

COUNCIL OF THE COUNTY OF MAUI

**PARKS, RECREATION, ENERGY, AND  
LEGAL AFFAIRS COMMITTEE**

December 21, 2018

**Committee  
Report No. \_\_\_\_\_**

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

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on March 7, 2017, January 23, 2018, June 12, 2018, November 13, 2018, and December 10, 2018, 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 February 12, 2015, the Department requested the opportunity to provide a status update on the case and to discuss a settlement demand received from the Plaintiffs, dated January 28, 2015. The correspondence transmitted a copy of the First Amended Complaint.

By correspondence dated October 22, 2015, the Department requested the opportunity to provide a status update on the case and transmitted a copy of the Complaint filed in a second case, Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil 15-1-0435(1). The Complaint alleges violations of the Due Process and

**COUNCIL OF THE COUNTY OF MAUI**  
**PARKS, RECREATION, ENERGY, AND**  
**LEGAL AFFAIRS COMMITTEE**

Page 2

**Committee**  
**Report No. \_\_\_\_\_**

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 rate for the County for Fiscal Year 2016.

By correspondence dated August 22, 2016, the Department requested the opportunity to provide a status update on both cases 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.

Your Committee notes the second case, Civil 15-1-0435(1), was subsequently dismissed with prejudice.

By correspondence dated November 4, 2016, the Department requested the opportunity to provide a status update on Civil 13-1-0848(2).

Your Committee notes the Council's Committee of the Whole (2015-2017 Council term) met on March 4, 2015, November 6, 2015, March 4, 2016, September 13, 2016, and November 18, 2016.

By correspondence dated January 9, 2018, the Department requested the opportunity to provide a status update on Civil 13-1-0848(2) and the Department's intention to appeal to the Supreme Court of the State of Hawaii.

By correspondence dated June 1, 2018, the Department requested the opportunity to provide a status update and discuss settlement options in Civil 13-1-0848(2), and transmitted a proposed resolution entitled "AUTHORIZING SETTLEMENT OF OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 13-1-0848(2)." The purpose of the proposed resolution is to authorize settlement of the case.

**COUNCIL OF THE COUNTY OF MAUI**  
**PARKS, RECREATION, ENERGY, AND**  
**LEGAL AFFAIRS COMMITTEE**

Page 3

**Committee**  
**Report No. \_\_\_\_\_**

By correspondence dated October 11, 2018, the Department requested the opportunity to provide a status update and transmitted an identical proposed resolution to the one transmitted earlier to authorize settlement of the case.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of \$7,500.

A Deputy Corporation Counsel provided a brief overview of the case. The Deputy said the case is pending before the Intermediate Court of Appeals. The County has an opening brief due in the latter part of December 2018. The Deputy said the County had received a written settlement demand from the Plaintiffs.

The Corporation Counsel requested the opportunity to convene an executive meeting to discuss the settlement demand.

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, your Committee voted 6-2 to recommend filing of the correspondence dated October 11, 2018. Committee members Atay, Carroll, Crivello, Hokama, Sugimura, and White voted "aye." Committee Chair Guzman and Vice-Chair King voted "no." Committee member Cochran was excused.

Your Committee notes filing of the most recent correspondence pending before your Committee does not resolve the ongoing case, but rejects the Plaintiffs' written settlement demand.

COUNCIL OF THE COUNTY OF MAUI  
**PARKS, RECREATION, ENERGY, AND  
LEGAL AFFAIRS COMMITTEE**

Page 4

**Committee  
Report No. \_\_\_\_\_**

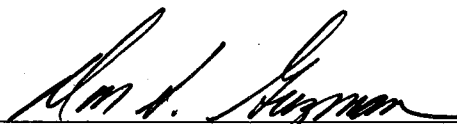
Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that the correspondence dated October 11, 2018, transmitting a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 13-1-0848(2)," be FILED.

COUNCIL OF THE COUNTY OF MAUI  
**PARKS, RECREATION, ENERGY, AND  
LEGAL AFFAIRS COMMITTEE**

Page 5

Committee  
Report No. \_\_\_\_\_

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

  
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DON S. GUZMAN, Chair

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