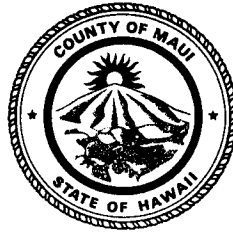


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RECEIVED  
2016 APR 29 09 25 53  
OFFICE OF THE  
COUNTY COUNSEL

MEMO TO: Riki Hokama, Chair  
Budget and Finance Committee

FROM: Jeffrey Ueoka, Deputy Corporation Counsel 

DATE: April 28, 2016

SUBJECT: **FISCAL YEAR ("FY") 2017 BUDGET** (CC-20) (BF-1)

We are in receipt of your memorandum dated April 27, 2016 requesting a response on whether park assessment funds may be used for (1) Phase 2a of the Lahaina Harbor Front Improvement Project; and (2) the restoration work for Moku'ula and the surrounding pond, Mokuhinia. Your memorandum further requested a response on whether park assessment funds may be granted to a nonprofit organization for these purposes. Due to the limited response time we are unable to review the scope of the projects.

The County park assessment requirement found in Section 18.16.320, Maui County Code ("MCC"), is authorized by Section 46-6, Hawaii Revised Statutes ("HRS"). For the purpose of this response, we shall focus on the "in-lieu fees" established in Section 18.16.320(D), MCC, and Section 46-6(b), HRS. We are required to limit the use of in-lieu fees to, "providing parks and playgrounds for the use of purchasers or occupants of lots or units in the subdivision."<sup>1</sup> In order to more directly affect the "purchasers or occupants of lots or units in the subdivision" the use of any in-lieu fees collected, are limited to the community plan area where the subdivision is located.<sup>2</sup> Our office has previously, informally advised that in-lieu fees may also be used for projects that improve existing parks and playgrounds. Section 18.16.320(c)(3), MCC,

<sup>1</sup> Section 18.16.320(D), MCC and Section 46-6(b), HRS

<sup>2</sup> Section 18.16.320(D), MCC

provides that the park assessment requirement may be satisfied through the improvement of existing parks and playgrounds and the limitations on use of in-lieu fees merely state "provide parks and playgrounds", therefore we felt it reasonable to conclude that in-lieu fees may be used to improve existing parks and playgrounds. We have also advised, in a more general sense, that park assessment funds should not be used for the maintenance of existing parks and playgrounds, with the understanding that there may be situations where differentiating between maintenance and improvement is difficult.

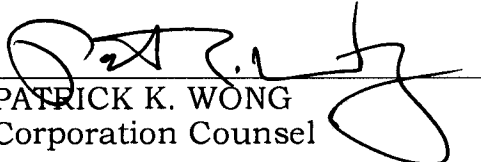
We are unaware of any limitations on the use of park assessment funds other than the requirement that park assessment funds be used for parks and playgrounds for the use of purchasers or occupants of lots or units within the subdivision. In determining whether to appropriate park assessment funds to a project, we would ask that the Council consider whether the project is improving a park or playground, with the understanding that parks come in a variety of forms. At this time we will simply state that both of these projects will create areas that could be considered passive parks that serve a cultural purpose. Whether these "parks" will serve the "purchasers or occupants of lots or units in the subdivision" from which these in-lieu fees were derived is outside the scope of our expertise therefore we will withhold comment.

We are not aware of any prohibition of granting the in-lieu fees to nonprofit organizations, however because there is no existing framework we would recommend that any grant be subject to the requirements of Chapter 3.36, MCC, pertaining to the Maui County Grants Program, and also be required to follow the limitations contained in Section 18.16.320(D), MCC.

Please let us know if you have any additional questions or require further clarification.

JTU:lk

APPROVED FOR TRANSMITTAL:

  
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PATRICK K. WONG  
Corporation Counsel