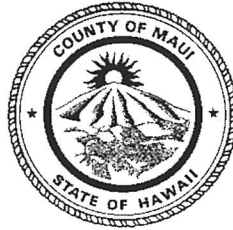


MICHAEL P. VICTORINO  
Mayor

MOANA M. LUTEY  
Corporation Counsel

EDWARD S. KUSHI, JR.  
First Deputy

LYDIA A. TODA  
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL  
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January 15, 2020

TO: Michael J. Molina, Chair  
Governance, Ethics, and Transparency Committee

FROM: Richelle M. Thomson, Deputy Corporation Counsel *RMT*

RE: LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION:  
CLIMATE CHANGE LITIGATION) (GET-11(30)) (LF LIT-5991)

In response to your request dated December 30, 2019, please find a redlined version and clean, executed draft resolution, as amended during the December 17, 2019, GET Committee meeting.

Please let me know if you need anything further.

# Resolution

No. \_\_\_\_\_

## AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO CLIMATE CHANGE LITIGATION

WHEREAS, Mayor Michael P. Victorino has declared that the effects of climate change and sea level rise (“SLR”) are among the topmost critical issues of his administration; and

WHEREAS, rising sea levels and projections of stronger and more frequent El Niño events and tropical cyclones indicate a growing statewide vulnerability to coastal flooding and erosion; and

WHEREAS, the impacts of rapid warming of the atmosphere and the oceans, caused by decades of unabated and profligate carbon emissions, are causing unprecedented rates of sea level rise that already affect and threaten Maui County’s natural environment, critical public infrastructure, public and private property, and the economy; and

WHEREAS, SLR is already impacting the Island and will likely reach 3.2 feet globally as soon as 2060 and will continue increasing for centuries; and

WHEREAS, SLR already impacts public and private property in Maui County’s coastal areas, and these impacts will worsen in coming decades; and

**Resolution No. \_\_\_\_\_**

WHEREAS, much of Maui Island's land designated for urban land uses will be adversely affected by SLR; and

WHEREAS, SLR will render many miles of major coastal roads impassible, jeopardizing access to many areas of the island; and

WHEREAS, Maui County's economic losses attributable to SLR and related climate change impacts to the Island include effects on its tourism-based economy and critical infrastructure such as harbor facilities, airport facilities, sewage treatment plants, water and sewer lines, and roadways; and

WHEREAS, greenhouse gas pollution from fossil fuel companies has and will continue to warm the Pacific Ocean and the atmosphere, causing SLR; increasing the frequency and severity of droughts, extreme precipitation events, and tropical cyclones; and causing other climate change-related impacts to Maui County; and

WHEREAS, fossil fuel companies have known for decades that combustion of fossil fuels causes these and other dire climate change-related impacts, and rather than warning of those risks and taking or supporting steps to mitigate or avoid them have instead increased production while spending billions of dollars on public relations campaigns to deceive the public about the relationship between fossil fuel

**Resolution No. \_\_\_\_\_**

emissions and climate change, and about the need to take steps to avoid or mitigate the consequences of excessive combustion of fossil fuels; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of Sher Edling LLP (the firm), as special counsel to represent the County in litigation involving the fossil fuel companies, and related entities, because of the complexity of litigation issues and the firm's expertise and experience in this area; and

WHEREAS, the firm and the Department of the Corporation Counsel shall work as a team in this matter, with the Department directing litigation strategy as chief legal advisor and representative of the County pursuant to Section 8-2(3), of the Charter of the County of Maui; and

WHEREAS, the firm's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

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

1. That the Council hereby authorizes the employment of the firm Sher Edling LLP as special counsel to represent the County in litigation as described in this resolution, on a contingency fee basis under


Resolution No. \_\_\_\_\_

the terms set forth in an executive meeting of the Governance, Ethics, and Transparency Committee; and

2. That the Department of the Corporation Counsel regularly update the Council's leadership on the matter; and

3. 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:



\_\_\_\_\_  
RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui  
LIT5991

# Resolution

No. \_\_\_\_\_

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WHEREAS, rising sea levels and projections of stronger and more frequent El Niño events and tropical cyclones indicate a growing statewide vulnerability to coastal flooding and erosion; and

WHEREAS, the impacts of rapid warming of the atmosphere and the oceans, caused by decades of unabated and profligate carbon emissions, are causing unprecedented rates of sea level rise that already affect and threaten Maui County’s natural environment, critical public infrastructure, public and private property, and the economy; and

WHEREAS, SLR is already impacting the Island and will likely reach 3.2 feet globally as soon as 2060 and will continue increasing for centuries; and

WHEREAS, SLR already impacts public and private property in Maui County’s coastal areas, and these impacts will worsen in coming decades; and

**Resolution No. \_\_\_\_\_**

WHEREAS, much of Maui Island's land designated for urban land uses will be adversely affected by SLR; and

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WHEREAS, greenhouse gas pollution from fossil fuel companies has and will continue to warm the Pacific Ocean and the atmosphere, causing SLR; increasing the frequency and severity of droughts, extreme precipitation events, and tropical cyclones; and causing other climate change-related impacts to Maui County; and

WHEREAS, fossil fuel companies have known for decades that combustion of fossil fuels causes these and other dire climate change-related impacts, and rather than warning of those risks and taking or supporting steps to mitigate or avoid them have instead increased production while spending billions of dollars on public relations campaigns to deceive the public about the relationship between fossil fuel

**Resolution No. \_\_\_\_\_**

emissions and climate change, and about the need to take steps to avoid or mitigate the consequences of excessive combustion of fossil fuels; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of Sher Edling LLP (the firm), as special counsel to represent the County in litigation involving the fossil fuel companies, and related entities, because of the complexity of litigation issues and the firm's expertise and experience in this area; and

WHEREAS, the firm and the Department of the Corporation Counsel shall work as a team in this matter, with the Department directing litigation strategy as chief legal advisor and representative of the County pursuant to Section 8-2(3), of the Charter of the County of Maui; and

WHEREAS, the firm's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

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

1.          That the Council hereby authorizes the employment of the firm Sher Edling LLP as special counsel to represent the County in litigation as described ~~hereinaabove~~ in this resolution, on a contingency fee



Resolution No. \_\_\_\_\_

basis under the terms set forth in an executive meeting ~~before~~ of the  
~~appropriate Council committee~~ Governance, Ethics, and Transparency  
Committee; and

1.2. That the Department of the Corporation Counsel regularly  
update the Council's leadership on the matter; and

2.3. 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:

\_\_\_\_\_  
RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui  
LIT5991