

MICHAEL P. VICTORINO
Mayor

ROWENA M. DAGDAG-ANDAYA
Director

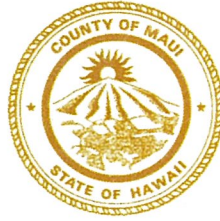
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OFFICE OF THE
COUNTY COUNCIL

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
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September 5, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

For Transmittal to:

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

APPROVED FOR TRANSMITTAL



Mayor

9/6/19

Date

Dear Chair Molina and Members:

**RE: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198
SOM, BMK, U.S. SUPREME COURT DOCKET 18-260 (GET-26)**

The Department of Public Works (Department) does not have a direct role in the County's Wastewater Treatment Operations and the Department has had no involvement in the subject matter, to date. The Department has instead, observed arguments for and against the case from the sidelines, as our colleagues at the Department of Environmental Management dealt with lawsuits and technical issues under their purview.

Previous Maui County Council Committee meetings, related news articles, editorials, and case briefings from various clean water organizations and stakeholders have brought to light, various issues that will potentially impact operations and future projects with this Department. The Department has oversight on Maui County roadways and stormwater systems. In light of the foregoing, we offer the following comments with regards to potential outcomes and liabilities that may fall on the Department. Our general

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Transparency Committee
September 5, 2019
Page 2

finding is that the Ninth Circuit Court's ruling, unchanged, will likely create regulatory uncertainty and unintended consequences which may result in the following:

- Substantial new burdens on the Department of Health's (DOH) Clean Water and Drinking Water Branches. In other words, the Federal interpretation of the ruling will dictate how the DOH manages its programs in a way that they are unfamiliar with and unequipped for;
- Regulatory uncertainty in permitting for new roadway and facility expansion or improvement projects, as they relate to groundwater; and
- New legal liabilities for facilities and infrastructure owned and operated by DPW, i.e., the County and residents will be more susceptible to civil lawsuits.

Regulatory permits that do not exist today will need to be formulated by the DOH to further regulate specific infrastructure. Examples of the infrastructure to be impacted and are directly under DPW control include:

1. Existing Detention/Retention and Sediment Settling basins.
2. Existing "dry wells" or inlets (catch basins) that are designed and intended to infiltrate into groundwater.
3. Roadway medians irrigated by R1 water.
4. Infiltration systems associated with municipal parking lots.


We anticipate that the Ninth Circuit's decision could also result in regulatory uncertainty for Green Infrastructure and Low Impact Development (LID) on public and private property. These types of stormwater management strategies promote natural systems for infiltrating stormwater into the ground and improving water quality using grassed swales, bio-retention areas, rain gardens, and pervious or porous pavements; strategies that are recommended and encouraged by the Department and by the Environmental Protection Agency (EPA), but do not require a National Pollutant Discharge Elimination System (NPDES) permit. We are concerned that any regulatory uncertainty on the applicability of the Clean Water Act could discourage or inhibit the use of these strategies for addressing stormwater runoff.

Honorable Michael P. Victorino
For Transmittal to:
Honorable Michael J. Molina, Chair
And Members of the Governance, Ethics, and
Transparency Committee
September 5, 2019
Page 3

The Department recognizes that the regulatory environment at the local, State, and Federal levels is forecasted to change significantly in the years ahead and that these changes will emphasize the importance of water quality and environmental protection; changes that we welcome and look forward to. Our work involves planning and budgeting for new infrastructure and retrofitting old infrastructure, and determining how to meet regulatory requirements for these projects. In order to plan for these projects and invest taxpayer money wisely, we need certainty and a better understanding on how to uphold the Clean Water Act, and what type of permits would be required for specific projects.

The foregoing are some of the concerns that the Department has based on the legal findings published by the Ninth Circuit. We are uncertain as to the ramifications of the Ninth Circuit's decision as it relates to projects under the purview of this Department. As such, the Department requires clarification and guidance with respect to the potential implications of the Ninth Circuit's decision and recommends moving forward in gaining clarity from the United States Supreme Court.

Sincerely,



ROWENA M. DAGDAG-ANDAYA
Director

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