

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

July 1, 2005

**Committee
Report No.**

_____ 05-83 _____

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 14, 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.

By correspondence dated March 11, 2005, the Chair of your Committee requested the Department of the Corporation Counsel to determine how the County can prevent the use of condominium regime laws to circumvent subdivision laws, and whether the County requires that a bond be posted upon application for a Shoreline Management Area permit.

By correspondence dated March 15, 2005, the Planning Director transmitted the coastal erosion rates and coastal erosion maps for Baldwin Beach Park in Paia, Maui as requested by your Committee.

By correspondence dated May 26, 2005, the Department of the Corporation Counsel transmitted a proposed resolution entitled "AUTHORIZING ADDITIONAL TERMS FOR SETTLEMENT OF ALL CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII". The purpose of the proposed resolution is to settle all cases relating to the Montana Beach Condominium Project in Paia, Maui.

By correspondence dated June 1, 2005, the Department of the Corporation Counsel transmitted the following proposed resolutions entitled:

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1. "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".

The purpose of the proposed resolution is to authorize additional compensation of \$55,000 for a total of up to \$65,000 for special counsel, the Law Offices of Ashford and Wriston, to represent the County of Maui regarding appeals of cases relating to the Montana Beach Condominium Project in Paia, Maui.

2. "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".

The purpose of the proposed resolution is to authorize additional compensation of \$75,000 for a total of up to \$105,000 for special counsel, the Law Offices of Ayabe, Chong, Nishimoto, Sia & Nakamura, to represent former Corporation Counsel James B. Takayesu in legal proceedings relating to the Montana Beach Condominium Project in Paia, Maui.

3. "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".

The purpose of the proposed resolution is to authorize additional compensation of \$50,000 for a total of up to \$55,000 for special counsel, the Law Offices of Crockett and Nakamura, to represent former Planning Director John Min in legal proceedings relating to the Montana Beach Condominium Project in Paia, Maui.

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4. “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”.

The purpose of the proposed resolution is to authorize additional compensation of \$110,000 for a total of up to \$120,000 for special counsel, the Law Offices of Michael Jay Green, to represent former Mayor James H. Apana, Jr. in legal proceedings relating to the Montana Beach Condominium Project in Paia, Maui.

5. “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”.

The purpose of the proposed resolution is to authorize additional compensation of \$60,000 for a total of up to \$70,000 for special counsel, the Law Offices of Roeca, Louie & Hiraoka, to represent former Deputy Corporation Counsel Richard K. Minatoya in legal proceedings relating to the Montana Beach Condominium Project in Paia, Maui.

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

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).

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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).

At its meeting, your Committee met with the Corporation Counsel; two Deputy Corporation Counsel; Howard Glickstein, Esq. of the Law Offices of Michael Jay Green; and Ronald Michioka, Esq. of the Law Offices of Ayabe, Chong, Nishimoto, Sia & Nakamura.

A Deputy Corporation Counsel provided a brief overview of the matter. She noted that the initial amounts requested for special counsel were minimal because the Federal actions had been stayed. She noted that the matters are now set for trial and the additional compensation requested is for trial preparation and continued appeals work. The Deputy Corporation Counsel said she anticipates consolidation of the cases 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 and two 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 resolutions to authorize settlement of the matter under the terms proposed in the executive meeting and to authorize additional compensation for the various special counsel.

Your Committee of the Whole **RECOMMENDS** the following:

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1. That Resolution No. _____, attached hereto, entitled “AUTHORIZING ADDITIONAL TERMS FOR SETTLEMENT OF ALL CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII” be ADOPTED;

2. That Resolution No. _____, attached hereto, 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” be ADOPTED;

3. That Resolution No. _____, attached hereto, 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” be ADOPTED;

4. That Resolution No. _____, attached hereto, 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” be ADOPTED;

5. That Resolution No. _____, attached hereto, 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” be ADOPTED; and

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6. That Resolution No. _____, attached hereto, 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" be ADOPTED

Adoption of this report is respectfully requested.

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