

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

July 18, 2003

Committee
Report No. 03-54

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 July 2, 2003, makes reference to County Communication No. 03-19, from the Council Chair, regarding the settlement of claims and lawsuits.

Your Committee is in receipt of correspondence dated May 20, 2003, from the Department of the Corporation Counsel, requesting consideration of the possible settlement of Richard Skaff, et al. v. County of Maui, Civil No. 01-00666 HG KSC. Attached to the request was a copy of the First Amended Complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF RICHARD SKAFF, ET AL., v. COUNTY OF MAUI, CIVIL NO. 01-00666 HG KSC". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges that County parks and recreational facilities do not comply with Federal and State accessibility requirements under the Americans with Disabilities Act (ADA).

By correspondence dated June 26, 2003, the Chair of your Committee transmitted correspondence dated June 20, 2003, from Earl Matsukawa, Project Manager, Wilson Okamoto Corporation, transmitting a copy of a three-volume Draft Self Evaluation & Transition Plan and Facility Report for the County of Maui, Department of Parks and Recreation, dated May 2003 (Draft Report). The Draft Report describes the process used to evaluate the Department of Parks and Recreation's activities, provides policy and program recommendations, and presents a transition plan for the modification of facilities.

At its meeting, your Committee met with the ADA Coordinator, Department of Management; the Director of Parks and Recreation; the Chief of Planning and Development, Department of Parks and Recreation; the First Deputy Corporation Counsel; a Deputy Corporation Counsel; Earl Matsukawa, Project Manager, Wilson Okamoto Corporation; Laura Mau, Planner, Wilson Okamoto Corporation;

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and Timothy Gilbert, Director of Community and Environmental Design, Moore Iacofano Goltsamn, Inc. (MIG).

Your Committee notes that the proposed settlement of a separate but related lawsuit was also discussed at this meeting.

Your Committee received testimony from four individuals. The first two individuals testified in support of making recreational facilities accessible to the disabled. One of these individuals also submitted written testimony. The third testifier supported access to public facilities for the wheelchair-bound, stating that he faced barriers to keep vehicles off the grass when he visited County beach facilities. The final testifier was Paul Kiang, Maui Branch Administrator, Vocational Rehabilitation Division, State Department of Human Services, who also serves on the Commission for Persons with Disabilities. Mr. Kiang stated that he was testifying as a private person, and recommended the following: (1) that an advisory committee be formed, which would include people with disabilities; and (2) that consideration be given to hiring therapeutic program aides and support staff. Mr. Kiang further supported including the ADA guidelines into the Uniform Building Code, and testified that Maui is ready for a full-time ADA coordinator.

The Deputy Corporation Counsel informed your Committee that a transition plan will be incorporated into any settlement agreement, and introduced the consultants from Wilson Okamoto Corporation and MIG (Consultants).

Your Committee received an electronic presentation summarizing highlights of the Draft Report from the Consultants. A written outline of the presentation was also provided. The Consultants informed your Committee that the ADA is a civil rights act, which essentially requires that every single program be made accessible but not necessarily every single place. Title II of the ADA, which addresses public agencies, was passed in 1990. The Consultants described the self-evaluation and transition plan processes undertaken for the various County parks, community centers and related facilities. The Draft Report prioritizes facilities based on program uniqueness, level of use, geographic distribution and tourism.

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Your Committee discussed consultant costs associated with the transition plan, totaling approximately \$300,000. Once the final transition plan is completed, the Consultants' work will be done. The Consultants explained that the transition plan is considered a living document, which means that as changes to County programs are made, changes in which programs need to be made accessible may occur.

Your Committee further discussed the County's top priorities for compliance. Based on the Draft Report, which is subject to further input and revision, 24 facilities were identified as priority facilities, at an estimated compliance cost of \$1.5 million. Those 24 facilities are considered the ones that are essential to achieve County-wide programmatic accessibility, and are reflected on page 57 of the Draft Report. There will be an opportunity to reassess priorities as the transition plan is finalized.

The total estimated compliance cost, including identified district priorities reflected on pages 58-61 of the Draft Report, is approximately \$6 million.

Your Committee discussed whether the estimated compliance costs are separate and apart from appropriations in the budget to address ADA concerns.

The Consultants noted that the Draft Report has been made available at public libraries on Maui, Molokai and Lanai.

Your Committee agreed with the Chair's recommendation that the Draft Report be referred to the Parks and Agriculture Committee for further discussion. Your Committee notes that Sections 4.0 through 4.9 of the Draft Report include recommended revisions to Title 13 of the Maui County Code, relating to Parks and Recreation.

The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting.

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.

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At its executive meeting, your Committee met with the ADA Coordinator, Department of Management; the Director of Parks and Recreation; the Chief of Planning and Development, Department of Parks and Recreation; the Deputy Director of Public Works and Environmental Management; the First Deputy Corporation Counsel; and a 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 to approve the settlement of the matter under the terms proposed in the executive meeting.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF RICHARD SKAFF, ET AL., v. COUNTY OF MAUI, CIVIL NO. 01-00666 HG KSC" be ADOPTED; and
2. That the Draft Self Evaluation & Transition Plan and Facility Report for the County of Maui, Department of Parks and Recreation, dated May 2003, be REFERRED to the Parks and Agriculture Committee.

Adoption of this report is respectfully requested.

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