

COUNCIL OF THE COUNTY OF MAUI
**GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE**

July 5, 2019

**Committee
Report No. _____**

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

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on March 21, 2019, and June 21, 2019, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated January 9, 2015, the Department of the Corporation Counsel requested the opportunity to provide a status update on Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil 13-1-0848(2), and transmitted a copy of the First Amended Complaint. The First Amended Complaint alleges violations of the Due Process and Equal Protection Clauses of the United States and Hawaii Constitutions, and violations of Chapter 92, Part I, Hawaii Revised Statutes, known as the "Sunshine Law," in the determination of the timeshare real property tax rates for the County for Fiscal Years 2014 and 2015.

By correspondence dated August 22, 2016, the Department requested the opportunity to provide a status update and transmitted a copy of the Second Amended Complaint filed on August 12, 2016, in Civil 13-1-0848(2). The Second Amended Complaint also alleges certain amended assessments for tax years 2006, 2007, and 2008 were illegal and unconstitutional.

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By correspondence dated June 14, 2019, the Department of the Corporation Counsel, transmitted a proposed resolution entitled "AUTHORIZING PARTIAL SETTLEMENT OF OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., SCAP NO. 180000578," along with the First Amended Complaint and the Second Amended Complaint. The purpose of the proposed resolution is to authorize partial settlement of Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., SCAP 180000578.

Your Committee notes the prior Council's Parks, Recreation, Energy, and Legal Affairs Committee reported on this case by Committee Report 18-246.

At its meeting of March 21, 2019, your Committee met with a Deputy Corporation Counsel. He provided a computer-generated slideshow summarizing rulings of the Second Circuit Court in the case. The Deputy Corporation Counsel advised the Court ruled that the "Timeshare" real property tax classification was "illegal" and the County improperly created "retaliatory" tax assessments.

At its meeting of June 21, 2019, your Committee met with a Deputy Corporation Counsel and the Director of Finance. The Deputy Corporation Counsel provided a brief overview of the case. He explained the case is on appeal before the Supreme Court of Hawai'i. The parties have agreed to mediation, and the Supreme Court has stayed proceedings in the case until the mediation process has been completed. He explained that the issue of the County's legal and constitutional authority to establish real property tax classifications and rates will proceed to adjudication by the Supreme Court, but other issues may be considered for settlement.

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The Deputy Corporation Counsel and Director of Finance answered factual and technical questions from your Committee in regular session.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

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 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama was excused.

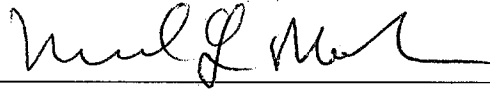
Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING PARTIAL SETTLEMENT OF OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., SCAP NO. 180000578," be ADOPTED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING PARTIAL SETTLEMENT OF OCEAN RESORT
VILLAS VACATION OWNERS ASSOCIATION, ET AL. V.
COUNTY OF MAUI, ET AL., SCAP NO. 180000578

WHEREAS, Plaintiffs Ocean Resort Villas Vacation Owners Association, et al. (“Plaintiffs”) initiated a lawsuit in the Circuit Court of the Second Circuit, State of Hawaii against the County of Maui and Maui County Council (“County”) on August 19, 2013, asserting claims based on constitutional violations and Sunshine Law violations, allegedly arising out of the County’s establishment in 2004 of the “Timeshare” real property tax classification and rate(s), and seeking retroactive real property tax refunds for each annual assessment year dating back to 2006 in amounts totaling as much as \$34 million; and

WHEREAS, on August 12, 2016, Plaintiffs filed a Second Amended Complaint, asserting further and additional claims based on constitutional violations, allegedly arising out of the County’s discovery and assessment of Plaintiffs’ omitted real property subject to taxation for assessment years 2006, 2007 and 2008; and

WHEREAS, the Second Circuit Court in Civil No. 13-1-848(2) made findings of fact, conclusions of law, and rulings against the County based on the

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additional constitutional violations alleged by Plaintiffs in the Second Amended Complaint; and

WHEREAS, on July 20, 2018, the County of Maui filed an appeal from the Second Circuit Court's rulings, which appeal on February 20, 2019 was accepted for review by the Supreme Court of Hawai'i and docketed as SCAP NO. 180000578; and

WHEREAS, on June 10, 2019 the parties voluntarily engaged in mediation through the Hawai'i Appellate Mediation Program; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of an appellate determination of the parties' respective rights and liabilities, have by way of mediation proposed a partial resolution of the appeal involving the additional claims made in the Second Amended Complaint, while reserving for appeal the claims made in the original Complaint; and

WHEREAS, the Department of the Corporation Counsel has requested authority to partially settle the appeal under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

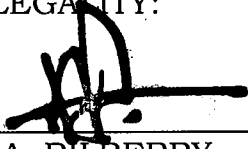
WHEREAS, having reviewed the facts and circumstances regarding this case and being advised by the Department of the Corporation Counsel, the Council wishes to authorize a partial settlement and a stipulated partial dismissal of the additional claims made in the Second Amended Complaint on appeal; now, therefore,

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

1. That it approves partial settlement and stipulated partial dismissal of the additional claims made in the Second Amended Complaint and on appeal under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and
2. That it furthers authorizes the Mayor on behalf of the County in this case to execute a Stipulation for Partial Dismissal of the additional claims made in the Second Amended Complaint and on appeal; and
3. That it hereby authorizes the Director of Finance to satisfy as necessary the partial settlement of this case on appeal; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui