

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 14, 2006

**Committee
Report No.**

_____ 06-89

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

Chair and Members:

Your Committee of the Whole, having met on July 11, 2006 and July 13, 2006, makes reference to County Communication No. 06-176, from the Council Chair, transmitting a proposed resolution entitled "OPPOSING THE PROPOSED COMMENCEMENT OF SERVICE OF THE HAWAII SUPERFERRY AT KAHULUI HARBOR".

The purpose of the proposed resolution is to oppose the commencement of the operation of the Hawaii Superferry (Superferry) at the Kahului Harbor in April 2007, pending an update of the Harbor Master Plan, preparation of an Environmental Impact Statement (EIS), and construction of necessary improvements.

By correspondence dated July 6, 2006, the Council Chair transmitted a copy of correspondence dated June 26, 2006, from State Senator Shan S. Tsutsui to the Governor, regarding the potential negative impacts of the Superferry operations.

By separate correspondence dated July 10, 2006, Donald W. Reeser and Jan Welda Fleetham opposed the Superferry.

By correspondence dated July 10, 2006, Jim and Jackie Helton supported the Superferry.

At its meeting, your Committee met with the Deputy Fire Chief, a Fire Fighter, Department of Fire and Public Safety; the Director of Transportation, State Department of Transportation; a Deputy Director of Transportation, State Department of Transportation; the Deputy Director of Business, Economic Development & Tourism, State Department of Business, Economic Development & Tourism; Glenn Hong, President, Young Brothers, Ltd.; Roy Catalani, Vice President, Strategic Planning and Government Affairs, Young Brothers, Ltd.; Vic Angoco, Vice President of Operations and General Manager, Young Brothers, Ltd.; Terry White, Executive Vice President of Operations, Hawaii Superferry; and Terry O'Halloran, Director of Public Affairs, Hawaii Superferry.

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Your Committee received computer generated slideshow presentations from the Department of Transportation (DOT), Young Brothers, Ltd. (YB), and the Superferry. Printed copies of these presentations, as well as the written remarks of the Deputy Director of Transportation, were also provided to your Committee.

Your Committee received public testimony from 21 people in support of the proposed resolution. Three testifiers also provided their testimony in writing. Many of the testifiers supported the completion of an EIS. Others urged the County to file a lawsuit against the State. Some testifiers urged the performance of an independent analysis of the proposed Superferry operations and its potential impacts. One testifier did a comparison of the cost of air travel versus the proposed cost of Superferry travel. Further comments included requests for more time for planning and obtaining answers to questions regarding Superferry, including the potential for negative economic impacts, the introduction of invasive species, the possible harm to whales, and the need to support small businesses.

Your Committee received one written testimony in opposition to the Superferry.

Your Committee discussed portions of the Hawaii Harbor Users Group Report on Port Facilities & Development Priorities prepared by Mercator Transport Group, dated December 2005. A copy of this report was received from YB. Your Committee noted that the report discusses critical facility and access concerns, the need for additional operational areas and berths, and the potential for disruptions in services. YB acknowledged their awareness of these concerns and the effect these concerns may have on limiting their business activities at Kahului Harbor.

Your Committee questioned why the Superferry was being allowed to commence activity in an already congested port. The DOT indicated that all harbors in the State of Hawaii face critical space shortage issues. The Deputy Director of Transportation said that in order to address the problems at the harbors, the State needs the support of local entities and the Federal government.

Your Committee also questioned how the State can justify continuing to claim that the Superferry will bring about no significant impacts when the communities of Maui County will potentially suffer from impacts caused by increased traffic, the introduction of alien pest species, harm to whales, and increased demands to public safety providers such as police and fire.

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YB informed your Committee that they anticipate a 20 to 25 percent increase in cargo demands over the next few years while facing a 23 percent decrease in space at Kahului Harbor due to proposed Superferry operations. Your Committee noted that YB has stated that they had been planning to discontinue less-than-container-load (LCL) services without regard to the commencement of Superferry services. YB said that while LCL services have been a tradition with the company, it is simply no longer a feasible business practice, and the introduction of the Superferry has hastened the process to discontinue this aspect of its business.

YB stated that even if LCL services are discontinued, the company has assured their employees that they will not lose their jobs. YB anticipates the increase in cargo demands will allow the company to shift employee responsibilities from LCL services to other duties.

According to YB, the discontinuation of LCL services will necessitate the use of freight consolidation services. Your Committee noted the lack of available freight consolidators in the County of Maui. The DOT recognized the value of competition in the consolidation of cargo services to keep the prices of these services as low as possible. YB indicated that although there would be additional expenses incurred by customers for the use of freight consolidation services, the time for the delivery of goods would probably not be significantly increased.

Mr. O'Halloran said that the Superferry intends to eventually operate at all ports in the State, but is starting with services between Maui and Oahu. He noted that services between Kawaihae on the Big Island and Oahu have been delayed due to the anticipated delay in the release of funds from the State for harbor improvements on the Big Island.

The DOT confirmed that funding for improvements at State harbors related to the Superferry will be split into two \$20 million increments.

Your Committee discussed the status of the Harbor Master Plan for Kahului Harbor and the possibility of a Pier 5 at the Kahului breakwater area. The Deputy Director of Transportation indicated that the State has been attempting to obtain the services of the Army Corps of Engineers to do the necessary reconnaissance of the area prior to pursuing any improvements.

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The DOT indicated that it has not requested County agencies to comment on the possible impacts the Superferry operations may have on County services, and has not addressed the issue of hazardous material transportation.

The DOT further indicated that the Superferry has not yet submitted its final operational plans, which will be evaluated by the DOT to determine whether the plans are satisfactory and whether the Superferry operations will be sustainable.

Your Committee expressed concerns regarding the State's determination that an EIS is not needed prior to the commencement of Superferry services. One Council member noted that exemptions for an EIS are only for "incidental" improvements.

Your Committee noted that litigation is pending in the form of an appeal to the Hawaii Supreme Court that includes the issue of whether an EIS is needed prior to the commencement of Superferry services. The DOT stated that if the Supreme Court rules that an EIS is required, they will certainly comply with this requirement. Your Committee questioned whether any delay caused by the pending litigation would necessitate the payment of liquidated damages of \$18,000 per day as provided for in the contract between the Superferry and the State, for failing to complete various harbor improvements. The DOT stated that any delays caused by the pending litigation would be exempt from the liquidated-damages clause of the contract.

The DOT said that the Superferry has not yet addressed agricultural inspections in detail. Your Committee expressed concerns regarding agricultural inspections and the possible threat of further introductions of alien species.

In response to traffic concerns, the DOT indicated that the Superferry will time their departures and arrivals to coincide with non-peak traffic times. Your Committee was not convinced that the timing of departures and arrivals would adequately address the potential increased traffic in Kahului, which is already a busy traffic area.

Your Committee briefly discussed the possibility of introducing legislation to address a possible legal challenge to the State regarding issues related to the Superferry.

Your Committee recessed its meeting to July 13, 2006.

At its reconvened meeting of July 13, 2006, your Committee met with the Corporation Counsel; the Director of Transportation, State Department of Transportation;

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a Deputy Director of Transportation, State Department of Transportation; the Plant Industry Division Administrator, State Department of Agriculture; Glenn Hong, President, Young Brothers, Ltd.; and Terry O'Halloran, Director of Public Affairs, Hawaii Superferry.

Your Committee discussed Sunshine Law parameters if it decided to consider potential legislation to address a possible legal challenge against the State regarding Superferry issues. The Corporation Counsel recommended that your Committee schedule a properly noticed meeting if it desired to recommend legal action against the State regarding the commencement of the Superferry operations.

Your Committee suggested that the DOT include, in any traffic study conducted on the potential impacts of traffic generated in association with Superferry operations, all developments within the Kahului area close to the Kahului Harbor.

Your Committee again discussed the LCL issue. YB indicated that they had planned to apply to the State Public Utilities Commission (PUC) for approval to discontinue LCL services within the next three to five years due to the critical shortage of space at the harbors. They noted that they anticipate seeking a rate increase if their application to discontinue LCL services is denied.

YB said that it did have to shift its business plan in order to address the loss of space due to the Superferry. YB indicated that although they have been attempting to secure additional space for their operations, no additional space has been available. They are currently planning to move a cement silo and demolish two warehouses at the Kahului Harbor in order to provide a staging area for their operations.

The DOT explained the Capital Advance Contract (CAC) procedure. The CAC process allows a private entity to contract with the State to develop a project at its own cost, and then to apply for reimbursement by the State. The private entity must follow all State procurement laws when following this procedure. YB indicated that it anticipates using the CAC procedure to move the concrete silo and demolish the warehouses at the Kahului Harbor for their staging area.

The DOT acknowledged that while the County will not have to contribute directly in order for the Superferry to commence activities, the County will shoulder indirect costs associated with increased demands for County services from passengers of the Superferry.

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Your Committee strongly reiterated concerns regarding agricultural inspections of the Superferry, its passengers, and cargo. The State Department of Agriculture (DOA) indicated that, although they are still facing significant staffing shortages, the budget for their program has recently doubled. The DOA anticipates that the Superferry's agricultural restrictions will be much more stringent than what is currently imposed on YB or Matson. The DOA further noted that cruise ships are currently not inspected by the DOA. Mr. O'Halloran said that the Superferry will be working in conjunction with the DOA regarding inspections, and will not be allowing any agricultural products that are not inspected and approved by the DOA to travel on its vessels.

Your Committee inquired as to the impact the Superferry has had or will have on capital improvement projects (CIP) at the Kahului Harbor. Your Committee requested that the DOT provide information on what CIP have been affected or will be affected by the Superferry.

Mr. O'Halloran indicated that the Superferry will be working with law enforcement agencies to address the issue of drug trafficking.

Your Committee expressed concern over the lack of available detailed information on the Superferry's operations given the fact that it is scheduled to commence operations in April 2007.

Your Committee notes that while the proposed resolution does not have the force and effect of law, it is a symbolic gesture that is intended to send a clear message to the State that the Council is extremely concerned about the significant impacts of the Superferry, and that proceeding with the commencement of Superferry operations without an update of the Harbor Master Plan, preparation of an Environmental Impact Statement (EIS), and construction of necessary harbor improvements is not in the best interest of the public.

Your Committee agreed to revise the proposed resolution to include the transmittal of a certified copy of the resolution to the PUC.

Your Committee voted to recommend adoption of the revised proposed resolution.

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Your Committee of the Whole RECOMMENDS that Resolution No. _____,
as revised herein and attached hereto, entitled "OPPOSING THE PROPOSED
COMMENCEMENT OF SERVICE OF THE HAWAII SUPERFERRY AT KAHULUI
HARBOR" be ADOPTED.

Adoption of this report is respectfully requested.

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