

# If tourism picks up, any excess will go into state's general fund

By **ILIMA LOOMIS**  
Staff Writer

Legislators have agreed to a plan that would cap Maui County's share of hotel-room tax revenues, as part of an effort to help close the state's budget deficit.

Starting in July, the cap would limit the total amount of transient

accommodations taxes, or TAT, distributed to all four Hawaii counties to no more than \$93 million — a little more than 2010 levels. Officials said they had already budgeted "conservatively" for the county's share of taxes in the coming year, and that the county would not lose any of its expected rev-

enues.

"We look OK," said Maui County Council Budget Chairman Joe Pontanilla.

He noted that the county had tentatively budgeted for about \$17.5 million in TAT revenues — comfortably within the \$21.2 million cap for Maui County.

"We budgeted conservatively for about \$17 million, and we should be getting about that amount," said county Communications Director Rod Antone. "We don't expect the

cap to affect us negatively. Bottom line is, we played it safe."

But while the county may not feel the effects of the cap this year, the county won't b the wealth if reve cials noted.

"We didn't take ty's TAT," said Roz Baker. "But if

## Deal to clear way for Molokai vets to get permitting

Since conception, project's cost has doubled; group doesn't have money

By **CHRIS HAMILTON**  
Staff Writer

WAILUKU — Molokai Veterans Caring for Veterans and county attorneys signed off on an agreement Friday that would give the nonprofit the building permit it has sought for years to finally start construction on its Kaunakakai meeting hall, commander Larry Helm said this weekend.

But with the cost of the project doubling to an estimated \$500,000 in the five years the group has wrangled with the county over its permit, there's still no guarantee when the group will be able to start work, Helm said. He said the group doesn't have that much money.

The group started with a \$250,000 Department of Defense grant to construct the 1,890-square-foot hall and have a 1,100-square-foot pavilion as well as a kitchen, meeting area, museum and space for finance, job and mental health coun-

*'Personally, this has caused a lot of stress.'*

*'It's sad that we've had to go this far for something that's very, very simple.'*

— **Larry Helm**, Molokai Veterans Caring for Veterans commander

selors. Over the years, the group has lost many of the free vendors and volunteer labor that would have kept costs down, and he said a number of veterans have died waiting for the plans to become a reality.

Helm also said the group has had to spend a lot of money on project designs, legal fees and trip after trip to Maui to meet with county officials and attend public meetings on the project.

See VETS on the next page

## AIDING JAPAN WITH



## 'Internet crap' can destroy credibility

By **NANCY BENAC**  
The Associated Press

WASHINGTON — How quaint: Candidate Bill Clinton's big

ginal attacks more seriously and to respond more quickly and forcefully.

"In today's climate, you can be innocent and still go down simply because of the sheer tonnage of neg-

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Weather (W): s-sunny, pc-partly cloudy, c-cloudy, sh-showers, t-thunderstorms, r-rain, sf-snow flurries, sn-snow, l-ice.

## Vets

Continued from Page A1

In addition, with the economy in the dumps in the interim, a lot of people either moved away to find work or lost their businesses, Helm said.

"Personally, this has caused a lot of stress," Helm said Saturday. "It's sad that we've had to go this far for something that's very, very simple."

All that the Molokai veterans group needs to do is sign off on the stipulation sent to it last week and arranged by Mayor Alan Arakawa and his staff, Arakawa said.

Arakawa, who made the vet center one of his campaign issues, said Thursday night that when the group eventually builds its meeting hall, the county will pay to connect the building to a proposed new county fire protection waterline with a new hydrant.

He said an undisclosed amount of money had been set aside to pay for some of the veterans' attorneys' fees as well.

But on Saturday, the veterans' attorney, Susan Suki Halevi, said she only signed off on a stipulation to give them their building permit.

"Anything else, as far as I know, the mayor said is purely speculative," Halevi said.

The County Council has waded into the issue.

In March, the council approved a plan to authorize county attorneys to negotiate settlement of the dispute.

And at the beginning of last month, the council approved changes that would allow the Fire Department — not the De-

partment of Water Supply — to sign off on the fire protection requirements on building permits. A conflict between the two departments on that issue held up the Molokai veterans' permit.

"I believe the (veterans') project is going to move forward," said Council Member Bob Carroll. "The lawsuit is separate now, so it's pau. I can't think of anything that should hold it up."

"We have been bending backwards to resolve an issue that never should have become one," Arakawa said last week.

"We are just waiting for them to agree to a stipulation, and if they agree to sign, this will finally be over," Arakawa said. "They will have the permits to start."

But Helm and Halevi said they didn't think the stipulation they signed on Friday included everything Arakawa was talking about.

Halevi said she wasn't aware of any other concessions granted in the stipulation than the granting of the building permit.

Helm said he hasn't been contacted directly by anyone from the county, because of a separate federal civil rights lawsuit pending against the county and former Mayor Charmaine Tavares.

Helm did express some confidence in Arakawa.

"He made a lot of promises to us, after all," Helm said.

One of the issues that held up the veterans' hall was an internal disagreement about whether the existing 4-inch waterline would provide adequate fire protection for the building.

While the Fire Department said it would, the Department of Water Supply disagreed.

In addition to the legislation passed by the council last month, Arakawa said he has plans in the near future to replace the aging small waterline with an 8-inch pipe.

Also, the state Department of Land and Natural Resources is planning an \$800,000 project to install a 12-inch fire protection waterline near the planned veterans hall on Kaunakakai Place, also known as Wharf Road. The waterline is meant to serve a planned new ferry facility at Kaunakakai Harbor but could also serve the veterans' facility, county officials said.

But Helm said that they don't have up to \$70,000 they estimate it would cost to connect to the state's new line.

"Our deal is there is enough water there, and there always has been," said Helm, who added that a number of newer buildings went up in the area without a hitch in recent years.

"Why are they giving the vets such a hard time?" he said.

Many residents have come out in support of the vets, saying they were puzzled as to why the county wouldn't do all it could to clear the way for the project.

But others, including Tavares, said that one group should not receive preferential treatment over another when it comes to building safety issues.

It's a stance Helm calls ridiculous since they are veterans, and they receive all kinds of individual treatment from the government for their serv-

ice and sacrifices.

Maui County Deputy Corporation Counsel Jane Lovell said she understands what's at stake, and that officials are really "trying to make this work."

She said that the sides are still both talking. And she noted that the stipulation would allow the veterans to use the original permit application they first filed in 2005, saving them a lot of time and money, Lovell said.

Halevi added on Friday that the veterans group has made recent progress in a separate civil rights lawsuit filed last year, which includes allegations that Tavares threatened Helm — something the former mayor strongly denies.

The suit claims that almost a year ago Tavares called Helm at home and told him that if his group continued to protest and criticize her administration, they would never get the permit. The group is seeking unspecified damages and a punitive award.

On Thursday, Hawaii District federal Judge Leslie Kobayashi ruled that the group's First Amendment case against Tavares will continue.

But Kobayashi dismissed many of the other claims against other county officials.

At the same time, though, the judge gave Halevi and her fellow Maui attorney, James Fosbinder, an opportunity to resubmit their suit with amendments to some of the other accusations.

Both Fosbinder and Halevi were ecstatic Friday about the decision to allow the civil rights claims to continue.

See VETS on Page A6

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## tear hanging lives

By **HARRY EAGAR**, Staff Writer

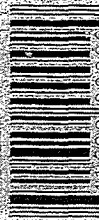
**A** medical mission to remote Nepal by a Maui plastic surgeon and his two teenage children turned into an experience he said "changed their lives."

Dr. Peter Galpin and twins Aki and Kiko were part of a 26-person team that traveled across the world in October and November for the second Aloha Medical Mission to Nepal. The group spent 10 days in the isolated town of Dhankuta.

See **MISSION** on Page A4

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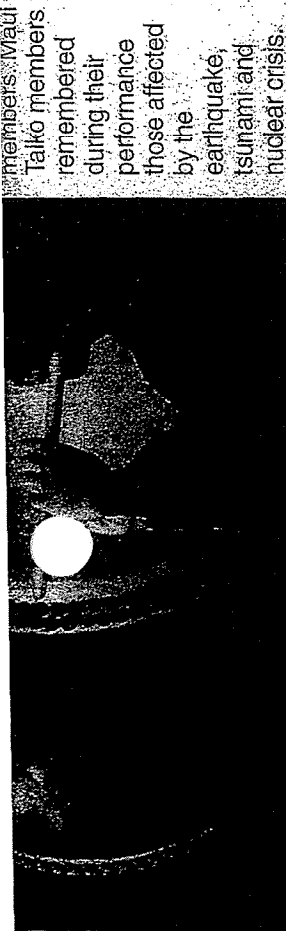
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5/9/11

Jim Smith

Public Testimony



members. Maui Talko members remembered during their performance those affected by the earthquake, tsunami and nuclear crisis.

extremely wearing. It couldn't provide immediate help in the event of a hurricane.

"It's dead. They're going to take as much money from it as possible," predicted Sen. Sam Slom, R-Diamond Head-Hawaii Kai. "We should be worried after the tsunami. We know a hurricane is going to hit us. It's just a question of when, not if."

See **BUDGET** on Page A5

# Project height bill 'slap in the face'

By **MELISSA TANIGUCHI** and **HARRY EAGAR**  
Staff Writers

**WAILUKU** — A bill that would allow certain residential structures to be built higher than the current county code allows has passed first reading by the Maui County Council.

The action earlier this month dismayed some Kahului residents, who have seen firsthand how raising neighborhoods by building them on a mountain of fill can create problems.

Please, Mr. Chairman, do not put us through this again," testified Adrienne Owens, whose home and others on Palama

Current law requires a building's height to be measured from the top of the structure to the original or finish grade of the lot, whichever is lower. The proposed bill would allow building heights to be measured from the finish grade of the lot to the top of the structure.

Street in Kahului suffered damage when work at the Farways at Maui Lani began several years ago on fill that rose as high as 30 feet above the natural grade.

Alan Arakawa, then in his first term as mayor, had signed off on the work on the

basis that a previous ordinance still applied to the Maui Lani project. Since then, the county has revised its ordinance to clarify that the allowable height of homes must be measured from the land's original, rather than finish, grade.

Owens' partner, William Beezley, said the group of Palama Street residents already had taken the Maui Lani developers to court and won. Construction was halted on the project, and a jury awarded some residents compensation for damage.

"It's a slap in the face by the County of Maui," Beezley said.

See **HEIGHTS** on Page A5

Maui News  
3/27/11

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

March 18, 2011

**Committee**  
**Report No.** \_\_\_\_\_

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

Chair and Members:

Your Planning Committee, having met on February 28, 2011, makes reference to County Communication No. 06-104, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS".

The purpose of the proposed bill is to amend the definition of height to establish that building height for structures within projects that have received site-plan approval in association with a Special Management Area permit, Project District Phase II approval, or Planned Development Phase II approval shall be measured from the finish grade of a lot to the top of the structure.

Your Committee notes the following: the Council's Planning Committee (2005-2007 Council term) met on June 5, 2006, June 19, 2006, July 10, 2006, and November 27, 2006; the Council's Planning Committee (2007-2009 Council term) met on November 18, 2008, and December 2, 2008; and the Council's Planning Committee (2009-2011 Council term) met on November 30, 2009.

Your Committee further notes that Section 19.04.040, Maui County Code, currently defines height as the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower.

Your Committee further notes that prior to 1991, building heights were measured from the finished grade of a lot to the top of the structure. Ordinance No. 2031 (1991) amended the definition of height to measure building heights from the natural or the finished grade, whichever is lower, to the top of the structure. However, this definition does not address the appropriate way to measure building height for structures within projects that received certain approvals prior to 1991.

Furthermore, the Maui County Code limits building heights to no more than 30 feet in many zoning districts. This limitation can leave very little room for the addition

5/9/11 Rec'd from Jim Smith Public Testimony

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

March 18, 2011  
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Committee  
Report No. \_\_\_\_\_

of fill material if a structure must be measured from the natural grade. According to the Department of Planning, the current definition of height largely impacts projects that undergo mass grading or grubbing.

By correspondence dated October 29, 2010, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS". The revised proposed bill amends the definition of height to establish that building height for structures within project districts that received Phase II approval prior to September 4, 1991, and Phase III approval prior to March 15, 2004 shall be measured from the finished grade of a lot to the top of the structure.

Your Committee voted to convene an executive meeting for the purposes of consulting with legal counsel, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Your Committee voted to revise the proposed bill to establish that building heights for structures within projects that received Project District Phase II site plan approval, step II planned development approval, or final subdivision approval after September 4, 1991, shall conform to the elevation as indicated on the approved site plan, which may use finish grade to measure height. Building heights for structures within project districts that received Phase II approval prior to September 4, 1991 shall be measured from the finished grade.

Your Committee voted 6-0 to recommend passage of a revised proposed bill on first reading and filing of the communication. Committee Chair Couch, Vice-Chair Baisa, and members Cochran, Mateo, Pontanilla, and Victorino voted "aye". Member White was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Planning Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2011), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE AMENDING SECTION

*Page 2*

COUNCIL OF THE COUNTY OF MAUI  
**PLANNING COMMITTEE**

March 18, 2011  
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Committee  
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19.04.040, MAUI COUNTY CODE, PERTAINING TO GENERAL PROVISIONS AND DEFINITIONS" be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That County Communication No. 06-104 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
DONALD G. COUCH, JR., Chair

pc:cr:11044aa:kcw

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

BILL NO. 12 (2011)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040,  
MAUI COUNTY CODE, PERTAINING TO  
GENERAL PROVISIONS AND DEFINITIONS

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

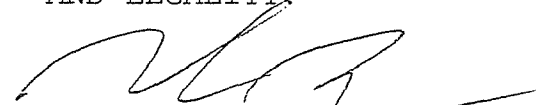
SECTION 1. Section 19.04.040, Maui County Code, pertaining to comprehensive zoning provisions, is amended by amending the definition of "height" to read as follows:

"Height" means the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower. For structures within projects that received site plan approval in association with a project district phase II approval, step II planned development approval, or final subdivision approval after September 4, 1991, building height shall conform to the elevation as indicated on the approved site plan, which may use finish grade to measure height. For structures within project districts that received phase II approval prior to September 4, 1991, finish grade shall be used to determine height."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance shall take effect upon its approval and shall apply retroactively.

APPROVED AS TO FORM  
AND LEGALITY:



MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

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5/09/11

## The Failure of Representative Democracy

### Haleakala Trail Lawsuit

The Deputy Attorney General, William Wynhoff, stated in his reply to this lawsuit: 'with all due respect, plaintiffs do not run the executive branch of the State of Hawaii. Plaintiffs do not have the right, either directly or through this court, to dictate which disputes the state should expend its limited resources on and how disputed issues should be addressed or settled.' We would ask – who has or are they a law unto themselves?

In the Gettysburg address Abraham Lincoln described 'government of the people, by the people, for the people'. Apparently we now have 'government of the government, by the government, for the government'.

The reality is that plaintiffs (Public Access Trails Hawaii – [www.pathmaui.org](http://www.pathmaui.org)), far from trying to dictate to their state government, have been trying to ask it some simple, legitimate questions and, after many years of fruitless effort, have been forced to take legal action as their only viable option. As private citizens they would seem to have every right to question the activities and decisions of the executive branch of the State of Hawaii. Failing to get answers to simple legitimate questions from past governments is a familiar experience for many of us; we had hoped a new administration would begin to take down this bureaucratic wall.

In a Representative Democracy power is derived from the people by means of elected representatives. As plaintiffs are a group of private citizens they would seem to have every right to question the activities and decisions of the executive branch of the State of Hawaii. These are government officials paid by the people to look after their best interests. In other words, the employers are having to sue employees to get any kind of response.

Haleakala Ranch disputes the state's ownership and has denied access to the general public for over 70 years. The state refuses to assert its ownership, despite overwhelming evidence that this is state land and the public has a right use this recreationally and historically important trail. We suggest the Deputy Attorney General would best fulfill his obligation to serve the people by ordering Haleakala Ranch to reopen the trail unless and until they can show it is not state land. It is disappointing to see the Deputy Attorney General defending the wealthy and influential Baldwin family to the detriment of the People he is paid to represent. We believe this iconic family would wish to preserve this historic trail for use by the public, even if it was inconvenient to one of their many commercial activities.

As for the people dictating how the state use its 'limited resources' (the people's money) we can only be thankful they are limited.

The Deputy Attorney General further states: 'but the plaintiffs cannot bring a quiet title claim for two reasons. First, the quiet title statute restricts quiet title actions to persons who own or claim to own property. Second, there is no state waiver of sovereign immunity for a claim 'by a stranger to title'.

The People certainly do claim to be 'persons who own or claim to own property' and are certainly not 'a stranger to title'. The government is an administrative organization, ultimately given power by the People to act on their behalf. The government itself does not own anything, even if it sometimes behaves as if it does.

Peter Dure-Smith MD and Sheila Dure-Smith  
May 9 2011  
Tel: (808) 573 0837 - [psdure@hawaiiantel.net](mailto:psdure@hawaiiantel.net)

provided to members  
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