

# Resolution

No. 19-158

**AUTHORIZING SETTLEMENT IN HAWAII  
WILDLIFE FUND, ET AL. V. COUNTY OF MAUI,  
CIVIL 12-00198 SOM BMK, U.S. SUPREME  
COURT CASE 18-260**

WHEREAS, Plaintiffs Hawaii Wildlife Fund, et al. filed a lawsuit in the United States District Court ("District Court") on April 16, 2012, Civil 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, 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 Settlement Agreement by Resolution 15-75 ("2015 Settlement Agreement"); and

WHEREAS, the 2015 Settlement Agreement was lodged with District Court on September 24, 2015, and following Federal government review pursuant to 40 C.F.R. §135.5, District Court entered the Settlement Agreement and Order and entered its Judgment 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 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 District Court's decision to the Ninth Circuit Court of Appeals 15-17447, and the Ninth Circuit Court of Appeals denied the appeal on February 1, 2018; and

WHEREAS, the 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 18-260; and



WHEREAS, in accordance with Section 3.16.020(F), Maui County Code, the Department of the 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 from Plaintiffs' counsel and transmitted to the Council's Governance, Ethics, and Transparency Committee, "Confidential Settlement Communication – FRE 408," dated April 26, 2019 (with amendments made on May 9, 2019), attached hereto as Exhibits "A" and "B" ("Plaintiffs' 2019 Settlement Proposals"); and

WHEREAS, in open session on September 6, 2019, at the reconvened September 3, 2019, meeting of the Governance, Ethics, and Transparency Committee, the Committee revised the terms of paragraph four of Exhibit "B" to read as follows:

"As long as the County makes good faith efforts to reduce its reliance on the LWRf injection wells to dispose of treated wastewater, to increase the beneficial reuse of that treated wastewater, and to secure and comply with the terms of an NPDES permit—which could be 'an equivalent control document' (see Hawaii Administrative Rules §11-55-01)—for the LWRf injection wells, the Community Groups will not bring litigation seeking additional penalties based on the County's lack of Clean Water Act compliance for use of the LWRf injection wells."; and

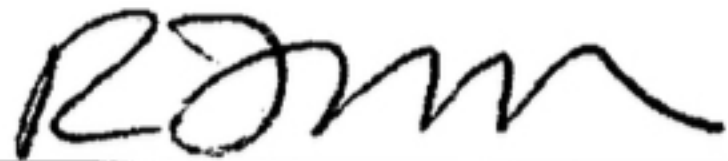
WHEREAS, having reviewed the facts, circumstances, ramifications, and consequences regarding the case and pending appeal before the U.S. Supreme Court, and being advised in the premises, the County Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of the case under the terms set forth in the Plaintiffs' 2019 Settlement Proposals, as amended in open session before the reconvened September 3, 2019 meeting of the Governance, Ethics, and Transparency Committee on September 6, 2019;

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in the case;
3. That it hereby authorizes the Director of Finance to satisfy said 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.

APPROVED AS TO FORM AND LEGALITY

  
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Department of the Corporation Counsel  
County of Maui

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