

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 20, 2006

Committee
Report No.

_____ 06-10

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

Chair and Members:

Your Land Use Committee, having met on January 10, 2006, makes reference to County Communication No. 05-386, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING THE STATE OF HAWAII A CONDITIONAL PERMIT FOR IMPROVEMENTS TO THE MANELE SMALL BOAT HARBOR FERRY SYSTEM FOR PROPERTY SITUATED AT MANELE BAY, LANAI, HAWAII". The purpose of the proposed bill is to grant a ten-year Conditional Permit for improvements by the State Department of Land and Natural Resources (DLNR) to the Manele Small Boat Harbor Ferry System on approximately two acres at Manele Bay, Lanai (TMK: (2) 4-9-17:002 (por.)).

Your Committee notes that the Lanai Planning Commission held a public hearing on the application on September 21, 2005.

Your Committee further notes that the Lanai Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE LANAI PLANNING COMMISSION SEPTEMBER 21, 2005 MEETING" (Department's Report), and the conclusions and recommendation presented in the document entitled "PLANNING DEPARTMENT'S RECOMMENDATION TO THE LANAI PLANNING COMMISSION SEPTEMBER 21, 2005 MEETING", voted to recommend approval of the application on September 21, 2005.

Your Committee also notes that the Department's Report contains information relating to a 16-acre project area that encompasses property owned by DLNR (TMK: (2) 4-9-17:006), as well as a 2-acre portion of a 95-acre parcel (TMK: (2) 4-9-17:002) owned by Castle & Cooke Resorts, LLC (C&C). The application for a Conditional Permit relates solely to the 2-acre site, upon which the applicant, C&C, proposes to construct two multi-use parking lots and a drainage basin. According to the Department's Report, TMK: (2) 4-9-17:002 will later be subdivided to allow the 2-acre portion to be transferred to DLNR for development.

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By correspondence dated December 22, 2005, Mich Hirano, Munekiyo & Hiraga, Inc., transmitted the following documents relating to a separate facility, the Lahaina Small Boat Harbor Comfort Station: (1) a Statement of Self-Insurance and Liability of the State of Hawaii dated October 7, 2005; and (2) a Historic District Approval dated April 12, 2005, from the Planning Director to the Chair, DLNR, Division of Boating and Ocean Recreation [*sic*]. Mr. Hirano noted in his correspondence that these documents were being provided to facilitate a possible amendment to Condition No. 4 of the proposed bill, relating to comprehensive insurance coverage, since the State is a self-insured entity and would not be in a position to provide the certificate of insurance required by the proposed bill. The documents were intended to provide an example of a condition previously imposed upon the State with respect to its liability, and to demonstrate that the Statement of Self-Insurance had previously been a vehicle used to satisfy an evidence of insurance requirement imposed upon the State.

By correspondence dated December 23, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel consider certain enumerated concerns and revise the proposed bill where appropriate. The concerns relate to: (1) the omission of the County zoning district for the site and lack of specificity regarding the improvements being permitted; (2) whether the State is properly identified as the permittee in the proposed bill, and whether the effective date of the ordinance requires revision; and (3) the insurance provisions, due to concerns voiced by the applicant's consultant, on the grounds that the State is self-insured.

By correspondence dated December 23, 2005, the Chair of your Committee informed your Committee that it had received a copy of the Final Environmental Assessment for the Manele Small Boat Harbor Ferry System Improvements, prepared by Bow Engineering & Development, Inc. dated August 2005. In addition, the Chair transmitted the following: (1) a map and site plans received on December 22, 2005 from Eric Yuasa, Project Engineer, Engineering Division, DLNR; and (2) correspondence dated October 28, 2005, from DLNR to the Board of Land and Natural Resources (BLNR), relating to the acquisition of the subject two acres from C&C.

By correspondence dated December 27, 2005, the Chair of your Committee transmitted to the Department of the Corporation Counsel a copy of the following documents relating to the Lahaina Small Boat Harbor Comfort Station: (1) a Statement of Self-Insurance and Liability of the State of Hawaii dated October 7, 2005; and (2) a Historic District Approval dated April 12, 2005, from the Planning Director to the Chair, DLNR, Division of Boating and Ocean Recreation [*sic*].

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By correspondence dated December 28, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING CASTLE & COOKE RESORTS, LLC, A CONDITIONAL PERMIT FOR A MULTI-USE PARKING FACILITY IN THE LANAI PROJECT DISTRICT 1 (MANELE) (OPEN SPACE PD-L/1) FOR PROPERTY SITUATED AT MANELE BAY, LANAI, HAWAII". The revised proposed bill clarifies the following: (1) that the permittee would be the applicant/property owner, C&C, and not the State; (2) that, if granted, the Conditional Permit may be transferred to DLNR upon conveyance of the subject property to the State and approval of the Planning Director; (3) that the improvements contemplated involve a State multi-use parking facility; and (4) that the subject property is located in the Lanai Project District 1 (Manele) and is designated Open Space PD-L/1. The revised proposed bill also clarifies the certificate of insurance requirement for C&C, and the statement of self-insurance requirement for the State.

At its meeting on Lanai, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Eric Hirano, Chief Engineer, Engineering Division, DLNR; Ralph Masuda, Vice President, Planning and Zoning, Castle & Cooke Resorts, LLC; and Mich Hirano, Munekiyo & Hiraga, Inc., the applicant's consultant.

Your Committee received public testimony from one individual, the President of Lanaians for Sensible Growth, who is also a member of the Manele Harbor Advisory Group. He expressed support for the project and asked that it be expedited.

Your Committee also received written testimony from Eric Hirano, stating strong support for the revised proposed bill and confirming that the language of the revised proposed bill is acceptable to DLNR. He also noted, however, that DLNR has a concern with the duration of the Conditional Permit and suggested the following alternative:

- "2. That the Conditional Permit shall be valid for so long as the site is used for a multi-use parking facility."

Your Committee received an overview from Mich Hirano of the proposed ferry system improvement project, and in particular, the two-acre portion of the project that would be subject to the proposed Conditional Permit. The improvements, all of which would be compliant with the Americans with Disabilities Act, include: a new waiting

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area and comfort station; an administrative office; resurfacing of the ferry pier boardwalk; a new access road into the harbor with circulation and a drop-off area for the ferry terminal facility; a public parking area; a sewage pump station and vessel sewage pump-out facility; a fuel line; installation of a fuel line under the pavement from the site of a potential future fuel storage tank to the ferry dock; and related utilities and lighting.

Mich Hirano explained that the two-acre portion of the project would be used for overload parking, boat trailer parking and storage, and a siltation basin. The two acres are currently vacant and undeveloped. He informed your Committee that C&C has agreed to transfer ownership of this portion of the parcel to the State upon approval of the Conditional Permit and final subdivision application. Mr. Hirano also described the State and Federal funding that had been obtained for the project.

Eric Hirano advised that many community meetings had been conducted to shape the project, and that the Lanai community is in favor of it. He further described funding that had been obtained and that is currently available for the project. He informed your Committee of an estimated timeline for the project, noting that DLNR hopes to complete final project plans by the end of January, open bids in March, and begin construction this summer. He stated that the State has received BLNR approval to acquire the two acres from C&C following approval of the Conditional Permit and subdivision of the parcel. Mr. Hirano also requested that your Committee consider revising the duration of the Conditional Permit, as noted in his written testimony.

The Planning Program Administrator described the purpose of the Conditional Permit, the chronology of hearings before the Lanai Planning Commission, and the Lanai Planning Commission's deferral on the Phase II application and the Special Management Area permit for the two-acre site pending action by the Council on the Conditional Permit application.

Your Committee discussed the projected timing for completion of the subdivision and the transfer of the two-acre property to the State. Eric Hirano confirmed that DLNR would work closely with the County on the subdivision of the property and inform the Administration once the transfer of the two acres had occurred.

Your Committee also discussed the potential of installing refueling facilities at the Small Boat Harbor. Eric Hirano noted that the issue is still being debated by the community. He advised that the State has determined a potential location for an above-ground fuel storage area. The State is installing empty pipelines from that area to

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the ferry pier in case the fuel storage facility is pursued. He stated that DLNR would not proceed with the fuel storage facility unless the community wants it. Your Committee expressed strong reservations about installing such a facility for general commercial use and also cautioned that safeguards against spillage must be considered.

Your Committee noted community concerns regarding payments being required for use of the current pavilion within the project area. Eric Hirano advised that he is not familiar with the terms of the lease agreement between Trilogy Excursions and the Division of Boating and Ocean Recreation, but confirmed that he would raise the issue with the Chair of DLNR and provide an update to your Committee.

Your Committee discussed concerns regarding minimizing light pollution. Eric Hirano noted that shielded lighting and timer switches for lights would be used. Your Committee also discussed steps being taken to address drainage concerns, including sloping the parking lot back toward the siltation basin and installing a cut-off ditch.

Eric Hirano noted that a sewage pump-out facility would be incorporated, and that Federal funding would cover 80 percent of the cost of that facility. He also confirmed that paving would consist of concrete on the areas indicated on the site plan. A variance request will be submitted to the Department of Planning to dispense with the requirement for trees in the parking area, due to foreseeable detrimental impacts on the use by boats and trailers.

Your Committee considered DLNR's request to revise the duration of the Conditional Permit. However, your Committee noted that DLNR should seek a Change in Zoning rather than a Conditional Permit of indefinite duration. Your Committee recommended that the State consider pursuing a Change in Zoning within the ten-year period of the Conditional Permit, should the Conditional Permit be granted. Eric Hirano stated that DLNR would not object to pursuing a Change in Zoning following the transfer of the two-acre property to the State.

Your Committee noted that the ferry is an affordable means of transportation for the Lanai community and that the Small Boat Harbor is an important lifeline for the community.

Your Committee voted to recommend passage of the revised proposed bill and filing of the communication.

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Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2006), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING CASTLE & COOKE RESORTS, LLC, A CONDITIONAL PERMIT FOR A MULTI-USE PARKING FACILITY IN THE LANA'I PROJECT DISTRICT 1 (MANELE) (OPEN SPACE PD-L/1) FOR PROPERTY SITUATED AT MANELE BAY, LANA'I, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 05-386 be FILED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

DAIN P. KANE **Member**

JOSEPH PONTANILLA **Vice-Chair**

DANNY A. MATEO **Member**

MICHELLE ANDERSON **Member**

MICHAEL J. MOLINA **Member**

G. RIKI HOKAMA **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**