

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

February 21, 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 February 4, 2020, makes reference to the following:

1. County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.
2. Committee Report 20-5, from your Governance, Ethics, and Transparency Committee, recommending adoption of 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.

Your Committee notes at its meeting of January 24, 2020, the Council recommitted Committee Report 20-5 to consider additional information.

A Deputy Corporation Counsel provided a brief overview of the case.

Your Committee discussed matters related to the fee agreement for special counsel.

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 pursuant to Section 92-5(a)(4), Hawaii Revised Statutes; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Following the executive meeting, your Committee reconvened in regular session.

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

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

Your Governance, Ethics, and Transparency Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO CLIMATE CHANGE LITIGATION," be ADOPTED; and
2. That Committee Report 20-5 be FILED.

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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

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 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:



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RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui  
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