

COUNCIL OF THE COUNTY OF MAUI
**PUBLIC WORKS AND
TRANSPORTATION COMMITTEE**

December 17, 2001

**Committee
Report No.**

01-253

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Public Works and Transportation Committee, having met on December 5, 2001, makes reference to County Communication No. 01-312, from the Director of Public Works and Waste Management, transmitting a proposed resolution entitled "AUTHORIZING A GRANT OF A LICENSE TO USE COUNTY REAL PROPERTY TO PACIFIC WAREHOUSE, INC."

The purpose of the proposed resolution is to authorize a grant of a license to use County real property to Pacific Warehouse, Inc. for a wall encroachment onto the County of Maui's right-of-way along Keala Place in Kihei.

At its meeting, your Committee met with the Deputy Director of Public Works and Waste Management and a Deputy Corporation Counsel.

The Deputy Director of Public Works and Waste Management provided an overview of the matter. He noted that the License Agreement addresses an encroachment of a hollow-tile wall on the County's right-of-way along Keala Place in Kihei. The encroachment is 6 inches wide by 70 feet long and totals approximately 35 square feet in size. The Department has no objections to the execution of the License Agreement (Agreement).

The Deputy Director advised your Committee that a provision is incorporated in the Agreement providing for the revocation of the Agreement should the County need the area for public purposes in the future. In addition, a termination clause is also incorporated in the Agreement whereby the County may terminate the license, by notice of the Director, with or without cause.

Your Committee recommended that the Department of Public Works and Waste Management consider establishing a fee for the granting of licenses to use County real property, especially for recently built structures. The focus was on recently built structures because new technology now enables surveyors to

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more accurately determine whether a structure is encroaching within the boundaries of County property. Your Committee noted that since a filing fee is required for variances, there should similarly be a filing fee for licenses to use County real property.

Your Committee noted that, depending on the height of the wall, a building permit may have been required for its construction. Thus, if a building permit was granted to construct the wall, the County may not want to assess a fee, in this case. Your Committee inquired about the following: the proximity of a structure adjacent to the hollow-tile wall to determine whether setback requirements were met; the estimated cost to move the wall entirely onto Pacific Warehouse, Inc.'s property; and whether an indemnification provision protecting the County from liability is included in the building permit process or in the Maui County Code. Your Committee also requested that the Department of the Corporation Counsel determine whether the County's zoning ordinances allow for flexibility in the interpretation of district boundaries.

Your Committee expressed concerns relating to the possibility of the County being held liable in a lawsuit involving a structure constructed by an individual or business entity that encroaches on County property.

The Deputy Corporation Counsel advised your Committee that an indemnification provision is included in the Agreement. Therefore, by executing the Agreement, the Pacific Warehouse, Inc. will indemnify the County of liability. Currently, because part of the wall sits on County property, the County may be held partially liable should a lawsuit be filed.

Based on your Committee's discussion, it requested the following information: (1) photographs of the subject wall and its surrounding area; (2) the approximate age of the wall; (3) the height of the wall; (4) whether the County granted a building permit for the construction of the wall; (5) what type of surveying equipment was used to determine the boundaries; (6) the proximity of closest structure adjacent to the wall to determine if setback requirements are met; (7) an analysis on costs associated with moving the wall completely onto the owner's property; (8) determination as to whether or not there is an indemnification provision in the building permit process or in the Maui County

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Code; and (9) whether zoning ordinances allow for minor adjustments in boundaries.

Your Committee voted to recommend the adoption of the proposed resolution and the filing of the communication.

Your Public Works and Transportation Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "AUTHORIZING A GRANT OF A LICENSE TO USE COUNTY REAL PROPERTY TO PACIFIC WAREHOUSE, INC.", be ADOPTED; and
2. That County Communication No. 01-312 be FILED.

Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA **Chair**

G. RIKI HOKAMA **Member**

DAIN P. KANE **Vice-Chair**

PATRICK S. KAWANO **Member**

ALAN M. ARAKAWA **Member**

CHARMAINE TAVARES **Member**

ROBERT CARROLL **Member**