

REQUEST FOR LEGAL SERVICES

Date: August 30, 2018
From: Kelly King, Chair
Planning Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeffrey Ueoka, Esq.

Subject: A BILL FOR AN ORDINANCE TO ESTABLISH THE SPECIAL MANAGEMENT AREA REVOLVING FUND (PC-13)

Background Data: Please revise bill in accordance with the attached, marked-up copy and in accordance with the Department of Planning's proposed revisions as set forth in the attached correspondence dated August 16, 2018. Please review and, if appropriate, approve as to form and legality. A signed, hard copy is requested.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature <u>Kelly J. King</u> Kelly King	Contact Person <u>Traci Fujita</u> (Telephone Extension: <u>7687</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 5, 2018
REASON: For September 6, 2018 Planning Committee meeting

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pc:ltr:013acc01

Attachments

Application fees for special management area assessments and permits, and shoreline setback variances, collected by the department of planning shall also be deposited into the fund. The fund may also receive revenue from grants, donations, and other sources, as set forth in the annual budget.

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE TO ESTABLISH THE SPECIAL MANAGEMENT AREA REVOLVING FUND

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

SECTION 1. Purpose. The purpose of this ordinance is to establish a fund for the deposit of all civil fines collected pursuant to Chapter 205A, Hawaii Revised Statutes. The funds deposited shall be used for: (1) enforcement personnel; (2) acquisition of land or easements to increase beach access in relation to the violation; and (3) master planning and implementation relating to coastal realignment.

SECTION 2. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 3.39

SPECIAL MANAGEMENT AREA REVOLVING FUND

Sections:

- 3.39.010 Fund established.
- 3.39.020 Purpose.
- 3.38.030 Administration; report to council.

3.39.010 Fund established. There is established and created a fund to be known as the “special management area revolving fund.” Any civil fine collected pursuant to Chapter 205A, Hawaii Revised Statutes, shall be deposited in the fund.

3.39.020 Purpose. A. The special management area revolving fund shall provide funds for ~~enforcement, land and~~

- to be used for the following purposes:*
- 1. augment enforcement of Chapter 205A, Hawaii Revised Statutes, and special management area and shoreline rules of the Lanai, Maui, and Molokai planning commissions;*
 - 2. land and easement acquisition for beach access; and*
 - 3. master planning, studies, permitting, and implementation pertaining to coastal realignment, beach and shoreline management, beach or dune restoration, or managed retreat.*

~~easement acquisition for beach access in relation to the violation, and master planning and implementation relating to coastal realignment.~~

B. In adopting each fiscal year's budget and capital program, the council may make appropriations to the fund. Any balance remaining in this fund at the end of the fiscal year shall not lapse, but shall remain in the fund accumulating from year to year.

C. The revenues in this fund shall not be used for any purpose except those listed in subsection A.

3.39.030 Administration; reports to the council. A. The director of finance shall establish a separate account to record all revenues credited to, and expenditures made from, the revolving fund.

B. Appropriations from the fund shall be by ordinance passed upon a vote of the council.

C. On or before March 1 of each year, the director^{of finance} shall transmit to the council a detailed report of the fund during the preceding year.

D. On or before March 1 of each year, the director of planning shall transmit to the council a detailed report of the violations and amount of fines ^{collected} imposed."

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

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Department of the Corporation Counsel
County of Maui
2017-0920
2017-07-19 Proposed Bill

ALAN M. ARAKAWA
Mayor

MICHELE CHOUTEAU MCLEAN
Director

JOSEPH W. ALUETA
Deputy Director



COUNTY OF MAUI

DEPARTMENT OF PLANNING

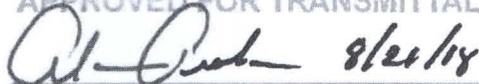
August 16, 2018

RECEIVED
2018 AUG 20 AM 9:36
OFFICE OF THE MAYOR

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Kelly King, Chair
and Members of the Planning Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor Date

Dear Chair King and Members:

SUBJECT: AMENDING TITLE 3, MAUI COUNTY CODE, TO ESTABLISH THE SPECIAL MANAGEMENT AREA REVOLVING FUND (PC-13) (RFC 2018/0066)

Thank you for your letter dated July 23, 2018 asking for further comments on the above-referenced bill.

In addition to the comments provided in the attached letter dated February 13, 2018, the Planning Department has the following further comments.

Proposed Maui County Code subsection 3.39.010 provides that the proposed special management area (SMA) revolving fund consists of fines collected for SMA violations. We recommend that the fund also be able to receive revenue from additional sources, including fees and grants; we therefore propose that this subsection read as follows:

"Fund established. There is established and created a fund to be known as the 'special management area revolving fund.' Any civil fine collected pursuant to Chapter 205A, Hawaii Revised Statutes, shall be deposited in the fund. Application fees for special management area assessments and permits, and shoreline setback variances, collected by the department of planning shall also be deposited into the fund. The fund may also receive revenue from grants, donations, and other sources, as set forth in the annual budget."

You may be interested to know that the Department collects an average of between \$60,000 and \$70,000 each year for the above-noted assessment, permit and variance application, and an average of between \$25,000 and \$75,000 each year for special management area violations.

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Kelly King, Chair
August 16, 2018
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The attached letter suggested revisions to subsection 3.39.020.A to allow greater flexibility to how the fund could be used and clarify that the funds will be expending by the Department of Planning consistent with the annual budget ordinance. We further suggest that this subsection be revised to read as follows:

"A. The special management area revolving fund shall provide funds to be used for the following purposes:

1. augment enforcement of chapter 205A, Hawaii Revised Statutes, and special management area and shoreline rules of the Lanai, Maui and Molokai planning commissions;
2. land and easement acquisition for beach access; and
3. master planning, studies, permitting, and implementation pertaining to coastal realignment, beach and shoreline management, beach or dune restoration, or managed retreat."

Lastly, proposed subsection 3.39.030.D calls for an annual report of special management area violations and the "amount of fines imposed"; we request that this be revised to require reporting of the "amount of fines collected" instead.

Thank you for your request and consideration of the Department's responses. Should you have any questions, please feel free to transmit them to the Department of Planning via transmittal through the Office of the Mayor.

Sincerely, *



MICHELE MCLEAN
Planning Director

Attachment

xc: Joseph Alueta, Deputy Planning Director (PDF)
Clayton I. Yoshida, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Davis Raatz, Administrative Planning Officer (PDF)
Jeffrey P. Dack, Current Planning Supervisor (PDF)
Mark Walker, Director of Finance

MCM:JPD:lk

Project File

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ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

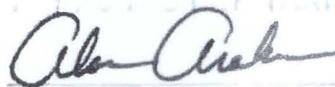
February 13, 2018

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Kelly King, Chair
Planning Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Honorable Elle Cochran, Councilmember
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

ALAN M. ARAKAWA
 2/13/18
Mayor Date

Dear Councilmembers King and Cochran:

SUBJECT: SPECIAL MANAGEMENT AREA REVOLVING FUND (PC-13)

Thank you for Councilmember Cochran's correspondence dated December 29, 2017, requesting comments on a bill to establish a Special Management Area Revolving Fund.

The Department of Planning (Department) welcomes additional funding for the Coastal Zone Management Program and therefore generally supports the bill. We recommend the fund's possible uses be expanded to more broadly further the bill's apparent intent.

Specifically, we suggest that proposed Section 3.39.020.A be amended to read as follows: "The special management area revolving fund shall provide funds for enforcement, land and easement acquisition for beach access [in relation to] in the vicinity of the violation, and master planning, permitting, and implementation relating to coastal realignment and beach management."

These changes provide greater flexibility to how the fund could be used and would ensure the fund's resources further policy objectives in both the Coastal Zone Management Act of 1972 and the Maui County General Plan. May I call your attention to the following excerpts from those laws:

- "The Congress finds and declares that it is the national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." Section 303(1), CZMA.

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Honorable Elle Cochran
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- "Protect undeveloped beaches, dunes, and coastal ecosystems, and restore natural shoreline processes." Page 46, Countywide Policy Plan.
- "Strengthen coastal-zone management." Page 47, Countywide Policy Plan.
- "Carefully manage beach nourishment activities to protect the coastal and marine ecosystem." Page 2-22, Maui Island Plan.

In addition, the Hawai'i Sea Level Rise Vulnerability and Adaption Report stresses the importance of many forms of beach management, including nourishment.

We also suggest that proposed Section 3.29.030.C be amended to read as follows: "On or before March 1 of each year, the director of finance shall transmit to the council a detailed report of the fund during the preceding year." This would clarify which director is responsible for submitting the report.

I hope this is helpful. If you have further questions or need additional information, please feel free to contact David Raatz, Administrative Planning Officer, at david.raatz@mauicounty.gov or Ext. 7743.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: John Rapacz, Planning Program Administrator (PDF)
David Raatz, Administrative Planning Officer (PDF)

WRS:DMR:atw
Project File
General File

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