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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

December 30, 2019

MEMO TO: Moana M. Lutey
Corporation Counsel

F R O M: Michael J. Molina, Chair 
Governance, Ethics, and Transparency Committee

SUBJECT: **LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION:
CLIMATE CHANGE LITIGATION)** (GET-11(30))

May I please call your attention to the attached correspondence, dated November 5, 2019, from the Acting Mayor, transmitting a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO CLIMATE CHANGE LITIGATION." The purpose of the proposed resolution is to authorize the employment of Sher Edling LLP as special counsel to represent the County in litigation involving fossil fuel companies, and related entities.

The Committee recommended adoption of the resolution, with revisions, at its meeting of December 17, 2019. I would like to request your assistance in obtaining a revised resolution, incorporating the Committee's revisions and further revisions that will help to ensure compliance with the Revised Charter of the County of Maui (1983), as amended, and Part I, Chapter 92, Hawaii Revised Statutes, known as the Sunshine Law.

The Committee voted to revise the resolution to add a BE IT RESOLVED clause requiring the Department of the Corporation Counsel to regularly update the Council's leadership on the matter and to indicate that damages obtained in the litigation be allocated not to the General Fund, but to specific appropriations relating to climate change, perhaps including a "Sea Level Rise Mitigation Fund."

Moana M. Lutey
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Charter Section 3-6(6) gives the Council the authority to employ special counsel and states: "Any such employment shall specify the compensation, if any, to be paid for said services."

The resolution includes a BE IT RESOLVED clause stating the special counsel's compensation will be "on a contingency fee basis under the terms set forth in an executive meeting before the appropriate Council committee." I question whether this provision actually specifies the compensation, as required by the Charter, and provides sufficient notice to members of the public who might want to offer informed testimony on the resolution, as required by the Sunshine Law.

The resolution also includes a term that should be replaced to improve readability.

Finally, the resolution does not indicate which categories of fees and costs will be the County's responsibility and which will be the special counsel's, contrary to most special counsel resolutions.

Therefore, may I request the resolution be revised as follows:

- 1) add a BE IT RESOLVED clause requiring the Department of the Corporation Counsel to regularly update the Council's leadership on the matter;
- 2) add a statement about the allocation of damages obtained in the litigation be allocated to specific appropriations relating to climate change;
- 3) revise the BE IT RESOLVED clause on compensation to provide more specificity on the contingency fee to ensure compliance with the Charter and the Sunshine Law;
- 4) replace "hereinabove" with "in this Resolution";
- 5) add a statement indicating which categories of fees and costs will be the County's responsibility and which will be the special counsel's.

I would appreciate receiving a revised proposed resolution, incorporating these revisions and approved as to form and legality, by **January 9, 2020**. To

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ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (James Forrest at ext. 7137, Shelly Espeleta at ext. 7134, or Pauline Martins at ext. 8039).

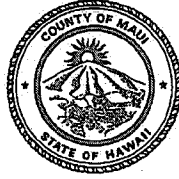
get:ltr:011(30)acc01:dr

Attachment

GET-11(30)

MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

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OFFICE OF THE
COUNTY COUNCIL

November 5, 2019

Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Molina:

**SUBJECT: LITIGATION MATTERS - RESOLUTION AUTHORIZING
THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO
CLIMATE CHANGE LITIGATION (GET-11)**

I am transmitting a proposed resolution entitled "Authorizing the Employment of Special Counsel Related to Climate Change Litigation." I am requesting that this proposed resolution be heard at the GET committee on November 19, 2019.

I appreciate your attention and expedited review of this matter. Should you have any questions or concerns, please do not hesitate to call me directly at ext. 7202.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandy K. Baz".

SANDY K. BAZ
Acting Mayor

Attachment

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

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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

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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

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litigation as described hereinabove, on a contingency fee basis under the terms set forth in an executive meeting before the appropriate Council committee; and

2. 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