

COUNCIL OF THE COUNTY OF MAUI

BUDGET AND FINANCE COMMITTEE

February 16, 2018

**Committee
Report No. _____**

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

Chair and Members:

Your Budget and Finance Committee, having met on January 23, 2018, and January 30, 2018, makes reference to County Communication 17-486, from the Budget Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES; DEPARTMENT OF PUBLIC WORKS, ROAD, BRIDGE, AND DRAINAGE MAINTENANCE PROGRAM - HIGHWAY FUND; TOTAL OPERATING APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)."

The purpose of the proposed bill is to amend the Fiscal Year ("FY") 2018 Budget by 1) increasing Carryover/Savings from the Highway Fund by \$1,000,000; 2) amending Section 3.B.15.f., Department of Public Works, Road, Bridge, and Drainage Maintenance Program - Highway Fund, by increasing Category B (Operations) and Total appropriations by \$1,000,000; and 3) adjusting the totals accordingly.

2. A Certification of Additional Revenues for Fiscal Year 2018, dated November 30, 2017, for \$1,000,000 in Carryover/Savings from the Highway Fund.

Accompanying the proposed bill and Certification of Additional Revenues is an emergency proclamation issued by the Acting Mayor on November 29, 2017, declaring the County needs to remove more than 400

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dead eucalyptus trees in the County-owned right of way along Piiholo Road.

By correspondence dated January 5, 2018, the Budget Director rescinded the proposed bill and accompanying Certification of Additional Revenues for FY 2018 attached to County Communication 17-486, stating estimated costs for the emergency tree removal were lower than anticipated by \$500,000. The Budget Director transmitted a revised proposed bill adjusting the amount of the increase downward, from \$1,000,000 to \$500,000. He also transmitted a Certification of Additional Revenues for Fiscal Year 2018, dated January 5, 2018, for \$500,000 in Carryover/Savings from the Highway Fund.

By correspondence dated January 12, 2018, the Budget Director rescinded the revised proposed bill and accompanying Certification of Additional Revenues for FY 2018 attached to the correspondence dated January 5, 2018, and transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018, EMERGENCY FUND."

The purpose of the further revised proposed bill is to amend Appendix A, Part II, Special Purpose Revenues - Schedule of Revolving/Special Funds for the FY 2018 Budget, by adding under the Emergency Fund a proviso that "\$500,000 shall be for the emergency removal of eucalyptus trees along Piiholo Road that pose an imminent danger of death, injury, and property damage to residents and visitors using Piiholo Road."

The Director of Public Works explained the events leading to the emergency declaration for the danger posed by trees along Piiholo Road began in October 2017. The Department removed fallen trees from the road in October and November. During the same period, the Mayor's office received multiple communications regarding the hazardous conditions created by trees along Piiholo Road.

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The Acting Mayor issued a proclamation on November 29, 2017, at 4:20 p.m. declaring the existence of imminent danger and the threat of an emergency or disaster because of the imminent falling of dead trees. The proclamation said that on County-owned rights of way in the Piiholo Road area there are in excess of 400 dead eucalyptus trees ranging from 70 to 100 feet in height. It also states there have been recent and numerous incidents of such trees falling onto Piiholo Road which endanger passing motorists or pedestrians and pose an imminent threat to life and property.

The Director said after the emergency was declared, an electronic sign was placed at the bottom of Piiholo Road, near St. Joseph Catholic Church, to warn drivers of the hazardous conditions.

The Director said a request for proposals was issued on December 8, 2017, for the emergency removal of trees at Piiholo Road. He explained the request included two bid alternatives: 1) Alternative A is for the removal of 60 eucalyptus trees in the County-owned right of way along Piiholo Road, with the waste being hauled away; and 2) Alternative B includes removal of the 60 trees and approximately 300 trees on Piiholo Ranch property located within 35 feet of the edge of the paved portion of Piiholo Road, while leaving the fallen trees on Piiholo Ranch's property.

The Director said the low bid for Alternative A is \$342,420, and the low bid for Alternative B is \$448,818. The cost difference between the two bids is \$106,398.

The Department of the Corporation Counsel provided your Committee with a draft right-of-entry agreement. Your Committee noted the agreement states the County will indemnify Piiholo Ranch. A Deputy Corporation Counsel said this is an issue for Alternative B because the indemnification will hold the County liable for any claims arising from the fallen trees left on Piiholo Ranch's property. Upon determination whether the County will move forward with Alternative A or Alternative B, the right-of-entry agreement will be modified to address the liability issue.

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Your Committee questioned the role of the Emergency Management Agency in issuing the emergency declaration. The Emergency Management Officer said he consulted with the Acting Mayor in determining whether the Piiholo trees constituted an emergency.

He explained the Emergency Management Agency is not involved with the removal of Piiholo trees because multi-agency coordination was not necessary for the declared emergency.

The Director of Parks and Recreation said that in August 2017, a contract was executed for the removal of 20 County-owned trees on Piiholo Road that were deemed the most dangerous to motorists.

Your Committee noted Section 12.24A.090, Maui County Code ("MCC"), allows the County to take corrective steps to mitigate a dangerous condition should landowners fail to take action after 14 days of notification from the Department of Parks and Recreation. The County could also assess the costs to the owner for such abatement.

The Director said no notices were issued to Piiholo Ranch relating to its responsibility of the hazardous trees on its property.

The Deputy Director of Public Works said while the trees in question are hazardous, the Department struggled to determine whether the trees met the definition of "hazardous tree" in Section 12.24A.020, MCC.

A Deputy Corporation Counsel said that as a landowner, the County has responsibilities and should take mitigative action on the trees.

Your Committee expressed concerns about using public funds for the benefit of a private landowner. The Deputy Corporation Counsel said in previous emergency situations, the County worked on private property if it was necessary to fix and protect public infrastructure.

Your Committee recognized the importance of removing the trees in the County-owned right of way and recommended the Department of Public Works move forward with Alternative A. Your Committee also

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recommended Alternative B be reconsidered should Piiholo Ranch agree to share the costs of the work with the County by paying the difference between the two proposals.

Your Committee recommended the proviso be revised to read "Provided, that \$500,000 shall be for the emergency removal of 60 eucalyptus trees in the County-owned right of way along Piiholo Road that pose an imminent danger of death, injury, and property damage to residents and visitors utilizing Piiholo Road; and may also be used for a cost-sharing agreement with Piiholo Ranch for the removal of 300 trees on Piiholo Ranch property that create similar hazards."

Your Committee notes Chapter 3.96, MCC, relating to the Emergency Fund, provides that appropriations from the fund shall be by ordinance passed upon a vote of not less than seven members of the Council.

Your Committee voted 8-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Hokama, Vice-Chair White, and members Atay, Carroll, Crivello, Guzman, King, and Sugimura voted "aye." Committee member Cochran was excused.

Your Committee notes that following its meeting of January 30, 2018, a representative from Piiholo Ranch agreed to share in the cost of the work with the County and proceed with Alternative B. Piiholo Ranch agreed to pay the difference of \$106,398 between the two proposals and allow the fallen trees to remain on Piiholo Ranch's property.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

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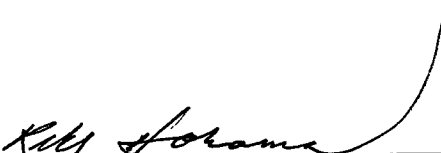
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Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill _____ (2018), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018, EMERGENCY FUND," be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That County Communication 17-486 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



RIKI HOKAMA, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING APPENDIX A
OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES -
SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018,
EMERGENCY FUND

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Ordinance No. 4456, Bill No. 65 (2017), Draft 1, as amended, "Fiscal Year 2018 Budget", Appendix A, Part II, Special Purpose Revenues – Schedule of Revolving/Special Funds for Fiscal Year 2018, is hereby amended as it pertains to the Emergency Fund, by adding a proviso, to read as follows:

"II. SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018

	<u>ESTIMATED BALANCE AS OF 6/30/17</u>	<u>ANTICIPATED REVENUES FOR FY 2018</u>	<u>TOTAL FOR FY 2018</u>
K. Emergency Fund (Section 9-14, Revised Charter of the County of Maui (1983), as amended; Chapter 3.96, Maui County Code)	28,924,919	0	28,924,919
(1) <u>Provided, that \$500,000 shall be for the emergency removal of 60 eucalyptus trees in the County-owned right of way along Piihoho Road that pose an imminent danger of death, injury, and property damage to residents and visitors utilizing Piihoho Road; and may also be used for a cost-sharing agreement with Piihoho Ranch for the removal of 300 trees on Piihoho Ranch property that create similar hazards."</u>			

SECTION 2. New material is underscored.

SECTION 3. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel

