

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

September 25, 2020

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 February 4, 2020, February 18, 2020, February 21, 2020, February 25, 2020, March 10, 2020, and September 8, 2020, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated January 8, 2020, the Department of the Corporation Counsel transmitted a proposed resolution to authorize settlement of Makabe, et al. v. Parks and Recreation Department, County of Maui, et al., Civil 18-1-0346(1), and transmitting a copy of the claim, dated August 16, 2018, filed in Second Circuit Court, State of Hawaii. The claim alleges injuries from a tree branch falling at Kanaha Beach Park, Kahului, Maui, Hawaii, on October 3, 2017.

By correspondence dated August 31, 2020, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF NORIYOSHI MAKABE AND MASAMI MAKABE AS CO-CONSERVATORS OF HAYATO MAKABE, AN INCAPACITATED PERSON V. PARKS AND RECREATION DEPARTMENT, ET AL.; CIVIL 18-1-0346(1)."

The purpose of the revised proposed resolution is to authorize the Department to settle the claim.

The Department also transmitted a copy of the claim and documentation relating to damages associated with the claim.

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

Page 2

Committee
Report No. _____

Your Committee notes the claimant alleges negligence, premise liability, emotional distress, and public nuisance. Your Committee also notes the County of Maui filed a Third-Party Complaint against Pacific Ohana Masonry & Landscaping, Inc. on April 8, 2020, for indemnification, defense, negligence, and contribution.

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

A Deputy Corporation Counsel provided a brief overview of the claim.

The Deputy requested an executive meeting to discuss confidential information related to the claim.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel in accordance with 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 and members Hokama, Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee Vice-Chair Rawlins-Fernandez was excused.

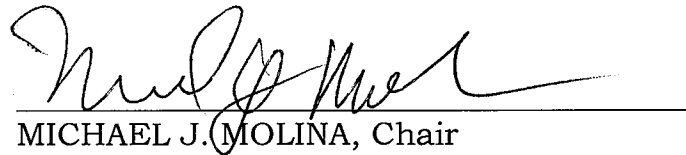
Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF NORIYOSHI MAKABE AND MASAMI MAKABE AS CO-CONSERVATORS OF HAYATO MAKABE, AN INCAPACITATED PERSON V. PARKS AND RECREATION DEPARTMENT, ET AL.; CIVIL 18-1-0346(1)," be ADOPTED.

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

Page 3

**Committee
Report No.** _____

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



MICHAEL J. MOLINA, Chair

get:cr:20011(33)aa:jbf

Resolution

No. _____

AUTHORIZING SETTLEMENT OF NORIYOSHI MAKABE
AND MASAMI MAKABE AS CO-CONSERVATORS OF
HAYATO MAKABE, AN INCAPACITATED PERSON V.
PARKS AND RECREATION DEPARTMENT, ET AL.; CIVIL 18-1-0346(1)

WHEREAS, Plaintiffs Noriyoshi Makabe and Masami Makabe as co-conservators of Hayato Makabe, an incapacitated, person filed a lawsuit against Parks and Recreation Department, County of Maui in the Circuit Court of the Second Circuit, State of Hawaii, on August 16, 2018, Civil No. 18-1-0346(1), alleging negligence, premise liability, emotional distress, and public nuisance; and

WHEREAS, the County of Maui, filed a Third-Party Complaint against Pacific Ohana Masonry & Landscaping, Inc. on April 8, 2020 for indemnification, defense, negligence, and contribution; 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

Resolution No. _____

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 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 approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee;
2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case;
3. That it authorizes the Director of Finance to satisfy said settlement of this case; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE K. KAWASAKI
Deputy Corporation Counsel
County of Maui
LIT-5908