

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

June 7, 2019

Committee
Report No. _____

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

Chair and Members:

This report recommends adoption of a resolution authorizing settlement of a case brought by the County to seek continued public use of the Kualapuu Mauka Well Site on Molokai.

Your Governance, Ethics, and Transparency Committee, having met on May 14, 2019, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated October 2, 2018, the Department of the Corporation Counsel transmitted a proposed resolution entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI VS. KUALAPU`U RANCH 4, LLC, ET AL., CIVIL NO. 18-1-0321(3)," along with a copy of the complaint. The purpose of the proposed resolution is to authorize settlement of County of Maui v. Kualapu`u Ranch 4, LLC, et al., Civil 18-1-0321(3).

Your Committee notes the complaint alleges declaratory and injunctive relief regarding State Well 0801-03, also known as the Kualapuu Mauka Well, a water tank, a pumping station, water transmission lines, and other infrastructure related to municipal water distribution on a portion of tax map key (2) 5-2-012:029, Molokai, Hawaii.

By correspondence dated February 21, 2019, the Department of the Corporation Counsel transmitted a revised proposed resolution, along with a copy of the complaint and Defendant Kualapu`u Ranch 4, LLC's answer and counterclaim against the County. The revised proposed resolution updates the name of the Committee before which the matter is pending in the 2019-2021 Council term.

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Your Committee notes the Council's Parks, Recreation, Energy, and Legal Affairs Committee (2017-2019 Council term) met on October 16, 2018.

Your Committee also 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.

The Director of Water Supply said most of Central Molokai, including Kaunakakai and Kualapuu, is served by the well.

A Deputy Corporation Counsel said the parties entered into mediation on February 14, 2019, and were able to agree on proposed terms. Terms would include the sale to the County of the 1-acre property the well is on plus an additional acre for a backup well whose location has yet to be determined. The complaint and counterclaim would be withdrawn, and the County would pay \$450,000 to Kualapu`u Ranch 4, LLC.

The Deputy said the County does not currently have a backup well to serve the area. Therefore, when the Kualapuu Mauka Well is not working, the Department of Water Supply must borrow water from the State Department of Hawaiian Home Lands.

Your Committee discussed the County's development and use of the well and the expiration of the County's right-of-entry agreement with Molokai Properties Limited for the well site; the history of ownership of the well site and the long-term lease to Kualapu`u Ranch 4, LLC; the appraised value of the property; and some legal risks associated with the pending claims.

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

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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 8-0 to recommend adoption of the revised 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 SETTLEMENT OF COUNTY OF MAUI VS. KUALAPU`U RANCH 4, LLC, ET AL., CIVIL NO. 18-1-0321(3)," be ADOPTED.

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



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
COUNTY OF MAUI VS. KUALAPU’U RANCH 4, LLC, ET AL.,
CIVIL NO. 18-1-0321(3)

WHEREAS, Plaintiff County of Maui filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on August 1, 2018, Civil No. 18-1-0321(3), against Kualapu’u Ranch 4, LLC and Molokai Properties Limited, claiming declaratory and injunctive relief regarding a well operated by the Department of Water Supply and situated on property leased by Kualapu’u Ranch 4, LLC; and

WHEREAS, the County of Maui, to avoid incurring 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; 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 Governance, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a

Resolution No. _____

negotiated settlement or Offer of Judgment 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:

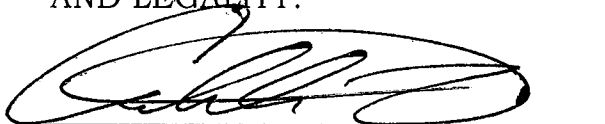
1. That it hereby authorizes the Department of the Corporation Counsel to negotiate settlement in this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

2. That it hereby 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

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 Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE
Deputy Corporation Counsel
County of Maui