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August 28, 2003

Gilbert Coloma-Agaran
Director
Department of Public Works
and Environmental Management
200 South High Street
Wailuku, Hawai'i 96793

Re: Reallocation of Position for CIP Coordinator

Dear Mr. Coloma-Agaran:

This is in response to your request, regarding the above-referenced matter, wherein you asked three interrelated questions on the funding of a proposed reallocated position for a CIP Coordinator within the Development Services Administration ("DSA", fka "LUCA"), Department of Public Works and Environmental Management ("Department"). As described in your request, an existing position within the DSA is proposed to be reallocated to a "CIP Coordinator" position. This CIP Coordinator position is proposed to be funded out of fee revenues in the Plan Review, Permit Processing and Inspection Revolving Fund ("Revolving Fund").

Question 1.

Whether the existing position can be reallocated for work that may fall out of the scope of the Building Permit Revolving Fund (i.e., construction management for the Police, Fire, or Housing and Human Concerns Departments).

In response to question 1, an existing position cannot be reallocated for work that falls outside the scope of the Plan Review, Permit Processing, and Inspection Revolving Fund. The

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authorized scope of use of the Revolving Fund does not include coordinating capital improvement projects for the department.¹

Use of the fee revenues in the Revolving Fund for the CIP Coordinator position would be inconsistent with the purpose of imposing fees for plan checking, permit processing, and inspections. Unlike taxes, such as real property taxes, that are imposed for the purpose of generating revenue for the general operation of the government and for capital improvements, fees are imposed for the purpose of recovering part or all of the cost of services or goods provided. In the case of the Revolving Fund, the fees collected are a recovery of the costs associated with the review and processing of building plans and building permits.² Accordingly, the amount of fees collected is limited to the costs associated with such activities, and the use to which such fee revenues may be put is limited both by the Building Code, which establishes the Revolving Fund, and the annual budget ordinance (in particular, the current fiscal year budget ordinance, Ordinance No. 3129 (2003)).³

¹ See § 16.26.107.3, Maui County Code, as amended, which states, in part:

There is hereby established and created a fund to be known as the "Plan Review, Permit Processing, and Inspection Revolving Fund." The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt and may be expended for salaries, training, contracts, materials, supplies, and equipment that facilitate plan review and for payment of overtime for plan checking, permit processing, and inspections. (Emphasis added.)

See also Ordinance No. 3129 (2003) ("Fiscal Year 2004 Budget"), p. 27 ("Special Purpose Revenues - Schedule of Revolving Special Funds for Fiscal Year 2004").

²"Each county shall have the power to fix the fees and charges for all official services not otherwise provided for." HRS § 46-1.5(8).

³Section 14, Ordinance No. 3129 (2003) states:

The special purpose revenues set forth in Appendix A, Part II (attached hereto and made a part hereof) are expected to be on hand as of June 30, 2003, or derived by the county during fiscal year 2004, from the programs or activities described in the Maui County

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Question 2.

Whether vacant positions funded by other department special funds (highways, sewer, solid waste) would have similar constraints if reallocated for the CIP Coordinator position.

Question 3.

If the position's activities cannot be funded with the Building Permit Fund, whether the Department can fund the reallocated position with savings from other funds (general, solid waste, sewer) without requiring a Budget amendment, or Supplemental Budget request.

Inasmuch as we conclude, above, that a revolving fund, such as the Plan Review, Permit Processing, and Inspection Revolving Fund, cannot be used to fund a CIP Coordinator position, we address Questions 2 and 3 together.

In responding, we assume, from the parenthetical list of "special funds" referenced in the questions, that the questions concern funds other than those funds identified as "Revolving Special Funds", such as the Plan Review, Permit Processing and Inspection Revolving Fund, set forth in Appendix A, Part II, of the annual fiscal year budget ordinance. As discussed above, expenditure of any amounts from such revolving funds is restricted to the purposes and uses identified in the ordinances establishing the revolving funds.

With regard to funds (or, to be more precise, unencumbered appropriation balances) within your Department from sources such as the Highway Fund, Sewer Fund, and Solid Waste Fund, these balances may be transferred to other programs within your Department by

Code at the references set forth under A through L therein. The balance remaining in each of the revolving or special funds as of June 30, 2003, is hereby re-appropriated to the particular fund for expenditure for the purposes identified in the ordinance establishing the revolving or special fund. Revenues derived from the particular program or activity during the fiscal year are hereby appropriated for expenditure for the purposes identified in the ordinance establishing the revolving or special fund. (Emphases added.)

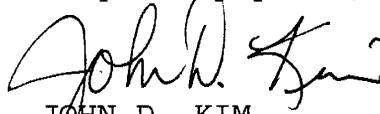
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resolution of Council, as provided by Section 9-10(2) of the Revised Charter of the County of Maui (1983), as amended.⁴

The transfer of unencumbered appropriation balances from one department to another requires adoption of an ordinance.⁵

If you should have any questions or concerns, please feel free to contact me.

Very truly yours,




JOHN D. KIM
Deputy Corporation Counsel

JDK:epg

cc: Danilo Agsalog, Budget Director, Office of the Mayor
Traci Fujita-Villarosa, Deputy Corporation Counsel, Department
of the Corporation Counsel
Keith A. Regan, Director, Department of Finance
Lynn G. Krieg, Director, Department of Personnel Services

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APPROVED FOR TRANSMITTAL



BRIAN T. MOTO
Corporation Counsel

⁴"Upon written request of the mayor part or all of any unencumbered appropriation balance may be transferred within a department by resolution or from one department to another by ordinance. No transfer, however, shall be made from an appropriation to pay any indebtedness, and no appropriation may be reduced below any amount required by law to be appropriated." Charter § 9-10(2).

⁵Id.