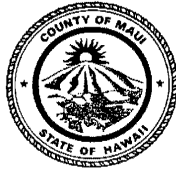


ALAN M. ARAKAWA  
Mayor




BRIAN T. MOTO  
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May 17, 2006

MEMO TO: Charmaine Tavares, Chair  
Planning Committee

F R O M:  James A. Giroux, Deputy Corporation Counsel

SUBJECT: **KIHEI-MAKENA AND WEST MAUI TRANSPORTATION PLANNING  
MODELS: TRAFFIC IMPACT FEES (PC-15)**

This memorandum is in response to your August 18, 2005 request, in which you included an attached letter dated September 15, 2004, from Michael W. Foley to Wayne K. Nishiki, the former Chair of the Planning and Land Use Committee, regarding the "Final Report, Traffic Impact Fee Program for West Maui and South Maui" prepared by Kaku Associates, Inc., and dated March 2003 ("Kaku Report"). In his letter, Mr. Foley cited the following concerns:

1. Roads under county jurisdiction were not considered;
2. Costs to purchase land right-of-way were not included; and
3. Portions of the study were done for the entire island, but the Traffic Impact Fee analysis was only done for South and West Maui. That portion accounts for less than 17% of the total cost of all needed improvements.

Question posed.

You ask the following question: Notwithstanding the concerns, may Council proceed to enact traffic impact fees for South and West [Maui] based on the Kaku Report?

Short Answer:

No, the Kaku Report does not meet the minimum requirements of Chapters 14.62 and 14.68, Maui County Code ("MCC"), pertaining to traffic impact fees for West Maui and for Kihei and Makena, respectively.

Charmaine Tavares, Chair  
Planning Committee  
May 17, 2006  
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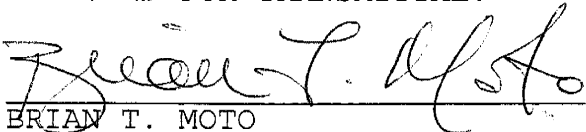
In a memorandum dated May 8, 2003 to Brian Miskae, the then Planning Program Administrator, the Department of the Corporation Counsel opined that the draft Kaku Report is deficient with regard to various requirements of Chapters 14.62 and 14.68, MCC. (See opinion dated May 8, 2003, attached hereto as "Exhibit A".)

Among the comments made in the May 8, 2003 memorandum were the following:

1. The report does not identify the areas where existing zoning is not in conformity with the applicable community plans.
2. It does not appear that the Kaku Report presents a comprehensive roadway master plan.
3. The Kaku Report does not list all of the local and collector roads, including rights of way.
4. The Kaku Report does not contain a description of all new intersection improvements, including left turn storage turns, right turn lanes, and traffic signal systems.
5. The listing of traffic impact fee rates in the Kaku Report does not match the format specified in Sections 14.62.070 and 14.68.070, MCC.

The Kaku Report does not comply with all of the requirements set forth in Chapters 14.62 and 14.68, MCC. However, we have been informed by a Department of Planning representative that Kaku Associates is working on a supplement or revision of its Report. As of this date, that supplement or revision has not yet been completed. We recommend that the Department of Planning be consulted to ascertain the status and scope of the pending Kaku Report update.

APPROVED FOR TRANSMITTAL:



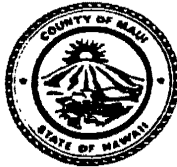
BRIAN T. MOTO  
Corporation Counsel

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Enclosure (Exhibit "A")

cc: Michael Foley, Planning Director  
Wayne Boteilho, Deputy Planning Director  
John Summers, Long Range Planning Division  
Michele White, Legal Assistant

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Mayor



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May 8, 2003

MEMO TO: Brian Miskae, Planning Program Administrator  
F R O M: Blaine J. Kobayashi, Deputy Corporation Counsel  
SUBJECT: **TRAFFIC IMPACT FEE PROGRAM FOR WEST AND SOUTH MAUI**

The following comments are offered with respect to your legal request to determine whether the draft "Final Report - Traffic Impact Fee Program for West Maui and South Maui" (hereafter "Report") prepared by Kaku Associates, Inc. meets the minimum requirements set forth in Chapter 14.62 of the Maui County Code ("Code").<sup>1</sup>

Section 14.62.050 of the Code states that, "[t]he west Maui transportation plan<sup>2</sup> shall be comprised of the following parts: (1) Transportation Planning Model, (2) Base Year Road Network System, and (3) Roadway Master Plan for West Maui."<sup>3</sup>

Pursuant to sections 14.62.050 and 14.68.050 of the Code, the Transportation Planning Model for West Maui and South Maui (Kihei-Makena) must contain certain specified elements. A listing of those elements may be helpful in determining whether the Report meets the minimum requirements of the chapter.

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<sup>1</sup>It should be noted that some of the items required by Chapter 14.62 requires input and analysis from an engineer; therefore, we offer no opinions on such items.

<sup>2</sup>Section 14.68.050 of the Code lays out virtually identical requirements for the Kihei-Makena (South Maui) transportation plan.

<sup>3</sup>It should also be noted that it is unknown whether the Report is intended to cover all, or some, of the required components of the West Maui transportation plan.

EXHIBIT " A "

Brian Miskae  
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1. Fair and equitable method of sharing growth-related costs of roadway improvements.

COMMENT: The Report does contain a method for sharing growth-related costs of roadway improvements. The Report utilizes the "fair share technique" to estimate the traffic impact fee for new development projected for West Maui and South Maui. See pgs. 71-72. This office, however, does not have the necessary expertise to determine whether the Report's proposed method is indeed "fair and equitable."

2. Form the basis for a roadway master plan.

COMMENT: Generally, the Report contains data which can be used to form the basis for a roadway master plan.

3. Baseline data to assess the quality of traffic operations on the existing road network.

COMMENT: Generally, the Report does contain baseline data to assess the quality of traffic operations on the existing major highways and roadways for West and South Maui. (The Report also includes information on major highways and roadways located in other community plan regions.)

a. Roadway geometrics.

COMMENT: It is unknown what "roadway geometrics" means. Therefore, I cannot determine whether the Report contains this element.

b. Intersection geometrics.

COMMENT: See comment to subsection (a) above.

c. Number of vehicular travel lanes.

COMMENT: Yes. See pgs. 16-20.

d. Traffic volumes.

COMMENT: Yes. See pgs. 20-25.

e. Travel times.

COMMENT: Yes. See pgs. 20-25 and 31-40.

f. Traffic flow patterns.

Brian Miskae  
May 8, 2003  
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COMMENT: Yes. See pgs. 25-40.

4. Land use data, including the Maui county general plan, Lahaina (and Kihei-Makena) community plan, proposed new developments and amendments to the Maui county general plan and Lahaina (and Kihei-Makena) community plan, and the areas in which the existing zoning is not in conformity with the Lahaina (and Kihei-Makena) community plan.

COMMENT: The Report contains single-paragraph general descriptions of the Lahaina and Kihei-Makena community plans, and includes data pertaining to population, growth, employment, visitor, and land use inventory. See pgs. 3-12. The Report does not identify the areas where existing zoning is not in conformity with the applicable community plans.

5. Trip generation computation based on the number of vehicular trips generated by types of land uses and land developments based on standards adopted by the institute of transportation engineers, as may be adjusted for local conditions.

COMMENT: Our office has no expertise regarding standards adopted by the institute of transportation engineers, as may be adjusted for local conditions. As such, I am unable to comment on this element.

6. Trip distribution which breaks region into definable traffic zones for purposes of determining the number of trips distributed among the various zones.

COMMENT: As used in chapters 14.62 and 14.68 of the Code, "region" means the West Maui and Kihei-Makena community plan regions, respectively.<sup>4</sup> Therefore, the "traffic zones" referenced in the ordinances are zones within each community plan region. The Report divides the entire island of Maui into "Traffic Analysis Zones," certain of which are within the West Maui and South Maui regions. See Figure 10; Table 13.

7. Trip assignment or the assignment of trips for various zones on the specific roadways or routes.

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<sup>4</sup>Section 14.62.020 of the Code defines "West Maui region" as "the geographical area defined in the Lahaina community plan." Section 14.68.020 of the Code defines "Kihei-Makena region" as "the geographical area defined in the Kihei-Makena community plan."

Brian Miskae  
May 8, 2003  
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COMMENT: The Report appears to have accomplished this element.  
See pgs. 31-52.

8. Road network system to satisfactorily accommodate the traffic demand for the base year at a quality of operation of level of service "D" as defined in Highway Capacity Manual, Special Report 209, 1985, prepared by the Transportation Research Board, National Research Council, Washington D.C.

COMMENT: The Report contains a summary of the existing peak hour traffic volumes and corresponding levels of service along the major highways on the island (see pgs. 25-30), a "County of Maui Travel Demand Forecasting Model" (pgs. 46-52), an "Analysis of Future Conditions" (including an "Identification of Deficiency Locations") (pgs. 53-63), and a discussion of "Proposed Improvements" for the island of Maui that are directed at the goal of achieving a level of service "D" throughout the island (pgs. 64-70). It appears that, collectively, this material describes a "road network system" as referenced in the ordinances. Because the technical jargon used in the Report differs somewhat from the terms and phrases in the ordinances, a precise comparison of the Report and the ordinances requires the assistance of a traffic consultant.

9. Roadway master plan for west and south Maui, which includes:

COMMENT: While it is unknown by this office as to what exactly constitutes a "roadway master plan," it does not appear that the Report presents a comprehensive roadway master plan.

a. All existing arterial highways, streets, local roads and collector roads, including rights of way.

COMMENT: While the Report lists major highways and streets, it does not list all of the local and collector roads, including rights of way.

b. Description of all new roadway rights of way widths and number of travel lanes.

COMMENT: The Report appears to list this. See pg. 65.

c. Description of all new intersection improvements, including left turn storage turns, right turn lanes, and traffic signal systems.

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COMMENT: The Report does not contain this element.

d. Description of all new roadway facilities.

COMMENT: See comment to subsection (b) above.

10. Impact fees to be based on the following factors

a. Impact of new development. Vehicle trips generated by the new land development activity in excess of the rated capacity of the impacted roadway section(s) according to the transportation planning model and the base year road network system.

COMMENT: The Report appears to contain an analysis of the impact of new development. See pgs. 73-78.

b. Overcapacity. A determination that a particular affected roadway section is at overcapacity shall be made when traffic demands exceeds capacity.

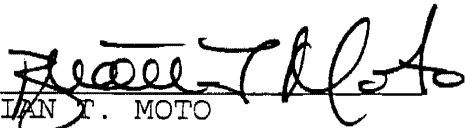
COMMENT: The Report appears to demonstrate this as shown in the levels of service during peak hours. See pgs. 25-30.

c. A schedule for determining traffic impact fees, with fee rates varying from zone to zone according to each zone's cumulative impact on the roadway network.

COMMENT: The Report does not comply with the requirements set forth in Sections 14.62.070 and 14.68.070 of the Code. In particular, the listing of rates in the Report does not match the format specified in Sections 14.62.020 and 14.68.070 of the Code.

If you have any further questions or concerns, please do not hesitate to contact me.

APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

BJK:ln