

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

November 17, 2006

Committee
Report No.

06-148

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

Chair and Members:

Your Planning Committee, having met on June 13, 2005, August 29, 2005, July 17, 2006, October 16, 2006, and October 30, 2006, makes reference to the following:

1. Miscellaneous Communication dated March 20, 2001, from the County Clerk, referring the matter relating to the transportation planning models for Kihei-Makena and West Maui.
2. County Communication No. 03-235, from the Planning Director, transmitting a report entitled "Final Report: Traffic Impact Fee Program for West Maui and South Maui", prepared by Kaku Associates, Inc., March 2003.

Your Committee notes that the Miscellaneous Communication was referred to the prior Council's Public Works and Transportation Committee for the 2001-2003 Council term at the Council meeting of March 16, 2001.

Your Committee further notes that Resolution No. 01-53 entitled "URGING THE ADMINISTRATION TO TRANSMIT PROPOSED KIHEI-MAKENA AND WEST MAUI TRANSPORTATION PLANNING MODELS", was adopted at the Council meeting of March 16, 2001.

Your Committee further notes that Chapter 14.62, Maui County Code (MCC), relating to impact fees for traffic and roadway improvements in West Maui, and Chapter 14.68, MCC, relating to impact fees for traffic and roadway improvements in Kihei and Makena enable the County to impose traffic impact fees in South and West Maui, and set forth a detailed regulatory scheme for the assessment and collection of said fees from landowners and developers. Sections 14.62.050 and 14.68.050 require that, prior to implementation, a transportation model by a licensed professional engineer must be prepared and made a part of the respective chapters.

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At its meeting of December 4, 2002, the Public Works and Transportation Committee recommended that the Miscellaneous Communication be referred to the Council Chair for the term beginning January 2, 2003, for a recommendation as to referral or other disposition.

Your Committee notes that the Miscellaneous Communication was referred to the Council's Planning and Land Use Committee at the Council meeting of January 10, 2003 (County Communication No. 03-12).

By correspondence dated April 21, 2003, the Chair of the Planning and Land Use Committee requested that the Planning Director provide a status report regarding the proposed Kihei-Makena and West Maui transportation models.

By correspondence dated April 22, 2003, the Planning Director responded that a draft report dated March, 2003, was transmitted to the Department of the Corporation Counsel, and the Department of Public Works and Environmental Management, for comments.

Your Committee further notes that the Council referred County Communication No. 03-235 to the prior Planning and Land Use Committee at its meeting of September 19, 2003.

By correspondence dated November 13, 2003, the Chair of the Committee transmitted an article from the November 12, 2003 issue of *The Maui News*, entitled "Study paves way for impact fees".

By correspondence dated February 9, 2004, the Planning Director transmitted a report entitled "South Maui Capacity Analysis".

At its meeting of February 17, 2004, the Committee met with the Planning Director; the Deputy Director of Planning; the Administrative Planning Officer, Department of Planning; a Planner, Department of Planning; the Deputy Director of Transportation; the Director of Public Works and Environmental Management; Police Officers, Department of Police, and a Deputy Corporation Counsel.

The Committee received testimony from one person stating that an engineering firm may not be the best choice to prepare a transportation model. The testifier requested that a transportation model include walking and biking paths.

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The Administrative Planning Officer stated that the transportation model entitled “Final Report: Traffic Impact Fee Program for West Maui and South Maui”, prepared by Kaku Associates, Inc., March 2003, identifies existing roadway capacity, and by examining available socio-economic data, projects a 20-year forecast of improvements required to mitigate traffic and roadway problems. He noted the following: (1) impact fees are collected in smaller increments than expenditures for improvements; (2) a comprehensive revenue distribution strategy is necessary; (3) the transportation model focuses on automobile roadways only; and (4) legislation enabling the imposition of impact fees island-wide would be more accurate and equitable. He further noted that impact fees would recover only a portion of the total cost to mitigate the impact of a development.

The Committee considered amending Chapters 14.62 and 14.68, MCC, to: (1) revise the deadlines for expenditures; (2) include a comprehensive strategy detailing the collection of deficient revenues; and (3) include a fee structure.

The Deputy Planning Director recommended that a consultant from Kaku Associates, Inc., attend a Committee meeting to discuss the data in the transportation model.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated August 24, 2004, the Chair of the Committee requested that the Planning Director inquire as to the availability of a consultant from Kaku Associates, Inc., to attend the Committee meeting scheduled for September 28, 2004.

By correspondence dated September 15, 2004, the Planning Director responded that a consultant would be unavailable to attend a meeting on September 28, 2004. In addition, he noted the following concerns related to the transportation model: (1) roads under county jurisdiction were not considered; (2) costs to purchase land right-of-way were not included; and (3) portions of the study were done for the entire island, but the traffic impact fee analysis was done for South and West Maui only.

By correspondence dated October 6, 2004, the Chair of the Committee requested that the Planning Director inquire as to the availability of a consultant from Kaku Associates, Inc., to attend a Committee meeting in October or November to discuss the transportation model.

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At its meeting of November 30, 2004, the Committee recommended that the Miscellaneous Communication and County Communication No. 03-235 be referred to the Council Chair for the term beginning January 2, 2005, for a recommendation as to referral or other disposition.

At its meeting of January 21, 2005, the Council referred the Miscellaneous Communication and County Communication No. 03-235, to your Planning Committee (County Communication No. 05-12).

At its meeting of June 13, 2005, your Committee met with the Deputy Director of Transportation; a Planner, Department of Planning; and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Director of Transportation pointed out the following flaws in the transportation model:

- (1) The majority of the highways and facilities marked in the transportation model fall under State, rather than County, jurisdiction.
- (2) Projected revenues from impact fees fall heavily on hotels, though there have been no new hotels built on the island in many years.
- (3) The report does not include models for alternative transportation.

Your Committee noted that amendments to Chapters 14.62 and 14.68, MCC, may be necessary in order to properly implement the impact fees. Your Committee further noted that a depository, as required in Sections 14.62.080 and 14.68.080, MCC, needs to be established in order to collect fees, and that a process to reflect the fees in the annual budget also needs to be established.

When asked by the Committee if the information in the report is sufficient for the Department of Transportation to extrapolate an updated fee schedule, the Deputy Director suggested that an ongoing study headed by an engineering team might best be able to derive the necessary figures with which to implement such a program.

Your Committee deferred consideration of the matter pending further discussion.

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By correspondence dated August 17, 2005, the Chair of your Committee transmitted a copy of Chapter 33A, Revised Ordinances of Honolulu, entitled "IMPACT FEES FOR TRAFFIC AND ROADWAY IMPROVEMENTS IN EWA" to be utilized as a possible model for legislation in Maui County.

By correspondence dated August, 18, 2005, the Chair of your Committee requested that the Planning Director respond to whether measures had been undertaken to mitigate the concerns of his Department regarding the transportation model, and whether he advises the Council to enact traffic impact fees for South and West Maui based on the transportation model.

By correspondence dated August 18, 2005, January 24, 2006, and February 14, 2006, to the Department of the Corporation Council, the Chair of your Committee transmitted a copy of correspondence dated September 15, 2004 from the Planning Director, stating concerns related to the transportation model. Your Committee requested that the Department of the Corporation Counsel render a legal opinion on whether the Council may proceed, based on the transportation model, to enact traffic impact fees for Kihei-Makena and West Maui.

By correspondence dated August 24, 2005, the Planning Director responded that the Department of Planning is in the process of finalizing a contract with Kaku Associates, Inc., to update the transportation model, and to expand the contract to include island-wide traffic impact fees. He noted that the update should be completed by March 2006. He further noted that the Department of Planning does not advise the enactment of traffic impact fees for South and West Maui based on the original report submitted by Kaku Associates, Inc., but should adopt an island-wide traffic impact fee program using the updated report and impact fee schedule, once it is completed.

By correspondence dated August 29, 2005, Dean Y. Uchida, Executive Director of the Land Use Research Foundation, provided a detailed analysis of the proposed impact fee schedules for South and West Maui. The analysis concludes that the transportation model does not address all issues required by the State impact fee statute or the County impact fee ordinances.

At its meeting of August 29, 2005, your Committee met with the Planning Director; the Administrator, Long Range Planning Division, Department of Planning; the Director of Finance; the Budget Director; and a Deputy Corporation Counsel.

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There was no public testimony.

Your Committee received copies of Chapters 14.62 and 14.68, MCC, related to traffic impact fees.

The Planning Director stated that after a thorough reading of the transportation model, the following revisions are necessary: (1) the list of proposed projects should be lengthened; (2) cost estimates should include costs to purchase land right-of-way given the six year spending limit on collected fees, pursuant to Section 46-144, Hawaii Revised Statutes; and (3) the transportation model needs to include the entire island.

The Planning Program Administrator added that in addition to the aforementioned revisions, the updated model should include the latest socio-economic data from the State Department of Business, Economic Development, and Tourism, as well as additional land use information.

The Planning Director again recommended that your Committee wait until the final updated report from Kaku Associates, Inc., before initiating the imposition of traffic impact fees. He informed your Committee that the Maui Planning Commission has been including a condition of approval on some current applications that states that the applicant must comply with any new traffic impact fee ordinances that are passed by the Council prior to issuance of building permits.

Regarding impact fee depositories, the Director of Finance explained that a trust agency fund could be established for impact fee revenues generated for specific uses, or a special fund could be established for impact fee revenues, using a broad umbrella. He further noted the possibility of setting up a regional fund to help finance traffic improvements that fall under the responsibility of the State.

Your Committee requested a formal opinion from the Department of the Corporation Counsel regarding the enactment of traffic impact fee legislation for Kihei-Makena and West Maui based upon the current transportation model.

Your Committee deferred consideration of the matter pending further discussion.

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By correspondence dated May 17, 2006, the Department of the Corporation Counsel opined that the transportation model does not meet the minimum requirements set forth in Chapters 14.62 and 14.68, MCC.

By correspondence dated May 19, 2006, the Chair of your Committee requested that the Planning Director inquire as to the availability of a consultant from Kaku Associates, Inc., to attend a Committee meeting to provide a presentation of the island-wide transportation planning model.

At its meeting of July 17, 2006, your Committee met with the Planning Director; the Planning Program Administrator, Long Range Planning Division, Department of Planning; the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; and Mr. Dick Kaku, President of Kaku Associates, Inc.

Your Committee received testimony from one person urging the Council to adopt impact fees as soon as possible.

Mr. Kaku provided your Committee with a computer-generated presentation outlining the progress of the updated report, of which he also provided your Committee with hard copies.

Mr. Kaku explained how travel, socioeconomic, and land-use demands for the future were calculated. In addition, he said that the forecasting data will denote areas of increased infrastructure need. He noted that the report coincides with the community plan areas, and identifies 36 traffic analysis zones within these areas. He noted that a roadside resident travel survey was conducted to gain an understanding of resident travel patterns. He added that through visitor interviews, tourist traffic patterns were calculated.

Mr. Kaku stated that the development pattern has changed since the original transportation model was transmitted in 2003, especially regarding residential development predictions for Central Maui. The new model is not limited to South and West Maui, thereby providing a more comprehensive view of future development patterns.

The Program Planning Administrator stated that the areas noted in the May 8, 2003 correspondence as being in noncompliance, and other concerns, were being addressed in the updated report. He further stated that it was important to develop one

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impact fee for the entire island, and that the current ordinance would need to be amended to reflect this.

Your Committee responded that your Committee's intention was not to have one fee for the entire island, but to have an island-wide study that included fees for each community plan area. Your Committee requested that collecting impact fees from West and South Maui not be held up waiting for amendments to the existing ordinance.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated July 20, 2006, the Chair of your Committee requested that the Planning Director ensure that the final transportation model provide a distinct fee structure for each community plan region, as required by Section 46-144(2), Hawaii Revised Statutes. The correspondence also listed the following elements to be included in the model to comply with the requirements of the Maui County Code: (1) identification of areas where zoning does not conform with the respective community plans; (2) a roadway master plan; (3) a listing of local and connector roads, including rights-of-way; (4) a description of new intersection improvements, including left turn storage lanes, right turn lanes, and traffic signals; (5) a listing of traffic impact fees formatted as specified in the MCC; (6) all roads under the County's jurisdiction; and (7) costs to purchase land rights-of-way.

By correspondence dated August 2, 2006, the Planning Director responded that Kaku Associates, Inc., will prepare the transportation model with a fee structure for each community plan region and will address all the items necessary to be in compliance with the MCC.

By correspondence dated October 10, 2006, the Planning Director transmitted the updated transportation model entitled "Maui Island Traffic Impact Fee Report and Comprehensive Roadway Master Plan, October 2006".

At its meeting of October 16, 2006, your Committee met with the Planning Director; the Planning Program Administrator, Long Range Division, Department of Planning; the Deputy Director of Transportation; a Deputy Corporation Council; and Mr. Dick Kaku, President of Kaku Associates, Inc.

Mr. Kaku provided your Committee with a computer-generated presentation regarding the updated transportation model. He stated that the forecasting model uses

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2004 land use information and that growth is projected to the year 2015. He noted that the majority of development is expected to be for industrial uses in the Wailuku-Kahului Community Plan area.

The Planning Program Administrator stated that nearly all the projects considered in the forecast have been either entitled or are under construction. He further stated that impact fees are but a small portion of the revenue needed for traffic improvements.

Mr. Kaku explained that determinations of trip purpose were based upon the following categories: (1) home-based work trips; (2) home-based other trips; (3) non home-based trips; and (4) visitor trips. He further explained that the trips were calculated regionally, using the land-use data.

He noted that visitor traffic has less of an impact on roads than residential traffic because calculations show that visitors travel more during off-peak hours, and it is the peak traffic hours that dictate traffic needs. He also noted that hotel traffic was based on visitor traffic, and not on hotel workforce traffic. Your Committee requested calculations based on hotel workforce traffic as well.

When your Committee asked if the calculations projected cost of living increases to the year 2015, the Planning Program Administrator stated that the MCC states that the transportation model is required to be reviewed annually by the Department of Planning and updated every five years, at which time, fees could be adjusted.

Mr. Kaku directed your Committee to the impact fee calculations for the West Maui and Kihei-Makena community plan areas. The proposed fees are divided into the following four categories: (1) residential; (2) commercial; (3) industrial; and (4) hotel, and have been organized into a table that can be inserted into Sections 14.62.070 and 14.68.070, MCC. He stated that they are recalculating the fee for commercial office space in the West Maui area.

Your Committee deferred consideration of the matter pending further discussion.

At its meeting of October 30, 2006, your Committee met with the Planning Director; the Planning Program Administrator, Long Range Division, Department of Planning; and a Deputy Corporation Council.

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Your Committee received testimony from one person on behalf of Maui Land and Pineapple Company, Inc., who stated an interest in meeting with the Department of Planning and the consultant to discuss the impact fee calculation methodology.

The Planning Program Administrator stated that the updated West Maui office space impact fee may result in minor adjustments to other areas of the impact fee schedule.

Your Committee had concerns regarding refunds to applicants if work is not initiated within six years of an impact fee collection, as required by the Hawaii Revised Statutes. The Planning Director stated that fees can be used for property acquisition in order to meet the six-year deadline. He further stated that although fees must be used for improvements in the community plan area where the fees are collected, the Council will decide the priority in which the fees are expended.

Your Committee requested that the Department of the Corporation Counsel determine whether Sections 14.62.090 and 14.68.090, MCC, can be amended to provide that 2 percent of the impact fee revenues be granted to departments for administrative costs associated with roadway improvement projects, in addition to the 2 percent of impact fee revenues currently granted to the Department of Finance.

Your Committee requested that the Department of Planning explain how impact fees for commercial and industrial developments will be calculated when the square footage of the development is a fraction above or below the "per 1,000 square feet" requirement.

Your Committee requested that the Department of Public Works and Environmental Management, and State Department of Transportation provide documentation regarding the collection of outstanding impact fees since 1996.

Your Committee voted to revise the draft bills to name the Department of Finance as the responsible entity to collect fees from the applicants upon issuance of building permits.

Your Committee voted to recommend passage of the draft bills, as revised, and filing of the communication.

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Your Committee is in receipt of the following revised proposed bills, approved as to form and legality, from the Department of the Corporation Counsel, incorporating your Committee's requested revisions:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH A FEE SCHEDULE FOR KIHEI-MAKENA TRAFFIC IMPACT FEES". The purpose of the proposed bill is to amend Subsection D of Section 14.68.070, Maui County Code, to establish a fee schedule for the Kihei-Makena Community Plan area.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH A FEE SCHEDULE FOR WEST MAUI TRAFFIC IMPACT FEES". The purpose of the proposed bill is to amend Subsection D of Section 14.62.070, Maui County Code, to establish a fee schedule for the West Maui Community Plan area.

Your Planning Committee RECOMMENDS the following:

1. That Bill No. _____ (2006), attached hereto, entitled "A BILL FOR AN ORDINANCE TO ESTABLISH A FEE SCHEDULE FOR KIHEI-MAKENA TRAFFIC IMPACT FEES", be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That Bill No. _____ (2006), attached hereto, entitled "A BILL FOR AN ORDINANCE TO ESTABLISH A FEE SCHEDULE FOR WEST MAUI TRAFFIC IMPACT FEES", be PASSED ON FIRST READING and be ORDERED TO PRINT;

3. That the Miscellaneous Communication dated March 20, 2001 be FILED;
and

4. That County Communication No. 03-235 be FILED.

Adoption of this report is respectfully requested.

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CHARMAINE TAVARES **Chair**

JO ANNE JOHNSON **Member**

DANNY A. MATEO **Vice-Chair**

DAIN P. KANE **Member**

MICHELLE ANDERSON **Member**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

JOSEPH PONTANILLA **Member**

G. RIKI HOKAMA **Member**