CHARMAINE TAVARES
Mayor

BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

November 19, 2009

MEMO TO: Bill Kauakea Medeiros, Chair
Joseph Pontanilla, Vice-Chair
Infrastructure Management Committee

F R O M: David A. Galazin, Deputy Corporation Counsel

SUBJECT: **BILL TO EXEMPT COUNTY-INITIATED OR COUNTY CO-SPONSORED PROJECTS FROM SUBDIVISION REQUIREMENTS** (IM-29)

Introduction.

This memorandum is in response to your memorandum dated October 14, 2009. At its meeting of October 12, 2009, the Infrastructure Management Committee ("Committee") considered a proposed bill to exempt from certain subdivision requirements subdivisions initiated or co-sponsored by the Department of Public Works ("DPW") for the acquisition of property for road widening lots and other public purposes.

You have asked for advice as to how the County can obtain reimbursement from private landowners who subdivide their property after the County has constructed improvements along adjacent County roadways.

Short Answer.

In the absence of a pre-existing or other applicable obligation of a property owner or developer to pay for roadway and frontage improvements, the County may obtain reimbursement of the cost of such improvements by implementing an authorized method of assessing those costs, such as Part VIII of Chapter 46, Hawaii Revised Statutes ("HRS"), relating to impact fees.

Analysis and discussion.

Chapter 18.20, Maui County Code ("MCC"), requires a subdivider to make certain roadway and frontage improvements, as a condition of subdivision approval, when the subdivision contains or is adjacent to substandard roadways. Roadway and frontage improvements are often not constructed unless and until a private developer chooses to undertake a subdivision on adjacent property. When a property owner subdivides property after an adjacent roadway has been improved as part of a County capital improvement project, that subdivider's improvement obligations under Chapter 18.20 are likely to be less costly as a result.

Depending on the circumstances, certain property owners may be obligated to make roadway or frontage improvements, or to fund such improvements in whole or in part, pursuant to pre-existing agreements or pursuant to conditions imposed by permits or land use entitlements. For example, special management area permits, State Land Use Commission permits, and changes in zoning may require a property owner, as a condition of the land use entitlement, to make, or pay for, various infrastructure improvements. Applications for building permits may also trigger mandatory infrastructure improvements in some circumstances. Where such binding obligations exist, and depending on the precise nature and scope of the obligation imposed, it may be possible for the County to obtain reimbursement of costs incurred in improving local roadways. In the absence of such obligations, however, County's ability to recover amounts spent for improvements is limited.

In the absence of a pre-existing or other applicable obligation of a property owner or developer to pay for roadway and frontage improvements, the County may obtain reimbursement of the cost of such improvements by implementing an authorized method of assessing those costs. One such method is the imposition of impact fees pursuant to Part VIII of Chapter 46, HRS.

In general, impact fees are moneys collected by local governments, as a condition of development approval, which finance municipal infrastructure improvements, including roadways.[1] Such fees can be collected prospectively, in anticipation of future municipal improvement projects, or collected on a pro-rata basis for construction projects that have already taken place. Section 46-142, HRS, states:

---

[1] *See* McQuillin Mun. Corp. § 25.118.50 (3rd ed.).

> **Authority to impose impact fees; enactment of ordinances required.** (a) Impact fees may be assessed, imposed, levied, and collected by:
>
> (1) Any county for any development, or portion thereof, not involving water supply or service; or
>
> (2) Any board for any development, or portion thereof, involving water supply or service;
>
> provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.
>
> (b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities.

As Section 46-142, HRS, indicates, assessment and imposition of impact fees requires a number of steps, including the adoption of implementing legislation. Such an impact fee process is beyond the scope of the proposed bill being considered by the Committee under agenda item IM-29, and would require, among other measures, the research, drafting, and review of legislation devoted to that purpose, and the adoption of appropriate public facility needs assessment studies.

APPROVED FOR TRANSMITTAL:

BRIAN T. MOTO
Corporation Counsel

S:\ALL\Advisory\DAG\Re Bill for CoM Subdivision Exemption 11-10-09.wpd

cc: Milton M. Arakawa, Director of Public Works
Ralph M. Nagamine, Development Services Administration
Webpage