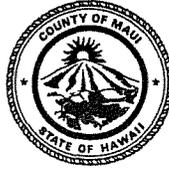


ALAN M. ARAKAWA
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MEMO TO: Joseph Pontanilla, Chair
Budget and Finance Committee

F R O M: Richelle M. Thomson 
Deputy Corporation Counsel

D A T E: March 16, 2012

SUBJECT: **AMENDING FY 2012 BUDGET: PURCHASE OF PAUKUKALO
COASTAL WETLANDS/KA'EHU BAY (OPEN SPACE, NATURAL
RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS
PRESERVATION FUND) (BF-66)**

This memo is in response to your request dated March 15, 2012, asking whether the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund may be used to cover the entire \$996,000 purchase price, given the restrictions set forth in Section 9-19, Revised Charter of the County of Maui (1983) ("Charter"), as amended, and Chapter 3.88, Maui County Code ("MCC").

Short Answer: Yes.

Section 9-19, Charter, states in relevant part:

Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

1. In adopting each fiscal year's budget and capital program, the council shall

appropriate a minimum of one percent (1%) of the certified real property tax revenues to a fund known as the open space, natural resources, cultural resources, and scenic views preservation fund. The revenues in this fund shall be utilized for **purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Maui ...**

Charter Section 9-19(1), and Section 3.88.020(A), Maui County Code, enumerate the "conservation purposes" of the property under consideration for purchase or other acquisition:

1. Public outdoor recreation and education;
2. Preservation of historic or culturally important land areas;
3. Protection of significant habitat or ecosystems, including buffer zones;
4. Preserving forests, beaches, coastal areas and agricultural lands;
5. Protecting watershed lands to preserve water quality;
6. Conserving land for the purposes of reducing erosion, floods, landslides, and runoff; and
7. Improving disabled and public access to, and enjoyment of, public land, open space, and recreational facilities.

Chapter 3.88.020(C) mandates that the "revenues in this fund shall not be used for any other purpose except those listed in subsection A of this section. No revenues in this fund shall be used for maintenance of the land acquired."

The interpretation of the charter is similar to the interpretation of a statute. Maui County Council v. Thompson, 84 Hawaii 105, 929 P.2d 1355, Hawai'i (1996). The fundamental starting point for statutory interpretation is the language of the statute itself. Peterson v. Hawaii Elec. Light Co., 85 Hawaii 322, 944 P.2d 1265 (Sept. 5, 1997). Where the statutory language is plain and unambiguous, the plain and obvious meaning should be given effect. Id. Statutes are open to construction only where the language used in the statute is ambiguous and requires interpretation. Id. Implicit in the task of statutory construction the foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be

obtained primarily from the language contained in the statute itself. Id.

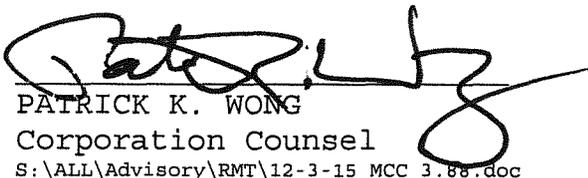
The plain language of Section 9-19, Charter, and Chapter 3.88(A), MCC, authorize the Council to make appropriations from the Open Space Fund for purchasing or otherwise acquiring lands that meet one or more of the listed "conservation purposes."

Section 9-19, Charter, and Chapter 3.88, MCC, are silent as to considerations affecting the purchase price. Section 3.44.015(B), MCC, places the responsibility for negotiating the purchase of real property in the public interest with the Director of Finance. The negotiated purchase price is not restricted by inclusion or exclusion of factors affecting said price. When said purchase is more than \$100,000, the County Council must authorize the acquisition by the passage of a resolution.

In sum, the Open Space Fund may be used to fund the entire \$996,000 purchase of the Paukukalo property, if the property itself meets one or more of the conservation purposes, subject to the Council's authorization of the purchase.

Should have any further questions, please do not hesitate to contact me.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel
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C. Mayor Alan M. Arakawa
Danilo Agsalog, Director of Finance
Sandy Baz, Budget Director
Robert Parsons, Environmental Coordinator