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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

December 6, 2017

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OFFICE OF THE
COUNTY CLERK

The Honorable Mike White
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair White:

SUBJECT: **URGING THE COUNTY AUDITOR TO INCLUDE A PERFORMANCE AUDIT OF THE DEPARTMENT OF PUBLIC WORKS RELATING TO THREE (3) LOTS OR LESS SUBDIVISION DEFERRAL AGREEMENTS IN THE FISCAL YEAR 2019 LIST OF SELF-INITIATED PROJECTS**

May I request the attached proposed RESOLUTION, entitled "**URGING THE COUNTY AUDITOR TO INCLUDE A PERFORMANCE AUDIT OF THE DEPARTMENT OF PUBLIC WORKS RELATING TO THREE (3) LOTS OR LESS SUBDIVISION DEFERRAL AGREEMENTS IN THE FISCAL YEAR 2019 LIST OF SELF-INITIATED PROJECTS**," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Don S. Guzman", is written over a horizontal line.

Don S. Guzman
Councilmember

DSG:klk

Attachment

COUNTY COMMUNICATION NO. 17-489

Resolution

No. _____

URGING THE COUNTY AUDITOR TO INCLUDE
A PERFORMANCE AUDIT OF THE
DEPARTMENT OF PUBLIC WORKS RELATING
TO THREE (3) LOTS OR LESS SUBDIVISION
DEFERRAL AGREEMENTS IN THE FISCAL
YEAR 2019 LIST OF AUDITOR'S
SELF-INITIATED PROJECTS

WHEREAS, the Subdivision Ordinance was amended in its entirety by Ordinance 789 (1974) which added a new Subsection 11-1.10(l) to the Permanent Ordinances of the County of Maui (1971) ("Permanent Ordinances"), Improvements on existing streets, which provided "No improvements shall be required upon existing streets for a subdivision containing three (3) lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to participate in an improvement district when and if such improvement district is proposed"; and

WHEREAS, the Permanent Ordinances were modified by Ordinance 801 (1974) to authorize the establishment of improvement districts now codified as Title 14, Article 3, Improvement Districts, Maui County Code; and

WHEREAS, agreements entered into pursuant to Subsection 11-1.10(l) came to be known as three (3) lots or less subdivision deferral agreements, or "deferral agreements"; and

WHEREAS, the County entered into an unknown number of deferral agreements with subdividers between 1974 and 1990 which may trigger contributions to the improvement of existing streets when and if improvement districts are proposed; and

WHEREAS, prior to 1990, the Subdivision Ordinance was silent on the resubdivision of lots subject to existing deferral agreements; and

WHEREAS, Subsection 11-1.10(l), Permanent Ordinances, was recodified as Subsection 18.20.040(A), Maui County Code, Existing streets, and amended by Ordinance 1907 (1990), which eliminated deferral agreements related to improvement districts; and

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WHEREAS, Ordinance 1907 (1990), also provided for the three (3) lots or less deferral agreements “provided the subdivider or owner, their heirs, executors, and assigns agree to pay their pro rata share of the cost of roadway improvements upon the existing street pursuant to the terms of the ordinance authorizing said improvements by the county or to a formula determined by the county”; and

WHEREAS, Ordinance 1907 (1990) additionally provided that “the land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels”; and

WHEREAS, Subsection 18.20.040(A), Maui County Code, Existing streets, was further amended by Ordinance 2214 (1993), and specifically referred to deferral of improvement agreements to existing streets for subdivisions containing three (3) lots or less; and

WHEREAS, pursuant to Ordinance 3513 (effective December 27, 2007), the Council amended Section 18.20.040 by deleting the provision allowing for the deferral of improvement agreements for subdivisions containing three (3) lots or less thus requiring improvements at the time of subdivision; and

WHEREAS, the County entered into an unknown number of deferral agreements with subdividers between 1990 and 2007 which require the payment of a pro rata share of the cost of road improvements at the time existing streets are improved; and

WHEREAS, after the adoption of Ordinance 4255 (effective October 8, 2015), subdivisions into two developable lots may receive a one-time exemption from improvements to existing streets under Section 18.20.040, Maui County Code; and

WHEREAS, pursuant to Section 3-9.2(1)(c) of the Revised Charter of the County of Maui (1983), as amended, the County Auditor is required to transmit a plan of the audits proposed to be conducted during the fiscal year to the Mayor and the Council, for review and comment, but not approval; and

WHEREAS, the plan of audits proposed by the County Auditor includes a list of both Charter-mandated audits and self-initiated projects; and

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WHEREAS, the plan of audits for Fiscal Year 2015 included a self-initiated audit of the County's road resurfacing, improvement, and maintenance practices which was issued as Office of the County Auditor, Report No. 15-01 (October 2015); and

WHEREAS, Report No. 15-01 did not audit or address three (3) lots or less subdivision deferral agreements; and

WHEREAS, deferral agreements require landowners to compensate the County for the pro rata share of the cost of improvements when existing streets are improved by the County; and

WHEREAS, revenue from deferral agreements represent an unknown and unquantified source of funds available to the County to make roadway improvements; and

WHEREAS, an audit of the number of deferral agreements entered into by the County between the years 1974 and 1990 that relate to improvement districts, including a list of properties encumbered by the agreements, and the current owners of the properties is needed to determine the outstanding obligations owed to the County; and

WHEREAS, an audit of the number of deferral agreements entered into by the County between the years 1990 and 2007 that relate to three (3) lots or less subdivisions and require a pro rata share contribution by the landowners, including a list of properties encumbered by the agreements, and the current owners of the properties is needed to determine the outstanding obligations owed to the County; and

WHEREAS, in addition to the identification and audit of three (3) lots or less deferral agreements, a recommendation is needed as to the enforceability of the agreements, a method to arrive at the fair calculation of costs contemplated in the agreements, and a plan to ensure that contributions are collected simultaneously with construction of existing roadway improvements by the County; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

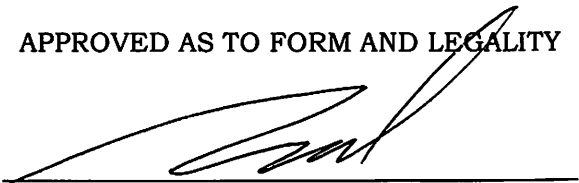
1. That it does hereby urge the County Auditor to include in his plan of audits for Fiscal Year 2019 a self-initiated audit of

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three (3) lots or less subdivision deferral agreements entered into by the County, Department of Public Works, for the years from 1974 to 2007 including an analysis of the number of agreements, the properties and landowners subject to the agreements, methods used to calculate the amounts owed under the agreements, the enforceability of the agreements, and plans for collecting contributions from landowners simultaneously or retroactive with the construction of existing roadway improvements by the County; and

2. That certified copies of this Resolution be transmitted to the County Auditor; Mayor of the County of Maui; the Corporation Counsel; the Director of the Department of Finance; and the Director of the Department of Public Works.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be 'Paul', is written over a horizontal line.

Deputy Corporation Counsel
County of Maui