

Memorandum

To: **Hawai'i Stadium Authority and Office of Planning and Sustainable Development**

From: HR&A Advisors, Inc. (HR&A)

Date: **August 30, 2024**

Re: NASED Value Capture Opportunity Study

Executive Summary

Introduction and Study Purpose

This report was prepared in response to a request from Stadium Authority (SA) staff to review the Clark County (Nevada) Stadium Authority framework for a Sports and Entertainment Improvement District (SEID) that was enacted in 2023 to finance a Major League Baseball (MLB) stadium project in Las Vegas, Nevada. SA staff and several other officials from Hawai'i were briefed by the Las Vegas Stadium Authority on the SEID during a visit in May 2024. The purpose of the briefing was to understand the mechanisms being used to finance the MLB stadium and surrounding district.

The cost of area-wide infrastructure improvements needed to achieve the State's vision for the New Aloha Stadium Entertainment District (NASED) is of great concern to the SA. Given that these improvements are also critical to realizing the TOD potential envisioned in the City and County of Honolulu's (City) Halawa TOD Area Plan, the SA is interested in exploring how land value capture mechanisms, like the Clark County SEID, might be applied at NASED to address the project area's infrastructure and operational financing needs. HR&A was asked to review and compare the Clark County SEID framework with respect to existing State and County value capture mechanisms and their potential application for financing infrastructure and operations at NASED. This high-level review did not afford time to consult with the City or the Hawai'i Community Development Authority (HCDA). Any recommendations involving changes to City ordinances or HCDA's enabling statute would require in-depth discussions with these two entities.

HR&A reviewed additional land value capture precedents that could be considered at NASED. If structured correctly, land value capture tools can be more efficient than traditional funding sources (e.g., public appropriations and grant programs) as they provide greater predictability in terms of their funding capacity and steps required for implementation.

HR&A was supported by Starn O'Toole Marcus & Fisher and PBR HAWAII in various capacities to produce this memorandum (collectively referred to as the "HR&A Team" throughout this document).

The NASED project will present significant benefits to the State of Hawai'i and the City and County of Honolulu. As noted, however, the project carries significant infrastructure and development costs. While the State has already made a significant appropriation to support capital expenses (\$350 million in the Supplemental Appropriations Act of 2022), additional funding may be required to support all capital and operation and maintenance needs.

Additional resources could also be needed if future changes in market conditions over the medium- to long-term affect the project's financial viability and capacity to repay financing for initial infrastructure investments.¹

This memorandum presents the NASED development teams with a menu of alternative funding approaches, specifically value capture tools, that can mitigate the threats to NASED's financial viability and its associated housing and economic opportunities. Value capture tools can enhance NASED's financial feasibility by leveraging shared public funding to address the costs associated with area-wide infrastructure improvements, including capital investments and costs associated with long-term operations of the stadium and mixed-use district. The funding tools evaluated can also support various financing mechanisms, though their appropriateness for NASED is outside the scope of this analysis. The menu of options presented in this memorandum and their implications may also be applicable for other TOD areas and large mixed-use developments in the State of Hawai'i.

To conduct its assessment, the HR&A Team analyzed value capture tools currently available in the State of Hawai'i and examined precedents in Hawai'i and elsewhere in the United States to glean best practices.² The result of these efforts is the identification and assessment of three value capture tools that hold the greatest opportunity for NASED and other large mixed-used developments in the State of Hawai'i, as well as recommendations to further enhance their capacity and effectiveness (understanding that some of these recommendations may require legislative actions and legal due diligence). These tools include:³

- An **Assessment District**, in the form of either a Special Improvement District (SID) or a Community Development District (CDD). Revenues from assessment districts can underwrite the issuance of public bonds to cover the cost of capital improvements or be used on a pay-as-you-go (PAYGO) basis to address ongoing operational and maintenance expenses. **SIDs and CDDs have the clearest regulatory framework of all the instruments evaluated and have been successfully implemented in the State.**
- A **Tax Increment Financing** (TIF) district, which like assessment districts can underwrite present-date public financing or be implemented on a pay-as-you-go basis (**PAYGO TIF**). Neither form of TIF has been implemented so far in the State. However, subject to further legal due diligence, under the current regulatory framework the most promising path to TIF implementation at NASED is a PAYGO TIF approved by the City and County of Honolulu that captures incremental revenue from Real Property Taxes (RPT) within NASED. While the legality of the issuance of TIF bonds is not clear under the current statute, proceeds from a PAYGO TIF could be leveraged to repay other forms of public financing. A TIF district could also be enhanced by the inclusion of incremental revenues from State taxes, though this option would require new State legislation.
- A **Tax-Sharing Agreement**, which can reimburse the developer for their initial investment in infrastructure improvements. Subject to further legal due diligence, implementation of a tax-sharing agreement could be viable as part of a "Development Agreement" and would represent a novel feature for this type of agreement in Hawai'i.

A SID or CDD is likely the instrument that can be implemented with relatively few hurdles in the short term, provided the developer for NASED agrees to it. Given the regulatory uncertainty surrounding TIF and tax-sharing

¹ The analysis is based on independent research conducted by the HR&A Team; information on NASED financials and procurement provided by their advisors, WT Partnership (WT); conversations with teams from the Stadium Authority (SA), the Department of Accounting and General Services (DAGS), the Office of Planning and Sustainable Development (OPSD), the Waikiki Beach Special Improvement District Association, and WT and Goldmans Sachs (advisors to NASED).

² This memorandum includes recommendations based on research conducted by HR&A and its subconsultants on topics involving the regulatory environment in Hawai'i and municipal finance strategies. However, this information should not be interpreted as legal advice or municipal finance advisory provided by HR&A or its subcontractors to NASED, its advisors, or any other parties. HR&A advises consulting with legal counsel and municipal finance advisors prior to taking any actions based on the findings and recommendations noted in this memorandum.

³ The selection of the three types of value capture tools analyzed in this document – Assessment Districts, TIF Districts implemented on a pay-as-you-go basis (PAYGO TIF Districts), and tax-sharing agreements – were discussed prior to the writing of this document agreed upon by the HR&A Team, the Stadium Authority, and the Hawai'i State Office of Planning and Sustainable Development.

agreements, implementing these tools at NASED could entail a period of legal exploration as well as the need to pass any applicable new City ordinances and State laws. These steps could delay the project's financial close and breaking ground. The choice of the most suitable value capture instrument for implementation at NASED will depend on the financial proposal ultimately submitted by the chosen developer and the degree to which public infrastructure costs impact the NASED project's financial feasibility and delivery schedule. It will also depend on the political appetite of relevant policymakers or other stakeholders needed for any necessary legislative changes.

Assessment District: Special Improvement District or Community Development District

Special assessment districts involve implementing a new levy on a real estate project. The developer agrees to "tax itself" through a new levy and all revenues from the assessment are reinvested into the project to fund its capital and operation expenses. If the economics of a real estate project make it feasible, assessment districts are a means for developers to contribute towards the costs of the project's enabling infrastructure.

Special assessment districts allow the developer to: i) access public financing to fund infrastructure improvements, potentially at a lower cost than through standard market commercial terms; and ii) use proceeds on a PAYGO basis to – for instance – contribute to a fund for capital improvements (which is how the Waikīkī Beach SID pays for capital improvements⁴) or cover ongoing operational and maintenance needs of a district (e.g., maintenance of common areas). An additional incentive for the developer to implement a special assessment district as a funding mechanism – as opposed to other alternatives, such as paying a ground lease to the State and expecting the State to cover infrastructure costs with those proceeds – is the assurance that all revenue collected is reinvested in the district.

In the City and County of Honolulu, special assessment districts can take the form of a Community Facilities District (CFD), a SID, or a CDD. While all three can support capital projects, CFDs are not authorized under State and City law to support ongoing services. Because the NASED project's needs encompass both capital and operations, the HR&A Team excluded CFDs from this analysis. While the economics of the instruments are the same, their regulatory aspects and implementing jurisdictions differ:

- A SID is formed through a City ordinance and administrative and public hearing procedure, and is often initiated by the developer or group of landowners affected by the new tax levy;
- A CDD is formed by the State legislature via statute and overseen by the Hawai'i Community Development Authority (HCDA). Subject to authorization by the State legislature, CDDs can also issue bonds secured by special assessment revenue. A CDD for NASED would be a State-level entity with certain powers that the Stadium Authority does not currently have, notably to assess properties within the CDD and issue bonds to finance construction of public improvements backed by those assessments. Unlike a SID, a CDD may be formed without landowner approval and there is no landowner protest procedure to stop CDD formation. Forming a CDD based on special assessments may impact the financial viability of individual project development and, as noted earlier, requires legislative support.

SIDs and CDDs have the clearest regulatory authority of all the instruments evaluated. Counties are authorized to form SIDs by Hawai'i Revised Statutes (HRS) §46-80, and SIDs in the City and County of Honolulu are governed by Chapter 28 of the Revised Ordinances of Honolulu (ROH). The process of forming a CDD and levying CDD assessments are outlined in HRS §206E-5 and §206E-6, respectively. SIDs and CDDs also have an established track record of implementation in the State. In the case of NASED, an assessment district could be implemented through a new City ordinance creating a NASED SID, or through a State bill creating a CDD.

SIDs and CDDs are not always feasible because not all real estate projects are profitable enough to pay an additional SID/CDD assessment on top of normal property taxes. SID and CDD assessments are only financially possible where a project has "excess value" (i.e., profits in excess of a developer's required return). Even where SID/CDD implementation is financially possible, assessment revenues from SIDs or CDDs alone might be

⁴ Interview with Richard Egged, President of the Waikiki Beach SID.

insufficient to fund all project needs. This is because the magnitude of the assessment required to cover all the intended costs may threaten the financial viability of the real estate project. Therefore, **separately and concurrently with SIDs or CDDs, TIF and Tax-Sharing Agreements can be used to supplement funds.**

Tax Increment Financing (TIF)

TIF is a tool that allows taxing jurisdictions to use anticipated future increases in tax revenues generated within a designated “TIF District” to finance present-day infrastructure improvements or to fund ongoing operational expenses. TIF Districts are formed for a specified, limited period. The taxing jurisdiction’s general fund continues to receive the amount of tax revenues generated at the time of the District’s formation for the duration of the TIF district. Any revenues generated above that baseline are allocated towards approved costs such as infrastructure improvements and operational expenses. After a TIF District’s termination, the taxing jurisdiction’s general fund receives all tax revenues generated within the former TIF District. Like SIDs, TIF can be paired with bond financing or used on a PAYGO basis.

In the State of Hawai‘i, TIF is regulated by HRS §§46-101 through 113, which authorizes Counties to pass ordinances to implement TIF districts and capture the incremental revenue from Real Property Taxes. The legislation does not allow the use of TIF to capture other sources, such as State taxes – General Excise Tax (GET) and Transient Accommodation Tax (TAT), for instance – or other County sources (such as GET and TAT surcharges). It is unclear whether County governments are authorized by the State Constitution to issue bonds secured solely by incremental TIF revenues (“TIF Bonds”).⁵ Therefore, contingent on further legal due diligence, the most viable path to TIF implementation at NASED would be a PAYGO TIF that is approved by the City and County of Honolulu and only captures RPT incremental revenue. This would require:

1. The City Council passing a general ordinance authorizing and governing the use of TIF in Honolulu; and then
2. The City Council passing a specific ordinance establishing a TIF district for NASED, with incremental RPT revenues used on a PAYGO basis to support project expenditures.

If a PAYGO TIF is legally and politically viable, the next step is to determine whether PAYGO TIF revenues can repay public or private debt instruments. Also subject to further legal due diligence and confirmation from a municipal finance advisor,⁶ the City may be authorized by the State to use TIF revenues to repay certain debt instruments such as Revenue Bonds and Special Purpose Revenue Bonds; federal financing, such as Transportation Finance and Innovation Act (TIFIA) loans; private financing with a commitment of TIF revenues; or Private Activity Bonds (tax-exempt bonds issued by a state or local government to fund projects for private entities).⁷

The funding capacity of TIF could be enhanced if the State of Hawai‘i contributed incremental revenues from State taxes (e.g., GET, TAT) to the TIF district. However, implementing this scheme would require legislative changes,

⁵ Office of the Attorney General, State of Hawaii, “Testimony of the Department of the Attorney General, Twenty-Seventh Legislature, 2014” regarding “H.B. 2167, Proposing Amendments to Article VII, Sections 12 and 13, of the Hawaii Constitution to Authorize the Counties to Issue Tax Increment Bonds and to Exclude Tax Increment Bonds from Determinations of the Funded Debt of the Counties,” (February 6, 2014).

⁶ HR&A Advisors, Inc. (“HR&A”) is not a registered Municipal Advisor and therefore cannot provide advice on the types of bonds TIF revenues may repay or any other municipal finance advice. HR&A is not recommending an action to the State of Hawai‘i (State), the Office of Planning and Sustainable Development (OPSD), or any county and/or municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities pursuant to Section 15B of the Securities Exchange Act of 1934. HR&A is not acting as an advisor to the State, OPSD, or any county and/or municipal entity or obligated person and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the State, OPSD, or any county and/or municipal entity or obligated person with respect to the information and material contained in this communication. The State, OPSD, or any county and/or municipal entity or obligated person should discuss any information and material contained in this communication with any and all internal or external advisors and experts that the State, OPSD, or any county and/or municipal entity or obligated person deems appropriate before acting on this information or material.

⁷ This list is not comprehensive, and PAYGO TIF revenues may be able to repay other debt instruments. See the Appendix for additional details on each of the debt instruments listed.

including amending the State TIF law to authorize TIF Districts to capture incremental State revenues. It would also require significant State-City coordination including establishment of a new governance mechanism to oversee project progress and allocate State and City incremental revenues. Precedents for this interjurisdictional collaboration have taken place outside Hawai'i. For example, both the State of Nevada and Clark County contribute incremental revenues from various taxes to the Clark County Sports and Entertainment District, including sales and use, payroll, and property, among other taxes.⁸

Tax-Sharing Agreement

In a tax-sharing agreement, a government entity (or entities) and a developer agree that: a) the developer makes all necessary public infrastructure investments to enable real estate development, procuring its own capital/financing; and b) after project completion, the developer is reimbursed for those infrastructure investments by the government entity.

The developer can be repaid for public infrastructure investment in multiple ways, including but not limited to tax abatements, payment-in-lieu-of-taxes (PILOT),⁹ or earmarking a part of the tax revenue generated onsite. Tax-sharing agreements are negotiated on a case-by-case basis by the parties and have a limited term. In most cases, developer reimbursement is tied to actual tax revenues generated onsite (or all or some taxes or even a share of some taxes). This approach results in the developer taking on the risk of the real estate project not generating enough tax revenue to be fully reimbursed for public infrastructure costs.

Tax-sharing agreements are often implemented via development agreements in the United States. In the State of Hawai'i, State law enables County governments to enter into development agreements but does not address the legality of tax-sharing agreements specifically. The ordinances of the City and County of Honolulu do not address this topic either. To implement a tax-sharing agreement at NASED, further legal review is recommended to:

- Determine the legality of tax-sharing agreements under State and City law; and
- Determine the need for new legislation at the State and/or City levels to enable a tax-sharing agreement at NASED with the State and/or City as parties.

Lessons for Value Capture Implementation in Hawai'i and Recommendations for Further Study

In addition to the regulatory requirements outlined, various factors will determine the applicability of these instruments in other projects in the State of Hawai'i, including:

- In the case of SIDs and CDDs, the margin of the project financials to absorb the additional assessment required to provide funding for the targeted infrastructure works or public services, which might not be enough to fund all infrastructure needs even when there is margin in project financials.
- In the case of all instruments, the inclusion of tax-exempt property uses (mainly affordable rental housing) within the development program needs to be balanced with the capacity of the value capture mechanisms to produce revenues.
- Implementing value capture tools that involve State-County coordination will likely require additional legislation and a learning curve for participating agencies.

Further study is recommended to identify changes that could enhance the utility of land value capture tools in the State of Hawai'i, including:

- Development of recommendations for amending existing district tools at the State and County level to expand value capture revenue sources beyond real property taxes and special assessments.
- Exploration of the authority required to enable tax-sharing agreements.

⁸ See the Precedents section for more information on the Clark County District.

⁹ Payment-in-lieu-of-taxes (PILOT) refers to a legal arrangement whereby a property taxing government and developer agree to remove the subject property from the property tax roll, and the developer instead must submit payments to the property taxing government in lieu of property taxes, typically at a discounted rate from normal property taxes. The discount, relative to normal property taxes, is what could indirectly compensate a developer in a tax-sharing agreement.

-
- Legal review of the use of tax increment revenues to repay or secure other debt instruments and any legislative changes that may be required.
 - Examination of potential amendments to the Stadium Development District and TOD infrastructure improvement district provisions in HRS Chapter 206E to support use of State-level district value capture for NASED.
 - Examination of a potential new statute authorizing the establishment of a State-level district for land use value capture of State and County revenues for use at NASED or elsewhere in Hawai'i.

Introduction and Background

The *TOD Infrastructure Financing and Delivery Strategy* study conducted by HR&A for the Office of Planning and Sustainable Development (OPSD) was undertaken to address the lack of funding for infrastructure needed for affordable housing and mixed-use development statewide—a key concern identified in the *State of Hawaii Strategic Plan for Transit-Oriented Development*.¹⁰ Several State-funded studies have revealed the magnitude of the funding required for infrastructure improvements needed in these TOD areas.¹¹ Moreover, the Infrastructure Financing study found that the counties needed additional dedicated revenue sources to meet their infrastructure needs, and that multiple revenue streams would need to be available for district infrastructure (as no single revenue source produced sufficient revenues to fund required infrastructure improvements).

Similarly, the cost of area-wide infrastructure improvements needed to achieve the State's vision for the New Aloha Stadium Entertainment District (NASED) is of great concern to the Stadium Authority (SA). Given that these improvements are also critical to realizing the TOD potential envisioned in the City and County of Honolulu's (City) Halawa TOD Area Plan, the SA is interested in exploring how land value capture mechanisms might be applied at NASED to address the project area's infrastructure and operational financing needs.

This report was prepared in response to a request from SA staff to review the Clark County (Nevada) Stadium Authority framework for a Sports and Entertainment Improvement District (SEID) that was enacted in 2023 to finance a Major League Baseball (MLB) stadium project in Las Vegas, Nevada. SA staff and several other officials from Hawai'i were briefed by the Las Vegas Stadium Authority on the SEID during a visit in May 2024. The purpose of the briefing was to understand the mechanisms being used to finance the MLB stadium and surrounding district.

HR&A was asked to review and compare the Clark County SEID framework with respect to existing State and City value capture mechanisms and their potential application for financing infrastructure and operations at NASED.

This high-level review did not afford time to consult with the City or the Hawai'i Community Development Authority (HCDA). Any recommendations involving changes to City ordinances or HCDA's enabling statute would require in-depth discussions with these two entities.

HR&A reviewed additional land value capture precedents that could be considered at NASED. If structured correctly, land value capture tools can be more efficient than traditional funding sources (e.g., public appropriations and grant programs) as they provide greater predictability in terms of their funding capacity and steps required for implementation.

HR&A was supported by Starn O'Toole Marcus & Fisher and PBR HAWAII in various capacities to produce this memorandum (collectively referred to as the "HR&A Team" throughout this document).

The NASED project will present significant benefits to the State of Hawai'i and the City and County of Honolulu. However, the project carries substantial infrastructure and development costs. While the State has already made a significant appropriation to support capital expenses (\$350 million in the Supplemental Appropriations Act of 2022), additional funding may be required to support all capital and operation and maintenance needs. Additional

¹⁰ Hawaii Interagency Council for Transit-Oriented Development, "State of Hawai'i Strategic Plan for Transit-Oriented Development," (December 2017, rev. August 2018).

¹¹ These include the 2018 "State Transit-Oriented Development (TOD) Planning and Implementation Project for the Island of O'ahu" commissioned by the Office of Planning (now the Office of Planning and Sustainable Development (OPSD)) and 2022 "State Infrastructure Improvement Master Plan for the Iwilei Area" commissioned by the Hawai'i Housing Finance and Development Corporation (HHFDC) and Department of Accounting and General Services (DAGS)

resources could also be needed if future changes in market conditions over the medium- to long-term affect the project's financial viability and capacity to repay financing for initial infrastructure investments.¹²

NASED Development Program and Procurement

The SA is a State entity created to repair, maintain, and operate stadium facilities and the Stadium Development District,¹³ which constitute NASED. The NASED project will include the delivery of an integrated, mixed-use, live-work-play-thrive district anchored by a new Aloha Stadium (the "Stadium"). The new Stadium is expected to be built by 2028, and development of the mixed-use district subsequently occurs between 2029 and 2047. The program includes market-rate and affordable residential, hotel, office, retail, commercial, and entertainment uses, as summarized in Figure 1.

Figure 1 | NASED Program Summary

LAND USE	PHASE 1B (YEAR 5 - 2032)		YEAR 10 - 2037		YEAR 15 - 2042		YEAR 20 - 2047	
	UNITS	% OF GSF	UNITS	% OF GSF	UNITS	% OF GSF	UNITS	% OF GSF
Ground-Floor Retail (Net SF)	84,000	5%	143,000	5%	212,000	5%	280,000	5%
Lifestyle/Entertainment Retail (Net SF)	125,000	7%	150,000	5%	150,000	4%	150,000	3%
Office (Net SF)	60,000	4%	60,000	2%	120,000	3%	120,000	2%
Rental Residential (Units)	300	15%	600	19%	1,200	25%	1,500	25%
Conventional Condo (Units)	600	31%	900	29%	1,200	25%	1,600	27%
Premium Condo (Units)	150	10%	325	14%	325	9%	525	12%
Affordable Residential	340	17%	455	14%	825	17%	910	15%
Hotel (Keys)	250	9%	500	11%	800	12%	800	10%
Total - Excluding Civic Uses	1,787,000	100%	2,917,000	100%	4,429,000	100%	5,473,000	100%
Civic Uses	0		200,000		200,000		200,000	
TOTAL - All Uses	1,787,000		3,117,000		4,629,000		5,673,000	

Source: RCLCO – Strategic Market Analysis for New Aloha Stadium Entertainment District (2023)

The project is currently undergoing procurement and the SA – in partnership with DAGS – intends for the project to be developed as one integrated public-private-partnership (P3). The chosen developer will be responsible for designing, building, financing, maintaining, and operating the new Stadium and the surrounding mixed-use district. The one remaining offeror in the procurement process submitted their proposal in July 2024.

Approaches to Close Potential Funding Gaps

The current cost-sharing scheme for NASED may pose financial feasibility challenges. Furthermore, even if the project appears viable under existing and anticipated conditions, this viability could falter if economic and market

¹² The analysis is based on independent research conducted by the HR&A Team; information on NASED financials and procurement provided by their advisors, WT Partnership (WT); conversations with teams from the Stadium Authority (SA), the Department of Accounting and General Services (DAGS), the Office of Planning and Sustainable Development (OPSD), the Waikiki Beach Special Improvement District Association, and WT and Goldmans Sachs (advisors to NASED).

¹³ Hawai'i Revised Statutes (HRS), § 109-2.

conditions change (e.g., increases in construction costs and interest rates). A supplemental funding strategy can help address funding gaps and mitigate risks. Possible approaches include:

Contributions from the developer, provided the economics of the project can absorb this additional cost.

These contributions can take the form of:

1. Internal cross-subsidy: The NASED developer can use revenues from profitable real estate uses to cover deficits in other project components. This cross-subsidy mechanism is integrated into the developer's financial model, assuming they retain all project revenues and bear responsibility for costs beyond State appropriations. **Private financing would support the project, with the developer assuming financing risk;**
2. Ground-lease payments: NASED's project design involves State ownership of the land. As project revenues stabilize, the developer could pay for land use. The **State would procure public financing to cover infrastructure needs and assume financing risk.**¹⁴ Ground lease agreements could earmark a portion of payments for project expenses, providing assurances to lenders and enhancing financial feasibility;
3. Value capture through special assessments: The developer agrees to "tax itself" through a new levy and all revenues from the assessment are reinvested into the project. In Hawai'i, special assessments can be levied through Community Facilities Districts (CFD), Special Improvement Districts (SID), or Community Development Districts (CDD). CFDs and SIDs fall under City jurisdiction, while CDDs are under State jurisdiction. Using these instruments **allows developers to access public financing**, with City or State bonds underwritten by district revenues.

Address potential future financial shortfalls with new tax revenues.

Changing conditions could threaten the financial viability of the project, especially given its long-term nature. To address funding gaps arising from such shortfalls, the State and the City can allocate part of the future incremental tax revenue generated onsite by the development of NASED. This could take place through the creation of a Tax Increment Financing District or through a Tax Sharing Agreement between the SA and the chosen developer. A tax-sharing strategy should consider the following factors:

- Tax-sharing instruments can complement the **developer contribution** approaches described earlier and be implemented simultaneously;
- Allocated tax revenues would likely be **lower than total incremental onsite revenues generated**. The actual amount would depend on whether the State and City decide to contribute revenues from their respective taxes. Fiscal costs arising from the NASED development would also impact the viable level of tax contribution from the State and City.
- The **financing capacity** of State and City tax revenue streams is lower than the revenues themselves due to uncertainty, market rates, and debt service coverage ratios.

Assessment of Potential Value Capture Instruments for NASED

To capture the revenue streams needed to address potential NASED financial shortfalls, the HR&A Team considered various value capture instruments that can convert to project funding sources part of the profits from the real estate development program (if existing) and the tax revenues generated onsite. The purpose of this section is to:

- Define these instruments;

¹⁴ The NASED team notes that no additional State funding for NASED is contemplated at this time.

- Present case studies of the implementation of the instruments to illustrate the agreements and governance models required, especially for those instruments that have not been implemented in the State of Hawai'i; and
- Assess the factors that would favor or impede their use for NASED.

Introduction to Potential Instruments

Internal cross-subsidy and ground leases are already being contemplated by the Stadium Authority in the project's procurement. Therefore, value capture instruments evaluated for this study include:

1. Contributions from the developer, assuming the economics of the real estate program can absorb them, through **Special Assessment Districts**; and
2. To **allocate future tax revenue** to address potential financial shortfalls, either:
 - a. A Tax Increment Financing district; or
 - b. A Tax-Sharing Agreement.

Assessment Districts:

In the State of Hawai'i, special assessment districts are generally formed as **Community Facility Districts** (County-level), **Special Improvement Districts** (County-level), or **Community Development Districts** (State-level).¹⁵

To form a CFD or SID, property owners agree to pay ongoing special assessments or taxes on real property to fund public services and public improvements that enable future development. In the City and County of Honolulu, CFDs are restricted to fund capital projects, while SIDs can support both capital projects and district services.¹⁶ Given that NASED's funding needs may encompass both capital expenditures and ongoing operational and maintenance costs, a SID is the preferred choice over a CFD and will be a focus of this analysis.

Examples of SIDs in the State of Hawai'i include the Waikiki Beach SID (City and County of Honolulu), as well as the Kaloko Heights SID and the Lono Kona Sewer Improvement District (County of Hawai'i).

To form a CDD, the State Legislature designates the district area by statute (HRS Chapter 206E). HCDA then drafts a Community Development Plan (CDP) that includes a district-wide improvement program. After a public hearing, the CDP is submitted to the Governor for approval.¹⁷ Once approved, the State Legislature may approve any appropriations or bonding authority for the CDD.¹⁸ HCDA may also authorize assessments on properties within the CDD to fund district-wide public improvements specified in the CDP and can issue bonds backed by assessment revenues to provide up-front financing for those improvements.¹⁹ As an instrument of the HCDA, CDD assessment revenues may fund both capital projects and district services.²⁰ Unlike a SID, a CDD may be formed without landowner approval and there is no landowner protest procedure to stop CDD formation. In forming a CDD that relies on special assessments, consideration needs to be given to the fact that the additional assessment may threaten the financial viability of individual development projects.

¹⁵ Hawaii State law contains provisions for two types of State-level districts: a Transit-Oriented Development Infrastructure Improvement District (HRS §§206E-241 through 249) and a Stadium Development District (HRS §§206E-221 through 226). The former is not analyzed in this document because it has not yet been implemented. The latter is not analyzed as a standalone tool because HRS §§206E-221 through 226 do not confer to the Stadium Development District the power to assess properties and issue bonds backed by those assessments. The Stadium Authority is not granted the power to assess properties and issue bonds backed by those assessments either (HRS §109-2). However, amending the Stadium Development District law to allow such powers is contemplated in the "Implementation Roadmaps" section of this document.

¹⁶ ROH §27-1.5 and §28-1.5. Compare ROH §27-1.5 (authorized special improvements for CFDs) and ROH §28-1.5 (authorized supplemental services and improvements for SIDs).

¹⁷ HRS §206E-5.

¹⁸ HRS §206E-5.

¹⁹ HRS §206E-6.

²⁰ HRS §206E-4.

Examples of CDDs include the Kaka'ako Community Development District and Kalaeloa Community Development District on O'ahu.

Unlike TIF and Tax-Sharing Agreements, payment of special assessments on existing or future land uses can begin as soon as a SID or CDD is created. Revenue from special assessments can fund:

- a. **Capital improvements**, either through a bond issuance or on a **PAYGO** basis. In the first case, future revenues from the special assessment are used to underwrite a present-date bond issuance that is fully backed by the anticipated revenues. In the case of PAYGO, revenues from the assessment are often used to capitalize a special fund to fund improvements and other activities in the future, or they are earmarked as one more source of repayment of public or private debt.
- b. **Operations and maintenance**, with annual revenue dedicated to funding ongoing services (e.g., cleaning, security, events, etc.).

To capture the tax revenue generated at NASED, consideration could be given to Tax Increment Financing or a Tax Sharing Agreement, as described below.

Tax Increment Financing, a district-based tool that allows taxing jurisdictions to either use all or a part of anticipated future increases in onsite tax revenues (measured relative to the baseline tax revenues at the creation of the district) to finance present-day infrastructure improvements; or use ongoing revenues to pay for operational and maintenance expenses or to repay a public debt instrument. Whether a portion or all future increases in tax revenues generated within the designated site (called a "TIF district") is outlined in the ordinance establishing the TIF District.

There are two important distinctions regarding TIF implementation:

1. While TIF often involves earmarking the revenue increment from property taxes, it has also been used outside the State of Hawai'i to earmark incremental revenues from other levies (such as sales tax, hotel taxes, and others). However, if these taxes are levied by different jurisdictions (e.g., State versus County or City), an agreement and coordination among those jurisdictions is often necessary to capture incremental increases from their multiple tax revenue sources.
2. TIF can be paired with bond financing or used on a PAYGO basis.
 - a. In the case of bond financing, a local government issues bonds that are backed by a percentage of projected future tax collections, which are expected to increase over time given higher property values and/or new business activity within a designated project area. It is not clear, however, whether issuing TIF bonds is allowed in the State of Hawai'i;
 - b. In a PAYGO TIF, the tax increment is earmarked to reimburse a private developer for infrastructure expenses (like a tax-sharing agreement) or to repay other types of debt, such as intergovernmental loans (e.g., TIFIA loan) or State or County General Obligation bonds.

In the State of Hawai'i, TIF is regulated by HRS §§46-101 through 113, which authorizes Counties to pass ordinances to implement TIF districts and capture the incremental revenue from Real Property Taxes (RPT). The legislation does not allow the use of TIF to capture other sources, such as State taxes – General Excise Tax (GET) and Transient Accommodation Tax (TAT), for instance – or other County sources (such as County GET and TAT surcharges).

It is unclear whether County governments are authorized by the State Constitution to issue bonds secured solely by incremental TIF revenues (“TIF Bonds”).²¹ Subject to further legal due diligence, a PAYGO TIF that is approved by the City and County of Honolulu and only captures RPT incremental revenue may be viable at NASED. Subject to further legal due diligence and confirmation from a municipal finance advisor, the City may be authorized by the State to use TIF revenues to repay certain debt instruments such as Revenue Bonds and Special Purpose Revenue Bonds; federal financing, such as Transportation Finance and Innovation Act (TIFIA) loans; private financing with a commitment of TIF revenues; or Private Activity Bonds (tax-exempt bonds issued by a state or local government to fund projects for private entities).²²

A **Tax-Sharing Agreement**, whereby a government entity (or entities) and a developer sign an agreement contemplating that:

- a. The developer makes all necessary infrastructure investments, procuring its own capital/financing; and
- b. After project completion, all or a portion of future revenues from all or some taxes generated by the development is used to repay the developer investment. The developer can be repaid for public infrastructure investment in multiple ways, including but not limited to tax abatements, payment-in-lieu-of-taxes (PILOT),²³ or earmarking a part of the tax revenue generated onsite.

Tax-sharing agreements are negotiated on a case-by-case basis by the parties and have a limited term. In most cases, developer reimbursement is tied to actual tax revenues generated onsite (all or some taxes or even a share of some taxes). This approach results in the developer taking on the risk of the real estate project not generating enough tax revenue to be fully reimbursed for public infrastructure costs.

While a Tax-Sharing Agreement pertains to a specific geographic area where development is to take place and is a “district-based” tool in that sense, executing and implementing a Tax-Sharing Agreement does not entail creation of a formal “district” with standardized regulations like a SID, CDD, or a TIF District. Rather, a Tax-Sharing Agreement is a contract from a project-by-project negotiation between a private developer and the public jurisdictions whose tax revenue streams are affected.

Tax-Sharing Agreements are often implemented via development agreements in the United States. In the State of Hawai‘i, State law enables County governments to enter into development agreements but does not address the legality of tax-sharing agreements specifically. The ordinances of the City and County of Honolulu do not address this topic either.

Pending further legal due diligence as to their legal status in the State of Hawai‘i and the City and County of Honolulu, Tax-Sharing Agreements could include government entities at the State and City levels as participating parties. Whether the State and/or City governments are included or not depends on whether State and/or City tax revenues are affected.

²¹ Office of the Attorney General, State of Hawaii, “Testimony of the Department of the Attorney General, Twenty-Seventh Legislature, 2014” regarding “H.B. 2167, Proposing Amendments to Article VII, Sections 12 and 13, of the Hawaii Constitution to Authorize the Counties to Issue Tax Increment Bonds and to Exclude Tax Increment Bonds from Determinations of the Funded Debt of the Counties,” (February 6, 2014).

²² This list is not comprehensive, and PAYGO TIF revenues may be able to repay other debt instruments. See the Appendix for additional details on each of the debt instruments listed.

²³ Payment-in-lieu-of-taxes (PILOT) refers to a legal arrangement whereby a property taxing government and developer agree to remove the subject property from the property tax roll, and the developer instead must submit payments to the property taxing government in lieu of property taxes, typically at a discounted rate from normal property taxes. The discount, relative to normal property taxes, is what could indirectly compensate a developer in a tax-sharing agreement.

Figure 2| Summary of Potential Value Capture Instruments Examined

Value Capture Instrument	Source of Revenue	Can Back Public Debt Financing?	Can Provide Funding Upfront for Areawide Improvements?	Primary Parties Responsible for Implementation	Key Benefits and Challenges
Special Improvement District / Community Development District	<p>Revenue from a new special assessment/tax on new or existing development.</p> <p>Payment of the special tax/assessment can begin as soon as the district is created and is based on future development.</p>	Yes. Can underwrite bonds fully secured by proceed from the special assessments.	Yes. SIDs and CDDs can support bond issuances and produce a steady revenue cash flow once district is created.	<p>SIDs: Developer or Property Owners, who often initiates SID. City Executive and City Council, who need to approve SID creation.</p> <p>CDDs: State legislature, which creates the CDD. Governor approves CDP. HCDA governs the CDD.</p>	<p>Starts providing revenues upfront.</p> <p>Provides access to public financing.</p> <p>Requires project financials that can absorb the additional assessment.</p>
Tax-Sharing Agreement	<p>PILOT or revenue from taxes on a) New development; and b) Growth in taxable value of existing properties, which may be abated. Taxes included (RPT, sales, others) to be defined in agreement.</p> <p>After project completion, revenue grows gradually as development and appreciation of the taxable base takes place.</p>	No. Developer secures financing for initial capital investment.	Yes. Developer independently secures funding for development-enabling improvements and is later reimbursed through means such as the sharing of tax revenues generated onsite.	<p>Developer/Property Owners, who is responsible to procure financing and execute site development.</p> <p>City Executive, which negotiates agreement.</p> <p>City Council, which needs to approve agreement.</p>	<p>Does not entail the levying of new taxes.</p> <p>It often takes time for the taxable base to grow sufficiently to support significant funding /financing capacity.</p> <p>Requires complex calibration and negotiation process.</p>

Value Capture Instrument	Source of Revenue	Can Back Public Debt Financing?	Can Provide Funding Upfront for Areawide Improvements?	Primary Parties Responsible for Implementation	Key Benefits and Challenges
Tax Increment Financing	<p>Revenue from property taxes on a) New development; b) Growth in taxable value of existing properties.</p> <p>Other jurisdictions have allowed TIF to capture incremental taxes beyond RPT, including sales, hotel, and other taxes, and incremental revenues at the State and County levels.</p> <p>After the district's creation, revenue grows gradually as development and appreciation of the taxable base takes place.</p>	<p>Yes. Can often underwrite bonds fully secured by incremental tax revenues (though it is unclear whether the State Constitution allows this). Can also help service debt of other debt instruments (which are not secured solely by the incremental tax revenue produced onsite).</p>	<p>Yes, if paired with a TIF Bond or other bond issuance or if used to repay a developer loan.</p> <p>TIF revenues can provide funding in the early- to mid-stages of development if a bond issuance takes place. As noted to the right, a TIF Bond issuance may not be permitted by the State Constitution.</p> <p>Subject to further legal due diligence, TIF revenues may be able to repay certain forms of government debt. Otherwise, TIF revenues grow gradually over time as the taxable base increases.</p>	<p>City Government</p> <p>State Government (<i>if increment of State taxes also included as a TIF revenue source</i>).</p>	<p>Does not entail the levying of new taxes</p> <p>It often takes time for the taxable base to grow sufficiently to support significant funding /financing capacity.</p>

Review of Precedents

To draw lessons on the funding potential, governance, and key success factors of the value capture tools considered, the HR&A Team studied their implementation in three cases, including:

- Waikīkī Beach Special Improvement District
- Hollywood Park Tax-Sharing Agreement, Inglewood, California
- Clark County / Las Vegas Sports and Entertainment Improvement District, Nevada

There are several key takeaways from these precedents for the NASED project:

- The experience of the Waikīkī Beach SID demonstrates that cost-sharing with property owners to fund infrastructure has a successful track record within the State of Hawaii – especially in cases where the economic benefit of supplemental public improvements to private landowners or ground lessees is clear. This is arguably the case for the NASED project, where the SID could help develop and maintain the ground infrastructure required for the privately-developed mixed-use program.
- Authorizing the capture of revenue increments (or a portion thereof) for a PAYGO TIF or a tax-sharing agreement from multiple jurisdictions can significantly increase revenues available for the project. However, it requires agreement and coordination between these parties, and may require considerable legislative changes. For instance, the Clark County / Las Vegas Sports and Entertainment Improvement District needed a State bill to allow capturing tax increments from both State and County sources, as existing legislation only authorizes revenue from property taxes.
- Individual agreements, such as tax-sharing arrangements, do not require creation of a district but may involve significant negotiation time and require approval from relevant jurisdictions. For example, the Hollywood Park tax-sharing process spanned two years from initial discussions to execution.

Waikīkī Beach Special Improvement District



Photo: Waikīkī Beach Special Improvement District Association

Key Takeaways:

- Initiated by commercial landowners who have an incentive to fund projects related to beach maintenance and restoration;

- District covers an area with high property values and commercial activity, which helps generate meaningful revenue to fund medium-scale infrastructure works;
- Fairly complex governance structure, though this is a direct result of the multiplicity of landowners within the district (which would not be the case at NASED);
- Streamlined district creation process given clear regulatory framework at State and City levels.

Overview: The Waikīkī Beach Special Improvement District Association (WBSIDA) was established in 2015 with the purpose of funding capital projects related to maintenance projects that prevent beach loss (e.g. sand fill, seawalls) and preserve Waikīkī Beach as a tourism asset. Examples of WBSIDA's accomplishments include funding:

- The Royal Hawaiian Groin Replacement (Project cost: \$1.4 million, 50% funded by WBSIDA, executed by the State Department of Land and Natural Resources, completed in 2020)²⁴
- Waikīkī Beach Maintenance Project Phase II (Project cost: \$4.0 million, including \$1.0 million from WBSIDA, executed by the State Department of Land and Natural Resources, completed in 2021).²⁵

As the above examples imply, WBSIDA provides funding but relies on State agencies to execute capital projects. While WBSIDA is focused on capital projects, as a SID it also is authorized to provide supplemental services. These services are instead provided by the Waikīkī Business Improvement District (BID), a separate organization funded by special assessments on property within the same geographic area as the WBSIDA.

Revenue Source: WBSIDA is funded by special assessments levied upon properties within the SID. Assessments are sized according to estimated project needs (though annual increases greater than 10% require a public notice and hearing process and City Council approval).²⁶ In WBSIDA's fiscal year 2022-2023, the assessment rate was \$0.069 per \$1,000 of assessed value, yielding approximately \$1.0 million in annual revenue. Certain types of properties, such as places of worship and residential properties, are exempt from the assessment. Despite being authorized to do so, WBSIDA has not issued bonds because the organization judged that the magnitude of bonds that could be underwritten does not justify the associated transaction costs.²⁷

Figure 3 | WBSIDA Assessment Rates and Revenues

Indicator	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Assessment Rate (Cents/\$1,000 Value)	7.6¢	7.2¢	7.0¢	6.6¢	6.6¢	6.6¢	6.9¢
Annual Revenue	\$799K	\$877K	\$967K	\$1.1M	\$1.1M	\$952K	\$1.0M

Source: WBSIDA 2022 Annual Report to City Council.

Governing Regulations: Counties are authorized to form Special Improvement Districts (SIDs) by HRS §46-80. In the City and County of Honolulu, special improvement districts (SIDs) are governed by Citywide enabling legislation (ROH Chapter 28). Each SID is then established through an ordinance. WBSIDA was established by City and County of Honolulu Ordinance 15-11.

WBSIDA Governance: As a SID, WBSIDA's board composition is governed by ROH §28-2.9 and includes 26 members:

- 22 voting members, including:
 - 14 members who are fee simple owners or ground lessees of real property within the SID;

²⁴ Engineering News Record, "Royal Hawaiian Groin Replacement," (September 29, 2021). Department of Land and Natural Resources, "Royal Hawaiian Groin Replacement Project Begins Next Week," (May 1, 2020).

²⁵ WBSIDA, "Waikīkī Beach Special Improvement District Association Report to the Honolulu City Council FY 2021-22," (May 31, 2022).

²⁶ ROH §28-3.2 and §28-4.

²⁷ Interview with Richard Egged, President of WBSIDA.

- Five members who are commercial tenants leasing space within the SID; and
- Three elected officials or their designees: Governor of Hawai'i, Mayor of Honolulu, and local Councilmember.
- 4 nonvoting members, including:
 - The Chair of the Waikiki Neighborhood Board 9; and
 - The Directors of the City and County Departments of Facilities and Maintenance; Budget and Fiscal Services; and Parks and Recreation.

The size of the board is due to the presence of many landowners under WBSIDA's jurisdiction, which would not be the case at NASED.

Hollywood Park Tax-Sharing Agreement (Inglewood, CA)



Photo: Studio-MLA.

Key Takeaways:

- Incentives for both developer and City government to engage in agreement, with developer obtaining special entitlements in exchange for procuring upfront financing for district infrastructure and SoFi Stadium, and the City of Inglewood avoiding fiscal risk with a guaranteed amount of future tax revenue written into the development agreement;
- Governance has low complexity, since developer manages development and maintenance of the site;
- Did not require agreement from the State or Los Angeles County, since only City taxes are incorporated in the agreement.

Overview: In 2015, the Hollywood Park Land Company ("Developer") and the City of Inglewood entered into a **development agreement** for the Hollywood Park district ("HP"). The district is anchored by the 70,000-seat SoFi Stadium, opened in 2020. When fully built, HP will also contain up to 2,500 homes, 900,000 sq. ft. of retail space, five million sq. ft. of office space, a 300-room hotel, and 25 acres of public parks and open space.

Highlighted Agreement Terms: In addition to the construction of SoFi Stadium and vertical development, the development agreement required that the Developer pay for public improvements necessary for development

(e.g., right-of-way improvements) and comply with a community benefits agreement (CBA)²⁸ with various provisions (e.g., conveying four acres of land to the City for civic uses including affordable housing).

Financing Mechanism: The Developer advances the costs of public improvements and is reimbursed by the City of Inglewood each year for the totality of capital and operational expenditure pertaining to the Stadium and District Infrastructure. The Developer is eligible annually for reimbursement during the entire term of the agreement, assuming the Developer has eligible expenses to report to the City. To receive reimbursement, the Developer must submit written evidence of its expenditures on public improvements to the City each year. The City keeps the first \$25 million, adjusted annually for inflation, of tax revenue (sales tax (on construction materials), ticket taxes, parking taxes, hotel taxes, franchise fees, property taxes, utility user taxes, and business license taxes) generated in a given year within HP, and the Developer is reimbursed by revenues above that threshold. If revenues generated are not sufficient to reimburse the Developer for the full cost of improvements advanced that year, interest accrues on the unreimbursed amount, which the City pays from future revenues above the \$25 million threshold.

Magnitude and Timing of Revenues: The precise magnitude and timing of revenues generated within HP is not known due to confidentiality. However, the \$25 million revenue threshold for Developer reimbursement was likely met in 2022, when ticket taxes were fully in effect, two years after SoFi Stadium opened to the public in 2020.

Governance: The term of the development agreement is 25 years, with the option to extend it by up to 30 years. The Developer must submit a letter annually to the City of Inglewood providing evidence of its compliance with the development agreement. If the Developer is not compliant, City Council may terminate the agreement.

Clark County / Las Vegas Sports and Entertainment Improvement District



Photo: Oakland Athletics via Nevada Independent.

²⁸ While California state law mandated that a CBA be negotiated prior to implementation of the tax sharing agreement, implementation of the CBA was required by the development agreement before the City of Inglewood would begin sharing tax revenues to reimburse Developer for public improvement costs.

Key Takeaways:

- Clark County / Las Vegas Sports and Entertainment Improvement District is essentially a TIF district that pools incremental revenues from multiple tax revenue sources – beyond just real property taxes – from the State and County that are generated from the future stadium on the site of a defunct hotel;
- Fairly complex governance structure, given the involvement of various government stakeholders in the project;
- The district revenues are used to repay County-issued general obligation bonds, which are not secured solely by the district's revenues but by the County's full faith and credit.

Overview: In 2023, the Nevada State Legislature passed SB1, establishing a Sports and Entertainment Improvement District ("District") for purposes of financing construction of an MLB Stadium in unincorporated Clark County. While counties in Nevada have the authority to implement TIF districts on their own initiative, a new state law was required in this instance to capture tax revenues sources beyond property taxes. SB1 provides up to \$380 million of public financing for the project, including:

- **Transferable tax credits:** which apply to payroll taxes, gaming license fees, insurance taxes, or any combination thereof;
- A **credit enhancement:** for repayment of bonds issued to finance construction of the stadium project, backed by a State appropriation of \$14 million to the State Infrastructure Bank;
- County bonds: Clark County will issue bonds to finance construction of the stadium project, described in greater detail below.

Revenue Sources and Funding/Financing Mechanism: County bonds issued to support the project will be repaid by multiple public revenue sources generated within the District including state taxes (sales and use, payroll, insurance, commerce, live entertainment, liquor, rideshare, property taxes), state fees (exhibition license, business license, and franchise fees), and County sales and use tax. Should public revenues generated each year within the District exceed what is necessary to repay principal and interest on County bonds, they are allocated according to a funding waterfall. The order of the funding waterfall is as follows:

1. Administrative costs of the Stadium Authority, up to \$1 million per year;
2. Operational costs of the stadium (should the Stadium Authority find the stadium operator in breach of its operating agreement); a debt service reserve fund, up to \$5 million per year;
3. Repayment of any amounts drawn under the State credit enhancement;
4. Replenishment of any draws on the reserve fund;
5. Contributions to the capital projects fund, up to \$5 million per year;
6. Refunds to the State for transferable tax credits awarded to developer in excess of \$60 million (up to \$120 million refunded to the State, with any further amounts thereafter transmitted to the County for supportive and low-income housing);
7. Contributions to the County community housing fund, up to \$5 million per year; and then
8. Early debt retirement.

In the event of shortfalls, the County would rely on the following, in order, to cover losses: available cash, the \$14 million in credit enhancement from the State, debt reserve funding, and the Clark County General Fund.

Magnitude and Timing of Revenues: Because project construction has not yet started, magnitude and timing of revenues are unknown. In a recent Las Vegas Stadium Authority meeting, Oakland Athletics representatives claimed that the MLB team would only require \$350 million of the \$380 million in public financing authorized by SB1.²⁹

²⁹ Nevada Independent, "A's offer initial Vegas stadium funding plans; won't use entire \$380M in public funding," (July 18, 2024).

Governance: SB1 created the Las Vegas Stadium Authority, which oversees the MLB stadium project and owns the associated land (and eventually, stadium). Its Board of Directors is composed of the following:

- Eleven voting members, including:
 - Three members appointed by the Governor³⁰
 - Three members appointed by the Board of County Commissioners³¹
 - One member appointed by the Majority Leader of the State Senate
 - One member appointed by the Speaker of the State Assembly
 - One member appointed by the President of the University of Nevada, Las Vegas
 - Two members elected by the above members (considering recommendations from an NFL and MLB team with demonstrated interest in locating in the stadium district (one member each)
- The County and State Treasurers, who are both non-voting ex-officio members.

³⁰ One of the Governor's appointees and one of the Board of County Commissioners' appointees would be selected from a list of nominees submitted by the two companies that generate the highest amount of hotel tax revenue in the County.

³¹ See previous footnote.

Scan of Local Context for Value Capture Instruments

Figure 4 summarizes the existing conditions for the implementation of the three value capture instruments in NASED, including:

- The potential **funding sources** for the proposed instruments;
- A list of potential **State and City regulations** relevant to the legality of each instrument. This list may not be exhaustive, and their implications regarding legislative changes or administrative actions needed for the implementation of each instrument require further legal review; and
- Components of the **governance of each instrument**, based on precedents detailed in the prior section of this memorandum and the identified State and City regulations.

Figure 4 | Value Capture Context and Considerations for Implementation in NASED

Dimension	Indicator	SID/CDD	TIF	Tax-Sharing Agreement
Funding Potential	Potential Funding Source(s)	<p>Special assessment levied on real property within district.</p> <p>The City Council may authorize bond issuances backed by SID special assessments, and HCDA may do the same for CDD special assessments.</p>	<p>Onsite incremental tax revenues generated from RPT, GET (State levy and City Surcharge), and TAT (State levy and City Surcharge). Only RPT increment allowed by existing statutes.</p> <p>The magnitude of the viable public contribution will depend on factors that include but are not limited to:</p> <ul style="list-style-type: none"> • Willingness of the City and County of Honolulu and the State government to contribute their respective tax revenue increments • Fiscal costs of the development (i.e., cost of providing public services to new development) • Magnitude and pace of growth in tax revenues • Debt coverage ratios and borrowing costs 	
Regulatory Framework	<p>Existing State and City regulations*</p> <p>(*) List might not be exhaustive</p>	<p>SIDs: HRS §46-80 permits Counties to pass ordinances that create SIDs. ROH §28-2.1 authorizes the City to form SIDs. The process to form a SID can be initiated by the City Council, the Mayor, or by petition of landowners owning real property comprising at least 25% of assessed value within the proposed district. The City Council must approve the ordinance forming</p>	<p>HRS §46-104 authorizes Counties to pass ordinances to implement TIF districts. TIF Districts may allocate incremental RPT, but no other State or County revenue sources.</p> <p>HRS §46-105 authorizes Counties to allocate incremental RPT towards TIF district expenditures.</p>	<p>HRS §46-123 permits Counties to pass ordinances authorizing their executive branch to enter into development agreements.</p> <p>ROH §33-1.2 authorizes the executive power of the City to enter into development agreements, subject to the approval of the City Council.</p>

Dimension	Indicator	SID/CDD	TIF	Tax-Sharing Agreement
		<p>the SID after the public notice and hearing process.</p> <p>CDDs: HRS §206E-5 authorizes the State Legislature to designate an area as a CDD. After designation, HCDA creates a Community Development Plan that includes a district-wide improvement plan for the CDD, and after a public comment period, the CDP is submitted to the Governor for approval. After approval by the Governor, the State Legislature shall approve any appropriations for the CDD as well as bonding authority. HRS §206E-6 authorizes HCDA to impose assessments on real property within the CDD to fund the costs of district-wide public facilities included in the CDP and may issue bonds (pursuant to any bonding authority granted for the CDD by the State Legislature).</p>		
	<p>Limitations of Existing Regulatory Framework*</p> <p><i>(*) List might not be exhaustive</i></p>	Both State and City regulations explicitly address SIDs and CDDs.	<p>It is unclear whether the Constitution of the State of Hawai'i authorizes the Counties to issue TIF bonds.</p> <p>Pending further legal due diligence, Counties may be authorized by the Constitution and laws of the State of Hawai'i to implement PAYGO TIF.</p> <p>HRS §§46-101 through 113 does not allow the capture of incremental revenues beyond RPT.</p>	<p>Neither HRS nor ROH address tax-sharing agreements.</p> <p>ROH §35-1.4 provides for "Incentives" (RPT rebate and waiver of permit fees) to "qualified businesses." ROH §35-1.3 prescribes the criteria for certification to be a "qualified business."</p>

Dimension	Indicator	SID/CDD	TIF	Tax-Sharing Agreement
			There is no City ordinance authorizing and regulating the use of TIF in Honolulu.	
Governance	Agencies Required to Participate	<p>SIDs:</p> <ul style="list-style-type: none"> Establishing a SID may be initiated by the City Council, Mayor, or by petition of landowners within the proposed district. The City Council legislatively approves any new SIDs after a public notice and hearing process. The Department of Budget and Fiscal Services would be responsible for the collection of assessments (ROH §28-3.4). A new SID would require a governing district association board, which would be responsible for setting the level of assessment (ROH §28-2.9, §28-3.2). <p>CDDs:</p> <ul style="list-style-type: none"> Establishing a CDD may be initiated by the State legislature alone, which also approves any appropriations for the CDD as well as authorizes any bonding authority. HCDA drafts a CDP, which must then be approved by the Governor. HCDA is also 	<p>Because the City and County of Honolulu does not have an ordinance governing its use of TIF, specific departmental responsibilities to administer TIF would have to be determined. The County of Hawai'i is the only county to have passed a TIF ordinance in the State and may provide an applicable blueprint for governance and implementation. The County of Hawai'i ordinance is appended to this document.</p> <p>If the State Legislature authorizes the use of incremental State-level revenues in addition to County-level revenues, specific State departmental responsibilities would also need to be determined.</p>	<p>ROH §33-1.7 provides that development agreements may be proposed by the developer, City, or the State (for State developments). All parties to the agreement must consent, and the development agreement must also be approved by City Council.</p> <p>ROH §33-1.4 provides that the Department of Planning and Permitting "shall conduct periodic reviews of all development agreements to determine compliance..." Further, "If the designated agency finds that any party has committed a material breach," a procedure is prescribed including notice with evidence of the breach, opportunity to cure the breach, and opportunity for a hearing.</p> <p>Additional specific department responsibilities would be outlined in the development agreement.</p>

Dimension	Indicator	SID/CDD	TIF	Tax-Sharing Agreement
		<p>authorized to impose assessments on real property within the CDD to fund public improvement projects.</p> <ul style="list-style-type: none"> HCDA governs operations of the CDD, including ongoing collection of assessments and overseeing construction of improvements. 		
	Coordination Required	<p>SIDs: Depends on financial proposal from chosen developer and negotiations with them.</p> <p>CDDs: Coordination is required between the Governor, State Legislature, and HCDA. Coordination with affected landowners, while not legally required for CDD formation, is advised to ensure financial feasibility of assessments to fund public improvement projects.</p>	Capturing both City- and State-level revenues would require new and close collaboration between the State and City.	Would require new and significant coordination between the Mayor and City Council (and if the State is a party to the agreement, potentially the Governor and State Legislature).
Lessons from Precedents	Key Components for Success	Commercial property owners had the financial capability and clear incentives to tax themselves to fund improvements for their own benefit.	<p>State-county coordination and alignment of objectives (e.g., both parties agreed to contribute an increment of their respective taxes).</p> <p>Ability to capture various tax revenues (not only RPT), with new state legislation required to allow for this arrangement.</p>	<p>Developer incentivized to accept development agreement in exchange for entitlements.</p> <p>Municipality authorized by California State law (California Code Section 65864 et seq.) to enter into a development agreement.</p>

Considerations for Value Capture Implementation at NASED

Instrument	SIDs/CDDs	TIF	Tax-Sharing Agreement
Revenue Source	Assessments on real estate	Tax increment generated onsite	Tax increment generated onsite
Regulations* <i>* Analysis may not be exhaustive</i>	<p>SIDs and CDDs have the most regulatory certainty of all instruments evaluated. They are authorized by existing State and City legislation and have a track record of successful implementation in the State of Hawai'i.</p> <p>Provide less flexibility for use and purpose of funds than other value capture instruments.</p>	<p>TIF is authorized by State law. Current legislation allows TIF to be implemented by Counties and does not allow TIF to include sources of revenue beyond RPT.</p> <p>It is unclear whether the Constitution of the State of Hawai'i authorizes the Counties to issue TIF bonds.</p> <p>Assuming passage of a City ordinance regulating TIF, TIF might be legally feasible under State law for NASED, provided it is done on a PAYGO basis. Determining the legality of PAYGO TIF requires further legal review.</p> <p>Subject to further legal due diligence, TIF revenues may also be able to repay other forms of debt (defined in Appendix).</p> <p>Requires passage of a City ordinance authorizing and governing the use of TIF in Honolulu. See the County of Hawai'i ordinance as an example, appended to this document.</p>	<p>Tax-sharing agreements are commonly used elsewhere under a development agreement designation, but using tax-sharing agreements under that designation within the State of Hawai'i and the City and County of Honolulu would require further legal due diligence.</p> <p>City ordinances regulate development agreements and tax exemptions but do not reference the legality of tax-sharing agreements. Clearly authorizing tax-sharing agreements may require State and City legislative changes, though it does not appear to require a State constitutional amendment.</p> <p>A tax-sharing agreement could be implemented via other legal instruments, though further legal exploration is needed to confirm this.</p>
Governance, Political, & Community Factors	SID implementation would require agreement from the chosen developer to "tax itself," and while not required, is advisable for CDD implementation.	Fairly low level of complexity for governance if only City is involved in TIF.	Minimal complexity of governance structure, as developer takes over operations and maintenance of district.

Instrument	SIDs/CDDs	TIF	Tax-Sharing Agreement
	<p>The limited number of property owners at NASED makes it easier to avoid landowner protest that would otherwise be a legal impediment for SID implementation (or objections by the master developer in a CDD, which cannot make a formal protest but can back away from the development project).</p> <p>SID implementation would require agreement from the City Council. CDD implementation would require coordination between the Governor, State legislature, and HCDA (all State-level entities). If implemented without other value capture instruments, SID or a CDD would minimize the need for coordination between State and the City regarding revenue sharing, if not seeking other revenue sources.</p>	<p>Requires high degree of coordination and alignment between State and City (the executive and legislative powers of each) if both State and City tax sources are used.</p> <p>Will need to consider total fiscal impacts, as TIF diverts resources from General Fund.</p>	<p>Potential to streamline implementation if only one jurisdiction's taxes – either State or City sources are considered within agreement.</p> <p>High degree of coordination required between Mayor and City Council – Mayor can negotiate agreement, but City Council ultimately must approve it.</p> <p>Complexity of coordination increases if State taxes are included in the agreement—and a new governance and regulatory framework would be needed for this.</p> <p>New interagency (and if State taxes included, City-State coordination) will imply a “learning curve” for all agencies involved.</p>
Opportunities and Challenges	<p>Clear regulatory structure, a track record of successful implementation in the State of Hawai'i, and ability to collect special assessment revenue immediately upon SID or CDD formation.</p> <p>Diminishes potential to capture cash flows through other contributions, such as ground leases.</p> <p>Given that SIDs and CDDs impose an additional assessment on properties, their implementation alone might not be sufficient to fund all project</p>	<p>As currently legislated TIF might be feasible for NASED, provided it is done on a PAYGO basis, only captures RPT, and the City agrees to its implementation.</p> <p>Reduces portion of future funds for public services in and around NASED.</p> <p>Including incremental State tax revenues in a TIF District would enhance funding potential but would require new State legislation as well as State-City coordination on oversight</p>	<p>Allows government entity to transfer financing risk to chosen developer.</p> <p>Reduces future funds for public services in and around NASED.</p>

Instrument	SIDs/CDDs	TIF	Tax-Sharing Agreement
	needs if the required level of magnitude of the assessment threatens the financial viability of the real estate development.	and allocation of respective incremental revenues. The legality of TIF bonds in Hawaii is not determined.	

Recommendations for Further Exploration of Value Capture Mechanisms for NASED

Employing value capture tools at NASED with features similar to those of the project precedents highlighted earlier in this document will require in-depth consultation with the City and County of Honolulu and HCDA. Moreover, employing these tools will require further legal due diligence as to whether existing State and/or City authority is sufficient to implement them at NASED, or if legislative and regulatory amendments are needed.

This section outlines some of the key considerations and studies that could be undertaken to create more flexible infrastructure district tools at the State and City levels, which might be used at NASED or other TOD areas statewide.

Considerations for Use of Special Assessment Tools: Special Improvement District and Community Development District

Regulatory Landscape

SIDs are regulated in Chapter 28 of the Revised Ordinances of Honolulu, and CDDs are regulated by Chapter 206E of the Hawai'i Revised Statutes. In the case of NASED:

- A new SID could be created through a new City ordinance;
- A new CDD could be created through a new State law.

The new City ordinance or State law would identify and quantify capital and operations needs in the long-term and set the special assessment accordingly.

- For SIDs, the special assessment amount may change year to year, though annual increases above 10% require public notice, a hearing process, and City Council approval.³² City Council may also authorize bond issuances backed by SID special assessments to finance the cost of SID capital projects.³³
- For CDDs, the special assessment is set according to the cost of district-wide improvements specified in the Community Development Plan drafted by HCDA and approved by the Governor.

SID and CDD Financial Feasibility

Prior to the formation of a SID or CDD, there should be an assessment of whether NASED project financials can feasibly absorb additional assessments. SID and CDDs are not always feasible because not all real estate projects are profitable enough to pay an additional SID/CDD assessment on top of other project costs. SID and CDD assessments are only financially possible where a project has “excess value” (i.e., profits in excess of a developer’s required return). Moreover, even if the project presents excess value, the assessment that can be feasibly levied may be insufficient to fund all project needs. This is because the magnitude of the assessment required to cover all the intended costs may threaten the financial viability of the project.

Governance

For SIDs, ROH §28-2.9 requires that a nonprofit governing “SID Association” be incorporated to oversee implementation of supplemental improvements and services when a SID is established. ROH §28-2.9 further specifies that a majority of the SID Association board’s membership be fee simple owners or ground lessees or land within the SID, at least one member be a commercial tenant, and the Mayor and local Councilmember (or their designees). The Chief Engineer and Director of Budget and Fiscal Services (or their designees) would also serve as non-voting members. The governance structure for a NASED SID would likely be less complex than the Waikiki Beach SID given the NASED project pertains to a single ground lessee (the chosen developer).

³² ROH §28-3.2 and §28-4.

³³ ROH §28-7.1 and §28-7.2.

CDDs are governed and operated by HCDA, which is empowered by HRS §206E-4 to prepare and implement a CDD's Community Development Plan (subject to the Governor's approval) and has the power to assess properties within a CDD.

At NASED, creation of an Improvement District under HRS Chapter 206E could take one of the following forms:

- Creation of a new CDD for the NASED project, for which HCDA is empowered by the State Legislature to assess properties and issue bonds backed by assessment revenue to finance construction of public improvements. Assessment revenue would also fund ongoing services.
- Amendment of the Stadium Development District provisions in Part IX of HRS Chapter 206E to empower the Stadium Authority to assess properties and issue bonds backed by those assessments. The Stadium Authority does not appear to currently have this power.
- Use of or amendment of Part X of HRS Chapter 206E provisions for Transit-Oriented Development Infrastructure Improvement Districts to replicate features of the Clark County Sport and Entertainment Improvement District for NASED project and infrastructure development.

Tax Increment Financing

Regulatory Landscape

State law authorizes Counties to pass ordinances to implement TIF districts. As of the writing of this document, only the County of Hawai'i has passed a TIF ordinance. As noted earlier, it is unclear whether the State Constitution authorizes the Counties to issue TIF Bonds. Conversely, and pending further legal due diligence, the Constitution and State law authorize Counties to implement TIF in its PAYGO form. The existing State law restricts the use of TIF to Counties and only contemplates real property taxes as a funding source.

Subject to further legal due diligence, under the current regulatory framework the most promising path to TIF implementation at NASED appears to be a PAYGO TIF that is approved by the City and County of Honolulu and captures RPT incremental revenue, which would be done through:

1. The City Council passing a general ordinance governing the use of TIF in Honolulu; and then
2. The City Council passing a specific ordinance establishing a TIF district for NASED, and incremental revenues being used on a PAYGO basis to support project expenditures.

The funding capacity of TIF could be enhanced if the State would contribute its incremental revenues (e.g., GET, TAT) to the TIF district. Implementing this scheme would require amending the State TIF law to authorize TIF Districts to capture incremental State revenues. It would also require significant State-City coordination, including establishment of a new governance mechanism to oversee project progress and allocate State and City incremental revenues.

Governance

The County of Hawai'i's TIF ordinance provides a potential template for the governance of a TIF at NASED.³⁴ Using the Hawai'i County ordinance as a model, once the TIF District is established, it is administered by the City Department of Budget and Fiscal Services. The Department is charged with calculation of the tax increment, collection of tax increment revenues, and payment of TIF District expenses. If State revenues support a PAYGO TIF District, governance would depend on the contents of new legislation passed enabling it. In the Nevada Sports and Entertainment District example, SB1 created a Stadium Authority and an associated Board of Directors to oversee the project, whose membership included representatives appointed by the Governor, Board of County Commissioners, and leaders in the State legislature, with recommendations for a limited number of board members coming from the hotel industry, National Football League, and Major League Baseball.

³⁴ Code of the County of Hawai'i, Chapter 33, Articles 2 and 3.

Tax-Sharing Agreement

Regulatory Landscape

In other states, tax-sharing agreements are typically implemented as part of a development agreement. Hawai'i State law enables County governments to enter into development agreements but does not address the legality of tax-sharing agreements. HRS §46-121.1 describes two purposes of development agreements:

- a. To "encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted county legislation which may conflict with any term or provision of the development agreement..."
- b. To "provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enact and enforce laws..."

The ROH does not address the legality or use of tax-sharing agreements either. ROH Chapter 33 contemplates development agreements in which the developer is required to provide contributions in exchange for the City providing entitlements, but does not mention tax-sharing arrangements. ROH Chapter 10, Article 10 contemplates tax exemptions but none of them in the context of development agreements.

To implement a tax-sharing agreement at NASED:

- Further review of ROH and HRS is required to determine the legality of tax-sharing agreements within either State or City jurisdiction; and
- New legislation at the State and/or City levels might be needed to enable a tax-sharing agreement at NASED.

A tax-sharing agreement could be implemented via other legal instruments besides a development agreement, but further legal analysis would be required to confirm that.

Governance

If a final agreement broadly follows the structure of the Hollywood Park tax-sharing agreement, the chosen developer would be responsible for construction and maintenance of infrastructure and any other negotiated community benefits and will be reimbursed for such expenses via annual tax transfers. In Honolulu, ongoing monitoring by the Department of Planning and Permitting is required by the development agreement ordinance.³⁵

Further Study for Value Capture Tool Improvements

The HR&A team has noted throughout the report where legislative changes would be needed to replicate the use of innovative value capture mechanisms used elsewhere. The following points summarize the studies that are recommended to identify changes that could enhance the utility of existing and new land value capture tools in the State of Hawai'i, including:

- Development of recommendations for amending existing district tools at the State and County level to expand value capture revenue sources beyond real property taxes and special assessments.
- Exploration of the authority required to enable tax-sharing agreements.
- Legal review and feasibility assessment of the use of tax increment revenues to repay or secure other debt instruments and any legislative changes that may be required. HRS §§46-101 through 113 (the Hawai'i State law that enables Counties to implement TIF Districts) does not expressly prohibit the Counties from using TIF revenues to repay other types of public debt. Whether TIF revenues can repay other types of public debt should be the subject of further legal due diligence. These types of public debt are listed and defined below. This list is not comprehensive, and TIF revenues may be able to repay other forms of debt instruments.

³⁵ ROH §33-1.4.

-
- **Private Activity Bonds:** Tax-exempt bonds issued by the State or local government on behalf of the private entity for qualified private activities with public benefit.
 - **Private Financing:** Traditional forms of credit issued by a private entity such as a bank.
 - **Special Purpose Revenue Bonds (SPRB):** A type of revenue bond authorized by Hawai'i's Legislature that can be issued by the State to provide loan financing to assist qualifying private capital improvement projects (for example, certain hospital or school construction) in the public interest. The bonds do not constitute a general obligation of the State and are not State monies. SPRBs are sold to private investors, who provide the actual funds and invest their funds in exchange for tax-exempt or taxable interest payments. The borrowers are required to secure the loans with revenues as part of the loan agreements. For the State, selling SPRBs is a way to facilitate loans for certain categories of private business projects without spending taxpayers' money or placing the State's credit at risk.
 - **Revenue Bonds:** Bonds payable from revenues, or user fees, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law.
 - **Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan:** Loans and credit assistance provided by the federal government for qualified projects of regional and national significance. TIFIA 49 provides special financing for transit and transit-oriented development projects.
 - Examination of potential amendments to the Stadium Development District and TOD infrastructure improvement district provisions in HRS Chapter 206E to support use of State-level district value capture for NASED.
 - Examination of a potential new statute authorizing the establishment of a State-level district for land use value capture of State and County revenues.

Appendix: County of Hawaii TIF Ordinance

The text of Chapter 33 of the Code of the County of Hawai'i (titled "Tax Increment Districts") is appended to this document, starting on the next page.

CHAPTER 33

TAX INCREMENT DISTRICTS

Article 1. General Provisions.

Section 33-1.	Purpose.
Section 33-2.	Definitions.
Section 33-3.	Authority; general provisions.
Section 33-4.	Powers reserved to council.
Section 33-5.	Private contributions.
Section 33-6.	Administration; annual report.
Section 33-7.	Requirements.
Section 33-8.	Limitation on time to sue.

Article 2. Procedure.

Section 33-9.	Initiation by council; study of proposed project.
Section 33-10.	Tax increment financing plan.
Section 33-11.	Establishment of tax increment district.
Section 33-12.	Termination of a tax increment district.
Section 33-13.	Provisional tax increment district.
Section 33-14.	Restrictions on provisional district.

Article 3. Tax Increments.

Section 33-15.	Computation of tax increments.
Section 33-16.	Tax on leased redevelopment property.
Section 33-17.	Collection of tax increments.
Section 33-18.	Tax increment fund.

Article 4. Tax Increment Bonds.

Section 33-19.	Tax increment bonds authorized.
Section 33-20.	Exemption from taxes.
Section 33-21.	Contents of bonds.
Section 33-22.	Execution of bonds; records; funds for payment.
Section 33-23.	Reserve fund.
Section 33-24.	Sale of bonds.
Section 33-25.	Lost, mutilated, stolen or destroyed bonds.
Section 33-26.	General provisions; bonds.
Section 33-27.	Bonds not chargeable against general revenue.
Section 33-28.	Tax increment bond anticipation notes.
Section 33-29.	General obligation bonds.

Article 5. Refunding Bonds.

Section 33-30.	Refunding authorized.
Section 33-31.	Refunding bonds.
Section 33-32.	Obligations unimpaired.

CHAPTER 33**TAX INCREMENT DISTRICTS****Article 1. General Provisions.****Section 33-1. Purpose.**

The purpose of this chapter is to enable the County to utilize tax increment financing to finance public improvements within a specific contiguous or noncontiguous geographic area, which is also an improvement district or a community facilities district, designated a tax increment district, by dedicating a portion of property tax revenue increases within the district to the funding of specific projects. This chapter also allows the creation of provisional tax increment districts, which can provide resources to enable the County to comprehensively address conditions in a targeted area through improvement districts, community facilities districts, or a combination of the two methods in conjunction with tax increment financing.

(1994, ord 94-76, sec 3.)

Section 33-2. Definitions.

As used in this chapter, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

“Adjusted assessment base” means the value of the assessment base for a tax increment or provisional tax increment district after adjusting the original assessment base annually by the adjustment rate, the effect of which shall be cumulative.

“Adjustment rate” means a percentage rate or rates of adjustment of the assessment base recommended by the director of finance and approved by the council at the time the tax increment or provisional tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the district and the projected cost increases to the County for servicing the new developments within the district.

“Assessment base” means the total assessed values of all taxable real property in a tax increment or provisional tax increment district as most recently certified by the director of finance on the date of creation of the district.

“Assessment increment” means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment or provisional tax increment district exceeds its assessment base.

“Blight” means a condition resulting in a reduction in or lack of proper utilization of the area to such an extent that it constitutes a serious physical, social or economic burden on the County. Specifically, this improper utilization must be caused by either:

- (a) The existence of residential, commercial, industrial or other types of buildings which are unfit or unsafe to occupy and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:
 - (1) Defective design and character of physical construction;

- (2) Faulty interior arrangement and exterior spacing;
- (3) High density of population and overcrowding;
- (4) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; or
- (5) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses; or
- (b) The existence of properties which suffer from economic dislocation, deterioration, or whose use is unreasonably impaired because of one or more of the following factors:
 - (1) Faulty planning;
 - (2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;
 - (3) The laying out of lots in disregard of the contours and other topography or physical characteristics of the ground and surrounding conditions;
 - (4) The existence of inadequate public improvements, public facilities, open spaces, and utilities which cannot be remedied by private or governmental action without tax increment financing;
 - (5) A prevalence of depreciated values, impaired investments, and social and economic maladjustment; or
 - (6) The existence of lots or other areas which are subject to being submerged by water.

“Council” means the council of the County of Hawai‘i.

“County” means the County of Hawai‘i.

“Director” means the director of finance of the County of Hawai‘i.

“Project costs” means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the district that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

- (a) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of property;
- (b) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;
- (c) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;

- (d) Imputed administrative costs, including reasonable charges for the time spent by employees of the County in connection with the implementation of a tax increment financing plan;
- (e) Relocation costs to the extent required by Federal or State law;
- (f) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;
- (g) Payments determined by the council to be necessary or convenient to the creation of a tax increment district or improvement district, or to the implementation of the tax increment financing plan for the tax increment district.

“Property” means:

- (a) Land, including land under water and waterfront property;
- (b) Buildings, structures, fixtures, and improvements on the land;
- (c) Any property appurtenant to or used in connection with the land;
- (d) Every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

“Provisional tax increment district” means a contiguous or noncontiguous geographic area designated pursuant to this chapter by the council for the purpose of financing preliminary costs for establishing a tax increment district in conjunction with an improvement district or community facilities district.

“Public works” or “public improvements” means any one or any combination of the following which shall be constructed to standards acceptable to the County at the time of the commencement of the project:

- (a) The establishment, opening, extension, widening, or altering of any street, alley, or other highway or sidewalk;
- (b) The grading, paving, curbing, or otherwise improving of the whole or any part of any existing public street, alley, or other highway or sidewalk;
- (c) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a storm drainage facility or sanitary sewerage system;
- (d) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a street lighting system;
- (e) The construction, installation, extension, maintenance, reconstruction, additions or improvements of a water system;
- (f) The construction, installation, extension, maintenance, reconstruction, additions or improvements of underground or overhead utility facilities including gas, electrical, telephone, or television facilities, and the removal, relocation, replacement or reconstruction thereof;

- (g) The establishment, extension, or construction of public off-street parking facilities, pedestrian mall, parks, playgrounds, beach areas, or other public recreational areas and facilities;
- (h) To make improvements related to the foregoing and to otherwise improve any of the foregoing to an extent exceeding maintenance or repair thereof;
- (i) Any other public improvement deemed necessary for the tax increment district by the council.

“Targeted area” means a specific geographic area proposed to be included in a tax increment or provisional tax increment district in which the council finds that blight significantly impacts and injuriously affects the entire area.

“Tax increment” means the amount of real property taxes levied for each fiscal year on the assessment increment.

“Tax increment bonds” means bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this chapter.

“Tax increment district” or “district” means a contiguous or noncontiguous geographic area designated pursuant to this chapter by the council for the purpose of tax increment financing.

“Tax increment financing plan” or “financing plan” means the plan for tax increment financing for a district submitted to and approved by the County council. The tax increment financing plan shall contain estimates of:

- (a) Project costs;
- (b) Amount of tax increment bonds to be issued;
- (c) Sources of revenue to finance or otherwise pay project costs;
- (d) The most recent assessed value of taxable real property in the district;
- (e) The duration of the district’s existence;
- (f) The financial and budgetary impacts on the County resulting from the proposed tax increment financing plan;
- (g) The proposed adjustment rate as recommended by the director of finance.

“Tax increment fund” or “fund” means a fund held by the director or other fiduciary designated by the council and into which all tax increments, other moneys pledged by the County for payment of tax increment bonds and any moneys available for project costs are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district, or as otherwise authorized herein.

“Total assessed value” means the gross assessed value less any applicable exemptions, and is also referred to as the “net assessed value.”
(1994, ord 94-76, sec 3.)

Section 33-3. Authority; general provisions.

- (a) Whenever in the opinion of the council it is desirable to create a tax increment or provisional tax increment district, the district shall be created and the project financed under the provisions of this chapter.
- (b) All project costs of a tax increment or provisional tax increment district shall be paid from the tax increment fund of that district.
- (c) The County may issue and sell tax increment bonds to provide funds to pay project costs upon finding that the tax increment of the district and any other available revenues will be sufficient to cover the full debt service on any such bonds. Both principal and interest on tax increment bonds shall be payable solely from the tax increment fund, all according to the provisions of this chapter.

(1994, ord 94-76, sec 3.)

Section 33-4. Powers reserved to council.

Any provision of law to the contrary notwithstanding, the council reserves the following powers over any tax increment district proposal:

- (a) If, for any reason whatsoever, the tax increment bonds authorized under article 4 are not sold or cannot be sold to any acceptable purchaser within a reasonable time, then the council shall have the power and authority to terminate the project to be financed by the tax increment district, or any part thereof. In the event that the project is terminated, all project costs incurred to the date of termination shall be paid from the tax increment fund.
- (b) In addition to the foregoing, at any time during the proceedings of any tax increment or provisional tax increment district proposal up to and including the adoption of the ordinance creating a tax increment district under section 33-11, the council shall have the power and authority to terminate the entire tax increment district project, or any part thereof, if it determines that the tax increment district project is not in the public interest.
- (c) In addition to the foregoing, at any time during the proceedings of any tax increment district proposal up to and including the adoption of the ordinance creating a tax increment district under section 33-11 hereof, the council shall have the power and authority to require the inclusion of costs of off-site improvements such as roads, water, sewers, drainage, which may be outside the tax increment district boundaries but which service the tax increment district. In the event that such costs are to be so included, the appropriate resolutions and ordinances shall be amended accordingly.

(1994, ord 94-76, sec 3.)

Section 33-5. Private contributions.

The owner or owners of real property located in a tax increment district or provisional tax increment district may advance funds for project costs. Any funds advanced under this section shall be deposited in the tax increment fund for the district. To the extent that such funds are used to pay project costs of the district, the council shall authorize partial or full reimbursement from the tax increment fund to the property owners who advanced such funds upon the termination of the district if money is available in the fund to make such reimbursement. If the funds advanced are not used to pay project costs within three years of the date they are advanced, the money shall be returned at that time to the property owners who advanced the funds along with the interest earned, if any, on the investment of the funds advanced while they were on deposit with the district.

(1994, ord 94-76, sec 3.)

Section 33-6. Administration; annual report.

- (a) The director of finance shall be responsible for the administration of this chapter, including any tax increment districts enacted hereunder, and shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, as necessary for the purposes of implementing this chapter.
- (b) The director of finance shall prepare an annual report to be submitted to the council by August 15 of every year on the status of every tax increment and provisional tax increment district. The report shall:
 - (1) Update the estimates and projections provided in the original plan(s);
 - (2) Certify the amount of the assessment increment to the council, together with the proportion that the assessment increment bears to the total assessed value of the real property within the district for that year; and
 - (3) Provide such additional information as the director deems necessary or the council requests.

(1994, ord 94-76, sec 3.)

Section 33-7. Requirements.

No tax increment district can be created unless the council finds that the proposed district meets all of the following requirements:

- (a) The project area proposed to be included in the district is a targeted area.
- (b) The improvements necessary to remedy the conditions in the targeted area cannot reasonably be expected to be accomplished in a reasonable time without tax increment financing.

- (c) The assessment base of the property proposed to be included in the district shall not cause the total assessed valuation of all property included in tax increment districts, determined at the time the districts were created as supplemented by the assessed valuation of property subsequently included in a district at such time of inclusion, to exceed ten percent of the total assessed value of all taxable real property in the County.
 - (d) The project area is also designated as an improvement district or community facilities district pursuant to the Hawai'i County Code.
- (1994, ord 94-76, sec 3.)

Section 33-8. Limitation on time to sue.

No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act, the issue or payment of any bonds, or the allocation of any tax increment authorized by this chapter, whether based upon irregularities or jurisdictional defects, or otherwise, shall be maintained unless begun within thirty days after performance of the act or the passage of the resolution or ordinance complained of.

(1994, ord 94-76, sec 3.)

Article 2. Procedure.

Section 33-9. Initiation by council; study of proposed project.

- (a) The council shall, by resolution requiring not more than one reading for its adoption:
 - (1) Determine the boundaries of a proposed district.
 - (2) Direct the director of finance to investigate and report to the council within sixty calendar days:
 - (A) The total assessed value of:
 - (i) All taxable real property in the County, and
 - (ii) The assessment base of the proposed district;
 - (B) The total assessed values of all taxable real property in the proposed district compared to the total assessed values of all taxable real property in the County over the two years immediately preceding the current year;
 - (3) Direct the director of public works to investigate and report to the council within sixty calendar days:
 - (A) Preliminary data concerning the current status of improvements within the proposed district, including:
 - (i) Any revisions recommended to the proposed boundaries of the district;
 - (ii) The present extent of public and private infrastructure located within the boundaries of the proposed district;
 - (iii) The infrastructure needs within the proposed district, listed in order of their priority.

- (B) The general character and extent of any improvements to be proposed, and their estimated cost;
 - (C) Whether any new land will be necessary to be acquired, and the estimated cost thereof and the proportion of the cost, if any, which should be borne by the County;
 - (D) Upon consultation with the planning director, determine:
 - (i) The present zoning within the proposed district;
 - (ii) The extent to which the present land use within the proposed district conforms to the County general plan;
 - (iii) The extent to which the present land use within the proposed district relates to any community development plan for the area;
 - (iv) The likelihood of the needs identified in subsection (a)(3)(A)(iii) of this section being addressed by the County or private means without the use of tax increment financing;
 - (v) Any additional information which may assist the council in determining if the proposed district is a targeted area.
 - (E) If the proposed district includes the construction or improvement of a water system or any part thereof, the director of public works shall consult with the department of water supply in determining the estimate of the cost to be included in the preliminary report to the council.
- (b) After the above reports have been furnished and filed with the council, they shall not be acted upon until one week has elapsed from the date of the filing of the last report. If any one or more of the reports required in subsection (a) above are not filed with the council within the required sixty days, the council may proceed with the district without such reports.
- (c) Thereafter the council may, by resolution requiring one reading for its adoption:
- (1) Find that the area proposed to be included in a tax increment district meets all of the requirements of section 33-7.
 - (2) Direct the finance director to prepare and submit to the council within sixty calendar days a tax increment financing plan which shall contain estimates of:
 - (A) Project costs;
 - (B) Amount of tax increment bonds to be issued;
 - (C) Sources of revenue to finance or otherwise pay project costs;
 - (D) The most recent assessed value of taxable real property in the district;
 - (E) The duration of the district's existence;
 - (F) The recommended adjustment rate for the district;
 - (G) Statement regarding the financial and budgetary impacts on the County resulting from the proposed tax increment financing plan.

(1994, ord 94-76, sec 3.)

Section 33-10. Tax increment financing plan.

In preparing the report required by section 33-9(c)(2), the director of finance may consult with the director of public works, the planning director, or with such financial consultant as has been specially employed by the mayor on behalf of the County to assist in the proceedings or who may otherwise be available to the County. The report may include such sums as deemed proper by the director of finance for reserve funds, bond discount allowances, and construction contingencies in determining the estimate of project costs.

(1994, ord 94-76, sec 3.)

Section 33-11. Establishment of tax increment district.

The council may provide for tax increment financing by approving a tax increment financing plan and adopting an ordinance establishing the tax increment district. The ordinance shall:

- (a) Describe the boundaries of the tax increment district;
- (b) Provide for the date of commencement of the tax increment district and the date of termination of the district;
- (c) Provide for the establishment of a tax increment fund for the district; and
- (d) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with the County general plan or any relevant redevelopment or community development plan.

(1994, ord 94-76, sec 3.)

Section 33-12. Termination of a tax increment district.

A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment bonds issued for the district and the interest thereon have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon.

(1994, ord 94-76, sec 3.)

Section 33-13. Provisional tax increment district.

A provisional tax increment district may be created by the council when an area meets the definition of a targeted area and the council finds either that tax increment financing alone will be unable to adequately address the conditions in the targeted area or that the owners of land in the targeted area should participate in the expense of addressing the conditions to a greater extent than is provided for with tax increment financing.

- (a) The council shall, by resolution requiring not more than one reading for its adoption:
 - (1) Determine the boundaries of a proposed district.

- (2) Direct the director of finance and director of public works to investigate and report to the council the same information as required by subsections 33-9(a)(2) and 33-9(a)(3).
 - (3) Fix a date of public hearing upon the proposed provisional tax increment district, which date shall be not less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the County.
- (b) After the above reports have been furnished and filed with the council, they shall not be acted upon until one week has elapsed from the date of the filing of the last report. If any one or more of the reports required in subsection (a) above are not filed with the council within the required sixty days, the council may proceed with the district without such reports.
 - (c) After the adoption of the resolution, the County clerk shall cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in accordance with the requirements of the County Charter and the Hawai'i Revised Statutes for public notice, giving notice, generally, to all owners of land proposed to be included in the provisional district and to all others interested in the general details of the improvements as proposed by the council and stating the time and place of public hearing and where the resolution and reports and other data may be seen and examined prior to the hearing. Like notices shall be posted at least ten days prior to the hearing at a public place in the judicial district in which the proposed provisional district is located.
 - (d) Any failure to post, mail, or receive the notice described above, shall not invalidate the proceedings held thereafter.
 - (e) If, as a result of the public hearing, the council finds that the owners of property in the proposed district do not support the proposed improvements, or are not willing to pay for the improvements through the improvement district or similar process if necessary, the council may at its sole discretion terminate the provisional tax increment district proceedings.
 - (f) If the council decides to proceed with the creation of a provisional tax increment district after the public hearing, it may by ordinance provide for the creation of a provisional tax increment district. This ordinance shall accept the reports of the director of finance and director of public works required by subsection (a) of this section, and shall:
 - (1) Find that the area proposed to be included in a provisional tax increment district meets all of the requirements of section 33-7;
 - (2) Create a provisional tax increment district which will terminate not later than five years from the date of its creation if it has not been converted by ordinance passed in accordance with section 33-11 to a tax increment district before its termination;
 - (3) Describe the boundaries of the provisional tax increment district;
 - (4) Provide for the date of commencement and termination of the provisional tax increment district;

- (5) At the option of the council, this ordinance may provide that until an improvement district is approved by the owners of land in a proposed provisional tax increment district, funds in the tax increment fund may be used only for:
 - (A) Preliminary costs for initiating an improvement district in accordance with section 12-10, Hawai'i County Code, including but not limited to the cost of title searches, postage, and other administrative costs;
 - (B) Any preliminary plans and engineering specifically authorized by the council as necessary for the initiation of an improvement district in the targeted area.

(1994, ord 94-76, sec 3.)

Section 33-14. Restrictions on provisional district.

- (a) A provisional tax increment district shall be subject to the following:
 - (1) No tax increment bonds or bond anticipation notes shall be issued to provide funds for a provisional tax increment district.
 - (2) The council may by ordinance extend the term of a provisional tax increment district for no more than two years beyond its original term.
 - (3) During the term of a provisional tax increment district, and subject to the limitation of subsection 33-13(f)(5) above, if appropriate, the money in the tax increment fund may be used only for:
 - (A) Preliminary costs for initiating an improvement district in accordance with section 12-10, Hawai'i County Code, including but not limited to the cost of title searches, postage, and other administrative costs;
 - (B) Professional service costs and administrative costs to prepare financial projections and to identify all methods available to remedy the condition in the targeted area, including but not limited to determining the feasibility of the proposed tax increment district to accomplish its goals through tax increment financing and/or the improvement district process as established in chapter 12, Hawai'i County Code;
 - (C) Preparation of a tax increment financing plan for the district if this mechanism is determined to be feasible; and
 - (D) Professional service costs and administrative costs for the district to prepare detailed plans and specifications for the projects proposed.
 - (4) During the term of a provisional tax increment district, the council may not exercise the power of eminent domain in connection with the acquisition of property in the tax increment district.
- (b) At any time during the term of a provisional tax increment district the council may approve a tax increment financing plan in accordance with section 33-11 and by ordinance convert the provisional tax increment district into a tax increment district. The council at its option may require that an improvement district be approved by the owners of land in the targeted area before a provisional tax increment district is converted to a tax increment district.

- (c) If a provisional tax increment district is converted to a tax increment district, the adjusted assessment base of the provisional tax increment district at the time of the conversion shall become the assessment base of the tax increment district.
 - (d) If at the end of its term a provisional tax increment district has not been converted to a tax increment district, all money remaining in the tax increment fund of the provisional tax increment district shall, to the extent it is not encumbered, be returned to the general fund.
- (1994, ord 94-76, sec 3.)

Article 3. Tax Increments.

Section 33-15. Computation of tax increments.

Upon or after creation of a tax increment district or a provisional tax increment district, the director of finance shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced or increased by reason of a board of review decision, court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the increase or reduction shall be applied to the assessment base of the district when the property upon which the change is made has not been improved since the date of creation of the district, and to the assessment increment of the district in each year thereafter when the change relates to improvements made after the date of creation.

(1994, ord 94-76, sec 3.)

Section 33-16. Tax on leased redevelopment property.

Whenever property in the tax increment district has been redeveloped and thereafter is leased by the County to any person or whenever the County leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest. (1994, ord 94-76, sec 3.)

Section 33-17. Collection of tax increments.

- (a) Commencing with the first payment of real property taxes levied by the County subsequent to the time a district takes effect, receipts from real property taxes collected for this district shall be allocated and paid as follows:
- (1) The amount of real property tax produced from the original assessment base shall be paid to the general fund; and
 - (2) The tax increments produced from the assessment increment in the district shall be applied as follows:
 - (A) First, an amount equal to (i) the installment of principal and interest falling due for any tax increment bonds, or (ii) any project cost approved by the council, shall be deposited into a tax increment fund established when the district was created.
 - (B) Second, an amount equal to the amount of real property tax produced on the adjusted assessment base reduced by the amount already paid to the general fund in subsection (1) of this section shall be paid to the general fund.
 - (C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund.
- (b) The allocation of real property taxes pursuant to this section shall not limit the power of the County under section 47-12, Hawai'i Revised Statutes, to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the County for the payment of principal and interest of its general obligation bonds.
- (1994, ord 94-76, sec 3.)

Section 33-18. Tax increment fund.

- (a) Money shall be disbursed from the tax increment fund for a tax increment district only to:
- (1) Satisfy the claims of holders of tax increment bonds issued for the tax increment district;
 - (2) Pay project costs for the district;

- (3) Make payments for project costs or debt service to a special assessment fund established upon the creation of an improvement district whose boundaries are identical to that of the tax increment district;
 - (4) Make payments to the County as provided in subsection (c) of this section or section 33-29(d).
 - (b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds in the County.
 - (c) In any year in which the tax increment exceeds the amount necessary to pay all project costs, and all installments of principal and interest of tax increment bonds issued for a district falling due, and the amount paid to the general fund pursuant to section 33-17(a)(2)(B), and subject to any agreement with bondholders, any excess money in the tax increment fund at the option of the council shall be used to redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the general fund, or any combination thereof.
- (1994, ord 94-76, sec 3.)

Article 4. Tax Increment Bonds.

Section 33-19. Tax increment bonds authorized.

The council may authorize the issuance of tax increment bonds, the proceeds of which may be used to pay project costs for a district or to satisfy claims of bondholders. Both principal, interest and premium, if any, on tax increment bonds shall be made payable solely from the tax increment fund established for the district.

The County may provide in its contract with the owners or holders of the tax increment bonds that the County will pay into the tax increment fund all or any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to either a redevelopment plan, as defined in section 53-1, Hawaii Revised Statutes, or a community development plan, as defined in section 206E-5, Hawaii Revised Statutes, to be used to pay principal and interest on the tax increment bonds and, if the County so agrees, the owners or holders of tax increment bonds may have a lien or mortgage on any facility acquired, improved or constructed with the proceeds of the tax increment bonds.

The County may issue such types of bonds as it may determine including bonds on which the moneys in the tax increment funds are derived:

- (a) Exclusively from the income and revenues of the projects financed with the proceeds of the bonds, or with such proceeds together with financial assistance from the State or Federal government in aid of the projects.
- (b) Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of the bonds.
- (c) In whole or in part from taxes allocated to, and paid into the tax increment fund pursuant to the provisions of this chapter.

- (d) From its revenues generally.
 - (e) From any contributions or other financial assistance from the State or Federal government.
 - (f) By any combination of these methods.
- (1994, ord 94-76, sec 3.)

Section 33-20. Exemption from taxes.

- (a) Pursuant to section 46-106(b), Hawai'i Revised Statutes, tax increment bonds, and the income therefrom, issued under this chapter shall be exempt from all State and County taxation, except estate and transfer taxes.
- (b) Bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid Federal law providing that the interest on those bonds shall be excluded from gross income for Federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into arrangements, establish funds or accounts, and take any action required in order to comply with any valid Federal law. Nothing in this chapter shall be deemed to prohibit the issuance of bonds, the interest on which may be included in gross income for Federal income tax purposes.

For the purpose of ensuring that interest on bonds issued pursuant to this chapter which is excluded from gross income for Federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded, no County officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of the bonds which change, amendment or modification would affect the exclusion of interest on the bonds from gross income for Federal income tax purposes unless the change, amendment or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

(1994, ord 94-76, sec 3.)

Section 33-21. Contents of bonds.

- (a) The director of finance, upon authorization by the council by ordinance, may issue tax increment bonds. Tax increment bonds shall bear the name of the district, shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be determined by the council or the director of finance as herein provided. The County may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.

- (b) Unless the council shall itself perform the actions, the director of finance shall:
 - (1) Determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;
 - (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
 - (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; and
 - (4) Determine all other details of bonds issued under this chapter.
 - (c) The principal of and interest and premium, if any, on all bonds issued under this chapter shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Tax increments bonds shall be subject to call but not prior to the second interest date thereof as hereinafter provided and at such premium, if any, as may have been provided for in the ordinance authorizing such bonds.
 - (d) Prior to the preparation of definitive tax increment bonds, the County may authorize issuance of interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.
- (1994, ord 94-76, sec 3.)

Section 33-22. Execution of bonds; records; funds for payment.

- (a) Tax increment bonds shall be executed by the director of finance, or by a deputy of the director of finance duly designated by the director to execute such bonds, and issued pursuant to and under the authority and requirements of the ordinance of the council. The bonds shall bear the lithographed or engraved facsimile signature of the mayor and shall be impressed with a lithographed or engraved facsimile of the seal of the County. If the council provides that no such tax increment bond shall be valid or obligatory unless and until there shall be manually executed a certificate of authentication thereof, all signatures of County officials on the bonds may be facsimiles of their respective signatures.
 - (b) The director of finance shall preserve a record of the bonds in a suitable book kept for that purpose. The council shall provide for books of registry to be kept for the registration of improvement bonds issued in fully registered form.
 - (c) The bonds shall be payable only out of moneys in the tax increment fund of the district for which they are issued or from the reserve fund established pursuant to section 33-23, if the moneys in the tax increment fund are insufficient to pay the bonds or the interest thereon as they become due. The County shall not otherwise guarantee payment of any such bonds issued under the provisions of this chapter.
- (1994, ord 94-76, sec 3.)

Section 33-23. Reserve fund.

The council may provide in the ordinance adopted pursuant to section 33-19 for a reserve fund as additional security for the payment of principal and interest on tax increment bonds issued in proceedings taken pursuant to this chapter. The reserve fund may be initially funded from the proceeds from the sale of tax increment bonds with respect to which such reserve fund is established in such amount as is designated by the council in the ordinance authorizing such bonds. Moneys in a reserve fund shall be used in accordance with the provisions of section 33-22(c) and to pay the principal or interest, or both, in whole or in part, on the last outstanding maturity or maturities of the bonds. (1994, ord 94-76, sec 3.)

Section 33-24. Sale of bonds.

- (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of bonds or part thereof as are issued under this article, including, without limitation, arranging for the preparation and printing of the bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of bonds and retaining those financial, accounting, and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the County. The council may authorize the director of finance to offer the bonds at competitive sale or to negotiate the sale of the bonds to:
 - (1) Any person or group of persons;
 - (2) The United States of America, or any board, agency, instrumentality, or corporation thereof;
 - (3) The employees retirement system of the State;
 - (4) Any political subdivision of the State;
 - (5) Any board, agency, instrumentality, public corporation, or other governmental organization of the State; or of any political subdivision of the State.
- (b) Subject to any limitation imposed by the council by the ordinance authorizing the bonds, the sale of the bonds by the director of finance by negotiation shall be at such price or prices and upon such terms and conditions, from time to time in such manner, as the director of finance shall approve.
- (c) Subject to any limitation imposed by the council by the ordinance authorizing the bonds, the sale of the bonds by the director of finance at competitive sale shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidder, and the bonds shall be sold in accordance with this subsection. The bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The bonds offered at competitive sale may be sold to the bidder offering to purchase the bonds at the lowest interest cost, the interest cost, for the purpose of this subsection, being determined on one of the following bases as selected by the director of finance:

- (1) The figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
 - (2) Where the interest on the bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment); or
 - (3) Where the interest on the bonds is payable other than annually or semiannually or will vary from time to time, upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the County; provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.
- (d) Bonds offered at competitive sale, without further action of the council, shall bear interest at the rate or rates specified by the successful bidder or varying rate or rates determined from time to time in the manner specified by the successful bidder with the consent of the director of finance. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the County and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the director of finance shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the bonds and terms and conditions upon which such bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event the date and time shall be either published in the same newspapers in which the notice of sale has been published or transmitted via electronic communication systems deemed proper by the director of finance which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for the sale.
- (e) The proceeds of the sale of bonds shall be applied to pay the project costs of the district. If no purchaser is found, the County may be the purchaser of any such bonds, using any funds available and unspent. Bonds sold to a purchaser other than the County may be sold for such discount as is acceptable to the council.

(1994, ord 94-76, sec 3.)

Section 33-25. Lost, mutilated, stolen or destroyed bonds.

Should any bond issued under this chapter become mutilated or be lost, stolen, or destroyed, the County may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

- (a) Has paid reasonable expenses and charges in connection therewith;
- (b) In the case of a lost, stolen, or destroyed bond, has filed with the County or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and
- (c) Has furnished indemnity satisfactory to the County.

(1994, ord 94-76, sec 3.)

Section 33-26. General provisions; bonds.

- (a) Notwithstanding any of the provisions of this chapter or any recital in any tax increment bond issued under this chapter, all tax increment bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, Hawai'i Revised Statutes, subject only to the provisions pertaining to registration.
- (b) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this chapter or the security for a bond or note issued under this chapter, a bond reciting in substance that it had been issued by the County for the tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this chapter.
- (c) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the County.
- (d) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.

(1994, ord 94-76, sec 3.)

Section 33-27. Bonds not chargeable against general revenue.

- (a) Tax increment bonds shall be payable only out of the tax increment fund. The council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. If the council has pledged a part of the fund for payment of bonds, a holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.
- (b) No officer of the County including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this chapter shall not be general obligations of the County, nor in any event shall they give rise to a charge against the general credit or taxing powers of the County or be payable other than as provided by this chapter. No holder of bonds issued under this chapter shall have the right to compel any exercise of the taxing power of the County to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this chapter shall state these restrictions on their face.
- (1994, ord 94-76, sec 3.)

Section 33-28. Tax increment bond anticipation notes.

Whenever the County has authorized the issuance of tax increment bonds under this chapter, tax increment bond anticipation notes of the County may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the County, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this chapter with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

(1994, ord 94-76, sec 3.)

Section 33-29. General obligation bonds.

- (a) For any project initiated pursuant to this chapter, the council, in lieu of the issuance of tax increment bonds, may in its sole discretion issue general obligation bonds of the County or authorize payment of the required amount from the general fund of the County. The proceeds of such general obligation bonds or any amount paid by the County out of the general fund shall be deposited in the tax increment fund for the appropriate district and expended only in accordance with section 33-18.
- (b) All such general obligation bonds shall be authorized, issued and sold under, pursuant to, and in accordance with chapter 47, Hawai'i Revised Statutes, as amended, all of the provisions of which chapter shall be applicable thereto. Without limiting the generality of the provisions of the foregoing sentence, the form, name, date, denomination, numbers, maximum interest rate, method of execution and all other details of such general obligation bonds shall be fixed and determined in accordance with and as provided by chapter 47. No right of prior redemption needs to be reserved in the issuance of such bonds, nor shall either the amounts or dates of the maturities of any such bonds be required to conform in any way to the amounts of tax increments to be collected.
- (c) The validity of such general obligation bonds shall not be dependent on or affected in any way by any proceedings taken or any contracts made, acts performed or done in connection with, or in furtherance of, any improvement or any assessments for such improvement.
- (d) If general obligation bonds are issued as provided in this section, all moneys collected on account of the tax increment may, to the extent so directed by the council, be applied to the reimbursement of the general fund of the County to the extent of the amounts paid for interest on and principal of such general obligation bonds. Any amounts collected on account of the tax increment as aforesaid to the extent not so directed by the council to be applied to such reimbursement or in excess of the amounts required for such reimbursement shall be applied in the manner set forth in section 33-17.
- (e) The provisions of sections 33-23, 33-24, 33-25, 33-26 and 33-27 shall not apply to the general obligation bonds authorized by this section and such sections shall be restricted in their application to tax increment bonds.

(1994, ord 94-76, sec 3.)

Article 5. Refunding Bonds.**Section 33-30. Refunding authorized.**

The County may issue tax increment refunding bonds for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the County. Both principal and interest on tax increment refunding bonds shall be made payable solely from the tax increment fund.

(1994, ord 94-76, sec 3.)

Section 33-31. Refunding bonds.

- (a) Tax increment refunding bonds issued for the refunding of the outstanding indebtedness of any tax increment district shall bear the name of the tax increment district for which they are issued, and shall be issued and sold under all the conditions and terms as prescribed by article 4 of this chapter, except as otherwise provided in this chapter.
- (b) A different rate of interest than that authorized in the original issue of tax increment bonds may be prescribed and the tax increment refunding bonds may be authorized to run for a term exceeding thirty years from the date of their issuance or fifteen years from the final maturity date of the tax increment bonds being refunded.
- (c) If the final maturity date of the tax increment refunding bonds exceeds the final maturity date of the tax increment bonds being refunded, the council shall, if necessary, pass an ordinance amending the original ordinance passed in accordance with section 33-11 to change the termination date of the district to coincide with the final maturity of the tax increment refunding bonds. Such ordinance shall be passed by the council prior to the issuance of such refunding bonds.

(1994, ord 94-76, sec 3.)

Section 33-32. Obligations unimpaired.

Nothing in this article shall be construed as giving the council the authority to impair the obligations of the tax increment district under any outstanding tax increment bonds.

(1994, ord 94-76, sec 3.)