

Resolution

No. _____

AUTHORIZING SETTLEMENT IN HAWAII
WILDLIFE, ET AL., V. COUNTY OF MAUI, CIVIL
12-00198 SOM-KJM, UNITED STATES DISTRICT
COURT, DISTRICT OF HAWAII

WHEREAS, Plaintiffs Hawaii Wildlife Fund, et al. filed a lawsuit in the United States District Court (“District Court”) on April 16, 2012, Civil 12-0019 SOM BMK, against the County of Maui, alleging violation under the Federal Water Pollution Control Act, also known as the Clean Water Act; and

WHEREAS, on January 23, 2015, and June 25, 2015, District Court granted plaintiffs’ 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 partial settlement agreement by Resolution 15-75 (“2015 Settlement Agreement”); and

WHEREAS, in accordance with the terms of the 2015 Settlement Agreement, the parties agreed the County reserved the right to appeal the rulings of the District Court to the Ninth Circuit Court of Appeals (“Circuit Court”) and then the United States Supreme Court (“Supreme Court”); and;

WHEREAS, the County appealed the District Court's decision to the Circuit Court 15-17447, and the Circuit Court denied the appeal on February 1, 2018; and

WHEREAS, the County filed a Petition for Writ of Certiorari with the Supreme Court on August 27, 2018, and on February 19, 2019, the Supreme Court granted the County's petition, Docket 18-260; and

WHEREAS, on April 23, 2020, the Supreme Court rendered a decision in County of Maui, Hawaii v. Hawaii Wildlife Fund et. al, stating “that the statute that best captures Congress meaning . . . is that a permit is required when there is a discharge from a point source directly

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into navigable water or when there is the functional equivalent of a direct discharge”; and

WHEREAS, the Supreme Court also noted seven factors, including time and distance traveled, that “may prove relevant” to determining the functional equivalent of point source discharge through groundwater depending on “how similar the particular discharge is to a direct discharge”; and

WHEREAS, consistent with the decision of the District Court, which previously concluded the discharges from the Lahaina Wastewater Treatment Facility are the “functionally equivalent to a [direct] discharge into the ocean itself”; and

WHEREAS, the Supreme Court also “vacated [the Circuit Court’s] judgment and remand[ed] the case for further proceeding consistent with this opinion”; and

WHEREAS, the Department of the Corporation Counsel advised the Council’s Governance, Ethics and Transparency Committee (“GET”) at its meeting of July 7, 2020, the Supreme Court remanded the case to the Circuit Court, and subsequently the Circuit Court remanded the case to the District Court, where the case is pending as Hawaii Wildlife, et al., V. County of Maui, Civil 12-00198 SOM-KJM; and

WHEREAS, on May 30, 2020, Mayor Michael P. Victorino proposed a settlement offer to the Plaintiffs, and;

WHEREAS, on June 9, 2020 the plaintiffs offered a counter proposal to the County, which is attached as Exhibit “1”; and

WHEREAS, the Corporation Counsel further advised the GET Committee that the County had not offered a response, as yet, to the Plaintiff’s counter proposal; and

WHEREAS, the case has continued since 2012, costing the taxpayers of the County of Maui over \$4 million in legal fees to continue the case to the Supreme Court; and

WHEREAS, the GET Committee was advised that the continuation of the case at the District Court could cost \$250,000 or more in attorneys’ fees, discovery, and other research; and

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WHEREAS, this case has dragged on over eight years and, without a settlement, could continue another several years; and

WHEREAS, continuation of the case without a reduction in the dependency on wastewater injection wells will continue to impact our environment, marine life and our coastal reef system; and

WHEREAS, the Council believes it should focus its resources, time, and efforts into securing jobs for residents, enhancing the local economy, providing shelter, and assisting individuals and families who need health care and treatment; and

WHEREAS, the Council believes continuing the case is not in the best interest of the residents of the County and further perpetuation of the case would be a distraction from addressing the real needs of residents of Lanai, Maui, and Molokai; and

WHEREAS, settlement of the case would allow the Council to focus on families and businesses in need; now, therefore,

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

1. That approves settlement of Hawaii Wildlife, et al., v. County of Maui, Civil 12-00198 SOM-KJM, United States District Court, District of Hawaii under the terms set forth during deliberations before the Governance, Ethics, and Transparency Committee; and
2. That it directs the Corporation Counsel to prepare and authorizes the Council Chair or Vice-Chair to execute a Release and Settlement Agreement on behalf of the County to resolve the case;
3. That it authorizes the Director of Finance to satisfy settlement of the case; and
4. That certified copies of the resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

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APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

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