

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

March 11, 2005

**Committee
Report No.**

05-25

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 February 15, 2005 and March 1, 2005, 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.

Your Committee further notes that County Communication No. 01-193 was referred to the Council's Land Use Committee (2001-2003 Council term) at the Council meeting of July 6, 2001. Your Committee further notes that the Land Use Committee met on this matter on August 16, 2001 (recessed to August 20, 2001).

By correspondence dated July 10, 2001, the Committee's Chair transmitted an article dated July 7, 2001, entitled "Residents oppose Maui housing", from the *Honolulu Star-Bulletin*; and an article dated July 9, 2001, entitled "Council to wade into Montana Beach dispute", from *The Maui News*.

By correspondence dated July 10, 2001, the Committee's Chair transmitted photographs of the subject property provided by Christina Hemming.

By correspondence dated July 11, 2001, the Council Chair transmitted correspondence dated July 10, 2001, from Christina Hemming, providing background information on the subject development.

By correspondence dated July 18, 2001, Councilmember Jo Anne Johnson transmitted correspondence dated June 30, 2001, from Selden B. Lewis, Owner, Island People, raising concerns regarding the subject development.

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By correspondence dated July 26, 2001, the Committee's Chair requested that the Corporation Counsel provide a legal opinion regarding the legality of the Planning Director's approval of permits for the subject development.

By correspondence dated August 2, 2001, the Committee's Chair transmitted an article dated August 2, 2001, entitled "County to halt controversial condo project near Paia", from *The Maui News*.

By correspondence dated August 6, 2001, the Committee's Chair requested that the Planning Director provide a brief timeline of the permit-approval process for the subject development.

By correspondence dated August 8, 2001, the Council Chair transmitted correspondence dated August 4, 2001, raising concerns regarding the subject development.

By correspondence dated August 9, 2001, the Committee's Chair transmitted a legal opinion dated August 8, 2001, from the Department of the Corporation Counsel, recommending that the Planning Director rescind Special Management Area (SMA) permit exemptions for the subject development; and correspondence dated August 8, 2001, from the Planning Director, rescinding SMA permit exemptions for the subject development.

By correspondence dated August 10, 2001, Councilmember Jo Anne Johnson transmitted documents referencing the historical coastal trail at the location of the subject development.

By correspondence dated August 15, 2001, the Committee's Chair requested that the Planning Director provide all relevant Department of Planning files.

By correspondence received on August 15, 2001, the Committee received a "writ of prohibition" from Majesty Akahi Nui, Kingdom of Hawaii, Sovereign Nation of God.

By correspondence dated August 15, 2001, the Managing Director advised that the Department of Planning would not be able to provide all of its relevant files prior to the Committee's meeting of August 16, 2001.

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By correspondence dated August 15, 2001, the Planning Director transmitted a brief timeline of the permit-approval process for the subject development.

At its meeting of August 16, 2001, the Land Use Committee met with the Mayor, an Executive Assistant to the Mayor, the Planning Director, the Deputy Planning Director, a Planner from the Department of Planning, the Deputy Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

Christina Hemming provided the Committee with correspondence dated April 16, 2001, from attorney Thomas D. Welch, Jr., regarding plans for the subject development; and photographs of the subject property.

The Committee received public testimony from William Knowlton and Christina Hemming raising concerns about the subject development's legality and environmental impacts. Your Committee also received public testimony from the Mayor regarding the County's approval and rescission of permits for the subject development.

The Committee recessed its meeting until August 20, 2001.

By correspondence dated August 17, 2001, Jim Peck provided comments on the permit-approval process for the subject development.

By correspondence dated August 17, 2001, Christina Hemming transmitted information relating to the subject development's shoreline certification.

At its meeting of August 20, 2001, the Land Use Committee met with the Planning Director, the Deputy Planning Director, two Planners from the Department of Planning, the Deputy Director of Public Works and Waste Management, the Corporation Counsel, and a Deputy Corporation Counsel.

Christina Hemming provided the Committee with correspondence dated June 20, 2001, from attorney Thomas D. Welch, Jr., regarding a settlement agreement to resolve disputes about the subject development, with attached

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related documents and correspondence; and correspondence dated March 13, 1995, from the Administrator of the State Historic Preservation Division, recommending that an archaeological inventory survey study be conducted for the subject property, with attached related documents and correspondence.

Councilmember Wayne K. Nishiki transmitted a list of shoreline certifications and rejections from *The Environmental Notice*, dated August 8, 2001 (published by the State Office of Environmental Quality Control).

The Committee's Chair transmitted a legal opinion dated August 7, 2001, from the Department of the Corporation Counsel, recommending that the Planning Director rescind SMA permit exemptions for the subject development.

In response to the Committee's questions, the Planning Director and Corporation Counsel provided information on the County's approval and rescission of permits for the subject development.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 14, 2001, the Committee's Chair requested that the Corporation Counsel provide all relevant files.

By correspondence dated September 18, 2001, the Department of the Corporation Counsel advised that relevant files are maintained by the Department of Planning.

By correspondence dated October 19, 2001, the Committee Chair requested that the Planning Director provide all relevant Department of Planning files.

By correspondence dated October 25, 2001, the Department of the Corporation Counsel transmitted relevant Department of Planning files.

By correspondence dated December 10, 2001, the Committee's Chair requested that the Corporation Counsel provide a status report on legal issues relating to the subject development.

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By correspondence dated December 13, 2001, the Department of the Corporation Counsel transmitted a copy of the Complaint for Injunctive Relief and Damages in County of Maui vs. Dennis Holland and Dianne Holland; Civil No. 01-1-0642 (3), dated December 7, 2001.

By correspondence dated July 25, 2002, the Committee's Chair requested that the Corporation Counsel provide a status report on any legal cases relating to the subject development.

By correspondence dated July 29, 2002, the Department of the Corporation Counsel provided a report on three legal proceedings relating to the subject development.

At its meeting of January 10, 2003, County Communication No. 01-193 was referred to the prior Council's Planning and Land Use Committee at the Council meeting of January 10, 2003 (County Communication No. 03-5).

At its meeting of November 30, 2004, the Planning and Land Use Committee recommended that County Communication No. 01-193 be referred to the Council Chair for the term beginning January 2, 2005, for a recommendation as to referral or other disposition.

At its meeting of January 21, 2005, the Council referred County Communication No. 01-193 to your Committee of the Whole (County Communication No. 05-12).

By separate correspondence dated February 4, 2005, the Department of the Corporation Counsel requested consideration of (1) the possible settlement of all cases relating to the Montana Beach Condominium Project; (2) employment of special counsel for insurance coverage issues for the cases; and (3) employment of special counsel to represent the County in the appeals of 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. The Department transmitted the following:

1. A proposed resolution entitled, "AUTHORIZING SETTLEMENT OF ALL CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII".

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The purpose of the proposed resolution is to settle all cases relating to the Montana Beach Condominium Project in Paia, Maui.

2. A proposed resolution entitled, "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL THE PACIFIC LAW GROUP, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII".

The purpose of the proposed resolution is to authorize the employment of special counsel, The Pacific Law Group, as insurance coverage counsel to represent the County of Maui in cases related to the Montana Beach Condominium Project in Paia, Maui.

2. 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".

The purpose of the proposed resolution is to authorize special counsel, Ashford and Wriston, as special counsel to represent the County of Maui in the appeals of 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.

By correspondence dated February 11, 2005, the Chair of your Committee requested that the Council discharge consideration of the proposed resolution authorizing special counsel, The Pacific Law Group, as insurance coverage counsel.

At its meeting of February 15, 2005, your Committee met with the Director of Public Works and Environmental Management; the Planning Program Administrator, Department of Planning; the Chief of Planning and Development Division, Department of Parks and Recreation; the Corporation Counsel; two Deputy Corporation Counsel; Charles W. Crumpton, Esq., Stanton Clay

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Chapman Crumpton & Iwamura; and Michael N. Tanoue, Esq., The Pacific Law Group.

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

At its executive meeting, your Committee met with the Corporation Counsel; two Deputy Corporation Counsel; Charles W. Crumpton, Esq., Stanton Clay Chapman Crumpton & Iwamura; and Michael N. Tanoue, Esq., The Pacific Law Group.

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

Your Committee discussed the current land use policies for the North Shore of Maui. The Planning Program Administrator indicated that there is an emphasis on protecting open space and shoreline areas from the North Shore to the West Maui Mountains.

Your Committee discussed the ownership of Baldwin Beach Park and noted that the County has a long-term lease for the park.

Your Committee discussed the shoreline erosion rates for Baldwin Beach Park. The Chief of Planning and Development indicated that as a general rule, the shoreline in the area is receding.

Your Committee requested that the Department of Planning provide the coastal erosion rates for Baldwin Beach Park.

Your Committee discussed the possibility of repealing the County's Plan Review Waiver procedure.

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Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolutions to authorize the settlement of the matter, and for special counsel on the appeals under the terms proposed in the executive meeting. Your Committee agreed to defer consideration of the proposed resolution to authorize the employment of special counsel as insurance coverage counsel.

At its meeting of February 18, 2005, the Council adopted Resolution No. 05-25 entitled, "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL THE PACIFIC LAW GROUP, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII".

At its meeting of March 1, 2005, your Committee met with the Corporation Counsel; a Deputy Corporation Counsel; Charles W. Crumpton, Esq., Stanton Clay Chapman Crumpton & Iwamura; and Michael N. Tanoue, Esq., The Pacific Law Group.

Two people provided public testimony.

The first individual indicated that she is a party to the settlement and does not intend to sign the settlement agreement due to concerns about lateral public beach access, financial aspects of the settlement, and issues related to the dwellings.

The second individual commented that the property should be a park and available for public use.

The Deputy Corporation Counsel provided a brief overview of the case and requested the opportunity to discuss the matter in an executive meeting.

Your Committee discussed general settlement procedures.

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 Corporation Counsel; two Deputy Corporation Counsel; Charles W. Crumpton, Esq., Stanton Clay Chapman Crumpton & Iwamura; and Michael N. Tanoue, Esq., The Pacific Law Group.

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 agreed to defer the matter pending further discussion.

Your Committee notes that although it voted to recommend adoption of the proposed resolution authorizing settlement of all cases relating to the Montana Beach Condominium Project at your Committee's February 15, 2005 meeting, reporting of that action is deferred pending further details from the Department of the Corporation Counsel regarding the settlement of the case.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, 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.

Adoption of this report is respectfully requested.

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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

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