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April 9, 2015

**MEMO TO:** Riki Hokama, Chair  
Budget and Finance Committee

**FROM :** Jeffrey Ueoka, Deputy Corporation Counsel *JU*

**SUBJECT:** **FISCAL YEAR ("FY") 2016 BUDGET (CC-3) (BF-1)**

We are in receipt of your memorandum dated April 7, 2015, posing the following questions:

1. Can funds from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund be used for the Kahana Bay erosion mitigation project (Professional Services, index 909010, sub-object 6132, page 14-9 of the Budget Details)? (EC)

At this time, without reviewing the project scope, we are unable to definitively opine as to whether this expenditure is an appropriate use of the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund ("Open Space Fund"). Section 3.88.020(A), Maui County Code ("MCC"), sets forth the purpose of the fund that focuses on, "purchasing or otherwise acquiring lands or property entitlements for land conservation purposes[.]" Again, while we have not reviewed the project scope, it is our understanding that the scope of the project focuses on erosion mitigation and not shoreline acquisition. Based on this understanding, we would not recommend using the Open Space Fund for the subject project. Furthermore, if the project scope were to include the acquisition of property, Section 3.88.020(C), MCC, prohibits the use of the Open Space Fund for maintenance of lands acquired, therefore

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an additional analysis of whether the erosion mitigation project is considered maintenance would be required.

2. Does the Maui Redevelopment Agency have the capacity to establish special assessments or special improvement districts for the purpose of generating revenue to support the initiatives of the agency? (MW)

We apologize, but due to the expedited response requested, we were unable to do a thorough, in-depth review of the broad powers of the Maui Redevelopment Agency ("MRA"). The County has the general power under Section 46-1.5(6), Hawaii Revised Statutes ("HRS"), to, "provide by ordinance assessments for the improvement or maintenance of districts within the county[.]" This general power is expanded by giving the County the authority to create Improvement Districts, Community Facilities Districts, and Special Improvement Districts in Sections 46-80, 80.1, and 80.5, HRS, respectively (hereinafter collectively referred to as the "Districts"). Generally speaking, the Districts allow for bond issuance and special assessments or taxes to be levied on the properties located within the district being benefitted by the improvement. Currently, only Article 3, Chapter 14, Maui County Code, entitled Improvement Districts, sets forth a process for funding improvements through assessments levied on benefitted properties. The MRA operates under the structure set forth in Chapter 53, HRS, and our limited review did not show any authority for the MRA to establish a special assessment or a special improvement district for the purpose of generating revenue. In contrast to Chapter 53, HRS, the statutes authorizing the Districts are clear in granting the County the ability to create some type of special assessment to be levied on the benefitted properties to pay for the improvements. This is not to say that any of the Districts could not be created in the area currently covered by the Wailuku Redevelopment Plan, however, the creation would be required to follow the procedures set forth by any ordinance. Our limited research does not show that the MRA has the same authority as the County to establish special assessments or special improvement districts.

APPROVED FOR TRANSMITTAL:

  
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