

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 1, 2010

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on September 16, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated September 8, 2010, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FREDDI L. GREENBERG WITH RESPECT TO LEGAL MATTERS RELATING TO THE ESTABLISHMENT OF A LANDFILL GAS RECOVERY FACILITY AT THE CENTRAL MAUI LANDFILL", and transmitting a copy of a document entitled "Final Report: Central Maui Landfill, Landfill Gas Utilization Study and Conceptual Design" (Gas Utilization Study), dated January 2010. The purpose of the proposed resolution is to authorize the employment of Freddi L. Greenberg as the County's special counsel in all legal matters pertaining to the establishment of a landfill gas energy recovery facility at the Central Maui Landfill, for a total compensation of \$100,000.

The Director of Environmental Management explained that in response to State and Federal regulatory requirements, the County operates a gas collection and control system at the Central Maui Landfill. Although the gas is not currently used for alternative energy purposes, the Administration would like to consider its options related to the establishment of a landfill gas recovery facility at the Central Maui Landfill. The Director noted that State and Federal regulations do not require that the County use the landfill gas as a renewable energy source.

The Deputy Corporation Counsel stated that the potential legal issues relating to the establishment of a landfill gas recovery facility involve a highly specialized area of law, requiring specific expertise with energy projects based on captured landfill gas. He further noted that special counsel is necessary to evaluate ownership options, the technologies available, and to negotiate any necessary agreements involved with the generation and sale of alternative energy.

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The Deputy Corporation Counsel advised your Committee that the Department of the Corporation Counsel engaged in a selection process pursuant to Chapter 103D, Hawaii Revised Statutes, the Hawaii Public Procurement Code. Ms. Greenberg was selected based on her extensive experience in the area of energy law.

Your Committee interviewed Ms. Greenberg by telephone conference call about her experience and knowledge in the area of energy law. Your Committee expressed concern about the selection process; nevertheless, your Committee was satisfied with Ms. Greenberg's qualifications.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the proposed resolution. Committee Chair Molina, and members Baisa, Kaho`ohalahala, Medeiros, Nishiki, and Pontanilla voted "aye". Committee Vice-Chair Mateo and members Johnson and Victorino were excused.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FREDDI L. GREENBERG WITH RESPECT TO LEGAL MATTERS RELATING TO THE ESTABLISHMENT OF A LANDFILL GAS RECOVERY FACILITY AT THE CENTRAL MAUI LANDFILL" be **ADOPTED**.

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This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
FREDDI L. GREENBERG WITH RESPECT TO LEGAL MATTERS
RELATING TO THE ESTABLISHMENT OF A LANDFILL GAS RECOVERY
FACILITY AT THE CENTRAL MAUI LANDFILL

WHEREAS, the Department of Environmental Management ("Department") has constructed a landfill gas collection and control system at the Central Maui Landfill for the purpose of managing the release and migration of landfill gas, a natural byproduct of the anaerobic decomposition of municipal solid waste; and

WHEREAS, the Department currently operates the gas collection and control system solely to protect the environment and comply with applicable Federal and State regulations; and

WHEREAS, captured landfill gas has a variety of potential uses, including electrical generation, direct use as a fossil-fuel replacement, and production of high BTU fuel; and

WHEREAS, the Department desires to realize the potential of the landfill gas as an alternative energy source by establishing a landfill gas energy recovery facility at the Central Maui Landfill; and

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WHEREAS, the Department has identified possible scenarios for the type of energy recovery facility to be constructed and different ownership options; and

WHEREAS, to adequately evaluate the possible scenarios and technologies available, and to help establish and negotiate the necessary agreements involved with the generation and sale of alternative energy, the Department may need to consider a variety of legal and equitable matters arising under County, State, Federal and/or international law; and

WHEREAS, the potential legal issues involve a highly specialized area of the law, and require a specific expertise with energy projects based on captured landfill gas; and

WHEREAS, the Selection Committee of the Department of the Corporation Counsel has met as required by the State Procurement Code, and has identified and ranked three law firms or attorneys on the County's eligibility list, of which Freddi L. Greenberg was ranked first; and

WHEREAS, the recommendation of the Selection Committee was accepted by the Corporation Counsel; and

WHEREAS, pursuant to Chapter 3-6.6 of the Revised Charter of the County of Maui (1983), as amended, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

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WHEREAS, the Council finds that, because of the need for specialized expertise and the urgency and complexity of these matters, there is a real necessity to retain Ms. Greenberg as special counsel to advise and represent the County; and

WHEREAS, Ms. Greenberg and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the amount of attorneys' fees and costs; and

WHEREAS, Ms. Greenberg's conduct in this matter shall reflect her 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 entity; now, therefore,

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

1. That the Council hereby authorizes the employment of Freddi L. Greenberg as special counsel to represent the County of Maui in all legal matters pertaining to the establishment of a landfill gas energy recovery facility at the Central Maui Landfill; and

2. That total compensation for the employment of Ms. Greenberg as special counsel shall not exceed \$100,000.00; and

3. That the hourly rate for Ms. Greenberg shall not exceed \$325.00; and

4. That the hourly rate for paralegal staff shall not exceed \$100.00; and

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5. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

6. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshal; (4) fees of the court reporter for necessary transcripts; (5) docket fees; and (6) compensation of court-appointed experts and interpreters; and

7. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel, unless pre-approved by the Corporation Counsel; (7) investigative expenses, unless pre-approved by the Corporation Counsel; and (8) other costs reasonably considered part of a law firm's overhead; and

8. That in instances of travel, both inter-island and out-of-state travel includes travel on regular coach economy fare and must be pre-approved by the Corporation Counsel; and

9. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require Council approval; and

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10. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

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