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I submit this letter on behalf of my client, Maui Tomorrow, Inc.

We strongly oppose operation of Hawaii Superferry during the time it takes to prepare an EA or an EIS. Such operations violate unambiguous Hawaii law. Maui Circuit Court Judge Joseph E. Cardoza correctly found that such operations caused the possibility of irreparable harm to marine mammals and an increased rate of alien species introductions.

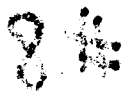
Evidence received during the hearings made it obvious that the Hawaii Superferry project "may" have a significant effect on the environment and, as such, a full EIS is required. Legislative recognition of this inevitability is no real concession to environmentalists.

We urge the Legislature not to pass this unconstitutional special legislation benefiting a single business, depriving us of vested Constitutional rights and violating the separation of powers by overruling a judicial decision.

If the Legislature has already decided (a) to convene a special session and (b) to allow Hawaii Superferry to operate while an EA or EIS is being prepared, it would be irresponsible of us to abandon the protection of the environment to the same administration that has been dedicated for many years to minimizing legitimate concerns about the Superferry project.

We are compelled to recommend conditions of operation to be imposed by the Legislature, not because we agree that the Superferry can operate (we do not) or because we agree with the proposed legislation or its purposes (we do not), but because it is now necessary to protect Hawai'i from the impacts of the improvident actions of the Lingle Administration and the Legislature if they were to allow the Hawaii Superferry to operate, even after a month long trial amply demonstrated that this would be unlawful and would cause irreparable harm in multiple fashions.

Based upon one month of daily testimony from highly qualified experts, the consensus of prevailing expert opinion was that the following mitigation measures are absolutely required to minimize to some responsible degree the possibility of irreparable harm caused by Hawaii Superferry operations during the time it takes to prepare an EA or EIS:



## **CONDITIONS OF OPERATION**

### **Protection of Marine Mammals and Turtles**

1. Hawaii Superferry vessels shall travel in routes that are in waters that are in excess of 1000 fathoms.
2. If Hawaii Superferry vessels travel in a route that is in any part in waters less than 1000 fathoms, its vessels shall travel at the NOAA recommended speed of no more than 13 knots. The 13 knot limitation shall be inclusive of the first 10 miles of exits and entrances to Honolulu, Kahului and Nawiliwili harbors. At all times, regardless of fathom depth, the ferry shall travel at lesser speeds than provided above as determined by the Captain to provide safe passage to passengers and to minimize strikes to whales.
3. Should a Hawaii Superferry vessel strike a marine mammal, a written report of such strike shall be immediately transmitted to NOAA and any other agencies responsible for monitoring and regulating strikes.
4. Hawaii Superferry shall immediately apply for and receive from NOAA an incidental take permit and engage in Section 7 consultation with NOAA regarding the impacts of its ferry operations on protected marine mammals.

### **Protection Against Introduction of Alien Species**

5. Hawaii Superferry shall conduct thorough undercarriage washes of all vehicles during embarkation at all ports to help dislodge seeds, insects and animals. Such undercarriage wash systems shall include appropriate debris traps and filters.
6. Hawaii Superferry shall utilize sufficient vacuum stations to vacuum the floors of all vehicles during embarkation. An appropriate filter system to trap and contain all debris shall be employed.
7. Hawaii Superferry shall not permit the transport of plants or plant propagative materials.
8. Hawaii Superferry shall secure and pay for all costs to have a dog handler team present at all harbors to conduct inspections of all vehicles at the time of embarkation. These dogs will be utilized to prevent the inter-island transmission, primarily, of invasive species and, secondarily, of drugs.
9. Hawaii Superferry shall inspect (a) the trunks of all cars, (b) the beds of all pickup trucks, (c) the engine compartments of all vehicles and (d) the interiors of all vehicles. Items such as coolers, boxes, trunks and luggage shall be opened and inspected.

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10. Agricultural inspections shall not be conducted on a random basis. Every vehicle and passenger shall be inspected or screened.

11. Hawaii Superferry shall not permit the transport of fishing nets.

12. Hawaii Superferry shall conduct, publish and disseminate a risk assessment within three months of operation to further assess potential impacts and better identify potential mitigation options.

13. Hawaii Superferry shall post signage at all harbors about invasive species. Specific information about invasive species shall be disseminated during the ticketing process on Hawaii Superferry's website. Said signage and information shall have been reviewed and approved by a representative of the Maui Invasive Species Committee.

### **Protection of Customary Native Hawaiian Practices**

14. Passengers, upon checking in at a harbor, shall declare whether they intend to camp at any destination island. Hawaii Superferry shall disseminate to all passengers who have declared their intent to camp written rules and procedures for camping on the destination island.

15. Passengers shall only camp at Federal, State and County campgrounds at destination islands, and then only if they can demonstrate upon checking in that they have obtained in advance permits to camp at those campgrounds.

16. Passengers shall not be permitted to transport to another island cultural or natural resources or products from the ocean, from the shoreline or from the inlands of another island, unless they can demonstrate through a written receipt that they have purchased these items from a legitimate commercial establishment.

17. Should Hawaii Superferry, through the inspection process, discover an attempt to transport natural resources to another island, this transport shall be disallowed and Hawaii Superferry shall immediately notify local DLNR DOCAR officials.

### **Agricultural Inspections**

18. There shall be two (2) qualified Department of Agriculture agricultural inspectors present and participating in agricultural inspections at all times of embarkation and disembarkation at each port. The DOA inspectors shall supervise all HSF screeners.

19. Hawaii Superferry, as an impact fee, shall pay all costs of the agricultural inspectors required in the foregoing paragraph.

20. The State Department of Transportation, in conjunction with the Governor, the State Legislature, and the Department of Agriculture shall forthwith allocate positions and funds for the additional agricultural positions necessary to staff the inspection personnel set forth in paragraph 18 above.

## **Bond Required**

21. Hawaii Superferry shall post a bond in the amount of \$40,000,000.00 to reimburse the State for the balance of the funds due, in the event that the Hawaii Superferry does not operate or refuses to follow the mitigation measures required by the EIS.

## **Permission to Operate Applies Only to the Alakai**

22. The permission to operate in this Bill is limited solely to the operation of the Alakai and shall not extend to any other vessel or vessels operated by Hawaii Superferry. The "no action" provisions of Chapter 343 shall be fully applicable to all other Superferry vessels, except for the Alakai.

## **Time Limits**

23. Hawaii Superferry shall not be able to utilize the lack of a time deadline in HRS Chapter 343 for the completion of the EIS as a means to keep operating for whatever period of time it may take to prepare an EIS. The Alakai shall not be entitled to operate after the expiration of the last day of the fifteenth (15<sup>th</sup>) month after the date of the adoption of this legislation.

24. These conditions of operation shall, however, be applicable to any and all Hawaii Superferries irrespective of whether they operate before or after the preparation of the EIS.

## **Verification of Compliance**

25. Designated representatives of Plaintiff groups shall be entitled to verify Hawaii Department of Transportation's and Hawaii Superferry's compliance with all of the foregoing.

26. In order to accomplish the foregoing, the designated representatives of Plaintiffs in Sierra Club et.al. v. HDOT; Civil No, 05-1-0114(3) shall be granted access to all State lands granted at all ports to Hawaii Superferry for its operations.

## **Enforcement of Conditions**

27. The foregoing conditions of operation may be enforced by the Attorney General of the State of Hawaii and by Plaintiffs in Sierra Club et.al. v. HDOT; Civil No, 05-1-0114(3).

28. These conditions may be enforced in any Circuit Court in the State of Hawaii and the prevailing party shall be entitled to the reimbursement of reasonable attorney's fees and costs.

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29. An allowable remedy in any such enforcement action shall be the cessation of operations by Hawaii Superferry until and unless compliance is achieved with the foregoing conditions.

