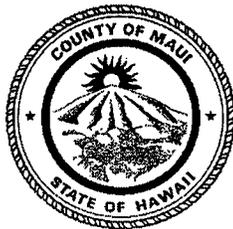


MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Acting Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer



RECEIVED

2019 MAY 23 AM 9:35

OFFICE OF THE
COUNTY COUNCIL

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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May 23, 2019

T O: Mike Molina, Chair
Governance, Ethics, and Transparency Committee

F R O M: Richelle M. Thomson, Deputy Corporation Counsel *ROM*

SUBJECT: **GET-26** Hawaii Wildlife Fund et al., v. County of Maui, Docket No. 18-260, Supreme Court of the United States

Please find attached a resolution related to a settlement proposal to be presented by Acting Mayor/Managing Director Sananda K. Baz in a duly called executive meeting before the Governance, Ethics, and Transparency Committee.

Resolution

No. _____

AUTHORIZING SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V.
COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK,
U.S. SUPREME COURT CASE NO. 18-260

WHEREAS, Plaintiffs Hawaii Wildlife Fund, et al. filed a lawsuit in the United States District Court (the “District Court”) on April 16, 2012, Civil No. 12-00198 SOM BMK, against the County of Maui, alleging violations under the Federal Water Pollution Control Act, also known as the Clean Water Act; and

WHEREAS, on January 23, 2015, and June 25, 2015, the District Court granted Plaintiff’s motions for partial summary judgment; and

WHEREAS, to avoid incurring expenses and the uncertainty of a judicial determination of the parties’ respective rights and liabilities, the County Council approved a Settlement Agreement by Resolution 15-75 (“2015 Settlement Agreement”); and

WHEREAS, the 2015 Settlement Agreement was lodged with the District Court on September 24, 2015, and following federal government review pursuant to 40 C.F.R. §135.5, the District Court entered the Settlement Agreement and Order and entered its Judgement on November 17, 2015; and

WHEREAS, pursuant to the terms of the 2015 Settlement Agreement and Order, the Parties agreed that the County reserved the right to appeal

Resolution No. _____

the rulings of the District Court to the Ninth Circuit Court of Appeals and on to the U.S. Supreme Court; and

WHEREAS, the County of Maui appealed the District Court's decision to the Ninth Circuit Court of Appeals, No. 15-17447, and the Ninth Circuit Court of Appeals denied the appeal on February 1, 2018; and

WHEREAS, County of Maui filed a Petition for Writ of Certiorari with the U.S. Supreme Court on August 27, 2018, and on February 19, 2019, the U.S. Supreme Court granted the County of Maui's petition, No. 18-260; and

WHEREAS, in accordance with Section 3.16.020(F), Maui County Code, the Department of Corporation Counsel may transmit to Council settlement offers involving claims not specified by the Council pursuant to Section 3.16.020(D), Maui County Code; and

WHEREAS, the Department of the Corporation Counsel has received notification that Mayor Michael P. Victorino, by and through Acting Mayor/Managing Director Sananda K. Baz, wishes to present and discuss a Settlement Proposal, of which terms, conditions, ramifications, and consequences of said proposal will be discussed in a duly called executive meeting before the Governance, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts, circumstances, ramifications, and consequences regarding this case and pending appeal before the U.S.

Resolution No. _____

Supreme Court, and being advised in the premises, the Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of 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; and

3. That it hereby 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 Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui
Lit 4996