

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

January 24, 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 December 17, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated November 5, 2019, the Acting Mayor transmitted 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 for climate change.

A Deputy Corporation Counsel provided a brief overview of the case. The Deputy described the qualifications for the special counsel and outlined similar cases elsewhere in the United States. She noted the Honolulu City Council had approved the employment of Sher Edling LLP as special counsel for the City and County of Honolulu for climate-change litigation.

The Managing Director and a representative from the University of Hawaii Sea Grant Program described at length the existing and foreseeable harm to the County arising from climate change and the County's bases for compensation through judicial action.

Because the case involves ongoing litigation, a Deputy Corporation Counsel requested the opportunity to convene an executive meeting.

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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.

Your Committee discussed amending the proposed resolution to require that the Council be regularly updated on climate-change litigation.

Your Committee expressed its support for the County initiating climate-change litigation and employing the designated special counsel.

Based on the information received and the recommendation of the Department, your Committee voted 6-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina and members Hokama, Kama, Paltin, Sinenci, and Sugimura voted "aye." Committee member King abstained. Committee Vice-Chair Rawlins-Fernandez and member Lee were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

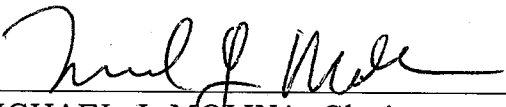
Your Governance, Ethics, and Transparency Committee **RECOMMENDS** that Resolution _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO CLIMATE CHANGE LITIGATION," be **ADOPTED**.

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



MICHAEL J. MOLINA, Chair

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Resolution

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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 litigation as described in this resolution, on a contingency fee basis under

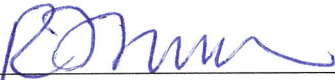
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the terms set forth in an executive meeting of the Governance, Ethics, and Transparency Committee; and

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