

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS COMMITTEE

February 17, 2006

Committee
Report No.

_____ 06-26 _____

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

Chair and Members:

Your Public Works Committee, having met on January 30, 2006, makes reference to County Communication No. 05-114, from the Director of Public Works and Environmental Management, transmitting the following:

1. A proposed resolution entitled "AUTHORIZING THE EXCHANGE OF REAL PROPERTY AT MAKAWAO, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the exchange of property, known as the Field Property, consisting of approximately 24,880 square feet of land identified as TMK: (2) 2-4-13:073 for approximately 26,102 square feet of County real property situated at TMK: (2) 2-4-13: Kahakapao Road. Both properties are located on Kahakapao Road in Makawao, Maui.

2. A proposed resolution entitled "AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE EASEMENT ON COUNTY OF MAUI REAL PROPERTY TO HALE JOCELYN FIELD, TRUSTEE OF THE BETTY E. STRAUSS LEGACY TRUST DATED FEBRUARY 12, 1995, WITH FULL POWERS TO SELL, MORTGAGE, LEASE OR OTHERWISE DEAL WITH THE LAND; HALE J. FIELD AND RAND NOOTEBOOM, FOR UNDERGROUND PRIVATE WATERLINE PURPOSES".

The purpose of the proposed resolution is to grant a non-exclusive easement on County real property, identified as Kahakapao Road located in Makawao, Maui, to allow underground private waterlines to connect to TMK: (2) 2-4-13:073 and (2) 2-4-13:185.

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3. A proposed resolution entitled "AUTHORIZING ACCEPTANCE OF A DONATION OF REAL PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the donation of approximately 382 square feet of property, located at TMK: (2) 2-4-13:185 on Kahakapao Road in Makawao, Maui, from Rand Nootboom.

By correspondence dated May 23, 2005, the Chair of your Committee transmitted correspondence dated May 18, 2005, from David Goode, requesting that the subject matter be scheduled for discussion.

By correspondence dated June 29, 2005, the Chair of your Committee requested that the Director of Water Supply provide information regarding the parties involved in the construction of Kahakapao Road, the source of funding for the road, and the identity of those who authorized construction outside the boundaries of the existing right-of-way.

By correspondence dated July 6, 2005, the Director of Water Supply provided a list of the parties involved in the road construction, including the parties involved in supervisory positions; the specific sources of funding for road construction; and the persons who authorized construction outside the boundaries of the existing right-of-way.

By correspondence dated July 11, 2005, the Director of Public Works and Environmental Management asked that discussion of the matter be deferred, noting that the Department of Water Supply was exploring other avenues to address the road construction issue.

By correspondence dated November 17, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel revise the titles of the proposed resolution relating to the exchange of real property, and the proposed resolution relating to the acceptance of a donation of real property, to add greater detail in their geographic descriptions.

By correspondence dated November 21, 2005, the Department of the Corporation Counsel transmitted the following:

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1. A revised proposed resolution entitled "AUTHORIZING THE EXCHANGE OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE"; and
2. A revised proposed resolution entitled "AUTHORIZING ACCEPTANCE OF A DONATION OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, FROM RAND NOOTEBOOM, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

At its meeting, your Committee met with the Director of Public Works and Environmental Management; the Director of Water Supply; two Deputy Corporation Counsel; and Paul Horikawa, Esq., the attorney for the owners of the subject properties.

There was no public testimony.

The Director of Public Works and Environmental Management provided background information on the need for the proposed resolutions. He reviewed how the road had been paved in an incorrect location, and distributed two maps to illustrate the separate lots involved. He noted that the intent of the proposed resolutions is to allow the existing Kahakapao Road to remain in its present location, rather than having to construct a road in the location legally described. He further noted that corrective construction would require additional expenditures as well as consideration of topographic constraints.

The Director of Public Works and Environmental Management reviewed the specific lots involved in each of the three resolutions and matched the descriptions contained in each resolution with the labels on the maps. He explained that the first resolution exchanges the 24,880 square feet of property owned by the Fields (Lot 3) for the 26,102 square feet of property owned by the County (Lot 6). The second resolution grants a five-foot wide, non-exclusive easement across Lot 3 for private waterline purposes. The third resolution accepts the donation of 382 square feet of property (Lot 5) from Rand Nooteboom.

Your Committee discussed the appraisals that had been done and the alternative remedies considered, including condemnation. Your Committee questioned the decision-making and quality of work which produced this situation, and sought assurance that lessons had been learned and that similar situations were not likely to be repeated.

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A Deputy Corporation Counsel recounted that the road had been paved over the existing road without an adequate survey. While the record mentioned the possibility of a prescriptive easement or the creation of an easement by necessity, that was not the case. He clarified that the cost to the County, should the proposed resolutions be adopted, would be nothing more than the money already expended to complete the appraisals, while the cost to the County for other possible remedies could be substantial.

The Director of Water Supply confirmed that the cost of other remedies had not been calculated, but any construction costs would be included in the Department of Water Supply's Capital Improvement Project request for an upcoming budget.

Your Committee voted to recommend adoption of the two revised proposed resolutions and the proposed resolution, and filing of the communication.

Your Public Works Committee RECOMMENDS the following:

1. That Resolution No. _____, as revised herein and attached hereto, entitled "AUTHORIZING THE EXCHANGE OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE", be ADOPTED;
2. That Resolution No. _____, attached hereto, entitled "AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE EASEMENT ON COUNTY OF MAUI REAL PROPERTY TO HALE JOCELYN FIELD, TRUSTEE OF THE BETTY E. STRAUSS LEGACY TRUST DATED FEBRUARY 12, 1995, WITH FULL POWERS TO SELL, MORTGAGE, LEASE OR OTHERWISE DEAL WITH THE LAND; HALE J. FIELD AND RAND NOOTEBOOM, FOR UNDERGROUND PRIVATE WATERLINE PURPOSES", be ADOPTED;
3. That Resolution No. _____, as revised herein and attached hereto, entitled "AUTHORIZING ACCEPTANCE OF A DONATION OF REAL PROPERTY SITUATED AT KAHAKAPAO ROAD, MAKAWAO, MAUI, HAWAII, FROM RAND NOOTEBOOM, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and

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4. That County Communication No. 05-114 be FILED.

Adoption of this report is respectfully requested.

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JOSEPH PONTANILLA **Chair**

G. RIKI HOKAMA **Member**

MICHAEL J. MOLINA **Vice-Chair**

DANNY A. MATEO **Member**

ROBERT CARROLL **Member**