

INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

July 13, 2009

Council Chamber, 8th Floor

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Bill Kauakea Medeiros, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Sol P. Kaho'ohalahala (In 9:04 a.m.)
Councilmember Danny A. Mateo
Councilmember Michael J. Molina

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki

EXCUSED: Councilmember Gladys C. Baisa
Councilmember Michael P. Victorino

STAFF: Michael J. Geers, Legislative Analyst
Camille Sakamoto, Committee Secretary

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros
Arthur Suyama, Executive Assistant to Council Chair Danny A. Mateo
Darlene Ane, Executive Assistant to Councilmember Gladys C. Baisa

ADMIN.: Milton M. Arakawa, Director, Department of Public Works (Item No. 16)
Cheryl Okuma, Director, Department of Environmental Management (Item
Nos. 14 and 15)
Scott Rollins, Civil Engineer, Wastewater Reclamation Division Chief,
Department of Environmental Management (Item Nos. 14 and 15)
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: **Item 16:** Charles Nunes
Martin Luna, Applicant's Attorney
Art Oughton, Maui Manager, Hawaii Water Service Company
Gwen Ohashi Hiraga, Applicant's Consultant
Anthony Plitt, Applicant's Representative
Two (2) additional unidentified attendees

PRESS: *Akaku: Maui Community Television, Inc.*

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CHAIR MEDEIROS: . . .(*gavel*). . . Aloha, kakahiaka kakou. Good morning to everyone. To those here in the Council Chambers and to those watching this meeting on *Akaku Community Television*, welcome to everyone. We have a quorum present. The Infrastructure Committee...the Infrastructure *Management* Committee meeting will now come to order. Today is Monday, July 13th, 2009, and it is now 9:04 a.m.

. . . Members, thank you for being here. At this time, I'd like to introduce the Committee Members. First of all, we have the Committee Vice-Chair, Member Pontanilla. Good morning.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR MEDEIROS: We have. . .the Council Chair, Member. . .Mateo. Good morning.

COUNCILMEMBER MATEO: Good morning.

CHAIR MEDEIROS: We have Member, Committee Member Molina. Good morning.

COUNCILMEMBER MOLINA: Morning, Chair.

CHAIR MEDEIROS: And we have non-voting Member Nishiki here. Good morning.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MEDEIROS: And entering the. . .Chambers now, good morning to Member Kaho'ohalahala.

MEMBER KAHO'OHALAHALA: Good morning, Chair.

CHAIR MEDEIROS: Excused from this meeting is. . .Member Baisa and Member Victorino.

. . . I'd like to introduce also the representatives from the Administration and Corporation Counsel. First of all, we have Mr. David Galazin, Deputy Corporation Counsel. Good morning, David.

MR. GALAZIN: Good morning.

CHAIR MEDEIROS: And we have from the Department of Public Works, we have the Director, Mr. Milton Arakawa. Morning, Milton.

MR. ARAKAWA: Morning.

CHAIR MEDEIROS: And from...later on we're going to also have the Director from Environmental Management who has two items on this agenda, and Public Works has one item. Also, we have our Committee Staff, Ms. Camille Sakamoto, Committee

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Secretary to my immediate left; and Mr. Mike Geers, Legislative Analyst. Thank you, everyone, for being here, especially, Members, on this early Monday morning. Thank you for taking the time to be a part of this meeting. Members, today we have three items on our agenda. If you look at your agenda, we have IM-16, which is authorizing grant of a non-exclusive easement to Hawaii Water Service Company, Inc., for waterline purposes at Kaanapali. The second item is IM-14, accepting dedication of sewerline easement for Maui Lani Village VMX Subdivision. And the third item, is IM-15, accepting dedication of sewer, sewerline easements for Maui Lani Phase 6 Subdivision, also known as Parkways at Maui Lani. At this time, before we get into public testimony, I'd like to have everyone in the Chambers disable their cell phones, put them on silent mode, or any other electronic devices you may have that may sound off and disrupt the meeting. The Chair would appreciate your cooperation so that we can proceed without any disruptions. Thank you. At this time, I'll accept public testimony on these items, and we have three items as was aforementioned. Those wishing to testify should sign up with our Committee Secretary, Ms. Sakamoto, to my immediate left. Testimony shall be limited to three minutes. The yellow light will indicate that you have 30 seconds remaining and that you should begin to conclude. Testifiers are request, requested to state their names for the record, and to indicate who they are representative *[sic]*, if applicable. Without objection, Committee Members, we will now accept public testimony.

COUNCILMEMBER _____: No objection.

CHAIR MEDEIROS: Thank you.

...BEGIN PUBLIC TESTIMONY...

CHAIR MEDEIROS: So, first we have signed up...to testify on Item IM-16, is Mr. Chuck Nunes. Mr. Nunes, if you would come forward please and state your name for the record?

MR. NUNES: Good morning, my name is Chuck Nunes, and I'm here to testify on that first item. My family owns the property adjacent to the proposed North Beach Park. Currently, we are undergoing a subdivision process to reconfigure the North Beach Park in our property. Considering the current situation as to the availability of water through the County Water Department, it seems that our likely source of water will be through Hawaii Water Service Company. Therefore, my family requests your support in granting the easement on Halawai Drive to Hawaii Water Service Company. Thank you for your consideration.

CHAIR MEDEIROS: Thank you, Mr. Nunes, for your testimony. Members, any questions for the testifier?

Okay, seeing none. . .Mr. Nunes, thank you for being here.

MR. NUNES: Thank you.

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CHAIR MEDEIROS: . . . Ms. Sakamoto, we have any more signed up for testimony?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MEDEIROS: The Chair will . . . provide the opportunity now for those that did not sign up for testimony, if they want to come forward now and testify, you may do so at this time.

. . . Okay. Seeing no one come forward, Members, without objection, the Chair would like to close public testimony.

COUNCIL MEMBERS: No objection.

CHAIR MEDEIROS: Thank you, so ordered.

...END OF PUBLIC TESTIMONY...

ITEM NO. 16: AUTHORIZING GRANT OF NON-EXCLUSIVE EASEMENT TO HAWAII WATER SERVICE COMPANY INC. FOR WATERLINE PURPOSES (KAANAPALI) (C.C. No. 09-179)

CHAIR MEDEIROS: First item that we are discussing is IM-16. Our first item this morning is relating to a proposed resolution to grant a non-exclusive easement for waterline purposes. At this time, I would like to ask the Director of Public Works to provide an overview of this item. Director Arakawa, if you would please?

MR. ARAKAWA: Thank you, Mr. Chair. The item before you pertains to a resolution related to the proposed granting of a non-exclusive easement on County real property to Hawaii Water Service Company, Inc., for an underground private waterline. The easement is proposed within Halawai Drive, which is a County right-of-way located in Kaanapali. The easement is proposed to be 10 feet in width and comprises 2,751 square feet. Hawaii Water Service Company, Inc., is the successor to Kaanapali Water Company and provides potable water to the Kaanapali area. Since its existing lines end in the vicinity of Kai Ala Drive and Puukolii Road, Hawaii Water Service Company, Inc., is proposing to extend its line through property owned by Kaanapali Development Corp., then on Halawai Drive, then across Honoapiilani Highway and is intended to serve the Honua Kai Development. The Grantee, Hawaii Water Service Company, Inc., would be responsible for construction, repair, and maintenance of the waterline. The Department of Public Works reviewed the document and found it to be satisfactory. The document has also been reviewed and approved by the Department of Corporation Counsel. A resolution entitled: authorizing the granting of non-exclusive easement on County of Maui real property situated at Kaanapali, Maui, Hawaii to Hawaii Water Service Company for waterline purposes has been drafted and is in your binders. The Committee's review and consideration of the proposed resolution is respectfully requested.

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CHAIR MEDEIROS: Mahalo, Director Arakawa. Members, before I open the floor for discussion, I just want you to know you should have been provided with copies of written testimony that was submitted this morning. So you have two of those pertaining to this agenda item. Okay, Members, the floor is now open for questions and discussion. Members, any questions for the Director or any other staff?

. . . Okay. Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. This. . .question is for the Director. It seems odd that the easement is in the middle of the roadway. Can you explain?

CHAIR MEDEIROS: Director Arakawa?

MR. ARAKAWA: Sure. The easement...the actual location of the easement was worked out with the agencies that already have existing lines within the roadway; Water Department as well as Department of Environmental Management also provided comments. So that's where the location is acceptable for all of the agencies involved.

VICE-CHAIR PONTANILLA: So there are other utilities on both sides of the roadway?

MR. ARAKAWA: There are other utilities within the County right-of-way, yes.

VICE-CHAIR PONTANILLA: Okay. Thank you.

CHAIR MEDEIROS: Thank you, Vice-Chair Pontanilla. Any other questions, Members?

. . . Seeing none, without further discussion, the Chair would like to make his recommendation.

COUNCILMEMBER MOLINA: Recommendation?

CHAIR MEDEIROS: Thank you.

. . . The Chair will entertain a motion to recommend adoption of the proposed resolution and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that we pass the resolution authorizing the granting of non-exclusive easement on County of Maui real property situated at Kaanapali, Maui, Hawaii, to Hawaii Water Service Company for waterline purposes.

COUNCILMEMBER MATEO: Chairman, I second that motion.

CHAIR MEDEIROS: It has been moved by Vice-Chair Pontanilla, seconded by Council Chair Mateo.

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... At this time, Members. . .any further discussion? Member Nishiki?

COUNCILMEMBER NISHIKI: . . . When the original application came in for this project, Mr. Chairman, how was the water supposed to be supplied?

CHAIR MEDEIROS: . . . I'm going to ask the Director of Public Works, Director Arakawa, to respond to that.

MR. ARAKAWA: Mr. Chair, we've been involved recently with the request for the easement. I see the applicant's representatives are also here. I would...since this has a kind of long history, I would ask that the applicant answer that question.

CHAIR MEDEIROS: Thank you, Director Arakawa. Members, would you like to have representatives of the applicant come forth and provide a response?

COUNCIL MEMBER _____: Yes.

CHAIR MEDEIROS: Yes, thank you. So if the representative from the applicant can come forth? And, again, state your name and who do you represent.

MR. LUNA: . . . Mr. Chairman, Members of the Committee, I'm Martin Luna. We're the attorneys for. . .Maui Beach Resort. . .Limited Partnership, which is the owner of the property and the development...developer of the Honua Kai. The project began in 19, I'm sorry, in 2004 actually. And the first application to the County for building permit was, I think, I believe it was 2006 or 2005 filed, but it was granted in 2006. It took a while. The Department of Water Supply provided the, the water for the first building and for the grounds. Then subsequently. . .it became apparent to the Department that, that it might have difficulty providing water for the rest of the project, which had been approved in 2005. And so, the Maui Beach Resort looked at working with Maui Land and Pine and other opportunities; and finally was able to work with the Hawaii Water Service Company, which is the successor of, of the Kaanapali Land...Kaanapali Water Company. So it's been in existence for a number of years and has provided water in the Kaanapali area for a number of years. This is a private-owned...privately owned corporation, but governed by and regulated by the Public Utilities Commission.

CHAIR MEDEIROS: Thank you, Mr. Luna. Mr. Nishiki?

CHAIR NISHIKI: Yeah, so, Martin, when the, I don't know what you call it, the second phase. . .now that it's coming up. . .was there conditions in regards to water availability and...

MR. LUNA: Not...not...I'm sorry.

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COUNCILMEMBER NISHIKI: And since the Department had a concern about the availability of water, your second choice was to go to this private water company?

MR. LUNA: Yes. Well, there were no conditions. . .placed on the project when it was first approved by the Maui Planning Commission in 2005, as far as water. . .restrictions were concerned because it was always contemplated, at that time, that water would be supplied by the Department. And, unfortunately, it developed where, where the Department determined that it could not adequately do that. So that's why we had to look for other sources.

COUNCILMEMBER NISHIKI: So the, the water company now is also developing the waterline through the development or is that something that you people are paying?

MR. LUNA: No, the. . .the way Hawaii Water System works is that they work out an agreement with the developer, and it's the developer's responsibility to do all of that on behalf of the Hawaii Water Service Company. So we negotiated with Kaanapali Land Management Company which owns the land *up to* where the. . .Halawai Drive is and also. . .worked out the agreement with Hawaii Water Service Company to do the construction of the waterline, which is already in. . .in, in Kaanapali Land Management Company's property. It's not in Halawai Drive. We, we're not coming for an after-the-fact permit.

COUNCILMEMBER NISHIKI: This water is surface water that the Land Company has or is it...

MR. LUNA: No, it's, it's groundwater. Yeah. It's being supplied by wells that they have.

COUNCILMEMBER NISHIKI: Martin, do you know is the Land Company here, the water company?

MR. LUNA: Yes.

CHAIR MEDEIROS: Is there a representative from...

MR. LUNA: Yeah.

CHAIR MEDEIROS: Okay, there is one.

COUNCILMEMBER NISHIKI: I got questions for the water, for the water company.

CHAIR MEDEIROS: Okay. Before we call up that representative, Members, any more questions for Mr. Luna?

. . . Seeing none, thank you, Mr. Luna--

MR. LUNA: Thank you.

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CHAIR MEDEIROS: --for being here. Okay. If we can come up? I have a representative from the . . .water company. Come forward, please. State your name and company you represent.

NOTE: Pause while Mr. Oughton approached the podium.

MR. OUGHTON: . . . Good morning.

CHAIR MEDEIROS: Good morning.

MR. OUGHTON: My name is Art Oughton, I'm the Maui Manager of the Hawaii Water Service Company formerly known as Kaanapali Water Company. And on behalf of Hawaii Water Service Company, I want to thank the Maui County Council Infrastructure Management Committee for voting to recommend to the Council the granting of the easement for a waterline through Halawai Drive so that the Company will be able to supply potable water to the Hana [*sic*] Kai Resort and other properties in the Kaanapali North Beach.

. . . The grant of the authority permitted by the Public Utilities Commission to the Company includes all of Kaanapali, and the Company is pleased that with this easement from the County, Hawaii Water Service Company is able to extend its service to the community, to properties that the Company had never before been able to serve, thereby meeting its commitment under the authorize...authority granted by the PUC.

CHAIR MEDEIROS: Thank you. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you. Thank you, sir. Can you tell me where your water is coming from, where the source is?

MR. OUGHTON: Well, the water source is from seven wells that are currently in operation, and actually we have two additional sources under construction at this time also.

COUNCILMEMBER NISHIKI: The other...you said you have seven wells right now.

MR. OUGHTON: Yes, we currently have seven wells--

COUNCILMEMBER NISHIKI: And these wells are located where. . .specifically?

MR. OUGHTON: Well, specifically. . .just up in the hills . . .(*laughter*). . .

. . . I don't know how to best describe the exact location, but up in the hills of the Kaanapali Resort, about anywhere...roughly around the 1,000 foot elevation level.

COUNCILMEMBER NISHIKI: Directly north?

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MR. OUGHTON: Yeah. Or...

COUNCILMEMBER NISHIKI: So you're not, you're not going towards the Honolua area?

MR. OUGHTON: . . . No.

COUNCILMEMBER NISHIKI: And the...you said the public [*sic*] utility company manages *what*?

MR. OUGHTON: Well, our, Hawaii Water Service Company, which is a private utility, we manage the water system in the Kaanapali Resort. We are regulated by the Public Utilities Commission of the State of Hawaii.

COUNCILMEMBER NISHIKI: And, and can you tell me *what* amount of water your seven wells produce?

MR. OUGHTON: They, they can produce roughly four...four point something million gallons a day. . .safe, safe yield.

COUNCILMEMBER NISHIKI: And do you come under the . . .purview of the State Water Commission?

MR. OUGHTON: Could you repeat the question?

COUNCILMEMBER NISHIKI: Do you come under the purview of the State Water Commission? Do they monitor --

MR. OUGHTON: Yes.

COUNCILMEMBER NISHIKI: --anything that you pump --

MR. OUGHTON: Yes.

COUNCILMEMBER NISHIKI: --or, or sell?

MR. OUGHTON: Yes, they do.

COUNCILMEMBER NISHIKI: And what is, right now, the availability of water there from your seven wells?

MR. OUGHTON: Well, we currently pump between two and a half million and three and a half million gallons a day. We have, the system has the capacity of, roughly, storage of five million gallons.

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. . . And, like I said, we have two new sources coming online which will even *increase* that production. . . a significant amount.

COUNCILMEMBER NISHIKI: And these two wells are located where?

MR. OUGHTON: They're roughly in the same locations, around that 1,000 foot elevation level.

COUNCILMEMBER NISHIKI: . . . Has the Water Department ever come to you to purchase water? *Our* Water Department?

MR. OUGHTON: Not to my knowledge, no.

COUNCILMEMBER NISHIKI: . . . Has your water testing shown any type of sodium levels, or do you test for that?

MR. OUGHTON: Not sodium levels, but we test for chlorides.

COUNCILMEMBER NISHIKI: And so far the, you've had no problems with high levels of chlorides?

MR. OUGHTON: Well, it's a delicate balance. That. . .that if you pump the wells too hard those chloride levels rise, so we have to...between the seven wells that we have now, we operate in a manner that will keep that balance in a, in a safe...at a safe level.

COUNCILMEMBER NISHIKI: . . . Thank you.

CHAIR MEDEIROS: Thank you, Mr. Nishiki. Members, any further questions for the representative of the water utility? Seeing none, thank you for coming forth to provide responses.

. . . Any further discussions, Member. . .or questions at this time?

. . . Seeing none, we have a motion on the floor, and I'll call for the question at this time. All those in favor of the motion, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR MEDEIROS: All those opposed, say "no".

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VOTE: AYES: Councilmembers Kaho‘ohalahala, Mateo, Molina, Vice-Chair Pontanilla, and Chair Medeiros.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

CHAIR MEDEIROS: The motion passes with five “ayes”; zero “noes”; and two “excused”, Baisa and Victorino. Thank you, Members, we’ll move on to our second item.

ITEM NO. 14: ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR MAUI LANI VILLAGE VMX SUBDIVISION (C.C. No. 09-177)

CHAIR MEDEIROS: And the, our second item is IM-14, accepting dedication of a sewerline easement for the Maui Lani Village VMX Subdivision. And coming forth this morning to represent the Administration is the Director of Environmental Management, Director Okuma. And, Director, if you would introduce your associate, please?

MS. OKUMA: Yes, good morning, Committee Chair Medeiros, Committee Members. With me today is Scott Rollins, who is the Planning and Permitting Engineer in our Division.

CHAIR MEDEIROS: Okay. Thank you both for being here. And I would like to now ask the Director of Environmental Management for an overview of this item. Director Okuma, if you would please?

MS. OKUMA: Thank you very much. What you have before you is a proposed resolution for the acceptance of dedication of a sewerline easement for the Maui Lani Village VMX Subdivision, pursuant to our Maui County Code. The purpose of this proposed resolution is to accept dedication from the Maui Lani Village Center of a sewerline easement over a portion of the Maui Lani Subdivision No. 7 here in Wailuku in order to eventually connect to the County’s existing eight-inch sewer lane, sewerline which is along Kuikahi Drive. Basically, their easement location and the width is acceptable to the Department of Environmental Management, Wastewater Reclamation Division, and is in conformance with conditions of approval and County standards. We would respectfully request your consideration on this proposed resolution.

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CHAIR MEDEIROS: Mahalo, Director Okuma. Any further comments from the...your associate?

MS. OKUMA: Not at this time. We're prepared to respond to any questions you may have. Thank you.

CHAIR MEDEIROS: Thank you, Director. Members, I would like to now open the floor for discussion. Any questions? Council Chair Mateo?

COUNCILMEMBER MATEO: Chair, Chairman, thank you very much. Director Okuma, good morning.

MS. OKUMA: Good morning.

COUNCILMEMBER MATEO: And just to follow up with your fact sheet, your No. 12 on your fact sheet, you indicate that improvements in this offsite easement have not yet...have not been completed and will occur concurrent with onsite subdivision improvements. Can you tell us what the projected improvements will be?

CHAIR MEDEIROS: Director Okuma?

MS. OKUMA: Yes, thank you. I'm going to ask our engineer, Mr. Rollins, to address that if I may?

COUNCILMEMBER MATEO: Thank you.

CHAIR MEDEIROS: Mr. Rollins?

MR. ROLLINS: Good morning, Council Chair and Council Members. The subdivision is actually under construction now. It is not completed yet. We have construct...or been out and done some inspection on the site. We don't have a projected date when it would be completed at this time.

COUNCILMEMBER MATEO: And you expect the improvements to include what?

MR. ROLLINS: Improvements typical for a subdivision. They're doing drainage, water, sewer improvements out there. This easement is strictly for sewer improvements.

COUNCILMEMBER MATEO: Okay, and at this point, you don't know when the subdivision will be completed?

MR. ROLLINS: . . . Not at this time, no.

COUNCILMEMBER MATEO: Is...does the . . .does the developer have an idea of when this subdivision will be completed?

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MR. ROLLINS: They're hoping later this year.

COUNCILMEMBER MATEO: . . . Okay. It would be nice to have some kind of a date when they project their project to be completed. Perhaps the economic climate leaves this subdivision somewhere in its unstable condition; would that be an assumption?

MR. ROLLINS: . . . That could be true, yes.

COUNCILMEMBER MATEO: Thank you. Mr. Chair, is the, is the developer going to be providing any comments on this, on their subdivision . . . *(inaudible)*. . . ?

CHAIR MEDEIROS: Council Chair Mateo, I don't see anyone here representing the developer. So I'm not sure if the...Director, do you know if they were going to be present?

MS. OKUMA: I, I don't know whether they had intended to be present or not. No one's informed us.

COUNCILMEMBER MATEO: No problem. Thank you, Chairman. I, I can...that's an easy to get. I can just call them. Thank you.

CHAIR MEDEIROS: Thank you, Council Chair Mateo. Members, any other questions?

. . . Okay, seeing none. . .the Chair would like to make his recommendation at this time.

COUNCILMEMBER MOLINA: Recommendation?

CHAIR MEDEIROS: Thank you.

. . . And before I do that, and the Director has expressed this, and I just, for your information, would summarize that the purpose of the proposed resolution is to accept a proposed sewerline easement area from the subject property's developer, which is Maui Lani Village Center, Inc. And in the resolution it does say the Director of Environmental Management has reviewed and approved the said dedication. So, at this time, Members, the Chair will entertain a motion to recommend adoption of the proposed resolution and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move to adopt the proposed resolution entitled: accepting dedication of the sewerline easement for the Maui Lani Village VMX Subdivision pursuant to Section 3.44.015, Maui County Code, and the filing of the communication.

CHAIR MEDEIROS: Okay. Okay. It has been moved by Vice-Chair Pontanilla. Do I hear a second?

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COUNCILMEMBER MATEO: Mr. Chair, I'll second.

CHAIR MEDEIROS: Thank you, Council Chair Mateo, for the second. Any further discussion on this motion?

. . . Council Chair Mateo?

COUNCILMEMBER MATEO: Chairman, I will be supporting the motion on the floor; however, as, as an individual or as an independent member of this Committee, with Maui Lani projects, I am quite hesitant in supporting their, their continued movements until this developer comes forward and talk to this County about their requirements and obligations for affordable housing that is still due this County. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Council Chair Mateo, for expressing that concern and a very valid point.

. . . Any other Members, questions or discussion?

. . . Seeing none, we have a motion on the floor, and I'll call for the question. At this time, all those in favor of the motion, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR MEDEIROS: All those opposed, say "no".

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VOTE: AYES: Councilmembers Kaho‘ohalahala, Mateo, Molina, Vice-Chair Pontanilla, and Chair Medeiros.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

CHAIR MEDEIROS: Okay. The motion passes with five “ayes”; zero “noes”; and two “excused”, Baisa and Victorino. Thank you, Members.

ITEM NO. 15: ACCEPTING DEDICATION OF SEWERLINE EASEMENTS FOR MAUI LANI PHASE 6 SUBDIVISION (ALSO KNOWN AS PARKWAYS AT MAUI LANI) (C.C. No. 09-178)

CHAIR MEDEIROS: We now move to the third item on our agenda. Our third item is IM-15, accepting dedication of a sewerline easement for the Maui Lani, Phase 6 Subdivision, also known as the Parkways. . .at Maui Lani. At this time, I would like to ask the Director of Environmental Management, Director Okuma, for an overview of this item. Director, if you would please?

MS. OKUMA: Thank you, Committee Chair Medeiros. What you have before you is a proposed resolution for the dedication of a sewerline easement for Maui Lani, Phase 6 Subdivision, which is also known, as pointed out, as Parkways at Maui Lani, in accordance with the Maui County Code. The purpose of this proposed resolution is in order to accept the dedication of easement from Maui Lani, Phase 6 of three sewerline easements over and across a portion of Maui Lani Subdivision Lot Number 7 here in Wailuku for the purpose of connection to the County’s existing 12-inch sewer lane among, along Kamehameha Avenue. The easement location and width is acceptable to the Department of Environmental Management, Wastewater Reclamation Division, as in, *and* is in conformance with County standards. We would respectfully request your consideration of this proposed resolution.

COUNCILMEMBER MEDEIROS: Mahalo, Director Okuma. Any further comments from Mr. Rollins?

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MR. ROLLINS: . . . This easement will tie into the County's . . . *(change tape, start Side 1B)*. . . it'll allow upstream properties to tie in and be part of the County system. So that's the reason for these. . . these easements.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Rollins. Members, the floor is now open for questions and discussion. Members. . . any questions or discussion? Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. Just so I understand the process. We're accepting these easements for sewerline, correct?

COUNCILMEMBER MEDEIROS: Director?

MS. OKUMA: Yes, that's correct.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Um. . . you're, you're going to be working at putting in these. . . who puts in the actual lines in? The developer does?

MR. ROLLINS: Yes, the developer does.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So these lines don't exist right now.

MR. ROLLINS: No, they don't.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So there will be construction work with the. . . with the placing of these lines in at some future date?

MR. ROLLINS: Yes, the lines in Kuikahi and Maui Lani Parkway are already constructed; and this is the tie between those and Kamehameha Avenue.

COUNCILMEMBER KAHO'OHALAHALA: Okay. I'm, I'm trying to orient myself. I'm looking at this map that you have attached. So I can see the Kamehameha Avenue, which goes into. . . and, correct me if I'm wrong, is, is that the Pomaikai School?

MR. ROLLINS: Correct.

COUNCILMEMBER KAHO'OHALAHALA: Okay, and then in the project site. . . so can you. . . you know, on this. . . well, okay. . . Kamehameha Avenue. . .

. . . In the attached, do you have this before you?

MR. ROLLINS: Yes.

COUNCILMEMBER KAHO'OHALAHALA: You do?

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. . . So can you help me to understand where your, your...where the actual easement is that we're talking about? Is that that *dashed* line area?

MR. ROLLINS: There's act. . .there are actually *three* easements in this subdivision. The subdivision is probably going to have private streets. So in order to accept the sewer for the whole subdivision, we have easements over all the streets in the subdivision. Uh . . .

NOTE: Silence.

CHAIR MEDEIROS: . . . Mr. Rollins. . .give your response regarding *this* particular easement.

MR. ROLLINS: Okay. The easement you're, you're currently looking at is one of the *private* streets, I believe.

. . .You're looking at Exhibit A-3A?

COUNCILMEMBER KAHO'OHALAHALA: . . . Yes.

MR. ROLLINS: Yeah, that is one of the private streets within the subdivision.

COUNCILMEMBER KAHO'OHALAHALA: *Within* the subdivision.

MR. ROLLINS: Yeah.

COUNCILMEMBER KAHO'OHALAHALA: And so, where's the tie-in that you're talking about?

MR. ROLLINS: Uh . . .

NOTE: Silence.

MR. ROLLINS: . . . Exhibit A-1A.

NOTE: Pause.

COUNCILMEMBER KAHO'OHALAHALA: . . . A-1A.

MR. ROLLINS: Yeah, it's a rather long document. So it's the first, first easement.

CHAIR MEDEIROS: . . . Yeah, Member Kaho'ohalahala, that's the first exhibit.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

CHAIR MEDEIROS: Yeah.

NOTE: Silence.

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MR. ROLLINS: . . . So the line will travel down Maui Lani Parkway, and it jogs *north*, and then it will turn and go *east* towards Kamehameha, instead of traveling all the way down Maui Lani Parkway and hitting Kamehameha at the intersection.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So if I overlaid these two, then that’s what you’re talking about that tie-in.

MR. ROLLINS: Well, Exhibit A-1A shows the entire tie-in.

COUNCILMEMBER KAHO‘OHALAHALA: Oh, it shows the entire...and then what I’m looking at in 3A is another loop?

MR. ROLLINS: Yes, that’s within the subdivision. It’ll just serve residential houses there.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then so, the, the area has already been. . .surveyed archaeologically?

MR. ROLLINS: Yes.

COUNCILMEMBER KAHO‘OHALAHALA: It has. And then when work proceeds to the, the trenching for these tie-ins, is there any monitoring that goes on?

MR. ROLLINS: I would assume so, but that would be under the purview of Public Works.

COUNCILMEMBER KAHO‘OHALAHALA: So there will be some way of understanding that as the work proceeds, and then...we’re, we’re accepting this easement to tie-in sewerlines. The developer puts in the lines, the developer will be trenching and putting those lines in.

MR. ROLLINS: That is correct.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, and then you’re saying that it will be, during that, time monitored by Public Works?

MR. ROLLINS: Correct.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Okay. I just wanted to know what the, the process was going to be in the easements and how, how they gets established, yeah, and the actual work. Okay, Chair, thank you.

CHAIR MEDEIROS: Thank you, Member Kaho‘ohalahala.

COUNCILMEMBER MOLINA: Chair?

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CHAIR MEDEIROS: If, if the Public Works Director was here, we could confirm that, but, you know, he's, he's left already. But if he's listening, and it's other, otherwise, then I'm sure he'll contact us. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chair. Just a follow-up for Mr. Rollins or Director Okuma with regards to the construction of the connection...connecting the lines. This part of Kamehameha Avenue, traffic-wise, is it a pretty busy area? Because I just want to make sure that, you know, we don't have the developer here or a representative from Maui Lani here to at least outline what their construction plans are, when they're going to do the work, I presume during the day. As we know, the citizens of Maui Lani are a vocal lot, so we want to make sure we don't get any calls or complaints about...you know, we want to make sure that they're properly notified. Do you have any information you can share with us as to when they're going to do the work, and what time of day, so forth?

MR. ROLLINS: Yes, Councilmember Molina, currently they are doing work down near the school, which is on Kamehameha. They're doing that work during the day, and I believe they're going to do most of the tie-in work so they'd be off the roads when, when this construction occurred. They will be doing work during the day, from what I understand from the developer, and they're trying to get all the work in that area done before school starts.

COUNCILMEMBER MOLINA: Thank you. That was going to be my next question. Okay. All right. Thank you very much, Mr. Rollins. And thank, thank you, Chair, for allowing me to ask that question, because we just want to make sure everything is up and up with the community.

CHAIR MEDEIROS: That's a good question.

COUNCILMEMBER MOLINA: Thank you.

CHAIR MEDEIROS: Yeah, thank you, Member Molina. Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Maybe for clarity--the next time you come up with sewer easement, if you could show the *total* subdivision itself on one drawing, you know, make it easy for us to see all of the tie-ins. And I'd just like to let the Members know that the subdivision itself has been graded, the roadway has been paved, I think, and it's just a matter of going into the subdivision itself. And Member Kaho'ohalahala brings out a pretty good point in regards to the trenching...future trenching to install the waterlines as well as well as the sewerline--that would be overseen by the Public Works Department as well as the Water Department to make sure that we don't come across any iwi in the area.

UNIDENTIFIED SPEAKER: Uh-huh.

VICE-CHAIR PONTANILLA: So, thank you.

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CHAIR MEDEIROS: Thank you for those questions and comments, Vice-Chair Pontanilla. Any further questions or discussion?

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

CHAIR MEDEIROS: Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah, when you use the word “private road”, what does that mean; that that road is going to be not dedicated over to the County?

MR. ROLLINS: That is correct.

COUNCILMEMBER NISHIKI: So am I to understand that if they don’t donate it to the County, then this will probably be a gated community?

MR. ROLLINS: They are considering that at this time.

NOTE: Silence.

COUNCILMEMBER NISHIKI: . . . Um . . .

. . . They are considering that at this time? . . . *(sigh)* . . .

. . . I, I, I guess. . . the concern I have is this, Mr. Chairman, you know, we’re coming in and we’re giving them all these easements. . . and yet. . . there is really no timetable, as Mr. Mateo said, for the affordable portion that. . . should be built.

. . . We don’t have any idea if there’s a timetable. And, and my question is I just feel like. . . if we’re going to create this type of. . . classist community, um. . . I have a problem. And, and if this is what. . . we’re going to be approving and giving an easement for, then I think. . . this developer needs to come on board at an early stage and put in the affordable.

. . . I don’t know, but I heard that. . . at the last time when they brought up their affordable subdivision. . . it was like putting the so-called people living there in a sardine can.

. . . And. . . if this is how a developer is going to treat. . . people that are going to be living in these places. . . where is the dignity of this developer? Where is the social conscience? Maybe it’s because they really have, as I pointed out. . . no eyes, no ears, but most importantly, no heart. And as an elected official. . . they’re not here today.

. . . And, and are they going to constantly hide behind *not* appearing here so that there is no one to answer a lot of the concerns that we have? So. . . hopefully if this passes out, we’ll have them. . . I request that you have them at the. . . Council meeting--which I hate to see this type of situation occur. But there is no *excuse* for a developer not being here to

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answer all the questions that a lot of us have. *No* excuse. In fact, I would ask that. . .you not pass this out today *until* the developer appears. Thank you.

CHAIR MEDEIROS: Thank you, Member Nishiki. Any other questions?

COUNCILMEMBER MOLINA: Chair?

CHAIR MEDEIROS: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chairman. For the record, was the developer consulted with to appear here, Mr. Chairman, for this particular matter?

CHAIR MEDEIROS: Yes, let me ask our Staff if a request went out. Staff?

NOTE: Long pause.

MS. SAKAMOTO: . . . Mr. Chair, Committee Staff mailed an agenda to *all* applicants.

CHAIR MEDEIROS: Okay. So the response is that our Staff did mail an agenda to the applicant which would indicate that we are scheduling this item. And if they want to come, they're certainly invited, you know, by being aware of the agenda.

COUNCILMEMBER MOLINA: Okay. So they are not bound by law to be here and each of one of us, as Members of this Council, can make a request to you as the Committee Chair to have the developer here?

CHAIR MEDEIROS: Correct.

COUNCILMEMBER MOLINA: Okay. I just wanted that noted for the record.

CHAIR MEDEIROS: Yeah.

COUNCILMEMBER MOLINA: So, you know, they're not bound to be here, but anyone of us can ask them to appear. And, Mr. Chair, should this matter go up to the full Council, that will be up to Council Chair Mateo to decide if we want to have the developer here. You know, my preference is we do the work here in Committee and, you know, of course, obviously it's up to our Council Chair if he wants to do that type of Q&A *at* the Council level. So I'm just kind of throwing that out there just so we fully understand the mechanics involved here if we want to get Q&A. But in the meantime, anyone of us can ask questions of the developer, can call them in or have a written response from them to be shared with at the County Council level--if, if that is, you know, the prerogative of Chairman Mateo to have this type of expanded discussion on this matter. You know, yeah--

CHAIR MEDEIROS: Okay. Thank you, Member Molina.

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COUNCILMEMBER MOLINA: Thank you, Mr. Chair.

CHAIR MEDEIROS: Yes, you raise some very, you know, relevant questions along with Member Nishiki. And, Corp. Counsel, I'd like to ask you--if we make a request of the applicant to be present, is that something they're *bound* by?

MR. GALAZIN: . . . Well, Chair, I think, you know, a simple *request*, they wouldn't necessarily be bound by. But I think as a practical concern, it would certainly *behoove* them to respond to that, you know. I wouldn't, I would have to look at the Rules of Council--with which I'm not overly familiar--to know if there are certain actions you can take that, that have more authority and carry a little more weight to demand that they come. But I think the real authority derives from your ability to either approve or deny, based on information. And if you feel that there's information that only the applicant can provide and the applicant's not coming forward to provide that, then it's, you're within your power to, you know, deny recommendation of this item.

CHAIR MEDEIROS: Okay. Thank you for that response, Mr. Galazin. And I just wanted to add that we did contact the Director of Public Works regarding the monitoring of the project, if it goes forward. And he did confirm that they do and are the responsible agency to monitor that--for Member Kaho'ohalahala. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you, Chair. Corporation Counsel, then if we...I'm just trying to understand. The easements that we are accepting now are to allow the sewage lines to be tied into our current system. So the accepting of the easement means that we have now control over that *section* of land in which these sewerlines are laid?

MR. GALAZIN: We have control, but not *exclusive* control. So we would have, by the terms of the easement document, the ability to go in, you know do maintenance repair work as far as the line itself. But that wouldn't *preclude* the landowner, the underlying landowner from granting rights to another entity, you know, have other utility lines in the same vicinity and so forth.

COUNCILMEMBER KAHO'OHALAHALA: Okay, and then what if we don't accept the easement?

MR. GALAZIN: Then they have to maintain the private system and it becomes a private sewerline system that will eventually tie into a County system. There are, there are such private systems, you know, around the island.

COUNCILMEMBER KAHO'OHALAHALA: So we are, by, by taking this first step in terms of an easement for sewage...sewerlines. . .allowing or...well, in the development then they would automatically be tied into a system that we have in place, but otherwise you said they would have to put in their own system to accommodate?

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MR. GALAZIN: Yeah, and, and perhaps, perhaps the Department may be a little, a little better versed in explaining how that process works.

CHAIR MEDEIROS: Director Okuma, if you'll respond to that?

MS. OKUMA: . . . Um, generally, what Mr. Galazin has indicated is correct. The purpose of the easement is for the County to be able to go in, do any kind of maintenance or repair on the line should there be some sort of breakage or some...something dealing with the integrity of that line. As long as we *don't* have an easement, we would not be going in there. So, basically, in *that* set of circumstances, that would be the responsibility of the owner of the private line--that they maintain that responsibility.

COUNCILMEMBER KAHO'OHALAHALA: When we accept then this easement, then we become responsible for the maintenance of these lines that will be tying into our current sewer system?

MS. OKUMA: Yes, it gives us the ability to be able to go onto the property for the purpose of doing whatever maintenance is needed.

COUNCILMEMBER KAHO'OHALAHALA: So the acceptance then...either Department or Corporation Counsel, by accepting the easement, then we are making a commitment that the *County* will be providing sewer services then?

MS. OKUMA: . . . And I think the other part of this, too, which is probably in Public Works' area, generally, those roads would be, as well, dedicated to the County. And so--

COUNCILMEMBER KAHO'OHALAHALA: Okay.

MS. OKUMA: --we would have . . .

COUNCILMEMBER KAHO'OHALAHALA: The road--

MS. OKUMA: . . . lines that go through that we would do the maintenance repair.

COUNCILMEMBER KAHO'OHALAHALA: Yeah, I'm, I'm a little confused with that because you just earlier stated that these will be all private roads.

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

COUNCILMEMBER KAHO'OHALAHALA: And so...

MR. ROLLINS: Yeah, I misunderstood the Director's question. Yeah, those roads are *planned* to be private at this time. It would be an easement over those roads to give us access to the sewerline to do the maintenance. If this easement wasn't accepted, those lines would

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then remain *privately* owned and maintained and anything upstream of there would remain privately owned and maintained. So we have a contiguous system instead of piecemeal.

COUNCILMEMBER KAHO‘OHALAHALA: But then that would put the responsibility on the people who owned the private road then?

MR. ROLLINS: . . . That or the, the homeowner’s association or the master developer. Then anything upstream of this easement, it would also require an easement within Maui Lani Parkway, Kuikahi, et cetera, for private maintenance.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And, Corporation Counsel, are, are we. . .obligated to provide this, this service?

MR. GALAZIN: No, I mean we’re not obligated to provide sewer service if there is a *private* system in place. There, you know, private sewer systems are a possibility for developers to pursue rather than have the County take it over.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. But by *accepting* this easement, then we are, in fact, now responsible for providing that service?

MR. GALAZIN: Yes, then it would become our system and, as Mr. Rollins pointed out, this would be the link between anything further upstream too. You know, if this remained private, then everything upstream of that would necessarily remain private as well, because we couldn’t have a system that was, you know, public at one point, and then private in the middle, and then public again.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. In terms of timing, then I’m just wondering, Chair, because what Chair Mateo brought up--by our actions, these small steps, I guess I would call them, we are in fact putting in place the *movement* of a development project. And by taking today’s action, then we would be setting in place a forward action for the developer, knowing very well that this is one area that they have an obligation that the *County* will now be responsible for taking care of the sewage system. So there leaves no, no responsibility on *their* part then in terms of how to maintain their own sewer concerns for a private development with private roads and, and a gated community. I’m trying to put all of the pieces together because, you know, the cumulative action is what I think is ultimately going to be where our liabilities and responsibilities are as a County. And these are the steps toward those cumulative actions. And I, I just wanted to clearly understand what it is that we *are* doing in fact--that we’re supporting a project to move forward and we’re also taking the liability to take care all of the sewer by accepting these easements. But we have no idea what the development is. We have no plans. We know it’s going to be privatized, it may be gated, and that we don’t even own the roads. So is that, is that the correct assumption?

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MR. ROLLINS: . . . Well, the subdivision has been through process with the County for well over a year, I know of. I know they're *close* to final construction plan approval. They're *very* close to final subdivision approval, but due to the economic conditions, you know, we cannot guarantee when that would happen.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Aside from the economic conditions as you described, our actions in fact are putting in place a . . .a movement toward that direction. So the question is that if you're not clear about what that . . .the conditions due to the economic times, then why . . .I think the question is appropriate, then why are we then wanting to take action *today* when we have no more information than you provide us? And the developer is not even here to give us any indication about where they're at.

MS. OKUMA: I, I think I should point out that is, in fact, the, the policy decision which this Committee can take a look at. From our side, we just did the process as we would in, in any other set of circumstances. But I think in terms of the question and the issue that you raised, I mean this is the time for that discussion--is here.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Then, Chair, just my own comment. Now, at least clarifying, I think, the processes that are involved, I am not real comfortable in accepting this kind of an easement of which. . .I, I don't see. . .if you want to call it "fair play", that the developer is, is absent from this process. We have no way of indicating . . .or getting any indication of where the project itself is. And then we go through these steps because from department to department these are part of the protocols in terms of how we go about accepting easements and projects. And we still have no other questions answered. So I'm a little concerned with that, and I would be hesitant in supporting the forward movement at this time. You know?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MEDEIROS: Thank you, Member Kaho'ohalahala. You, you, you've raised, you know, some important questions and concerns. So. . .I think we need, you know, more answers or the ability to at least ask the questions. Council Chair Mateo?

COUNCILMEMBER MATEO: Thank you very much, Chairman. Member Kaho'ohalahala kind of brings up all of the red flags that had not yet been addressed. Unfortunately, when we get information from the Department that comes with their, their fact sheet attachments and comes with them submitting the resolution, it kind of tells us that the Department is encouraging us to take it full under advisement because you have reviewed all of the terms and conditions that, in fact, you know, like puts the County in an advantage position. And in this particular instance, it does not. So that disturbs me a little bit. It apparent, it seems that there really is no priority at this point in moving this project forward because if it *was*, the developer sure as hell would be here with us. There's more questions than there are answers at this point. And, again, Mr. Chairman, I stand on my, my concern--there are still 516 units that Maui Lani owes this County, and the more we continue to allow them to move forward with developing projects. . .we have

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not reengaged that discussion that we had a few years ago with their obligations to affordable housing that their overall development project *is* responsible for. And as, and as you, Mr. Chairman, are aware as well as every other Committee Chair, the Chair is not that responsive to having Committee discussions on the Council floor. I would really request consideration by IM Chair to defer this item and have all of the questions that had been raised addressed, so by the time this does, in fact, move on to the full Council we would be able to not have Committee discussions on my floor. I think it is just more responsible to do it at that point. And this is just a more difficult...this is just not a regular easement, as far as I'm concerned. This is a gated community. This is a plan for the...the "them" and the "us". And I have difficulty in supporting in moving this out at this particular point, Mr. Chairman. Thank you very much.

CHAIR MEDEIROS: Mahalo, Council Chair Mateo. I'm going to go to Vice-Chair Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Chairman, I don't have a problem with withdrawing my motion, but before I do that, and if you request to do that...

CHAIR MEDEIROS: Hold on. Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Yes?

CHAIR MEDEIROS: I don't believe we have a motion yet on this particular item.

VICE-CHAIR PONTANILLA: Oh, okay, fine. Then let me make my comments in regards to easement in general.

CHAIR MEDEIROS: Go ahead.

VICE-CHAIR PONTANILLA: You know, although this is going to be a private road system...when we look at subdivisions and easements in general, the only time that we see it is when the subdivision has already been completed and now it requires Council approval. And I think this is the *first* that I've seen, that came to this Council for approval. And, and I think that's the way it should be...

UNIDENTIFIED SPEAKER: Uh-huh.

VICE-CHAIR PONTANILLA: ...require our approval at the frontend rather than the backend. Because if we disapprove at the backend, we not going to tell the developer go dig up all those sewerlines and all those waterlines. You know, that's...that's unreal. So what we're doing here today in looking at this project in regards, in regards to the sewerline easement, I, I think it's, you know, really a good task in trying to approve easements prior to actual construction. Um...that, that's my comment. And Member Mateo brings up a good point--this is a good time to have the developer answer some questions in regards to the affordable housing that is owed to this County by this developer. And, like I say, you know...I would defer this...and have the developer come back to this Committee and

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provide us with not only answers to this easement, but answers to other things in regards to, you know, what is being discussed this morning.

CHAIR MEDEIROS: Thank you, Vice-Chair Pontanilla, for your comments. Member Nishiki, I'm going to go to the voting Member Molina first, please?

COUNCILMEMBER NISHIKI: That's fine.

CHAIR MEDEIROS: Thank you.

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman. If I could ask the Department a question? I don't know if they can answer it, but what are the consequences to the *residents* if the County does not accept the dedication?

MR. ROLLINS: . . . There are no *residents* at this time--

COUNCILMEMBER MOLINA: Uh-huh.

MR. ROLLINS: --that connect to this line in question. It may prevent upstream development at a later time. Um . . .

COUNCILMEMBER MOLINA: Uh-huh.

MR. ROLLINS: If this isn't accepted, then all lines that get constructed will just remain privately owned and maintained until such time they come back and want to try and dedicate it again.

COUNCILMEMBER MOLINA: So if there is a future development approved, then it's up to the...you know, say we don't accept the dedication, then it's up to the developer, basically, to pass the cost on to perspective new residents then?

MR. ROLLINS: Yes.

COUNCILMEMBER MOLINA: Okay. Mr. Chairman, you know, it's somewhat disappointing the developer is not here for something as important as this. *Normally*, they are here, the Maui Lani folks, but I don't know why they're not here this morning. But obviously they *should* be because there's been a lot of interesting issues that have popped up, and I guess just the perception of a gated community and if we accept the dedication, they're asking the County taxpayers to finance the maintenance of this sewer system down the road. So just in general, I think they should be here. And, you know, I had an issue in *my* own Committee where the applicant did not show up, so that didn't fair too well with me on that. But I, I see, I have no problem with deferring this matter, Mr. Chairman, and then that way the developer makes sure they get out here to answer some of the questions the Committee Members have. And I certainly don't want to see a full-blown discussion if this were to move on to the Council, because the Council is not the place to have this

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kind of work done. So I have no, there's no shame, Mr. Chairman, in having a deferral because, you know, sometimes many issues, you know, take more than one meeting, and it's always better, as I say, to make sure all the I's are dotted and the T's are crossed because, you know, sometimes haste makes waste, yeah, Mr. Chairman. So I have no objections to deferral of the matter. Thank you. . . .(change tape, start side 2A). . .

CHAIR MEDEIROS: Thank you, Member Molina. Member Nishiki?

COUNCILMEMBER NISHIKI: Thank you. And I, and I thank my fellow Members for giving me some insight prior to making these kinds of statements. I heard earlier this morning saying that, well, maybe, individual Members can meet privately with the developer should we have questions. *That* concerns me from the point of the Sunshine Law in regards to if *these* types of meetings are happening. . .and they're not in front of this Committee, in front of. . .thank God, *Akaku*. . .then *how* is the ability, Mr. Chairman, of the *general public* to know what is occurring inside these offices and Chambers? Secondly. . .if what the Council Chair statement is true, *516 units* that this developer is responsible, *516 affordable units*, *affordable units* is the, is responsible for--when do we see it? After the entire development is done? And we've seen in prior. . .developments, developers leaving. . .and not having to put this units up. I think, as representatives for the people of Maui County, we *deserve* an answer from the developer when these units are going to be put in. Finally, and I, and I thank the Members of the Committee for pursuing this, but as I listen more and more, I was going, wow, and I may say it. . .not "grossly". . .but right, really upfront. . .this developer wants us. . .to be allowed. . .to privatize. . .areas of this development--and I don't know if this was ever discussed when the developer came for the zoning approval. *But*. . .it would be *responsible* of them to let us know that, yes, we indeed want to privatize it. Because maybe then the County would say, you take care of your development with a private sewer system. And *why* am I angry about this, Mr. Chairman? "Pass this", they say. . ."allow us to develop a private development." But you know what. . .and when we, when we, when the police, when we need police help, come. When we need fire, come. But at the same time they say, you know what, even in this development, *you*. . .*you* County, take care of our stool and urine. . .and yet, you don't come into this community, it's gated, only for those that live here.

. . . I don't know, and I hope we don't see more developers coming with this type of mentality, you know. But, you know, you don't. . .make as much as we do. . .you can't afford to live here because our houses are so big. . .and only *we* can live here because we are of this. . .ability to afford--if we continue to allow this type of development to occur in Maui County, I think. . .this is not how we were taught. I don't even remember being taught this in *school* when I was going to school.

CHAIR MEDEIROS: Okay, Mr. Nishiki. . .

COUNCILMEMBER NISHIKI: So. . .

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CHAIR MEDEIROS: Yeah, wait. I appreciate the comments you're making, but I think we're drifting away from the agenda item.

UNIDENTIFIED SPEAKER: Mr. Chair?

COUNCILMEMBER NISHIKI: Yeah, I'm just making a point, Mr. Chairman.

CHAIR MEDEIROS: Right, and I understand that--

COUNCILMEMBER NISHIKI: Get the developer here so he can answer our questions--

CHAIR MEDEIROS: And I think--

COUNCILMEMBER NISHIKI: --because ...

CHAIR MEDEIROS: Yeah, I think that's been expressed by most of the Members. Thank you. Thank you for your comments. Any other questions?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. Just to add a point of clarification. When I made mention earlier about Members meeting with whoever--developers, environmentalists. . .you know, as elected officials, we have that priority. We can do that. And, you know no, if some people think there's inappropriate things going on, no. . .we have the responsibility of meeting with *all* our constituents, open door, whatever. You know, so it's just about fact-finding, getting more information. But ultimately our decisions are made out here in the public. So, you know, nothing is being hidden. And if we want to talk about transparency, then make sure we expose *all* what we do, no matter *what* the issues are. So we need to be consistent. But, Mr. Chair, you know, with regards to Maui Lani itself and, yes, it's a gated community, but, you know, I think we should be *really* sensitive about just slamming all those folks that are, that are in Maui Lani. Many of them are just longtime local residents who've worked their way up the social ladder, economic ladder and, you know, they've bettered themselves. So these are not all these people who have come here from elsewhere, off-island and are already rich. A lot of folks who live in Maui Lani, in the different phases, they're working class people just, and who happened to work their way up the ladder to have a better life. So I just wanted to add, add that point. You know, we're not here to *condemn* those who live in Maui Lani because they live in a gated community. It was an opportunity presented by this developer to gate the community. And I, too, would like to see us go away from that direction of gated communities. But in itself, we, we should be respectful to the people who live in Maui Lani. Many of them are kama'aina, and they just worked their way up the economic ladder. They have a better life now. So to just condemn them because they live in a gated community, to me, is not, not right. So they're *all* residents, they're all kama'aina. Thank you, Chair. I wanted to make that point, and I'm ready for your recommendation.

CHAIR MEDEIROS: Okay. Mahalo, Member Molina. Vice-Chair Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you. I, I just want to share my same sentiments as what Member Molina had just said. You know, I do have friends that live on both sides--the gated as well as the ungated areas in Mau Lani. And these are working families. And, you know, if they want to live...you know, people live wherever they want to live. You know, that's their right. That's their right to be a citizen of this United States. So, again, I share the same comments as Member Molina. . .knowing, you know, people in, in the gated community as well as the not-gated community in Maui Lani. Thank you.

CHAIR MEDEIROS: Thank you, Vice-Chair Pontanilla. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. And I just want to get back to why I think we're having this discussion--is really a process in which the Council is to either put in motion future development. And irregardless [*sic*]. . .of what that outcome is, I think what was stated earlier by Member Pontanilla is that it's best that we start at the frontend. And I think that what we're trying to do is establish some discussion at the frontend so that we can get clear indication of what the developer is intending to do or not to do. And if we take this action today without any knowledge of that, then we have, in fact, at the frontend begin to put in motion something of which this Council has no fair understanding or indication or information or knowledge of. So if it is the Chair's intention, then, to defer this item so that we can get to that point, then I think that *that* was the purpose of today's discussion. Thank you.

CHAIR MEDEIROS: Thank you, Member Kaho'ohalahala. Any other questions? Okay. The...Member Nishiki. . .and can, we have to keep it on the agenda item, please.

COUNCILMEMBER NISHIKI: Yeah, I, I, I just, I just heard from Members speaking. . .and the more sensible way. . .so that we eliminate. . .if these concerns that we may have, is tear down the gates. It is not necessary. Tear down the gates. And it's not against anybody that *lives* in the community or not. I'm just saying that it puts a stigma. And I don't think that anyone of us likes to see that happening here in Maui County. Thank you.

CHAIR MEDEIROS: Thank you. Okay. I have a few questions. . .for both the Department and Corp. Counsel.

. . . For the Department, if the County has an established wastewater treatment system--meaning the transmission lines and so forth in the area of a development--does the development, by law, have to connect to the County service?

NOTE: *Silence.*

MR. ROLLINS: . . . If the subdivision fronts an existing County line, they need to connect to it, correct.

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CHAIR MEDEIROS: So, do they have a *choice* whether to keep it private. . .or they must connect?

MR. ROLLINS: They must connect to, to allow treatment of their sewage, but the system could remain private. It would be their choice.

CHAIR MEDEIROS: Okay. But if they *connect* and they keep it private, then are they responsible for the maintenance of that private system?

MR. ROLLINS: Yes, they are.

CHAIR MEDEIROS: Okay. Thank you for that.

. . . Now, now, when the Department considers a private system connecting to the County system, is there a study made on what capacity is available at the treatment plant?

MR. ROLLINS: Yes, whenever a subdivision comes in, we look at the projected wastewater flows and make sure that our collection system, pump stations, and the treatment plant can handle those flows.

CHAIR MEDEIROS: Okay. So it's the Department's. . .decision that there is capacity and pumping and all the other infrastructure required for this to connect to the County system?

MR. ROLLINS: Yes, at this time.

CHAIR MEDEIROS: Okay.

. . . And, Corp. Counsel. . .if a road is. . .a private road, and then at any future point of time they can dedicate it to the County?

NOTE: Pause.

MR. GALAZIN: . . . Yeah, I mean any private road could be potentially available for dedication to the County, and it just depends on, you know, obviously, I think the recommendation from Public Works is a big part of it on, on if the roadway is up to standards. Obviously, a recommendation from Environmental Management about any, you know, other utilities, like a sewerline utility would be installed in the road. But it, it's certainly within this body's power to accept any private roadway for dedication.

CHAIR MEDEIROS: Thank you, Corp. Counsel. And because the Sunshine Law was raised, is it any violations for our Members to discuss items like this within the confines of their office with any constituents?

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MR. GALAZIN: Committee Chair, I think. . . I think Council Vice-Chair Molina put it very well--that as representatives of the public-*at-large*, all Members have a responsibility to *interact* with the general public, hear concerns, discuss, investigate. The Sunshine Law is really geared towards the interaction of the Members *with each other* and to make sure that that doesn't occur in an impermissible way, and most importantly that decisions are arrived at a properly noticed agenda meeting that's open to the public where you allow everyone in, you allow people to bring their views, and testify. So the Sunshine Law isn't. . . doesn't really touch on how Members would interact with public individually--because that's, that's really what your, one of your primary functions is.

CHAIR MEDEIROS: Thank you. And, and just...you did respond to this question and I just wanted to be sure and confirm your response--that the Committee, under its authority, can request the attendance of an applicant, but certainly it is not mandated under that request. And so, as you put it, it would behoove the applicant to appear at which we hope, you know, they do in the future. Is there any other *more* authoritative procedure to *require* them to attend?

MR. GALAZIN: I believe under, under State law you may have certain subpoena powers, but that's not an area with which I'm intimately familiar. So. . . I don't, I don't know if perhaps your Committee Staff is more well-versed with that kind of function that you have. But boards and commissions, generally--and, and under the larger umbrella of State law, you would be considered a board--do have subpoena powers for certain, for certain things. I, I couldn't say in this *specific* instance. . . for certain, but...

CHAIR MEDEIROS: Thank you. And, and I will ask our Legislative Analyst to check on that so we can have a more definitive idea of what we have in our authority for that.

. . . Members, hearing all...

COUNCILMEMBER KAHO'OHALAHALA: Chair?

CHAIR MEDEIROS: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Chair, you asked a question, and it brought another question to mind. . . that you posed to Corporation Counsel regarding acceptance of private roads.

CHAIR MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: Could I ask one question as a follow-up to that?

CHAIR MEDEIROS: Certainly, go ahead.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

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CHAIR MEDEIROS: Proceed.

COUNCILMEMBER KAHO‘OHALAHALA: In the situation of private roads, and we’re talking gated communities, if we accept a road to become part of a County road in a gated community, does that now make that, that community accessible. . .because the road is now no longer private and it belongs to the County?

MR. GALAZIN: Well, yeah, then it would be. . .it would be a public road. It would be opened up.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Do we have *any* situation where we have. . .County roads within gated communities?

UNIDENTIFIED SPEAKER: No.

MR. GALAZIN: I can’t *imagine* that would be the case, but I believe you’d have to ask either, probably Department of Public Works.

COUNCILMEMBER KAHO‘OHALAHALA: It just brought to mind that . . .*(laughter)*. . . you know, we’re talking about accepting the...potentially accepting these private roads, but we’re talking about it being within potentially gated communities. So I, I was just wondering what, what that situation would pose. So . . .

CHAIR MEDEIROS: Interesting question. And I, I think we need to pursue that to find out for ourselves. The...unless there’s more questions, the Chair will make his recommendation.

COUNCILMEMBER MOLINA: Recommendation?

CHAIR MEDEIROS: Thank you. And before I do that, I just want to say that *should* we defer this and go and schedule it for another meeting. . .I will ask our Staff, and we will also confer with Corp. Counsel, as far as the parameters we have to set in the questions because we are discussing just a sewerline easement. Many of the questions that I allowed this morning. . .should have been asked at the time, like, Council Chair...I mean Committee Chair Pontanilla said, maybe we need to do this at the frontend and not at the backend. So I would just bring that up for your understanding. . .that it has to stay within the agenda item. So at this time without objection, the Chair will defer this item.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. Anybody opposed?

. . . Seeing none, this matter is...item is deferred.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: GCB and MPV)

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ACTION: DEFER pending further discussion.

CHAIR MEDEIROS: And that brings us to the conclusion of the three items we had agendized. Members, this concludes our Committee's business for the day. So the Infrastructure Management Committee meeting of July 13, 2009, at 10:23, is now adjourned ...*(gavel)*...

ADJOURN: 10:22 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair
Infrastructure Management Committee

im:min:090713

Transcribed by: Jessica Cahill

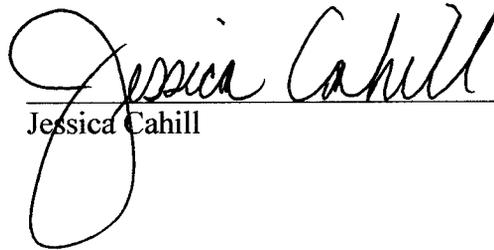
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CERTIFICATE

I, Jessica Cahill, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 3rd day of August, 2009, in Wailuku, Hawaii.



Jessica Cahill