreement with ML&P to preserve Honolua Bay Lipoa Point; and
2. That it further urges the Administration to then transmit a comprehensive proposal and recommendation—including draft legislation—to facilitate the acquisition and preservation of Honolua Bay, Lipoa Point, and adjacent shorelines; and
3. That certified copies of this resolution be transmitted to the Mayor; the Corporation Counsel; the Director of Finance; the Director of Parks and Recreation; the Planning Director; the Director of Public Works; Robert Webber, Chief Operating Officer and Executive Vice President,

Resolution No. _____

Maui Land & Pineapple Company, Inc.; Walter A. Dods, Jr., Director,
Maui Land & Pineapple Company, Inc.; Warren H. Haruki, Director,
Maui Land & Pineapple Company, Inc.

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