

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 19, 2008

Committee
Report No.

08-163

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

Chair and Members:

Your Policy Committee, having met on December 2, 2008, makes reference to County Communication No. 08-255, from the Director of Public Works, transmitting a proposed resolution entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY INTERESTS AT LAHAINA, MAUI, HAWAII FOR LAHAINA WATERSHED FLOOD CONTROL PROJECT".

The purpose of the proposed resolution is to authorize proceedings in eminent domain to acquire approximately 20.572 acres, 2.311 acres, and 9.919 acres located in Lahaina, Maui for drainage easement, access easement, and construction easement purposes, respectively (Lahaina Watershed Flood Control Project (Project)). The properties are identified as TMK: (2) 4-7-01:portion of 026, TMK: (2) 4-7-02:portion of 004, TMK: (2) 4-7-02:portion of 012, TMK: (2) 4-7-03:portion of 028, TMK: (2) 4-7-03:portion of 031, TMK: (2) 4-7-03:portion of 032, and TMK: (2) 4-7-03:portion of 033 (subject properties).

Your Committee notes that Chapter 101 and Sections 46-1.5(6), 46-61, and 46-62, Hawaii Revised Statutes (HRS), authorize the counties to exercise the power of condemnation by eminent domain when it is in the public interest to do so.

Your Committee further notes that resolutions authorizing eminent domain proceedings must pass two readings, pursuant to Section 101-13, HRS, by a majority vote of the Council.

At its meeting, your Committee met with the Director of Public Works; the Chief, Engineering Division, Department of Public Works; the Land Agent, Engineering Division, Department of Public Works; a Deputy Corporation Counsel; Ranae Ganske-Cerizo, District Conservationist, Natural Resources Conservation Service, United States Department of Agriculture (NRCS); and Elskin Allan, Civil Engineer, NRCS, United States Department of Agriculture.

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Your Committee received public testimony from two individuals in support of the proposed resolution, eight individuals in opposition to the proposed resolution, and one individual who provided comments.

The two individuals who testified in support of the proposed resolution noted that Federal funds will be lost for the Project if the subject properties are not acquired. One of the individuals submitted copies of three color photographs of a previous flood occurrence in areas surrounding the Project; and written testimony dated December 1, 2008, from Howard Hanzawa, Vice President, Kaanapali Land Management Corp., supporting the proposed resolution.

The eight individuals who testified in opposition to the proposed resolution questioned whether traditional access routes from mauka to makai of the Project area will be maintained. They raised issues regarding title to the subject properties as it relates to compensation for eminent domain and expressed their support for keeping the drainageway along the natural drainage path of Kauaula Stream. One of the individuals also submitted written testimony.

Your Committee noted that the proposed affordable housing project at Wainee Village will not be completed if the Project does not proceed.

The Director of Public Works provided copies of a regional map, a project map, and three easement maps. He explained that the intent of the Project is to reduce the threat of flooding in low-lying areas of Lahaina, makai and north of the Lahaina Aquatic Center, by diverting water from the West Maui mountains within three sub-watershed areas. He explained that it has been 28 years since the Project was first proposed. He noted that the original project design intended to intercept storm waters south of Lahainaluna Road and transport them along a man-made channel to Kauaula Stream. The storm waters would then flow to the ocean through the natural Kauaula Stream outlet. He explained that the increase in storm-water flow would have required improvements to the aging concrete channel which passes through and is owned by the Puamana development.

The Director further explained that when the original project design was made public in the 1980s, the Puamana development owners objected. Due to those objections, the Department redesigned the project. He explained that the new design would divert storm waters from Kauaula Stream to a sediment basin and ocean outlet between Puamana and Launiupoko. He also noted that with the new design, approximately

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20.72 acres of land must be acquired for drainage, access, and construction purposes, in order to construct the diversion channel. He further noted that the appraised fair market value of the subject properties is \$2,360,635. He indicated that since his Department and the property owner were not able to reach an agreement for acquisition, the County must use its power of eminent domain to obtain the property.

The Director also indicated that the Department received approval for all of the necessary permits, and is ready to begin construction once the subject properties are acquired. He explained that if the subject properties are not acquired, approximately \$14 million in Federal funding for the Project may be lost.

The Director explained that construction of the Project is planned to occur in phases. The first phase of the Project will begin with construction of a sediment basin and concrete outlet structure at the terminus of the Project. The construction phases will then take place along the flood diversion system until construction is completed at the inlet basin south of Lahainaluna Road.

Your Committee inquired about the feasibility of returning to the original project design. Your Committee notes that the second outlet, proposed as part of the redesign of the Project, will empty near a popular surf spot. The Director explained that the existing channel at Kauaula Stream does not have enough capacity to manage the cubic-feet-per-second of water for a 100-year storm.

Your Committee expressed concerns about the type of infrastructure needed for the Project, the funding necessary for the various phases of construction, and the time it will take to complete construction.

Your Committee questioned the wisdom of completing the first few phases of the Project if funding may not be available to complete future construction phases. Your Committee asked the Director to provide information on the time and costs involved for each phase of the Project.

Your Committee notes that approximately \$2.2 million is appropriated for the Project in the Fiscal Year 2009 Budget.

Ms. Ganske-Cerizo indicated that approximately \$3.1 million is secured for the first phase of the Project through NRCS. She also stated that another \$3.5 million is

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available for release for the second phase, and that funding will not lapse at the end of this year.

Your Committee requested written assurance from NRCS that Federal funding for the Project will not lapse by the end of this year.

Your Committee voted to recommend referral of the communication to the Council Chair for the term beginning January 2, 2009.

Your Committee is in receipt of correspondence dated December 3, 2008, from Ms. Ganske-Cerizo, confirming that \$3,176,788 is obligated for construction of the first phase of the Project and the funds will not expire. Ms. Ganske-Cerizo noted that NRCS's estimated portion of construction costs is \$14 million; however, no NRCS moneys are currently appropriated for future phases.

Your Policy Committee **RECOMMENDS** that County Communication No. 08-255 be **REFERRED** to the Council Chair for the term beginning January 2, 2009.

Adoption of this report is respectfully requested.

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