

October 4, 2019

**Via Hand Delivery**

The Honorable Scott Harris  
Clerk of Court  
Supreme Court of the United States  
One First Street, N.E.  
Washington, DC 20543

Re: No. 18-260, *County of Maui v. Hawai'i Wildlife Fund, et al.*

Dear Mr. Harris,

I am Counsel of Record for the County of Maui on this case. I am responding on behalf of the County of Maui Corporation Counsel, the chief legal advisor and legal representative of the County, to Mr. Henkin's letter to you that informs of a possible settlement of this case. This case has not settled.

On October 1, 2019, Corporation Counsel responded to County Council Chair King's letter of September 25, 2019 (a copy of which was attached to Mr. Henkin's letter) in which Chair King requested that Corporation Counsel execute the settlement agreement and withdraw the County's petition to the Supreme Court. Corporation Counsel informed the Chair that the Mayor must agree to settle the case and withdraw the County's petition. At this time, the Mayor has not agreed to do so. A copy of this letter is attached.

Please let me know if you have any questions.

Sincerely,



Elbert Lin

cc: Moana Lutey  
Richelle Thomson  
Colleen Doyle  
David Henkin

HUNTON  
ANDREWS KURTH  
Enclosure

**MICHAEL P. VICTORINO**  
Mayor

**MOANA M. LUTEY**  
Corporation Counsel

**EDWARD S. KUSHI, JR.**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
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TELEPHONE: (808) 270-7740  
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October 1, 2019

Kelly T. King  
Council Chair  
Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

**SUBJECT: REGARDING REQUEST FOR EXECUTION OF RESOLUTION NO. 19-158 AND WITHDRAWAL FROM HAWAII WILDLIFE FUND, ET AL V. COUNTY OF MAUI, CIVIL 12-00198 SOM BMK, U.S. SUPREME COURT CASE 18-260 (PAF 19-173)**

Dear Chair King:

Thank you for your letter dated September 25, 2019 regarding the above-listed matter. As you are aware, I have been out of the office for the last two weeks, only having returned yesterday. Because this matter is of great importance, I am able to provide you with a brief response, that will be supplemented with additional case law and analysis at a later date.

1. You have requested that my office execute a settlement agreement consistent with Resolution No. 19-158.

It is our position that withdrawal of the appeal before the U.S. Supreme Court must be agreed to by the Mayor. As of this date, Mayor Michael P. Victorino, has not agreed to withdraw the appeal.

Chair Kelly T. King  
October 1, 2019  
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2. You have requested that we take necessary action to resolve the case, consistent with Resolution No. 19-158.

Because it is our position that the Mayor must agree to withdraw the U.S. Supreme Court appeal, and has not, we have not taken any action to resolve this matter.

Sincerely,



MOANA M. LUTEY  
Corporation Counsel

MML:cmv  
PAF 19-173  
2019-0670

cc: Edward Kushi, Jr. First Deputy Corporation Counsel  
Elbert Lin, Esq., Hunton Andrews Kurth, Special Counsel for the  
County of Maui

No. 18-260

IN THE SUPREME COURT OF THE UNITED STATES

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COUNTY OF MAUI

Petitioner,

HAWAI'I WILDLIFE FUND, SIERRA CLUB – MAUI GROUP, SURFRIDER  
FOUNDATION, WEST MAUI PRESERVATION ASSOCIATION,

Respondents.

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2019, one (1) copy of the foregoing letter was served as required by U.S. Supreme Court Rule 29.3, on the following:

David L. Henkin  
EARTHJUSTICE  
850 Richards Street, Suite 400  
Honolulu, Hawai'i 96813  
(808) 599-2436

*Counsel for Respondents*

Noel J. Francisco  
*Solicitor General*  
U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue, N.W., Room 5616  
Washington, D.C. 20530-0001  
(202) 514-2217

*Counsel for Amicus Curiae United States*

The following e-mail addresses have also been served electronically:

[dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org)  
[SupremeCtBriefs@usdoj.gov](mailto:SupremeCtBriefs@usdoj.gov)

I further certify that all parties required to be served have been served.

  
\_\_\_\_\_  
Elbert Lin