

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005

**Committee**

**Report No.**

05-146

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

Chair and Members:

Your Land Use Committee, having met on September 14, 2005 and October 5, 2005, makes reference to County Communication No. 05-265, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING AMERON INTERNATIONAL CORPORATION, dba AMERON HAWAII A CONDITIONAL PERMIT FOR THE RELOCATION OF THE EXISTING CONCRETE BATCHING PLANT WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Munekiyo & Hiraga, Inc., on behalf of Ameron International Corporation, dba Ameron Hawaii, for a one-year Conditional Permit for the operation of a concrete batching plant on approximately 2.002 acres within the County Agricultural District at Kihei, Maui (TMK: (2) 3-8-04:002 (por.)).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on June 28, 2005.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the 16-page document (with accompanying exhibits) entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 28 2005 MEETING", and the conclusions and recommendation presented in the 6-page document, also entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 28 2005 MEETING", voted to recommend approval of the application on June 28, 2005.

Your Committee notes that Ordinance No. 3308 (effective August 5, 2005), amended Ordinance No. 2794 by extending the Conditional Permit to allow for the continued operation by Ameron Hawaii of a concrete batching plant at its existing site, consisting of approximately 2.02 acres in Kihei, Maui (TMK: (2)-3-8-04:023). Your Committee further notes that when it considered the Conditional Permit time extension for TMK: (2)-3-8-04:023, your Committee was apprised of the imminent relocation of the plant due to the State Department of Transportation's (State DOT) highway-widening project. Your Committee also notes that Ordinance No. 3308 extended the Conditional

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005  
Page 2

**Committee**  
**Report No.**      05-146

Permit for the plant at TMK: (2)-3-8-04:023 for a period of three years, or until the issuance of a “new Conditional Permit ordinance for the new location”.

By correspondence dated September 8, 2005, the Vice-Chair of your Committee requested that the Department of the Corporation Counsel consider (1) clarifying the reference in the proposed bill to the relocation of the existing concrete batching plant; and (2) whether the name of the permittee should be changed based on information from the Department of Commerce and Consumer Affairs’ website reflecting that the temporary name “Ameron International Corporation dba Ameron Hawaii” had expired.

By correspondence dated September 8, 2005, the Planning Director transmitted a copy of pages 42-52 of the minutes of the Maui Planning Commission’s June 28, 2005 meeting.

By correspondence dated September 12, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled “A BILL FOR AN ORDINANCE GRANTING AMERON HAWAII A CONDITIONAL PERMIT FOR THE OPERATION OF A CONCRETE BATCHING PLANT WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII”. The revised proposed bill deletes the reference to the relocation of an unspecified existing concrete batching plant and changes the name of the permittee to “Ameron Hawaii”.

By correspondence dated September 13, 2005 to the Department of the Corporation Counsel, the Vice-Chair of your Committee noted the apparent expiration of the Conditional Permit granted by Ordinance No. 3308 upon the effective date of a Conditional Permit for the new location. The Vice-Chair requested that the Department revise the proposed bill to allow the applicant to continue to operate at its existing location until the new plant is operational.

By correspondence dated September 13, 2005, Ferdinand Cajigal, District Engineer, Maui District, Highways Division, State DOT, provided written testimony in support of the application, noting that the relocation of the plant is being requested because the existing site would soon be rendered unusable due to the State DOT’s Mokulele Highway Widening Project. Mr. Cajigal further described the phasing of the State DOT’s project, indicating that the waterline portion of the work is anticipated to begin by the end of 2005.

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005  
Page 3

**Committee**  
**Report No.**      05-146

At its meeting of September 14, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Michael Munekiyo, Munekiyo & Hiraga, Inc. (applicant's consultant); Matt Slepín, Land Use Planner, Munekiyo & Hiraga, Inc.; and Eric Yoshizawa, Vice President of Operations, Ameron Hawaii.

There was no public testimony.

The Planner provided an overview of the application, the land use designations for the property, and the Maui Planning Commission's recommendation that the application be approved with six conditions.

Your Committee discussed mitigation measures to ensure that infiltration and run-off from batching plant operations are minimized. The Planner noted that the applicant will be subject to certain project specific conditions, including a requirement to submit a final drainage plan, grading plan, and best management plan.

Mr. Munekiyo provided your Committee with an enlarged version of the Kihei Batch Plant Relocation site plan. He noted that the access road from the new plant site to the realigned Mokulele Highway would be constructed when the relocation is completed. The applicant has been coordinating the scheduling of this phase of the Mokulele Highway Widening Project with the State DOT. The installation of a new waterline traversing the existing plant site will trigger the relocation of the plant.

Mr. Munekiyo further informed your Committee that there will be an on-site storage basin to manage run-off. He also noted that the intersection of Mokulele Highway and North Kihei Road will be signalized. The access road from the relocated batch plant will be controlled at that signalized intersection. According to Mr. Munekiyo, although both Ameron Hawaii and Monsanto will use the access road, the use should not result in high volumes of traffic.

Your Committee discussed the fact that the Conditional Permit granted by Ordinance No. 3308 would immediately terminate upon the approval of a new Conditional Permit. The expiration of the Conditional Permit granted by Ordinance No. 3308 would not allow the existing concrete batching plant to continue to operate while the necessary building permit is obtained and other steps are pursued to relocate the plant. The Deputy Corporation Counsel opined that appropriately curing this problem

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005  
Page 4

**Committee**  
**Report No.**      05-146

would require an amendment to Ordinance No. 3308, and that a conservative approach would be to notice on a subsequent meeting agenda a revised proposed bill to allow Ameron Hawaii to continue to operate at its existing site until the new plant is operable.

Your Committee requested that the Department of Planning provide (1) a copy of the approval letter for the State Land Use Commission Special Use Permit; and (2) a copy of the remaining portion of the minutes of the Maui Planning Commission's June 28, 2005 meeting that relate to this application.

Your Committee deferred consideration of this matter pending further discussion.

By correspondence dated September 21, 2005, the Department of the Corporation Counsel transmitted a further revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2794 (1999), AS AMENDED, AND GRANTING AMERON HAWAII A CONDITIONAL PERMIT FOR THE OPERATION OF A CONCRETE BATCHING PLANT WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII". The purpose of the further revised proposed bill is to grant Ameron Hawaii a one-year Conditional Permit for the operation of a concrete batching plant on approximately 2.002 acres within the County Agricultural District at Kihei, Maui (TMK: (2) 3-8-04:002 (por.)), and to also amend Ordinance No. 2794, as amended by Ordinance No. 3308, to allow an existing concrete batching plant located on approximately 2.02 acres in Kihei, Maui (TMK: (2) 3-8-04:023) to continue to operate until the new plant is operable.

By correspondence dated September 22, 2005, the Planning Director transmitted (1) a July 5, 2005, State Land Use Commission Special Use Permit approval letter from the Planning Director to Munekiyo & Hiraga, Inc.; and (2) page one of the minutes of the Maui Planning Commission's June 28, 2005 meeting.

At its meeting of October 5, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Charlene Shibuya, Assistant District Engineer/Construction Engineer, Maui District, Highways Division, State DOT; Michael Munekiyo, Munekiyo & Hiraga, Inc.; and Eric Yoshizawa, Vice President of Operations, Ameron Hawaii.

There was no public testimony.

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005  
Page 5

**Committee**  
**Report No.**      05-146

Mr. Munekiyo gave an overview of the status of the application and the reason for the proposed relocation of the site. He noted that a concern was expressed at the September 14, 2005 meeting that the time extension for the plant's current site may be jeopardized once the new Conditional Permit is adopted. The revised proposed bill would allow Ameron Hawaii a smooth working transition from its existing site to the new, relocated site.

The Planner informed your Committee of the documents transmitted by the Department of Planning since the last meeting, in response to your Committee's request for additional information. She noted that, although a reference had been made by a Commissioner at the Maui Planning Commission's June 28, 2005 meeting, to earlier public testimony relating to dust, a review of the minutes revealed that there was no further public testimony on this item.

Ms. Shibuya informed your Committee that access, which will be fully signalized, will be significantly improved at the new site. She stated that the design of the highway-widening project should not require Ameron Hawaii to again relocate in the future. She briefly described the status of the State DOT project.

Mr. Munekiyo provided a historical overview of the location of the concrete batching plant. He informed your Committee that the original permit had been granted in 1979. When Piilani Highway was constructed, the original plant site needed to be relocated to the current plant site. He also noted that Ameron Hawaii's current intent is to operate at the new site on a permanent basis.

Your Committee discussed the duration of the proposed Conditional Permit, and proposed that the Conditional Permit be granted for five years instead of one.

Your Committee voted to recommend passage of the revised proposed bill, as further revised to change the duration of the Conditional Permit from one year to five years, and filing of the communication.

Your Committee is in receipt of the further revised proposed bill from the Department of the Corporation Counsel incorporating your Committee's requested revisions.

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 21, 2005  
Page 6

**Committee**  
**Report No.**     05-146

Your Land Use Committee RECOMMENDS the following:

1.     That Bill No. \_\_\_\_\_ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2794 (1999), AS AMENDED, AND GRANTING AMERON HAWAII A CONDITIONAL PERMIT FOR THE OPERATION OF A CONCRETE BATCHING PLANT WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
  
2.     That County Communication No. 05-265 be FILED.

Adoption of this report is respectfully requested.

COUNCIL OF THE COUNTY OF MAUI  
**LAND USE COMMITTEE**

October 21, 2005  
Page 7

Committee  
Report No. 05-146

  
\_\_\_\_\_  
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

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2005)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2794 (1999), AS AMENDED, AND GRANTING AMERON HAWAII A CONDITIONAL PERMIT FOR THE OPERATION OF A CONCRETE BATCHING PLANT WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, Ordinance No. 2794 (1999), as amended by Ordinance No. 3308 (2005), granting a Conditional Permit to Ameron Hawaii for the operation of a concrete batching plant located at TMK: (2)3-8-004:023, is amended by amending Section 2 to read as follows:

"SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered;
2. That the Conditional Permit shall [be valid for a period of] expire the earlier of three (3) years from the effective date of [this ordinance,] Ordinance No. 3308 (2005), or [until the issuance of the new Conditional Permit ordinance for the new location;] the date on which the concrete batching plant located on the site identified for real property tax purposes by Tax Map Key Number: (2)3-8-004:002 (por.) is operable; provided that, an extension of this Conditional Permit [beyond this three year period] may be granted pursuant to Section 19.40.090, [of the] Maui County Code;
3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance;
4. That Ameron Hawaii, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to



all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming County of Maui as a named additional insured, insuring and defending Ameron Hawaii and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this Conditional Permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Ameron Hawaii of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance;

5. That full compliance with the conditions of the Land Use Commission Special Use Permit shall be rendered; and
6. That the applicant shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui County Code."

SECTION 2. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 3 of this ordinance, a Conditional Permit is hereby granted to Ameron Hawaii, for the operation of a concrete batching plant within the County Agricultural District. The site is identified for real property

tax purposes by Tax Map Key Number: (2)3-8-004:002 (por.), comprising approximately 2.002 acres of land situated at Kihei, Maui, Hawaii.

SECTION 3. The granting of the Conditional Permit described in Section 2 of this ordinance is subject to the following conditions:

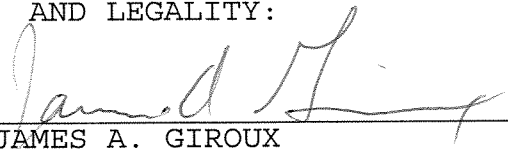
1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable unless the Council approves transfer by ordinance.
4. That Ameron Hawaii, its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as a named additional insured, insuring and defending Ameron Hawaii and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional Permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Ameron Hawaii of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

5. That Ameron Hawaii shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That full compliance with the conditions of Land Use Commission Permit (SUP2 2005/0001) shall be rendered.

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



---

JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

S:\CLERICAL\LJN\ORD\CP\Amend3308Ameron.wpd