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COUNTY COUNCIL
COUNTY OF MAUI
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October 8, 2019

Mr. Elbert Lin, Esq.
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd St.
Richmond, VA 23219-4074

Via email: elin@HuntonAK.com

Dear Mr. Lin:

SUBJECT: **WITHDRAWAL OF SUPREME COURT APPEAL IN
HAWAII WILDLIFE FUND V. COUNTY OF MAUI**
(PAF 19-173)

As the Council Chair, I am writing to direct you to implement Resolution 19-158, adopted by the Council on September 20, 2019, to accept the plaintiffs' settlement offer and work with them to withdraw the appeal pending in the United States Supreme Court as Docket 18-260.

As we discussed last week, the Department of the Corporation Counsel has taken the position that the Corporation Counsel, as the County's legal representative in all legal proceedings, controls active litigation. You said that you have taken direction from the Corporation Counsel on that basis. However, the Corporation Counsel's position is incorrect because it ignores an explicit Charter exception regarding special counsel.

The Revised Charter of the County of Maui (1983), as amended, addresses this issue in the Sections 3-6 and 8-2.3. The text of these sections follows.

Section 3-6. Powers of council. *The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:*

6. *To retain, employ, or designate, by a vote of two-thirds of its entire membership, special counsel as legal representative for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services.*

7. *To designate attorneys within the office of council services to serve as legal advisors.*

Section 8-2.3. Powers, Duties, and Functions. *The corporation counsel shall:*

1. *Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel.*

2. *Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions; and of all officers and employees in matters relating to their official duties, except as otherwise provided in this charter.*

3. *Represent the county in all legal proceedings.*

4. *Perform such other duties and functions as may be incident to the department or required by law.*

(Emphases added.)

In summary, the Charter makes Corporation Counsel the legal representative of the County, except when the Charter says otherwise. The Charter does say otherwise, when it allows special counsel to be the legal representative with the Council's approval by two-thirds vote.

The Council has exclusive authority to retain special counsel for the County. Maui County Council v. Thompson, 929 P.2d 1355 (Haw. 1996). The Council exercised this authority by retaining you and extending your retention as legal representative in this matter, by Resolutions 12-127, 14-52, 14-99, 14-137, 15-35, 15-74, 15-101, 16-3, 16-69, 17-133, 18-61, and 18-189.

As noted above, the Council accepted a settlement offer by Resolution 19-158, more than two weeks ago, with oral argument now less than four weeks away. As Council Chair, I am directing you to implement Resolution 19-158, to be formalized in a settlement agreement with the plaintiffs, without further delay.

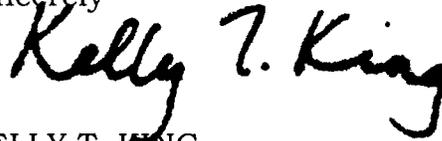
Mr. Elbert Lin, Esq.
October 8, 2019
Page 3

I understand the County's standard-form contract for professional services includes a reference to the Corporation Counsel as "Officer-in-Charge." But that designation is generally for fiscal management of the contract and cannot supersede the Charter.

The Corporation Counsel provided me an October 3, 2019 memorandum of law identifying portions of Hawaii Wildlife Fund's most recent settlement offer that would purportedly require action by the executive branch, claiming the Mayor's approval would be required for settlement under Harris v. DeSoto, 911 P.2d 60 (Hawaii 1996). Based on legal advice from the Council's legislative attorneys, I disagree with Corporation Counsel's position and its understanding of Harris. To avoid contention and seek prompt settlement, however, I authorize you to work with the plaintiffs' counsel to remove or revise any terms that might implicate executive authority, if any.

I look forward to your immediate action.

Sincerely

Handwritten signature of Kelly T. King in black ink.

KELLY T. KING
Council Chair

cc: Moana Lutey, Esq.
Isaac Moriwake, Esq.

paf:dmr:19-173r