COLUMBIA CAPITAL
MUNICIPAL ADVISORS
2292 Faraday Ave
Carlsbad, CA 92008

January 19, 2022

Honorable Yuki Lei K. Sugimura, Chair
Infrastructure and Transportation Committee
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Chair Sugimura:

RE: COMMUNITY FACILITIES DISTRICTS (IT-38)

The Maui County Council's Infrastructure and Transportation Committee has requested that Columbia Capital address certain questions related to the proposed County CFD Guidelines submitted by the County Planning Department specifically as they pertain to the Kahana Bay and Napili Bay beach restoration projects.

The development of CFD Guidelines, while not required by the CFD legislation in Hawaii, was originally requested by members of the Infrastructure and Transportation Committee in December of 2020. Drafts of the Guidelines have been commented on and reviewed by the County Planning Department, County Finance Department, two County bond counsels, and most recently by Corporation Counsel.

CFD guidelines or policies are widely used on the mainland, particularly in California, where such policies are, in fact, required to be adopted prior to CFD formation and issuance of CFD bonds by a municipality. The intent of such guidelines is to help address and create a policy framework for when CFDs are formed and under what circumstances CFD bonds are issued. Guidelines are intended to assist the municipality in formulating policy choices and to assist potential CFD property owners gain a better understanding of the policy framework, issues, procedures, and costs involved. The proposed CFD Guidelines are not intended to modify the County's CFD ordinance or preclude the County from waiving or modifying any provision in the Guidelines as needed by a specific project.

We understand that there are ongoing questions and concerns regarding maintenance and liability expenses that Chapter 3.75, Maui County Code, does not currently address and that the proposed Guidelines attempt to address. Specifically, the question posed relates to the follow statements in the proposed CFD Guidelines.

The Guidelines propose that, ***"Generally, the County will require that Public Infrastructure financing through a CFD provide a general public benefit, that a source to fund maintenance costs is identifiable and affordable, and that, absent findings of special circumstances, the essential Public Infrastructure does not increase the County's public liability risks beyond levels normally acceptable for public improvements."***

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The Guidelines further propose, ***"The Applicant will also be required to prepare and submit a plan for the Public Infrastructure financed by the CFD to address administrative, operational and maintenance expenses not funded by the proposed CFD special taxes, unless otherwise agreed, including the source of funds or deposits proposed to fund administrative, operational, and maintenance costs."***

We address your specific questions in the paragraphs below.

1. Please comment on the guidelines above as proposed by the County's Planning Department.

The intention of the first referenced statement in the Guidelines is that CFD formation and financing should only be considered for needed or required public infrastructure. Such public infrastructure should have a general public benefit beyond the specific special benefit of the infrastructure project to the property owners in the CFD, and, furthermore, that a plan is researched and proposed to maintain the infrastructure over time, at a reasonable cost, with such cost to be funded either by the County or in whole or in part by the property owners or property owner associations subject to the CFD. The enabling CFD legislation in Hawaii does not provide for maintenance cost to be levied in a CFD and so the Guidelines aim to address how long-term maintenance will be funded.

The public infrastructure financed by the CFD should also not add materially to the liability risk of similar County-owned public infrastructure. For example, the shoreline improvements proposed in Kahana and Napili should have a similar liability profile to other County-owned coastal structures. If additional liability is determined to exist, a finding of special circumstances should be made to assure that all exceptional liability risks are identified and known. County insurance policies, the feasibility or enforceability of property owner indemnities, and, where self-insured, legal risk, needs to be assessed so that an informed decision can be made by the County in forming a CFD.

The intention of the second referenced statement in the Guidelines is that the applicant address how CFD maintenance costs, which cannot be financed in the CFD special tax, will or can be paid. This is intended to assure that long-term costs are identified and not overlooked in the CFD formation process. The intention is not necessarily to require that all maintenance costs be paid by property owners in a CFD. For example, if a CFD is requested to build flood control improvements in areas Upcountry or in Kihei, involving hundreds of property owners, and there are no property owner associations, there may be no way to cover such costs and the County may agree or not agree to cover long-term maintenance and repair costs. Conversely, as in the case of Kahana and Napili, the property owners' associations and other landowners will likely propose to enter into an agreement with the County to fund long-term maintenance and repair costs. This could also be the case if a CFD is formed for a sewer treatment plant required for a new subdivision where a property owners' association or a large developer may agree to make a substantial deposit to fund such future costs. To the extent the CFD improvements are for sewer, solid waste or water, such costs could possibly be incorporated into the user rates for those services.

Note that long term capital replacement costs *can* be financed in a CFD. These replacement costs are being explored with respect to the Kahana and Napili projects.

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The intention of a CFD is to provide a source of financing, other than the County General Fund, Department of Water Supply funds, Sewer Fund, or other County special funds, for needed or requested public improvements (upfront capital costs) that directly benefit certain properties, but also have an acceptable level of general benefit.

2. It is my understanding that if CFD property owners fail to pay the special tax levied against them for the construction of the CFD project, the remedy is foreclosure. If we assume that CFD property owners will be responsible for maintenance and liability costs in the future, how will these fees be paid?

Regarding maintenance, if a property owners' association or master developer is involved and a maintenance agreement is approved, the County could legally pursue maintenance costs if they are not paid. The County could require up-front deposits, third party guarantees or bank letter of credit if there is a concern over the inability of the property owners' association or master developer to make payments. It is possible that a dispute over maintenance responsibilities could arise over time or that future associations are not able to honor their obligations. It may be worth noting that property owners benefit from CFD improvements and that this benefit may be limited by a failure to honor maintenance obligations which in turn may impact property values. As a result, property owners may have an incentive to help assure the improvements are maintained.

In the case of Kahana and Napili, the respective property owners' associations have indicated that they would agree to consider long-term maintenance agreements including possible up-front deposits.

To the extent CFDs are formed for public improvements involving property owners who are not in a property owners' association, the County may have to consider accepting the public infrastructure into its County-funded public works maintenance system. There may be no practical way to fund long-term maintenance for road improvements which benefit hundreds of property owners for example, other than the County General Fund. If the improvements are accretive to property values (or are required to prevent values from declining), the County may see additional property tax revenues from benefitted properties which could help offset assumed maintenance costs.

3. And, if these fees are not paid, how do you anticipate the County will recoup these expenses from CFD property owners?

Addressed in question # 2.

Please let us know if you require follow up or additional information on the responses provided

Respectfully

Curt de Crinis
Managing Director

Cc: Michele McLean – Director of Planning
Scott Teruya- Director of Finance
Moana Lutey – Corporation Counsel

IT Committee

From: Curt de Crinis <cdecrinis@columbiacapital.com>
Sent: Thursday, January 20, 2022 10:36 AM
To: IT Committee
Cc: 'Michele McLean'; 'Scott Teruya'; moana.lutey@co.maui.hi.us
Subject: Maui County IT Committee Communication
Attachments: IT Committee Response Jan 20.2021.pdf

Please see attached.

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