

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 18, 2005

Committee
Report No.

05-160

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

Chair and Members:

Your Land Use Committee, having met on October 19, 2005, makes reference to County Communication No. 05-313, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA" (District Boundary Amendment bill).

The purpose of the proposed bill is to grant a request from the State Department of Transportation (DOT) for a District Boundary Amendment from State Agricultural District to State Urban District for approximately 8.448 acres (TMK: (2) 3-8-01:019 (por.), (2) 3-8-01:134 (por.), and (2) 3-8-79:021 (por.)) for a general purpose aircraft apron adjacent to a cargo building and alien species inspection building, to accommodate multiple aircraft, public parking, and a loading area at the Kahului Airport, Kahului, Maui.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO AIRPORT FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA".

The purpose of the proposed bill is to grant a request from the DOT for a Community Plan Amendment from Agriculture to Airport for approximately 0.507 acres (TMK: (2) 3-8-01:019 (por.) and (2) 3-8-79:021 (por.)) for the project.

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3. A proposed bill entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL AND INTERIM DISTRICTS TO AIRPORT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”.

The purpose of the proposed bill is to grant a request from the DOT for a Conditional Change in Zoning from County Agricultural District and Interim District to Airport District for approximately 8.448 acres (TMK: (2) 3-8-01:019 (por.), (2) 3-8-01:134 (por.), and (2) 3-8-79:021 (por.)) for the project.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on July 26, 2005.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled “MAUI PLANNING DEPARTMENT’S REPORT TO THE MAUI PLANNING COMMISSION JULY 26, 2005 MEETING”, and the conclusions and recommendation presented in the document entitled “MAUI PLANNING DEPARTMENT’S RECOMMENDATIONS REPORT TO THE MAUI PLANNING COMMISSION JULY 26, 2005 MEETING”, voted to recommend approval of the application on July 26, 2005, subject to the following zoning condition:

- “1. That the applicant shall not be exempted from paying fee, impact assessments, for the construction of on and off site improvements.”

By correspondence dated October 11, 2005, the Chair of your Committee requested that Brian Sekiguchi, Deputy Director, Airports Division, DOT, provide the following: (1) a copy of the Final Environmental Impact Statement (EIS) that includes the project, along with a statement (and accompanying excerpts) of those portions of the EIS that relate specifically to the apron/cargo building; (2) a copy of the settlement agreement between the DOT and the Kahului Airport Coalition; (3) a map or site plan showing the subject Tax Map Keys in relation to the project site; and (4) a copy of the PowerPoint presentation and maps relating to the proposed land use changes that have been prepared for this project.

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By correspondence dated October 11, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel make technical revisions to the proposed Community Plan Amendment bill, including a change to reflect that the amendment is authorized under Chapter 2.80B of the Maui County Code, rather than Section 8-8.6 of the Revised Charter of the County of Maui (1983), as amended. The Chair also requested that technical and nonsubstantive revisions be made to the proposed Change in Zoning bill. The revised Condition of Zoning provides as follows:

- “1. That the State of Hawaii shall not be exempt from paying fees or impact assessments for the construction of on-site or off-site improvements.”

By correspondence dated October 12, 2005, the Department of the Corporation Counsel transmitted the following:

1. A revised proposed bill entitled “A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO AIRPORT FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”; and
2. A revised proposed bill entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL AND INTERIM DISTRICTS TO AIRPORT DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”.

The revised proposed bills incorporate the requested revisions.

By correspondence dated October 12, 2005, Brian Sekiguchi, Deputy Director, Airports Division, DOT, transmitted explanatory comments and the following documents: (1) a complete set of the Kahului Airport EIS dated September 1997; (2) selected portions of the EIS relating specifically to the “cargo facility”; and (3) a copy of the settlement agreement dated January 28, 2005, between the DOT and the Kahului Airport Coalition.

By correspondence received on October 18, 2005, Sandra Lee Kunimoto, Chairperson, Board of Agriculture, State of Hawaii; Dean Okimoto, President, Hawaii Farm Bureau Federation; Warren Watanabe, President, Maui County Farm Bureau; and

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Hawaiian Commercial & Sugar Company each submitted testimony in support of the application, citing the need for the alien species inspection facility to protect the future of Maui's agriculture and environment, and to prevent the further introduction of harmful pests. Mr. Watanabe also noted that the shaded cargo building would aid in compliance with new food safety requirements that are anticipated for the transportation sector.

By correspondence dated October 18, 2005, Gregg Nelson, General Manager, Napili Kai Beach Resort, submitted testimony in support of the application, stating that the improvements to the Kahului Airport are vital to protect the environment, reducing traffic delays, and enhancing airport operations.

By correspondence dated October 19, 2005, Paul Koehler, President, Hawaii Crop Improvement Association, submitted testimony in support of the application, stating that the facility would help to protect and benefit Maui's agricultural producers and other areas of the island's economy which rely on Maui's scenic beauty and pastoral landscapes.

By correspondence dated October 19, 2005, the Chair of your Committee transmitted correspondence dated August 29, 2005 from Clyde Namu`o, Administrator, State Office of Hawaiian Affairs (OHA), confirming that the subject property does not include ceded lands.

At its meeting, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Fire Captain, Department of Fire and Public Safety; two Deputy Corporation Counsel; Brian Sekiguchi, Deputy Director, Airports Division, DOT; Steve Takashima, Head Planner, Airports Division, DOT; Gene Matsushige, Project Engineer, Airports Division, DOT; Lyle Wong, Administrator, Plant Industry Division, State Department of Agriculture (DOA); and Michael Munekiyo, Munekiyo & Hiraga, Inc., the applicant's consultant.

Your Committee received public testimony from 11 individuals, all of whom testified in support of the application, uniformly emphasizing the need for the alien species inspection facility. A testifier noted that the general purpose apron is an imperative part of the overall project, and would essentially provide a parking lot for aircraft that is adjacent to the inspection facility and cargo building. Another testifier noted that chances of detecting alien species right now are not high, and that effectively controlling alien species after they are established is nearly impossible and very

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expensive. Testifiers included representatives of the hotel and tourism industries, the State Office of Tourism, the Friends of Haleakala National Park, the Office of the Mayor, and the Maui Chamber of Commerce, as well as two members of the alien species action team and an independent orchid grower.

Five of the testifiers voiced strong concerns that the alien species inspection facility be adequately staffed by skilled inspectors and trained dogs. A testifier informed your Committee that a risk assessment prepared three years ago calls for 14 inspectors and 3 dogs. Some of the testifiers noted that including an inspection facility in the project had not been the State's idea, but was a direct result of public advocacy; that a building alone is insufficient to prevent the further introduction of alien species; and that currently, funded inspector positions remain unfilled.

Your Committee questioned whether the alien species inspection facility should not be opened if the State did not have its facility fully staffed. A testifier responded that the facility should not be kept closed. However, another testifier noted that the requested approvals should be provisioned upon staffing.

Your Committee received 15 pieces of written testimony at the meeting, all in support of the application.

Mr. Munekiyo provided your Committee with a computer-generated overview of the project, along with a printout of the presentation. The presentation included an aerial photograph of the project site; a summary of the land use approvals required for the general purpose apron; and site maps depicting the boundaries of the property subject to the proposed Community Plan Amendment, and the property subject to the proposed District Boundary Amendment and Change in Zoning. Mr. Munekiyo explained that a portion of the Old Haleakala Highway will need to be realigned to accommodate the construction of the general purpose apron.

The Administrative Planning Officer gave a brief overview of the land use approvals being sought.

Your Committee received the following documents from a Committee member: (1) a Memorandum of Understanding regarding the Prevention of Alien Species Introduction through the Kahului Airport among the U.S. Department of Transportation, the U.S. Department of the Interior, the U.S. Department of Agriculture, the Hawaii Department of Transportation, the Hawaii Department of Agriculture, the Hawaii

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Department of Land and Natural Resources, and the Hawaii Department of Health, executed in August 1998; (2) a Kahului Airport Pest Risk Assessment prepared by the Plant Quarantine Branch, Hawaii Department of Agriculture, dated November 2002 (Pest Risk Assessment); and (3) a proposed condition relating to alien species control. The proposed condition reads as follows: "No further expansion of airport capacity will be initiated until the alien species protection program is fully staffed with 19 inspectors and 4 dogs."

Mr. Sekiguchi noted that airport flights fluctuate with seasonal activity. Currently, the average is 21 flights a day. That number will increase over the holidays.

Mr. Sekiguchi further noted that the Kahului Airport is a public airport, is Federally funded, and is subject to a number of grant assurances and grant agreements with the Federal government. Accordingly, a number of restrictions apply, and neither access nor capacity can be limited. If access is limited, funding is not only jeopardized for Maui, but is jeopardized for all 15 airports statewide. He also noted that there is currently no runway extension project in the Capital Improvement Program. Mr. Sekiguchi confirmed that the DOT has funded the 9 additional positions to bring the total number of inspectors at Kahului Airport up to 14, in accordance with the Settlement Agreement.

Dr. Wong informed your Committee that, due to problems in filling temporary civil service positions, the DOA went to the State Legislature and requested that the temporary positions be made permanent DOA positions, funded by the DOT. He explained that 14 inspectors rather than 19 were considered, in part, because it did not make sense to have more inspectors on the Island of Maui than on the Island of Oahu. He also provided background information on the Pest Risk Assessment, and noted that it is critical to solve quarantine problems statewide.

Dr. Wong explained that the DOA has 16 plant quarantine positions on Maui, and that 14 of those are available to meet the requirements under the Alien Species Action Plan. Six of those slots have not been filled because qualified candidates have not been found. He stated that the DOA will make every effort to fill all the positions as quickly as possible, and that he has no doubt the staffing will be in place when the doors of the inspection facility open. He advised your Committee of the status of securing detector dogs.

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Dr. Wong further explained that the DOA's role is to inspect cargo, passengers, and airplanes coming in from domestic points of departure. The DOA is not involved with international flights, which are handled by Customs and Border Protection, Department of Homeland Security. He also confirmed that the Settlement Agreement calls for future pest risk assessments, which may impact the number of inspectors and dogs required.

Dr. Wong informed your Committee of the challenges faced by the DOA in trying to fill the inspector positions, and of additional steps being taken to try to fill the positions. He also described efforts being undertaken to meet the terms of the Settlement Agreement.

Mr. Munekiyo advised your Committee that, as a follow-up to the Maui Planning Commission meeting, the DOT had requested confirmation from OHA that the subject property did not involve ceded lands. A copy of that written confirmation was distributed to your Committee by its Chair on October 19, 2005. He also confirmed that a drainage plan is in place for all areas of the project where increased runoff will be generated.

Your Committee briefly discussed the disposal of hazardous material and invasive species that may be found, as well as the status of wastewater capacity to accommodate the project.

Your Committee considered a possible amendment to the revised proposed Change in Zoning bill to add a condition that would read: "No further expansion of airport capacity will be initiated until the alien species protection program is fully staffed with 14 inspectors and 4 dogs." A Committee member noted that the condition is intended to address an increase in airport arrivals and to assure the County that it will not need to spend more money to eradicate more alien species that may invade the islands due to a lack of inspectors.

Your Committee considered revisions to the proposed amendment to reduce the number of dogs to 3 and to try to clarify the phrase "expansion of airport capacity". The proposed condition was revised as follows: "No further increase in airport arrivals will be allowed until the alien species protection program is fully staffed with 14 inspectors and 3 dogs."

Your Committee noted that it may be difficult to enforce such a condition.

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A Deputy Corporation Counsel requested additional time to provide an analysis of the proposed condition.

Your Committee requested the applicant's comments on the proposed staffing condition. Mr. Munekiyo noted that conditions are generally framed to mitigate the impacts of the request, and that he was unsure whether this condition falls within that framework. Mr. Sekiguchi informed your Committee that the project consists of approximately \$19 million in Federal funding. If the proposed condition were incorporated, Mr. Sekiguchi advised that he felt certain that the Federal Aviation Administration (FAA) would want the project cancelled. As a public airport, such restrictions are not permitted. Funding for the project will lapse in September 2006. According to Mr. Sekiguchi, any condition that would limit capacity, arrivals, or expansion would kill the project. Your Committee requested that the DOT provide written confirmation of the FAA's position.

Mr. Sekiguchi advised your Committee that the construction project has been awarded, but that the project is on hold until the subject land use approvals are received.

Mr. Sekiguchi informed your Committee that a call had been placed to the FAA during the meeting. He stated that, after checking with the FAA, such a condition would not only jeopardize funding for this project, but for the entire program, which would amount to \$50 million to \$60 million per year.

The proposed amendment to incorporate a staffing condition failed. Your Committee noted merit in the concerns expressed regarding staffing of the alien species inspection facility. However, your Committee also noted that care needs to be taken to avoid creating unintended consequences through such a condition.

Your Committee voted to recommend that the proposed District Boundary Amendment bill, the revised proposed Community Plan Amendment bill, and the revised Change in Zoning bill be passed; that the unilateral agreement be recorded; and that the communication be filed.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" executed by the State of Hawaii.

Your Land Use Committee **RECOMMENDS** the following:

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1. That Bill No. _____ (2005), attached hereto, entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”, be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That Bill No. _____ (2005), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO AIRPORT FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”, be PASSED ON FIRST READING and be ORDERED TO PRINT;

3. That Bill No. _____ (2005), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL AND INTERIM DISTRICTS TO AIRPORT DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KAHULUI, MAUI, HAWAII FOR THE KAHULUI AIRPORT AREA”, be PASSED ON FIRST READING and be ORDERED TO PRINT;

4. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”; and

5. That County Communication No. 05-313 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**