

COUNCIL OF THE COUNTY OF MAUI

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

November 15, 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 October 30, 2018, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated October 18, 2018, the Department of the Corporation Counsel requested consideration of the possible settlement of Lesli Lyn Otani v. County of Maui, et al., Civil 17-00281 JAO-KJM (formerly designated as Civil 17-00281 DKW-KJM). Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL. CIVIL NO. 17-00281 JAO-KJM," a copy of Resolution 18-145, and a copy of the Complaint. The purpose of the proposed resolution is to authorize the Department to settle the case.

Your Committee notes the Complaint alleges violations of Lesli Lyn Otani's constitutional rights made actionable pursuant to 42 United States Code Section 1983, among other violations, including constitutional invasion of privacy and employment retaliation in violation of public policy and under Section 378-62, Hawaii Revised Statutes. The claims allegedly arise from Ms. Otani's non-retention as Chief of Field Operations and Maintenance for the Department of Public Works at the expiration of her probationary appointment to the position.

Your Committee further notes it previously reported on this matter through Committee Report 17-147, which recommended that the correspondence dated September 21, 2017, transmitting a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI V. COUNTY OF MAUI, ET AL., CIVIL NO. 17-00281 DKW-KJM," be filed.

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

Page 2

Committee
Report No. _____

At its meeting of October 20, 2017, the Council adopted the recommendation in Committee Report 17-147.

Your Committee also notes it previously reported on this matter through Committee Report 18-138, which recommended that the proposed resolution, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI VS. COUNTY OF MAUI, ET AL. CIVIL NO. 17-00281 DKW-KJM," be adopted. At its meeting of September 7, 2018, the Council adopted the recommendation in Committee Report 18-138 (Resolution 18-145).

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. He said the Department participated in a settlement conference and received a settlement demand that he would request your Committee consider. 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 5-0 to recommend adoption of the proposed resolution. Committee Chair Guzman and members Atay, Crivello, Hokama, and Sugimura voted "aye." Committee Vice-Chair King and members Carroll, Cochran, and White were excused.

Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL. CIVIL NO. 17-00281 JAO-KJM," be ADOPTED.

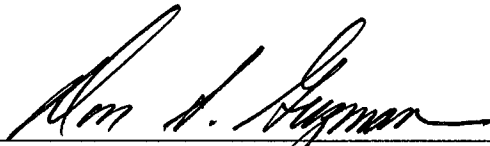
COUNCIL OF THE COUNTY OF MAUI

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

Page 3

Committee
Report No. _____

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL.
CIVIL NO. 17-00281 JAO-KJM

WHEREAS, Plaintiff Lesli Lyn Otani filed a lawsuit in the United States District Court for the District of Hawaii on June 13, 2017, Civil No. 17-00281 JAO-KJM (formerly designated as Civil No. 17-00281 DKW-KJM) against the County of Maui, et al., claiming violations of her constitutional rights made actionable pursuant to 42 United States Code Section 1983, among other violations, including constitutional invasion of privacy and employment retaliation in violation of public policy and under Section 378-62, Hawaii Revised Statutes; and

WHEREAS, Defendants County of Maui, Department of Public Works, and David Goode filed their Answers on September 18, 2017; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, attempted to reach a resolution of this case by way of an Offer of Judgment dated September 18, 2018, as approved by Council in Resolution No. 18-145; and

Resolution No. _____

WHEREAS, said Offer of Judgment was rejected, and at a mediation conference before a federal magistrate judge on October 15, 2018, a counter demand for settlement was made by Plaintiff Lesli Lyn Otani; and

WHEREAS, the County of Maui, to avoid incurring further expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment in response to the counter demand for settlement made by Plaintiff Lesli Lyn Otani; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs 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 the settlement; now, therefore,

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

1. That it approves settlement of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

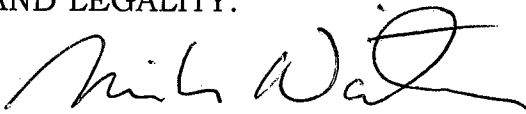
2. That it further authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

Resolution No. _____

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read "Shinken Naitoh", written over a horizontal line.

SHINKEN NAITOH
Deputy Corporation Counsel
County of Maui