

# INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

## MINUTES

August 31, 2009

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:04 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Bill Kauakea Medeiros, Chair  
Councilmember Joseph Pontanilla, Vice-Chair (Out 11:19 a.m.)  
Councilmember Gladys C. Baisa  
Councilmember Sol P. Kaho'ohalahala (In 11:31 a.m.)  
Councilmember Michael J. Molina (In 9:05 a.m.; Out 11:45 a.m.)  
Councilmember Michael P. Victorino

NON-VOTING MEMBERS:

Councilmember Jo Anne Johnson (In 9:13 a.m.)  
Councilmember Wayne K. Nishiki

**EXCUSED:** Councilmember Danny A. Mateo

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

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Cheryl Okuma, Director, Department of Environmental Management (Item Nos. 2 and 6)  
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental  
Management (Item Nos. 2 and 6)  
Milton M. Arakawa, Director, Department of Public Works (Item No. 23)  
Lieutenant Scott English, Fire Prevention Bureau, Department of Fire and  
Public Safety (Item No. 23)  
Francis Cerizo, Planner, Zoning Administration and Enforcement Division,  
Department of Planning (Item No. 23)  
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation  
Counsel

*Seated in the gallery:*

Kalbert L. Young, Director, Department of Finance (Item No. 6)

**OTHERS:** William Brown (Item No. 23)  
Joan Brown (Item No. 23)  
Dan Cantore (Item No. 23)  
Hans Becker (Item No. 23)  
Margy O'Brien (Item No. 23)  
Jim O'Brien (Item No. 23)

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Michael Covic  
(5) additional unidentified attendees

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

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CHAIR MEDEIROS: . . .(*gavel*). . . Aloha and good morning, everyone, Members, people from the public in the gallery. We have a quorum present so at this time I will call the Infrastructure Management Committee meeting to order. Today is August 31<sup>st</sup>, 2009 and it is right now 9:04 a.m. First of all, I'd like to introduce the Members that are present this morning. First we have the Committee Vice-Chair, Member Pontanilla. Good morning. And we have Ms. Baisa. Good morning, Gladys.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MEDEIROS: We have Mr. Mike Victorino. Good morning, Mike.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MEDEIROS: And also present is your Chair Bill Medeiros. We have a non-voting Member, Mr. Wayne Nishiki.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR MEDEIROS: Thank you for being here. Excused today is Member and Council Chair Danny Mateo, and also excused, for the moment, is Member Kaho'ohalahala. We'd like to, I'd like to make further introductions at this time. From our Department of Corporation Counsel we have Mr. David Galazin, Department, Deputy Corporation Counsel. Good morning, David.

MR. GALAZIN: Good morning, Chair.

CHAIR MEDEIROS: I'm sorry. And arriving and we welcome to the meeting Mr. and Member Michael Molina. Good morning, Mike.

COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR MEDEIROS: And continuing with the introductions, we have from the Administration representatives from the different departments. First, we have the Director of Environmental Management who is here for IM-2 and IM-6, we have Director Cheryl Okuma. Good morning, Director. And also with her we have Mr. Tracy Takamine, Division Chief of the Solid Waste Division. Good morning. We have some other Administrative representatives coming for the other items and as they appear before you we will introduce them. We have our Committee Staff here this morning. Our Secretary

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is Camille Sakamoto, and our Legislative Analyst is Mr. Michael Geers. Good morning, everybody.

Today, Members, we have three items on our agenda. We have IM-2, which is the County's Integrated Solid Waste Management Plan. We have IM-6, Delinquent Refuse and Landfill Accounts, and the third item we have IM-23, Permitting Requirements for Construction of Lanai Enclosures.

We do have three, well four people now signed up for testimony. And before I open testimony we're going to set some ground rules here. And before we set the ground rules for the public testimony, I want to remind our Members and all of those here in the meeting in the gallery to please turn off your cellphones or any pagers you may have or anything that may ring that may interrupt the proceedings of this meeting, and we appreciate your cooperation. At this time, I'll accept public testimony on any of the items should you not be available to testify later, and we'll take testimony at the beginning of this meeting. Those wishing to testify that haven't already you can approach the Secretary's desk to my immediate left and sign up with her to testify. Testimony shall be limited to three minutes. The red light will indicate your time has expired. Testifiers are requested to state their names for the record and to indicate who they are representative [*sic*] if any. May I request that this time we will start our public testimony. And so, Members, we will now open for public testimony. First giving public testimony this morning is Mr. William Brown. He is testifying on IM-23. Mr. Brown, would you come forward please? Good morning, and if you'll state your name, and if you're representing any organization, please state that also.

**...BEGIN PUBLIC TESTIMONY...**

**MR. BROWN:** I'm really representing myself in this matter. I want to thank the Committee for this opportunity of, of sharing something that's been rather frustrating to us as condo owners for nearly two years now. My name is Bill Brown, and for seven years we have owned a condo at the Kaanapali Royal and the previous owner that we bought the condo from having closed the lanai. For some information, there are 105, roughly 105 condos in Kaanapali Royal, and during the last 24 years, 80 of those owners have enclosed their little back lanais one after another having been told by the County that a permit was not necessary. Now suddenly after so many years we were told we might be fined for having done so without having had a permit, and it seems rather unfair that it would be switched like this. The lanais are only 70 inches by 70 inches and they're easily made into part of the bedroom. Mine is now my tiny office for which I'm very grateful. I understand the ruling on some other counties like Oahu is that to enclose a lanai still requires no permit. And I would appreciate your recommending that it be the same for Maui. Thank you very much.

**CHAIR MEDEIROS:** Thank you, Mr. Brown, for coming all the way from Kaanapali to be at our meeting and for your testimony. Would you hold on for a minute in case any of the Members have any questions? And before I open it up for questions, Members, for the

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viewing public and for those that are not familiar what a lanai is, because it is a Hawaiian name, we want to be sure everybody know that that's a balcony attached to a unit and so that we're clear on that. Members, any questions for Mr. Brown?

COUNCILMEMBER BAISA: Chair?

CHAIR MEDEIROS: Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you, Mr. Brown, for being here this morning. I know this is a very important issue. I've heard estimates of what it would cost to unenclose *[sic]* the lanai. Have you ever looked into that?

MR. BROWN: I think, I've been told it costs probably around up to \$5,000.

COUNCILMEMBER BAISA: The other issue that I wanted to ask if you could, if you have the answer was do you have anything from the County in writing in regards to this? They said you didn't need a permit. I know sometimes we just take people on their word, but I was wondering if you had anything.

MR. BROWN: No, I don't. And I don't know who might have . . . *(inaudible)* . . .

COUNCILMEMBER BAISA: 'Cause you, you're the second owner, you're not the one who did the enclosing.

MR. BROWN: Right. Ours was done by the previous owner.

COUNCILMEMBER BAISA: Okay. Thank you very much.

MR. BROWN: Thank you. Thank you.

CHAIR MEDEIROS: Members, any other questions? Seeing none, thank you, Mr. Brown, for your testimony. Next testifying on the same item IM-23 is Ms. Joan Brown. Mrs. Brown, would you come forward please? And she will be followed by Mr. Dan, is it Catony *[sic]* or Catore *[sic]*? Okay. Mrs. Brown, please state your name and any organizations you'll be representing. *(sound cuts off from mike)*

MS. BROWN: Thank you. I just really represent myself and, I must say, many who couldn't be here today from Kaanapali Royal, and, and I thank you so much for this opportunity. My husband and I own a condo at Kaanapali Royal and we live there full time. Some time ago Mr. Clement J. Enomoto, Maui's Supervising Building Examiner, who has unfortunately died, came to our condo to check out our enclosure. He indicated we should install a railing outside which we then did. When he later came back to inspect the work, Mr. Enomoto looked over our condo and was pleased with the railing and indicated that everything was in order. He said nothing about needing permits, et cetera. My husband has made the enclosure into a much needed office, and it would be a

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hardship to lose our enclosure and bring the office into the bedroom since we have an autistic grandson who visits us quite often for long stays. Anything that you can do to keep our condo as it is we would be extremely grateful. And thank you so much for letting me speak.

CHAIR MEDEIROS: And thank you, Mrs. Brown. If you would remain there in case any of the Members have any questions. But thank you for coming over from Kaanapali to be here this early in the morning at our meeting. Members, any questions? Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. And thank you, Mrs. Brown, for being here. I'm trying to get a visual in my head of what you're talking about. You, you enclosed your lanai?

MS. BROWN: Yes.

COUNCILMEMBER BAISA: And where did you build a railing, outside of the enclosure?

MS. BROWN: It was outside the window. There's two windows like this. And this, the railing was outside. Mr. Enomoto thought that perhaps children might climb out the windows and a railing would stop them.

COUNCILMEMBER BAISA: I see.

MS. BROWN: Yes.

COUNCILMEMBER BAISA: I see. Thank you very much.

MS. BROWN: Thank you.

CHAIR MEDEIROS: Any other Members, questions? Thank you, Mrs. Brown, for --

MS. BROWN: Thank you.

CHAIR MEDEIROS: --for your testimony. And I want to recognize Member Jo Anne Johnson, a non-voting Member. Good morning. Thank you for being here.

COUNCILMEMBER JOHNSON: Aloha.

CHAIR MEDEIROS: Aloha.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MEDEIROS: Okay. We have next testifying on the same item, item No. IM-23, Mr. Dan Catory [*sic*]. Thank you. Your, state your name and any organization you representing, sir.

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MR. CANTORE: Yeah. Hi, my name is Dan Cantore. I just represent myself. We also own a unit at the Kaanapali Royal. Something that would help and I, I don't know if we have any chance of getting a white board or anything like that where I could draw an illustration of what this. 'Cause I think the people are having a difficulty envisioning what this situation is. It's not a protruding lanai as it sticks out on many buildings. This is a lanai that easily fits under the roofline of the building. There is no protrusion being enclosed. It's just simply a window coming across an otherwise, you know, useless lanai. I think it was really a mistake in the original building. It, it's very unnatural to have lanais in the areas that have been enclosed. We already have a main lanai in every one of the units that everybody uses as a lanai. The lanais that have been enclosed were really part of another room that had been unnaturally cut off and added as a, you know, in other words they took away part of the, the bedroom to make a lanai that was never used. And same thing in the downstairs [*sic*]...there was, we live on the third floor where there are two enclosures, one in our bedroom. It's an A-frame bedroom and part of that A-frame was just chopped off, and they put a lanai out there, you know, under the roofline. So it was a very natural thing for everyone to look at it and say, boy, this isn't right. We need to have the rest of our bedroom where we can use the space. This is crazy. It was just a dust collector out there, you know, leaves and dust collector. The same thing with the downstairs lanai which is smaller and this is the type that the person before me was talking about. And that's also was part of a downstairs bedroom that was chopped off and, and a useless lanai put in there. So the whole thing, as we saw it when we purchased the, the unit, was well the, everyone else has done that and added space to their bedrooms and this space should have been part of the bedroom to begin with. And so it was a very natural decision to enclose it. I guess that's really what I wanted to, you know, to let you know. It really was a natural kind of a thing. Everyone had, by the way we were told also no permit was required, and so we went ahead and had it done. Thank you.

CHAIR MEDEIROS: Thank you, Mr. Cantore. If you'll remain there. Members, any, Members, I'm going to call on the Member of the Committee first, Ms. Johnson, if that's all right with you.

COUNCILMEMBER JOHNSON: Sure.

CHAIR MEDEIROS: Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Cantore, you know, you're not the only testifier that mentioned that no permit is required. But, you know, I'm just wondering although the statement was made no permit is required, have any of you ever called the County, Public Works or Planning Department in regards to, you know, what alteration was being done to the building?

MR. CANTORE: Well, we were told when we began to look into making the change and making the enclosure was that from our property manager who's, been onsite for, I don't know how long, but Mr. Grabil, he's been onsite for a long time, and he assured us that

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the County didn't require any permitting and you were...matter of fact, he mentioned somebody's name that was from the County that was, he was informed didn't, that we didn't need a permit.

VICE-CHAIR PONTANILLA: So . . .*(inaudible)*. . .

MR. CANTORE: So he, he gave me a name but I don't recall who it was.

VICE-CHAIR PONTANILLA: Yeah. You know what Member Baisa indicated, you know, nothing in writing, you know, it's really tough for us to...I guess what I'm trying to say is, as long as I can remember, you know, anything that you do on your property, first of all, you check with the County department to make sure or any, one of the departments, Planning or Public Works, to make sure that you're in compliance so that such things like this don't appear over here. So thank you for your testimony.

MR. CANTORE: Yeah. The only other thing I'd like to add is that, you know, when we had this done there were probably at least 80 other units, by that time, who had done it. And so by example we just assumed that...and I know an assumption is, you know, an assumption. But when you got 80 other people that checked it out, you know --

VICE-CHAIR PONTANILLA: I'm sure you have a board, right?

MR. CANTORE: --you know you assume that they, you know, it was okay.

VICE-CHAIR PONTANILLA: Mr. Cantore, I'm sure you have a board of directors or homeowners association --

MR. CANTORE: Yeah.

VICE-CHAIR PONTANILLA: --that you guys go through in regards to making any alterations to the building?

MR. CANTORE: Right.

VICE-CHAIR PONTANILLA: Okay.

MR. CANTORE: But that's what we were told.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MEDEIROS: Any other questions? Excuse me, Mr. Cantore. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. Thanks very much for coming. I just wanted to find out when you were describing like the lanai on the one side that is not enclosed, about, do you know what the measurements are on that?

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MR. CANTORE: Ah, boy. I, I didn't really take a measurement. I wouldn't know.

COUNCILMEMBER JOHNSON: Okay. But, you know, like obviously the other lanai that you're describing, is it the same size?

MR. CANTORE: No, I'm sorry. Yeah. The, the upstairs lanai which is in addition to the downstairs lanai which is the person just before me. Those smaller dimensions are the downstairs lanai. The upstairs lanai would be about the size of a double sliding door.

COUNCILMEMBER JOHNSON: Okay. So maybe like...

MR. CANTORE: Well actually it, I guess it goes all the way across the, the length of the upstairs bedroom.

COUNCILMEMBER JOHNSON: Okay. That's, that's the length but how about the width? Is it like six feet? Nine feet?

MR. CANTORE: Oh. Yeah. It'd be about six feet I think.

COUNCILMEMBER JOHNSON: So about --

MR. CANTORE: About six feet deep.

COUNCILMEMBER JOHNSON: --six feet maybe by six feet?

MR. CANTORE: Maybe six feet by maybe, I don't know. I'm not sure.

COUNCILMEMBER JOHNSON: Okay.

MR. CANTORE: Longer than six feet one way and six feet another way.

COUNCILMEMBER JOHNSON: Okay. Okay.

MR. CANTORE: Sorry.

COUNCILMEMBER JOHNSON: And then the footprint has not been altered? You know in other words the, I guess the lanai that was there you didn't, you didn't come out over --

MR. CANTORE: No.

COUNCILMEMBER JOHNSON: --and above that? And the footprint basically --

MR. CANTORE: Right.

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COUNCILMEMBER JOHNSON: --that was there has not been expanded?

MR. CANTORE: No. That, that didn't change. As a matter of fact, it's, it's got a half wall, you know, it's, it's not just bars like this. It's, it's a solid half wall about so high, well about three feet high. And so it, it's as though the wall of the bedroom was cut off and they put a lanai out there that collected dust and dirt. And we were also told to put a railing on our...you know, it's kind of an unusual looking thing. You know, you've got windows that complete the room and then you got to put these bars or some kind of a additional railing, which we did, in order...and that was what we were told would satisfy any code violations.

COUNCILMEMBER JOHNSON: Okay. And, and as far as your...if let's say there was a fire. With regard to your access out on to that little area where the rail is, would that in any way be impaired or would any be, anyone be impaired from coming in and rescuing you if you needed that?

MR. CANTORE: No. They, we have sliding doors that open pretty easily --

COUNCILMEMBER JOHNSON: Okay.

MR. CANTORE: --as window doors.

COUNCILMEMBER JOHNSON: Okay. So you have sliders.

MR. CANTORE: Yeah. They're very easy to open up.

COUNCILMEMBER JOHNSON: Okay. Thank you very much.

MR. CANTORE: Thank you.

CHAIR MEDEIROS: Any other Members, question? Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you again for being here. It's important that we get the picture of what's, what's there. These units are how, how many stories are we talking about?

MR. CANTORE: They're three-story units with what they call a mezzanine. And our bedroom is on the mezzanine. It's, it's got a bedroom and a bathroom, and that's where the upstairs lanai, the useless lanai was.

COUNCILMEMBER BAISA: Okay.

MR. CANTORE: 'Cause we have a main lanai that...everyone has a main lanai right off of their living room which is just downstairs to the bedroom on the third floor. And, you know, that's what everybody uses. The others were really useless.

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COUNCILMEMBER BAISA: Thank you very much.

MR. CANTORE: Thank you.

CHAIR MEDEIROS: Any other Members have any questions? Mr. Cantore, I have a question for you.

MR. CANTORE: Yes.

CHAIR MEDEIROS: And, Member Johnson, I don't know if it'll help but I think a previous testifier gave his dimensions as 70 by 70 inches. So I don't know if they're different size lanais they're talking about. But again explain to me that...because in your testimony I thought you described something that didn't extend out of the existing building wall but it does, doesn't it?

MR. CANTORE: No.

CHAIR MEDEIROS: It doesn't?

MR. CANTORE: No. What...

CHAIR MEDEIROS: So it's straight down. There's nothing that comes out from the wall?

MR. CANTORE: There's nothing that comes beyond the, the overhang of the, of the, the roof.

CHAIR MEDEIROS: Okay.

MR. CANTORE: In other words, the roofline...when you enclose the lanai it just completes the A-Frame size of your upstairs...it's like a vaulted ceiling in the upstairs bedroom. And it just completes the room when you enclose the lanai. It's as though they cut off part of the room to make a lanai that didn't belong there.

CHAIR MEDEIROS: Okay. So the, the roofline you're talking about is the, the roofline on the building?

MR. CANTORE: In, the ceiling itself on the inside of the, the, in the room actually is, is part of the overhang. It looks...in other words, if you...when the lanai was there it was just like they had literally cut off part of the bedroom and made a lanai. And when you take the lanai the, the separation, the, the sliding windows that went to the lanai, when you take those out the room is complete.

CHAIR MEDEIROS: Uh-huh. Uh-huh. Okay. Yeah. We're trying to get a good picture of what --

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MR. CANTORE: Yeah. I wish I had a --

CHAIR MEDEIROS: --what exists there.

MR. CANTORE: --a whiteboard to --

CHAIR MEDEIROS: Yeah. Yeah. And sorry --

MR. CANTORE: --draw a picture.

CHAIR MEDEIROS: --about the white board but we need advance, you know, request to --

MR. CANTORE: Right.

CHAIR MEDEIROS: --to be, get one here. But, Members, any other Members for questions? Seeing none; thank you, Mr. Cantore, for your testimony, for being here this morning. The last testifier that signed up is also for item IM-23, Hans Becker. Please come forward and state your name and any organization you may represent.

MR. BECKER: Yeah. Good morning. My name is Hans Becker, I live at Kaanapali Royal. I represent myself. I want to reiterate what Mr. Brown said that other counties like Kauai and Oahu, they faced similar situations and they enacted legislation or wording, in effect, to allow such implementation of enclosures. If you look at Kaanapali Royal you have a mauka lanai that's three by three foot. So you're not talking about a, a huge amount of area, number one. You're not changing the footprint, as the previous testifiers indicated. It has a natural structure and framing where you have stucco, and you just put a window in, nothing more and remove the door to keep the dust and dead animals out. On the upstairs it's a little bit larger. It's probably 16 by 6 maybe? I don't know. I'm guessing by the size of, of sliding glass doors.

UNIDENTIFIED SPEAKER: Right.

MR. BECKER: It was also a smallish lanai. You couldn't put much out there, maybe a sun chair. But basically the, again the, the roofline and the whole structure was really made to just put a window in. All you had to do is get the framing for the windows, slap it in, you're done. You're not increasing the footprint. Safety issue-wise upstairs you have a cut in to the main roof so you have another roof coming out from the lanai you can step onto. You know, like the maintenance people are out there all the time either painting it or doing some repair. So if you need to be rescued, you're on the roof per se out of, out of harms way. The footprint of the living area has not changed. So it, it's, it seems a natural thing to do to put a window in. I also have checked with the property manager. He indicated he had personally checked whether a permit was needed or not and it wasn't. I was told that. Furthermore, there were some owners specifically on the ground floor who, whose son-in-law is a contractor, knows better than to just go ahead and do things checked with the County and we can have him deposed if you want to. He was

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told not a, not a problem. Kaanapali Royal is made out of block, concrete and steel. I believe it has a four hour firing rating. So as, as far as a safety issue, it's not going to burn; I'm not going to start a fire on my lanai. It's, it's concrete and, and tile. So I don't think there's a safety issue per se. We've tried to comply with what the County say, okay now you need an after-the-fact permit which we applied for; nevertheless, the County decided no you can't have it unless you, has some other fantastic requirements like put sprinklers in or whatever. And some of these things came back, now you have to put in a fire road and all kinds of stuff. I don't, I really don't understand why, whereas in, the previous inspector said, no, this stuff, this building won't burn. I mean it's, it's very, very safe. Basically that's my testimony.

CHAIR MEDEIROS: Thank you, Mr. Becker, for your testimony, for being here this morning. Members, questions? Okay. Member Nishiki?

COUNCILMEMBER NISHIKI: It seems to me like you have dealt with an official from Maui County. Have you dealt with anyone from, an official that has come to your place?

MR. BECKER: The, Mr. English came to a meeting we had last year in May, I believe. And the discussion was, well, perhaps even your, the amount of water coming in for sprinklers might not be sufficient. But, you know, if you act in due diligence pretty quick it probably would pass, because...I don't know if some deadline was involved or what not. So it, it seemed a little bit artificial like there was a rush to get in sprinklers in. And we've looked into sprinklers and we got all kinds of different quotes. And one owner even, I believe he had in writing that he could get a sprinkler off the curb water system, because the assumption is that maybe one or two heads might go off which, which didn't make any sense to me, because sprinklers supposed to be independent. But other than that the only ones I've dealt with is the Planning Department to bring in my after-the-fact request for a permit. Mr. Schulz is an architect. He was the first one to do it. So I asked him, I said what are you plans? Can I copy 'em? Because there's about 80 people that need to have this done. I'll put it on a computer. I know a little bit...my background's computers. I can replicate their needs so at least we can facilitate getting the after fact permits squared away. After a while they recognized that sort of same over and over again so that facilitating, getting the, you know, getting the after, after-the-fact permits into the system.

COUNCILMEMBER NISHIKI: So besides the Fire Department you never met with anyone from Public Works or Planning?

MR. BECKER: We did meet, I believe it was Ms. . . .*(inaudible)*. . ., Mr. O'Brien and myself, not sure anybody else was there, we met with Mr. Nagamine.

COUNCILMEMBER NISHIKI: Nagamine. Okay.

MR. BECKER: And because at that point the Fire Department was very adamant in putting sprinklers in that it was virtually impossible for the other owners to get on board, because

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some, some owners were not involved said over my dead body. Okay. So we, we requested him to perhaps mandate sprinklers so we could get them in. But I guess it was one of those meetings that no notes were taken. He said no, no, no, no, good bye.

COUNCILMEMBER NISHIKI: And, and, and finally the County never asked you about any type of inspection to look at electrical, plumbing, whatever?

MR. BECKER: Nobody, nobody came up to my apartment ever.

COUNCILMEMBER NISHIKI: Okay.

MR. BECKER: The other thing is, I want to amend one of the statements. Depends if you are on the second or ground floor then you have a very small three by three foot lanai. The third floor have two lanais where the restoration probably would be 15,000 to 20,000.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Members, any other questions? I have a couple questions, Mr. Becker. You said the building is constructed of masonry and steel, that's correct?

MR. BECKER: Correct.

CHAIR MEDEIROS: Okay. And does the building have sprinkler systems existing on the interior of the building right now?

MR. BECKER: Do not.

CHAIR MEDEIROS: Do not. Okay. So when the Fire Department said they probably would request a retrofit of sprinklers, was that just for the enclosure of the lanai or for the entire unit?

MR. BECKER: I suspect it was for the entire unit.

CHAIR MEDEIROS: I see. Okay. And then you also mentioned in your testimony that the other counties do not require a building permit. You know what counties you were speaking about?

MR. BECKER: I believe that Kauai had, has a situation like this and Oahu where they've introduced legislation to mitigate this problem.

CHAIR MEDEIROS: Okay. But you're not sure if it's to --

MR. BECKER: It's hearsay, I have not --

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CHAIR MEDEIROS: --exempt building permits?

MR. BECKER: --I have not read the, I have read the, the code as such. It's just in conversation I've heard that.

CHAIR MEDEIROS: Okay. Well, thank you, Mr. Becker, for your testimony and for being here this morning at our meeting.

MR. BECKER: Mahalo.

CHAIR MEDEIROS: This is the last chance for people to come up and testify. If you haven't signed up yet would you come forward please and come to the podium, state your name and any organization you represent. And after your testimony and questions you can go to the Committee Secretary to sign up. Good morning.

MS. O'BRIEN: Good morning. I'm Margy O'Brien, B-102. I wrote a written testimony because I'm very upset and angry at the way we have been treated. We moved here 15 years ago. We were volunteers all over the County and this occurs. So we had, our insurance man came over. We're on the first floor. We actually have four exits to our condo. We have an exit at the master bedroom, at the second bedroom, the front door and the living room. I took the, the insurance man wrote, I have a letter from the underwriters that say we do not need any more safety features. He's perfectly happy with our condo. I have a dear friend who lives in B-302 so she has the two enclosures. I brought him up there and he said if he was her insurance agent he would have his underwriters write a letter that her condo is perfectly safe. It makes no sense that we've been put through all this. But anyway our group of, I think it was 72 people pooled their money and we had two engineering companies, professionals study the program. Both engineering companies said we are perfectly safe, we don't know why you're being put through this. Then we had two architects study the program. One is Marie Kimmey, the other was Uwe Schulz who's, who is part of our ownership. And they both said this is ridiculous what you're being put through. And to quote Mr. Uwe Schulz, last paragraph, I want to make sure you do read all of those, I think 24 written testimonies that you have received. Mr. English also stated when he visited us, his last paragraph in writing that Kaanapali Royal buildings meet a one-hour fire-resistant standard; however, all buildings at Kaanapali Royal with the exception of the pool and recreation center are built entirely out of concrete masonry units, CMU, which brings the entire project into a three-hour fire-resistant standard. This error in judgment where the chief plan checker of the Maui County Fire Department does not know the difference between a one-hour fire-resistant building and a three-hour fire-resistant building makes his judgment and competence highly questionable. And I want you to read that personally each one of you. The other thing was...oh, I feel so much better getting this out. I'm telling you, I can't tell you the nights we've tossed and turned in our beds 'cause we love our condo the way it is and it's not a safety problem and I can never help crying because it just makes me so angry. What was the other thing I wanted to tell you? Well, I'm not inspired by God so I hope

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that helps. Please read those written testimonies. I really beg you to do that. Don't make it like our health plan that people don't read and vote on. Aloha.

CHAIR MEDEIROS: Ms. O'Brien --

MS. O'BRIEN: Yes?

CHAIR MEDEIROS: --would you stay there for a moment in case the Members have questions. Member Johnson?

MS. O'BRIEN: Yes.

COUNCILMEMBER JOHNSON: I'm sorry for all of this --

MS. O'BRIEN: Stress --

COUNCILMEMBER JOHNSON: --stress --

MS. O'BRIEN: --and anger.

COUNCILMEMBER JOHNSON: --you know, stress. I know sometimes it puzzles me too being a part of government. I want to ask you just in terms of, you know, 'cause I've heard other testimonies, I've heard your testimony. Were you given consistently, I guess consistent information from the various departments to your knowledge?

MS. O'BRIEN: Oh, no, no. You would have to speak to my husband about that because normally all I do is cook, clean, and enjoy my home. My husband does the bills and all of that work. You'd have to ask him that. But I do remember this, it is not a pop-out, it is not a pop-out. It is an enclosure. That's a very important thing in architecture, I know that.

COUNCILMEMBER JOHNSON: Okay. Yeah.

MS. O'BRIEN: So I'm sorry. You'd have to ask my husband that question.

COUNCILMEMBER JOHNSON: Okay. That's fine. I, I really appreciate it. Thank you, Margy.

MS. O'BRIEN: Thank you.

CHAIR MEDEIROS: Thank you, Member Johnson. Any more questions, Members? Seeing none, thank you, Mrs. O'Brien, for being here, for your testimony. The Chair will offer another opportunity. Anyone in the gallery wishing to testify please come forward at this time. Ms, Ms. O'Brien, will you come back down and fill up the paperwork that we need. Thank you.

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Any others in the gallery would like to testify? This is your last opportunity. Seeing...

COUNCILMEMBER NISHIKI: Mr. Chair?

CHAIR MEDEIROS: Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Can I get the gentleman that had a discussion with Mr. Enomoto?

CHAIR MEDEIROS: Okay.

MS. O'BRIEN, FROM THE AUDIENCE: ...*(Inaudible)*...

CHAIR MEDEIROS: Okay. If there's no objections for the...

MS. O'BRIEN, FROM THE AUDIENCE: Joan, Joan, Joan had the ...*(Inaudible)*...

CHAIR MEDEIROS: Members. Ma'am, yeah, you --

COUNCILMEMBER NISHIKI: ...*(Inaudible)*...

CHAIR MEDEIROS: --just need to sign up there. So if there's no objections from the Members. No objections? I'll, I'll call down the gentlemen that can answer Member Nishiki's questions whoever that may be.

UNIDENTIFIED SPEAKER: ...*(Inaudible)*...

CHAIR MEDEIROS: Oh, Mrs., okay. Would you come forward? This is Mrs. Brown. And again would you state your name for the record please.

MS. BROWN: I'm Mrs., Mrs. Joan Brown.

CHAIR MEDEIROS: Thank you for coming back down to answer the Member's question. Member Nishiki?

MS. BROWN: You're welcome.

COUNCILMEMBER NISHIKI: Yeah. You mentioned the name Enomoto.

MS. BROWN: Yes.

COUNCILMEMBER NISHIKI: What was his reasoning for being there? Or was he visiting you?

MS. BROWN: No.

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COUNCILMEMBER NISHIKI: Or was it a phone call?

MS. BROWN: No. I really can't remember now. It's about three or four years ago. I, I'm, maybe he was, you know, just checking all the enclosures. I don't know. But I, I just remember a very wonderful man came, very, very charming gentleman. And he asked to just look out the window on the left hand side of the enclosure, and he said I think it would be better, it would be safer if we had a railing there, because if children climbed out the window, you know, it would stop them. And that's all I really remember about it.

COUNCILMEMBER NISHIKI: Okay. And, and maybe you can't speak for the rest of them, but I was reading the letter from Mr. Uwe Schulz. Am I to understand that throughout the 80-enclosed rooms--I don't know if they're all units, separate units--that there was no plumbing work, no electrical work or wall construction? None of them had any of this as a work done?

MS. BROWN: I really can't speak for the rest of them.

COUNCILMEMBER NISHIKI: Oh, okay.

MS. BROWN: There's definitely no plumbing. And I'd like to while I've got the opportunity to say that the, the only wall is the bathroom wall and that is a sturdy wall. It's not like this is sticking out on its own at all. It's all part of the building.

COUNCILMEMBER NISHIKI: Okay.

MS. BROWN: Okay.

COUNCILMEMBER NISHIKI: I guess, I guess my concern is if one of these units that was done had any kind of electrical work or whatever and it was done by anybody, and then there was a fire or whatever that could occur that liability to the entire complex would be at question. But from my, from my reading with Mr. Uwe Shulz, absolutely none of these units, 100 percent had no plumbing, electrical or wall construction required.

MS. BROWN: Uh-huh.

COUNCILMEMBER NISHIKI: And I guess is that a fact?

MS. BROWN: I would say it is a fact. Yes. Yes.

COUNCILMEMBER NISHIKI: Okay. Thank you so much.

MS. BROWN: Thank you.

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CHAIR MEDEIROS: Members, any other questions for Mrs. Brown? Seeing none, thank you for coming back down.

MS. BROWN: Thank you.

CHAIR MEDEIROS: Mrs. Brown, thank you for your testimony. Anyone else coming forward to testify? Seeing, excuse me, sir?

MR. O'BRIEN, FROM THE AUDIENCE:: Can I testify?

CHAIR MEDEIROS: Did you testify already?

MR. O'BRIEN, FROM THE AUDIENCE: No.

CHAIR MEDEIROS: Okay. You may come down and give your testimony and then sign up with the Committee Secretary. State your name and any organization you may represent.

MR. O'BRIEN: My name is Jim O'Brien and I represent myself as a, an owner and full-time resident at Kaanapali Royal. And the reason I'm asking you to testify is that, to clarify a few of the questions that came up. Doing the last first, the draft bill that we're considering here only involves enclosing the lanai. It does not involve any other modifications. If any modifications required electricity or plumbing, they under the Code as I understand it, would require electrical or plumbing permits.

CHAIR MEDEIROS: Right.

MR. O'BRIEN: So this bill does not include any electricity or plumbing. Another thing I wanted to, to point out is that I am in the possession of a letter from a Mr. Clement Enomoto when he was inspecting the, all the lanais in Kaanapali Royal, all the enclosed lanais on the upper levels because a number of them had enclosed their lanais with, with glass windows, opening glass windows and had not replaced the railings. And I believe that that's the occasion when Mrs. Brown met Mr. Enomoto was when they were doing that. I live on the first floor so I didn't need a railing. But at that time he, he inspected all the lanais and he wrote a letter--I believe it was to the association but I do have a copy of it--stating that with the installation of these railings that the lanais were okay. So I wish I had that letter with me today but I do have it. I do also have the letter that Margy mentioned from State Farm Insurance company saying it does not affect the, affect the insurance. And I have a copy of a letter from the Planning Department to one of the owners stating that, that it does not need SMA, it's exempt from SMA requirements. And the reason is these lanais are all enclosed within the building and as specified in the draft bill they involve no extension beyond the building, they're all under roof and they're all within existing walls. So I just wanted to clarify a few of those items.

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CHAIR MEDEIROS: Thank you, Mr. O'Brien, if you'll remain there. Any questions, Members, for Mr. O'Brien? Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And, you know, this is just to see if you could provide copies of those letters that you referenced to the Committee. I think it would be of great help.

MR. O'BRIEN: Yes, I could. And if somebody could give me instructions on how to go about it properly, I'd certainly appreciate it.

COUNCILMEMBER JOHNSON: I think you can ask, ask Staff and they will assist you. And also I just wanted to find out in regard to the testimony and I know I'm supposed to be asking a question about your testimony. But because you seem to be addressing other people's testimony I wanted to find out the question that I had asked your wife, Margy, about were you given, to your knowledge, consistent information from the various departments in Maui County that would help you to move forward on your issues?

MR. O'BRIEN: Well, we were given very consistent information for, oh about 25 years until this reversal and request for permits was made upon us. Since then we've been getting bounced around like a ping pong ball. On the issue of fire, the automatic fire sprinklers themselves, the information we got bounced around from individual units requiring fire sprinklers, the entire project requiring the fire sprinklers to individual buildings requiring fire sprinklers. And it just seemed to be coming from all different directions on that. When we went to the Planning Department at first for the SMA assessments, originally a, a lower-level employee who said up first, -front she did not have the authority to do it, but she said the Planning Department is in the business of--her words were--compliance not punishment. And it's felt with the similarity of all these lanais that if we paid these \$1,000 after-the-fact building permit once for the entire project because it would all be the same it would just be one assessment for the entire project. But she said that a, her supervisor a Clayton, Clayton Yoshida, I think, Clayton Yoshida had the authority to do that. We went back and spoke to Clayton Yoshida and he agreed with Carolyn Cortez. I had, did not happen to be in the meeting with Clayton Yoshida, but I did get the information immediately and was going to run over, set up, set up an appointment as soon as possible and just run over and pay him the \$1,000 and get that taken care of. But by the time I called him, he had talked to his supervisor at the time who was...

COUNCILMEMBER JOHNSON: Colleen.

ME. O'BRIEN: Suyama.

COUNCILMEMBER BAISA: Suyama.

COUNCILMEMBER JOHNSON: Colleen Suyama.

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MR. O'BRIEN: Colleen Suyama overruled him and said, no, each unit has to pay \$1,000 plus 10 percent of the construction cost as an assessment fee to be told, as it says right in front of the requirements on the assessment fee application that we are, we are exempt. So, no, it has not been consistent information coming from the County.

COUNCILMEMBER JOHNSON: And, and were you also sent letters with fines attached to them or potential fines?

MR. O'BRIEN: Yes, that was not, you know, I think at one point I referred to the Planning Department fees as fines, but I was corrected on that, they are fees. But yes we have fines threatened by the, is it the Administration Services Division -- Ralph Nagamine and Jarvis Chun. We got the letters from, what's his name, Mike Ramick, Mike Ramick saying that, well, first we got the letter saying we would be, we had to get permits for our lanais within like a six month period deadline or face a notice when we get a \$500 fine and then if we didn't have them restored within 30 days we pay \$100 a day fine which would double every month until it got up to \$1,000 a day. And so we've been threatened with all these fines and, you know, it's really frightening. A number of the owners just simply returned their units to the original condition because of the threat of these fines. But it's just not fair. It's just not fair. We did it with the permission of the County and it's just not fair.

CHAIR MEDEIROS: Okay. Member Johnson?

COUNCILMEMBER JOHNSON: Thank you. Thank you very much.

CHAIR MEDEIROS: Thank you.

COUNCILMEMBER JOHNSON: And I just wanted, you know, to try to get a sense of where this is going and where it's been. Thank you.

CHAIR MEDEIROS: Any other questions, Members? Seeing none, thank you, Mr. O'Brien, for your testimony. And would you sign up please? Thank you. If there's no one else coming forward to testify, without objection, Members, the Chair will close public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. So ordered.

**...END OF PUBLIC TESTIMONY...**

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**ITEM NO. 2: COUNTY'S INTEGRATED SOLID WASTE MANAGEMENT PLAN**  
(C.C. No. 09-22)

**CHAIR MEDEIROS:** Okay. Members, we're going to take up the first item on our agenda at this time, and that is IM-2, the County's Integrated Solid Waste Management Plan. Our first item is relating to projects and programs being implemented as part of the County's Integrated Solid Waste Management Plan. And we have here the Director of Environmental Management and also the Chief of the Solid Waste Division. I would like to now ask the Director to provide an overview on this item. Director Okuma?

**MS. OKUMA:** Thank you, Committee Chair Medeiros, Committee Members. I would like to provide you with a context and an update in terms of where we are. The Solid Waste Plan recommends increasing the recycling diversion rate from the current 30 percent to 60 percent with several programs. That plan, as you recall, was presented back in February by our consultant. In addition, the Solid Waste Plan recommends the County undertake studies to consider a WasteTEC or a waste-to-energy facility to convert waste into energy. If the County continues as it currently is, Central Maui Landfill will reach capacity in about 14 years or 2024. If the County implements new recycling programs and can push that diversion rate to 60 percent then Central Maui Landfill reaches capacity at approximately 2031 or 21 years from now. If the County implements WasteTEC, Central Maui Landfill reaches capacity at about 2042 or 32 years from now. And that, by the way, would increase our diversion rate perhaps upwards from that 60 percent. As you heard from our consultant in February, the planning efforts for these projects needs to begin now given the length of time it takes to budget, plan, design, permit and construct projects. Given that we do not feel that appropriate resources, meaning funding and staff, it is not realistic to think that we can implement the entire plan now. We have been considering the plan for components that we believe are within our current ability to begin, given current level of resources in staff. The component that we are addressing today is curbside recycling and a Material Recovery Facility. But please note that I say "begin", because full implementation of even those two projects means that in time we will still require resources meaning additional staffing. Business as usual will not be enough to support the implementation of this plan and the remainder of the Solid Waste Plan projects if the goal is to reach increased diversion as has been set forth in the plan. The automated refuse program has been rolled out in phases over the course of the last several years. As you recall, the major phase of that rolled out last year Upcountry and Lahaina. The automated program was designed to be the foundation upon which curbside recycling and green waste programs could be developed. We are now in the process of planning and developing the curbside recycling program together with the material recovery processing facility. And the concept of that plan is to phase this program over the next few years. At this point, details are not available because we are still undertaking internal analysis and discussion; however, what I can say is that our intent is to start with a pilot project in an area where we believe we can see how the program would work within the community. This is much the same as what was done and has been done in Honolulu beginning with pilots in certain communities in order to collect data so that the program could be evaluated and modified before full

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implementation. It is important to note that we have also a place to bring those recyclables picked up at the curbside, and that would be the material recovery processing facility. Currently, our consultant is completing a preliminary engineering report which will help us to decide how to implement that material recovery processing facility or we call it MRF for short. We anticipate that that will be completed sometime October 2009. Also this consultant is providing recommendations for a pilot curbside recycling project which we are currently analyzing and discussing. What is needed to implement the Solid Waste Plan to its full intent is funding for capital projects and funding for operational needs. And based on GBB's best estimates at the time of the study we know that that will mean a substantial increase to Solid Waste operating budget and a substantial increase to the CIP program budget. Currently, the Division has about \$30 million of projects it carries; however, the Solid Waste Plan would require resource to support about \$200 million of Capital Improvement Projects. And currently the Division does not have the resources or the staffing to do this and, therefore, is not equipped to implement the plan in a timely fashion. The longer the implementation of this plan is delayed it will mean the landfill capacity will be reached a lot sooner than we'd like. And if you recall back in February when this was presented, our consultant informed this Council and informed the Department that we would need to start right away and we're probably already behind. I can tell you that to date we have had two independent consultants who inform us that the Division does not have the needed staffing to fully implement the Solid Waste Plan recommendations. Staffing relating to functions of operations, compliance, project and permitting, project management and permitting, planning and engineering. While we can begin some of the recommendations like curbside recycling and the Material Recovery Facility we cannot sustain even these projects in a phased approach without the proper resources. But having said all of that we are in the process of seeing what we can do at this current point in time and we are in discussions right now, and we hope to be able to provide you more details as we move forward.

CHAIR MEDEIROS: Thank you, Director, for that overview. Members, at this time the floor is open for discussion and questions.

COUNCILMEMBER MOLINA: Question.

CHAIR MEDEIROS: Member Molina?

COUNCILMEMBER MOLINA: Thank you very much, Mr. Chair. Good morning, Madam Director, and thank you for a very lengthy opening presentation. Would it be possible to get a copy of your presentation this morning, 'cause it was very detailed and, you know, I think it would help us.

MS. OKUMA: Yes. I will...it's a little scratched up --

COUNCILMEMBER MOLINA: Okay.

MS. OKUMA: --but can I, if I can clean it up --

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COUNCILMEMBER MOLINA: Sure.

MS. OKUMA: --then I will submit that to you.

COUNCILMEMBER MOLINA: That'd be much appreciated. I know there's a lot of things we can touch on, Mr. Chair, so I'll ask a few questions and yield the floor to my fellow Committee Members as well.

CHAIR MEDEIROS: Thank you.

COUNCILMEMBER MOLINA: Just for clarification, first of all, the pilot project you spoke of, are we talking about a curbside recycling pilot project?

MS. OKUMA: Correct. It would be curbside recycling for pickup at resident, residential locations.

COUNCILMEMBER MOLINA: And any particular area you're looking at having this pilot project?

MS. OKUMA: We are, we're, what I would like to say is that we haven't, we would like the chance to further analyze that. We do have some, a location in mind currently, but I would like the chance to under, undertake our internal discussions on that one.

COUNCILMEMBER MOLINA: Okay.

MS. OKUMA: But we do have a particular area that we are considering.

COUNCILMEMBER MOLINA: Okay. With regards to this implementation of this, the portion of the Solid Waste Integration Plan, how many do you need currently for this curbside recycling and materials recycling facility part of the, the management plan? Are you looking at how many additional positions? Or do we, do we have the positions available?

MS. OKUMA: Okay. We're looking, obviously we're trying to be as economically, economical as we can given the situation. So we are looking at least at this component to see if we, and that's the analysis, if we can phase it without having additional positions for the curbside recycling. However, for the MRF project, we would need to take a hard look and I really suspect that we're, we would be looking at expansion positions in order to carry the CIP project and the contracts that go along with that.

COUNCILMEMBER MOLINA: Any idea at this point how many positions?

MS. OKUMA: I, I, that's part of our analysis right now.

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COUNCILMEMBER MOLINA: Okay. And you mentioned, you gave us some very sobering news about 2014 as the, when the Central Maui Landfill could potentially fill up if we don't, you know, implement the plan.

MS. OKUMA: About 14 years --

COUNCILMEMBER MOLINA: Fourteen years.

MS. OKUMA: --2024.

COUNCILMEMBER MOLINA: Oh, 2024.

MS. OKUMA: Right. That, that's if it's status quo and --

COUNCILMEMBER MOLINA: Status quo.

MS. OKUMA: --business as usual. Right.

COUNCILMEMBER MOLINA: Okay. Any update as far as the, you know, the, the monies that were appropriated for the purchase of, you know, 20, 25 acres near that area?

MS. OKUMA: Yes. The Council did approve monies for us to begin to go forward with negotiations. And I am, in fact, in the process of opening those negotiations with A&B. Those negotiations, the point of contact is coming out of Honolulu.

COUNCILMEMBER MOLINA: Okay.

MS. OKUMA: And so that, that is proceeding forward. We had preliminarily identified that in fact there are 25 acres adjacent to Central Maui Landfill, and that looks like the ideal location.

COUNCILMEMBER MOLINA: Okay. I'm hoping we can get it for a very good price with regards to the real estate market right now, so maybe get even more than, I guess, the projected 20, 25 acres if, if those lands are available. So anyway, Mr. Chairman, I'll yield the floor to my fellow Committee Members for now. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Molina. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Just for now, just one question. On the MRF, I know it's going to cost, you know, quite a bit of money. Is there any consideration being done with public/private partnership?

MS. OKUMA: Councilmember Pontanilla, that's a good question. And that is, in fact, what we'll be looking at as our consultant completes their recommendations in the preliminary engineering report which will basically cover in addition to certain kinds of information

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we're going to need some of the options in terms of how to go forward. And as you well know, the options could range from County design, build, operate to private sector finance, design, build and operate. And then between those two types of options you may have sort of hybrids. So the intent really is for us to receive that report and as I mentioned we hope to get that in the next couple of months and we will be evaluating those recommendations.

VICE-CHAIR PONTANILLA: Thank you. And this would be for, I guess, a total plan itself looking into that type of consideration, public/private?

MS. OKUMA: Yes. That, that'll help us, we hope, to be able to reach that kind of decision point. And as mentioned, that same consultant has also looked at a pilot curbside project for us as far as recommendations. So all of these pieces are coming together and we would like the chance to analyze that.

VICE-CHAIR PONTANILLA: Thank you. Because when you talk about \$2 million, you know, it's going to be difficult for the County to, you know, expend that kind of money --

MS. OKUMA: Right.

VICE-CHAIR PONTANILLA: --to complete this Integrated Solid Waste Plan.

MS. OKUMA: And, and I just want to say this whole area's fairly complex, because the market in terms of recyclables, as you know, with the economy really tanked and it's never recovered to the levels it was. So that adds a whole nother complexity to the picture here and would need to be considered as we look at these recommendations.

VICE-CHAIR PONTANILLA: Good. Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Mahalo, Mr. Pontanilla. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. And thank you, Director Okuma, for being here today. Couple of quick questions. I believe you are aware that there is a private vendor here in, in Maui that is presently putting together a MRF right down here at the Puunene industrial area. That is correct, right?

MS. OKUMA: Yes, we are. In fact, I believe that came up at one of the Council Committee meetings, and as a result of that I did meet with them to find out more about it. And as you say, yes, they are moving forward with a, with a facility and so that, that's useful information for us to know.

COUNCILMEMBER VICTORINO: And have the discussions even gotten to a point where there could be some shared or some, like you mentioned, private/public partnership? Would they be open to that idea? And, I mean I don't want to put you --

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MS. OKUMA: Sure.

COUNCILMEMBER VICTORINO: -- on the spot to say they or this or that. But is there a possibility? You know, 'cause this is something important because as you just stated, as Mr. Pontanilla just stated, 2 million, I mean that's a lot of money to, to put something together right now especially in these austere times. Yet, on the other side, we all know we don't do something today, tomorrow is going to come very quickly, and then we're going to be behind the eight ball, and then we're going to do what Oahu's doing, putting somebody together to package and ship our garbage out which is not really a feasible idea I'd like to consider. But have you had a chance --

MS. OKUMA: Yeah.

COUNCILMEMBER VICTORINO: --to really --

MS. OKUMA: Yes.

COUNCILMEMBER VICTORINO: --look into this and see what the possibilities?

MS. OKUMA: That, that's a good question. And first of all let me preface everything with we are governed by procurement law --

COUNCILMEMBER VICTORINO: I understand.

MS. OKUMA: --so we cannot just work a deal with a particular company. But it's good to know what is out there because that information helps us in terms of how we move forward. So I think what I can tell you is, yes, we are aware, yes, they seem to be moving forward, and we understand that that potential is out there in terms of public/private partnership. But whatever it is we would have to go through our procurement process.

COUNCILMEMBER VICTORINO: Okay. Again the question was not to say have you struck a deal or anything? I just wanted to know have you felt the willingness on this party to look to work together? I guess that was what I was asking.

MS. OKUMA: I believe so.

COUNCILMEMBER VICTORINO: Okay. And, and that's it. I mean not to, to --

MS. OKUMA: Right.

COUNCILMEMBER VICTORINO: --you know, I understand laws and, you know, I'm not putting you on spot. But I'm also looking at there's something being down now. Can we partnership with them now so that we can, you know, you know, work some solutions now? Because again as you stated the recycling market has tanked. Okay. We understand that. And you've seen what's happened in Oahu, they're putting together a

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system to ship things off to the mainland. I'd like to avoid that with a passion in every way we can. Your plan as well as the plan we all worked on is a very viable plan, but I guess the, you know, if we have to work with others for now until we have more money or the opportunity will be good. So thank you, Ms. Okuma, for that clarification. Thank you, Mr. Chair.

CHAIR MEDEIROS: Thank you, Mr. Victorino. Other Members? Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. I did want to make a few comments. I wanted to thank you, Ms. Okuma, for the hard work on this plan. The fact that your plan has, your draft has been accepted is no small thing. You know people who have never worked on studies and plans sometimes do not appreciate what it takes. But, you know, I know you worked very, very hard and a lot of people worked hard on this. So I'm glad that we're at least got a plan that's okay. Now the hard part, of course, is going to be to find the money, and we're going to be hard pushed around here to try and fund these big amounts of money that this plan talks about. And so, I too, really encourage us to look at partnerships and to helping those who in the private sector may be able to build these facilities for us, and we can participate at some level. Because I just do not see us...I mean realistically where are we going to raise the kind of money we're talking about, 20 million for this, 30 million for that, \$50 million for something else? Unless somebody has thought of something that I haven't. Do you have any ideas about revenue streams? You know we sit and hear every year talking about, you know, like even rubbish pickup fees, and we go talk, we fight for hours about \$2. Now how are we going to raise millions and millions of dollars?

MS. OKUMA: Uh-huh. Those are particulars that we would take a look at in terms of, you know, public/private partnership. But, you know, the one thing we do need to be aware of again is the economy. And so when the, when the market's not there it's very difficult. It even makes it difficult for private sector as well whom we would be looking to. So I guess that's part of the complexity of, of looking at the situation, how we want to structure this. But we're well aware, your, your comments are good points, and it's on our minds as we move forward in terms of how are we going to accomplish this.

COUNCILMEMBER BAISA: Yeah. Thank you very much. You know the best laid plans unfortunately will need money to, to make them happen. However, we don't have a whole lot of luxury of time which is another complicating factor is that if you don't meet these deadlines and we don't make them then we're looking at EPA fines and all kinds of other things that could possibly cost us even more money. So I think we're going to have some tough decisions to make here in the coming budgets and we're going to have to look at doing some things we don't like to do. Thank you very much.

CHAIR MEDEIROS: Mahalo, Ms. Baisa. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. You know you said that the landfill has like 14, 14 years of life --

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MS. OKUMA: Approximately.

VICE-CHAIR PONTANILLA: --presently.

MS. OKUMA: Yes.

VICE-CHAIR PONTANILLA: I know it's going to take more than 14 years to complete this Integrated Solid Waste Plan. You know, I don't know if you, you know, thinking about the possibility to extend the life of the landfill to do exactly what Oahu is doing until, you know, we get this Integrated Solid Waste Plan fully in operation meaning, hopefully, waste-to-energy as part of the requirements.

MS. OKUMA: The waste-to-energy component is, is going to be, by far, I think one of our more challenging ones. That project from the time of planning, design, permitting and build could easily take, you know, five, five years at least, maybe more depending on if we get into any kind of issue. But that is a component that we are currently not resourced to carry that project. That is a component--like Councilmember Molina you had asked about positions--that we would need positions for because we are not equipped with the kind of positions we're going to need to carry that. And yet, we need to begin right away especially if it's going to give to be five to seven years from the time we see it built. The priority for the Solid Waste Plan has been to increase the diversion rate, and as mentioned, I think that the curbside recycling and MRF is at least one place we can begin. Again, I emphasize we can't sustain the phasing without the resources we're going to need, but I'm talking about beginning, getting, getting out the gate. And for waste-to-energy I think we need to be looking at that now actually because of the horizon, the timeline in terms of how long it's going to take to actually see that built. And I think there's a lot of discussion that will need to occur with respect to how we want to proceed on that and what we think that's going to look like.

VICE-CHAIR PONTANILLA: So again the private partnership in regards to that one particular item is a real key.

MS. OKUMA: Is a key.

VICE-CHAIR PONTANILLA: Yeah. 'Cause I remember way back when, when Maui Electric was considering and probably that's the reason why for that alternate site for their power generation plant was to utilize that landfill as a possibility. So thank you. Thank you, Chairman.

CHAIR MEDEIROS: Mahalo, Mr. Chairman. Mr. Molina then Mr. Nishiki will be following you.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Chair. Madam Director, thank you for your comments on the waste-to-energy facility. Just following up on that question from

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Member Pontanilla, I, I presume you looked at the feasibility of doing a public/private partnership, you know, rather than the County just building their own and we staff it, just have maybe outsource this and have somebody come in. Can you give us feedback on that aspect?

MS. OKUMA: Okay. Thank you, I appreciate that question. Because that is our first step is to have the resources to do the feasibility study, because, as you realize, a commitment to waste-to-energy is a very long commitment. So we want to be very sure about what we want to have that look like. So we've always known that we've had to do a preliminary study which would include the feasibility, different recommendations, different options that we would need to consider. That has not been done. We don't have the funding to do that, and, and we would need, as I mentioned, staffing and resources in order to, to sustain and support that project, that particular project.

COUNCILMEMBER MOLINA: Can you recommend to us what are some ways to get those resources? Does it mean we're going to have to look at hiking up rubbish fees as one major way of getting . . . *(inaudible)* . . .

MS. OKUMA: We would, we would have to come out of it with our operations. You know we, we can look at grant funding, but I can tell you grant funding has been very difficult. If we rely on that it's, it's going to be delay. That is no guarantee we're going to get it. It's been very difficult even for us. We've tried. That has been one of our initiatives to, to see what kind of grant funding there is for solid waste projects. It's not that easy. So we don't have the funding to do the important feasibility study that you mentioned. But that is what we need, that is exactly what we need.

COUNCILMEMBER MOLINA: Well, you know, I think you mentioned the, the aspect of recycling. I mean we live on an island. There's only so much space, and our options, ship it out or people throw away less. Maybe we should all go back to a time when we, I know well my, our ancestors, yeah, many of us can recall, people didn't waste. And I know the, as part of the younger generation, we used to sort of laugh at that. You know, oh, why are they saving this, saving that? But now it makes much, much more sense. Recycle, reuse and so forth, yeah.

MS. OKUMA: I, I just want to mention that for the County, for the County and the philosophy of the Solid Waste Plan I believe is one of sustainability. It's a good plan and the committee--of which some of the Council Members worked on, were, were part of that--arrived at a very good outcome. When you go to the mainland and you hear how they're managing their solid waste, their management is to build large transfer stations to ship it out of state. And I, I don't think that's what we're looking at.

COUNCILMEMBER MOLINA: Yeah.

MS. OKUMA: I mean it'd be very difficult for one thing, we're islands. But the other, other thing is I don't, I don't think that's what we want to do.

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COUNCILMEMBER MOLINA: Okay. Well thank, thank you for your report on this. I certainly appreciate it. A little sobering but it's, it's the realities we're looking at. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Molina. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you. I'm more enthusiastic about this. For me it's getting more information from the Department. That hard copy that she's got I, I'd like to see what is in there, as requested by Mr. Molina. The two companies that you mentioned about I'd like to see those reports also. I'd like to see timetables that we put upon this Department, Mr. Chairman, as soon as we get more information from 'em. The fact that the hesitancy of even saying to me, to us today where the first community is. I don't, I don't, I don't know why, I mean, if, you know, some of these studies from these two study people that you mentioned about. And, and, and it's hard to say anything because of, like I said, the hard copy, what their recommendations are. Finally, I heard you say that the warm bodies are basically--and, and you need to correct me if, if it's not true--was going to be for WasteTEC. However with what warm bodies we have I'd like to see what, if these companies are saying you need more warm bodies, where they were to be placed and what their responsibility is. But, you know, we're, we're looking, number one, at the, completing the recycling and the Material Recoveries *[sic]* Facility. Where is the information for us if the study is about to be taken or you haven't done it yet? What that --

MS. OKUMA: That . . .

COUNCILMEMBER NISHIKI: --two areas are going to be in regards to warm bodies? So for me, Mr. Chairman, there are many unanswered questions and, and no deadline dates except I heard of an October 2009 study completion date. That's the only date I heard. The others were the 14 years, the 21 years and the 32.

CHAIR MEDEIROS: Okay. Mr. Nishiki, let, let the Director --

MS. OKUMA: I'm going to try...

CHAIR MEDEIROS: --try to answer some of the questions.

MS. OKUMA: I'm going to try to address some of it. I'm sure I'm going to miss points of it. There's some critical studies that are being done right now. One is the material recovery, on the material recovery processing facility the consultant is completing that recommendation report. We expect to see it sometime in October. They've also provided us with recommendations for a pilot curbside project. I would like the chance to analyze those two reports internally. We haven't had a chance to do that. In terms of the consultants that I mentioned, what they addressed were the staffing resources we would need not only to support waste-to-energy but for all our CIP projects. The CIP

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projects we're looking at in the Solid Waste Plan is \$200 million. The number of, the value of the projects that the Solid Waste Division currently has and it's all they can carry right now is \$30 million. Okay. So that's huge. That's, and this is coming out of the report that our consultant on the Solid Waste Plan did which is all on the web. It's a 1,500 page plan, report. And what we needed to know was what is it going to take to begin implementation and to sustain the implementation? What I, what I can tell you today is that we are working on the curbside and MRF plan to begin. But beginning doesn't mean we can sustain it as we try to phase it. And why are we trying to phase it? Because we want the program to be successful. We need to be able to analyze and collect data in terms of how it proceeds from community to community. And the other part of it is we know it's too expensive to take one full swoop at it so we're phasing it.

CHAIR MEDEIROS: Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. And, and Cheryl, not, you don't need to be defensive with me. I think that for, for me it's like, you know, give me, give me the studies. You've got some studies obviously and some you haven't gotten to. You got some studies.

MS. OKUMA: We have...

COUNCILMEMBER NISHIKI: Give it to us because...

MS. OKUMA: Councilmember Nishiki, we provided the plan to the Council back in February.

COUNCILMEMBER NISHIKI: This?

MS. OKUMA: No. It's 1,500 pages. It's on, it's on the website. We delivered CDs, we delivered it on CDs, we delivered everything, the entire work of the committee. We'd be happy to provide that to you if you, if you did not get it but it is on the website.

COUNCILMEMBER NISHIKI: And the dates that you have also, you have specific dates that...

MS. OKUMA: That, that may have conceptual, conceptual, you know, how long projects generally take, but that is nowhere near a detail that, that's enough to then proceed to plan, design and build a project. That's, those are the studies we need moving forward.

COUNCILMEMBER NISHIKI: So in regards to this 1,500 page study have you got anything concrete to share with this Committee in regards to --

MS. OKUMA: That's what I'm saying is --

COUNCILMEMBER NISHIKI: --where we're going?

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MS. OKUMA: --we're, we're working on something concrete now. We need the time to get these reports together. We're still waiting for this one and to analyze all of that in a, in a global fashion for curbside recycling and the material recovery facility project.

COUNCILMEMBER NISHIKI: And this October 2009 date is what that study's going to --

MS. OKUMA: Correct.

COUNCILMEMBER NISHIKI: --be completed?

MS. OKUMA: We hope, right. We're, we're hoping to receive it, we're hoping they're going to be done with it by then.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Mr. Pontanilla, before you go on I just want to add some information that may help, and I think the Director has, you know, stated it. But the, the plan, right, does cover 1,500 pages, 14 chapters, 12 appendices and in that 12 appendices there's 47 documents. So it's pretty comprehensive that, you know, if you have the time to go through it all there's a lot of information. It's a very extensive and comprehensive plan. And, Director, you mentioned the website. For those watching this meeting on television and don't have access to the amount of information we have, is that website still the [www.mauicounty.gov//index.asp?nid=881?](http://www.mauicounty.gov//index.asp?nid=881?)

MS. OKUMA: I'm sorry. It was [www.mauicounty.gov/departments/environmentalmanagement--management is mgt--/swplan.htm](http://www.mauicounty.gov/departments/environmentalmanagement--management%20is%20mgt--/swplan.htm). Or the other thing is go to the County of Maui website, go under Department of Environmental Management, I believe we do have something in there which specifically says ISWMP or Solid Waste Plan.

CHAIR MEDEIROS: Okay. And, Director, if, you know, some people may not have access to a computer what number can they call for information?

MS. OKUMA: They can call...well, one thing is we always deposited these, the same thing in public libraries around the County. So they can call the public libraries. Let me just name them, Hana, Kahului, Kihei, Lahaina, Lanai, Makawao, Molokai, Wailuku. All of those public libraries have been provided the information. Or they can call us at--what's our main number? (*asking the Chief of the Solid Waste Division*)--270-7875.

CHAIR MEDEIROS: Okay. Thank you, Director, for all that information. That'll be helpful to the public in wanting to access the information. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. You know I just want to thank Ms. Okuma for providing us with this update to the Solid Waste Integrated Plan. And I think you already started and you're going to start negotiating with A&B to purchase that

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land that is adjacent to the existing landfill. But, you know, the question that I have because solid waste is very important to us along with wastewater, you know you have a tough job in regards to waste water in trying to relocate that particular plant also. So, you know, I don't know how you're going to set your priorities. I know we've put in \$20 million to reinforce that plant which I was so happy to see in *The Maui News* that it's going to go out for procurement or bidding. So, hopefully, you can reinforce that plant and then figure out later on where we're going to move that plant. So you have a tough job in front of you. Thank you.

MS. OKUMA: Thank you.

CHAIR MEDEIROS: Thank you, Mr. Pontanilla. Members, any other questions? Otherwise, the Chair has a few questions. Director, when we did the Integrated Solid Waste Management Plan and the consultant did a really good job about showing the different approaches or different comparisons in the report and costs. Now that very costly study and report that was done by GBB, didn't that already give you some kind of a feasibility study as far as what needed to be done?

MS. OKUMA: No. It's not an engineering feasibility study, not at all.

CHAIR MEDEIROS: Okay. Thank you. And then now, you know, the State law required this plan and I think our last plan was in 1994. And the State law also requires 50 percent recycling by January 2000. So are there penalties for us not being at that level yet?

MS. OKUMA: Not to date.

CHAIR MEDEIROS: Okay. And so we need to go from 34 percent where we are now. Has that increased since we started this plan?

MS. OKUMA: That's a good question. No.

CHAIR MEDEIROS: So we're still at 34 percent? We haven't --

MS. OKUMA: Or --

CHAIR MEDEIROS: --we haven't improved?

MS. OKUMA: --something, more like probably 30 percent. It hovers, yeah. It's an average.

CHAIR MEDEIROS: Okay. Yeah. The, the plan done by the consultant said we're at 34 in the plan. So we're, we're at 30 percent. Okay. You talked about the MRF, the Materials Recovery Facility. Now in, in your negotiations or in your planning for that facility is that going to be like a single stream facility?

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MS. OKUMA: I know there's been, that's one of the things we'll talk about, and I'm hoping we'll be discussing that once we get the consultant report in October.

CHAIR MEDEIROS: Okay.

MS. OKUMA: But yes, I mean that's part of the discussion is, is it going to be single stream or not?

CHAIR MEDEIROS: And, and do you know why in, in the presentation we got and the copy that Mr. Nishiki held up which has a CD in it also, do you know why we're...in 2007, 51,000 households, you know, are currently, you know, can receive refuse collection but we only have 24,000? You know we're less than 50 percent being served.

MS. OKUMA: I think--of course I can't remember the 1,500 pages--but I think that's the potential if we increase our recycling efforts from 30 to 60 percent. I think that's what we would be looking at is more households, I think, plus with the growth and population over time.

CHAIR MEDEIROS: Right.

MS. OKUMA: But I'm not sure exactly what you're looking at, so.

CHAIR MEDEIROS: Well that came out of the presentation of the consultant.

MS. OKUMA: Right. But I mean I don't know...I'd have to look at, look at that. So I don't know if he's talking, they were talking currently or it was, if it was a projection assuming that we could increase recycling to 60 percent together with population increase.

CHAIR MEDEIROS: Right. And, and, you know, on the technology you're looking at, there was one technology that was brought to our attention and that was the landfill reuse. Now are you considering that?

MS. OKUMA: I believe you're talking about the, there was a name for it, the aerobic, anaerobic landfill process.

CHAIR MEDEIROS: Right. With...

MS. OKUMA: And yes, I had, in fact, talked to Department of Health in the past about it, but I don't recall all of the details. But one of the things is the State Department of Health does not have the appropriate rules in place that would permit that. They would have to put in place rules. EPA does allow it but on a case-by-case basis.

CHAIR MEDEIROS: Right.

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MS. OKUMA: And we would need to take a close look at it, that particular process because of the amount of, I think, leachate that would need to serve and go back into the system. So given the things we're trying to do with the landfill we obviously need to make sure it's consistent with that and we're not at odds with any of the programs we have going on. As I said, I forget the details but I did look at it. But it didn't look as promising as one would think.

CHAIR MEDEIROS: I, I think the promising part about that technology is that we don't need to so much purchase new land to do it.

MS. OKUMA: True. Yeah.

CHAIR MEDEIROS: They, they would dig it up like between three and five years, recycle what was left in the ground, end up with a small residue that they would dispose of and we could reuse the same area.

MS. OKUMA: Right. But part of it was it would create issues for us on our gas-to-energy process, if I recall correctly. So, you know, we're moving forward with the gas-to-energy. So that's a process that you mentioned. We'd have to take a really careful look at it. We were also, as I recall, concerned about any recycling materials left or other, other types of materials that don't break down, how that would be handled. And some of that may have to be some kind of manual process.

CHAIR MEDEIROS: Right.

MS. OKUMA: So there were other aspects of that process and as I said ,it's been a while since I revisited that. But I did talk to Department of Health and looked into it, and it seemed like a process that may work with odds with some of our current things.

CHAIR MEDEIROS: Okay. Thank you for checking on that technology because I think we need to consider all technology especially if we can save the County money and land. And then finally, I did write a letter and you did send a response, and it was asked you to prioritize where we are right now. And I believe in your responses to the Members the priorities are for the recycling program along with the MRF, and then next would be negotiating for the 25 acres with A&B --

MS. OKUMA: Yeah. Yeah.

CHAIR MEDEIROS: --and then finally to reach the goal of 60 percent recycling rate. Are those the current short list priorities?

MS. OKUMA: Yes. Because that, that's currently where we are and currently what we're able to do with our current resources.

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CHAIR MEDEIROS: Uh-huh. Uh-huh. And finally, because many of the Members asked and you gave your responses, you're in the transition of planning out what kind of personnel and funding needs you will need as, as we get closer to budget cycle?

MS. OKUMA: Yes.

CHAIR MEDEIROS: Okay.

MS. OKUMA: I hope to have more information for you on that both in terms of, and it will address what we need in terms of the phasing of the recycling program in addition to the rest of the components of the Solid Waste Plan which includes the MRF, which includes waste-to-energy, which includes all those other programs that were being recommended in the Solid Waste Plan.

CHAIR MEDEIROS: Okay. Thank you, Director, for the work you and your Department doing on this. Yeah. We want to see it move, you know, as expeditiously as we can; yet, we know the challenges involved. Members, any further questions? Seeing none, so, Members, let me just offer this. The Chair is ready to give his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR MEDEIROS: Thank you, Members. So because of the questions and the request for additional information and reports, and because it would be easily, we could receive easily further periodic and updated reports from the Department on the implementation status of this plan then my recommendation is to defer this item.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: No objections. Thank you, Members. So ordered.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.** (excused: SPK and DAM)

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: Members, at this time we're going to take a ten minute morning break. And so we'll be returning at 10:45. This meeting is in recess. . . .(gavel). . .

**RECESS: 10:35 a.m.**

**RECONVENE: 10:47 a.m.**

CHAIR MEDEIROS: . . .(gavel). . . Members, thank you for that recess. The meeting of the Infrastructure Management Committee of August 31<sup>st</sup>, 2009 is now reconvened.

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**ITEM NO. 6: DELINQUENT REFUSE AND LANDFILL ACCOUNTS (C.C. No. 09-101)**

**CHAIR MEDEIROS:** We'll, Members, we'll go to our second item for our meeting this morning. That second item is IM-6, and IM-6 is relating to Delinquent Refuse and Landfill Accounts. And the, Councilmember Pontanilla initiated this item, and he also transmitted a copy of a article from *The Maui News*. So at this time, Members, I will ask the Director to give us an overview of this item. Director Okuma?

**MS. OKUMA:** Good morning, Committee Chair Medeiros and Council, Council Members. I'd like to just give you an overview of our residential refuse accounts and our commercial accounts, and I'll start with the residential refuse accounts. The County has approximately 23,000 residential accounts, and revenue projection based on that number of accounts is approximately \$2.6 million. We now have a new billing system that was just rolled out for the residential portion sometime just prior to the beginning of the year to replace an existing system that is, is currently not very efficient for us. And we are still going through some, you know, shakeup. You always have a shakeup startup period. You work your kinks out, and so we're still going through that just so you understand. But MIS is the project manager for that project, and we have been working very, very closely with them. The determination is that currently there are about 2,000 delinquent residential accounts or that's about \$220,000. This is about an 8 percent delinquency rate. As a result, we recently sent out delinquent notices to those accounts. Now based on our past experience, once delinquent notices are issued we've been able to get that delinquency rate to about 2 percent, somewhere between 1 to 2 percent. So for example, for this last billing cycle which was from January through June of 2009 there were outstanding 350 delinquent accounts totaling about \$37,000. That is about a 2 percent rate. And what we did with those remaining 350 delinquent accounts is they were closed due to non-payment. Okay. I'm now going to move on to the commercial accounts. The delinquency rate for commercial accounts is approximately 19 percent. There are 450 active commercial accounts with projected revenues of about \$6 million. Now about 192 of those accounts are delinquent more than 30 days, I mean more than 60 days, I'm sorry, and that totals about 1.1 million. Of those 192 accounts, we have 22 big commercial accounts. We define big commercial accounts as accounts over \$5,000, and that delinquency for those 22 big commercial accounts is about \$1 million or about, represents about 86 percent of the total delinquent accounts that are more than 60 days delinquent. Now of that 22 there are seven very large commercial accounts that total about \$665,000 or they represent about 60 percent of those 22 big accounts I just mentioned. We do have two problem accounts that make up most of that 66 percent, and one is on Molokai and the other is on Lanai, both of which total nearly \$500,000 and have not paid. We now know that it appears likely that the company on Lanai will be unable to pay, and very shortly we will be meeting with representatives of the company on Molokai. Of the two other companies, large companies that make up the 66 percent, one indicated that they would be coming in with a payment plan so we are waiting to receive that, that information. The other company has been sending in payments over the course of the last several months in order to bring their arrearage down. Now due to lack of staffing and resources that we have, the focus is currently on dealing with these very

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large delinquent accounts. Later as we get proper resourcing [*sic*], which includes the staffing we need, we will then proceed to work on the process for the smaller delinquent accounts. What I'd like to mention is that current efforts that will lead to improvement in the management of our accounts and billings is the implementation of the NorthStar utility billing system, where MIS is lead on that project. MIS procured this contract in an effort to replace the County's current billing system because our current systems are not efficient. The residential refuse, as I just mentioned, was rolled out prior to summer, and we are still going through a period of refining and identifying what needs to be adjusted in the system. We anticipate that the next phase of handling commercial accounts, landfill commercial accounts will go live within the next couple of months, more than likely around October. And, again, we anticipate going through a period of refining and identifying what needs to be adjusted in the system. And by the way, this is a huge training effort for our staff. So that is part of the implementation process. I would like to mention that the Directors of Finance and Environmental Management wanted to be sure that fiscal operations achieve a level of efficiency within the division. And the Finance Director and myself believe that there were areas for improvement; therefore, from Director's office we had contracted with independent consultants who reviewed the fiscal operations against fiscal practices, identified areas to be target, one of which is the matter of delinquent accounts and billing. The management assessment done from March through April 2009 provides recommendations for operational improvements. Implementing these recommendations requires resources, resources such as the filling of the Accountant I position for which we received partial funding in the last budget cycle. Filling the Accountant I position would provide better attention and focus to the revenue functions within the division. Recruitment for the Accountant I is in process, and because of the concerns we have regarding the fiscal section we have been able to hire someone part-time until we can fill permanently the Accountant I position.

CHAIR MEDEIROS: Thank you, Director. And at this time I'd like to offer Member Pontanilla, as the Member who initiated this matter, first opportunity for some introductory remarks or/and questions. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. Because of *The Maui News* article in regards to the number of delinquents and the dollar amount that was noted back in March, you know, it became a concern for me in regards to, you know, how do we become more efficient in trying to get delinquents paid? And, you know, after hearing Ms. Okuma provide us with action plans that they're taking along with consultation with the Finance Department in regards to efficiency improvements in the collection area, you know, I feel assured that, you know, she's moving or the Department is moving in the right direction. It's good to hear that, you know, MIS is also taking an active part in this one here in regards to the NorthStar billing system. I imagine it's a new billing system that we have for the Department. So again, Chairman, what prompt me to create this item was the, and that was prior to budget also and, and, you know, probably good timing. And so, Chairman, I thank Ms. Okuma for providing us with an update. It's mind-boggling as far as, you know, 19 percent delinquent, you know, costs the County \$6 million so it's a lot of money and we need to be aware of that. So thank you.

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CHAIR MEDEIROS: Mahalo, Mr. Pontanilla. You have any questions for the Director at this time?

VICE-CHAIR PONTANILLA: Oh. As far as questions, you know, because of the economic condition that we face today I'm sure you're going to get more delinquents. So I don't know what's the Department action plan in trying to, I don't know, support some of the accounts that we have in regards to what's happening in Maui County today.

MS. OKUMA: We are working together closely with Corporation Counsel with respect to the enforcement authority that we do have. But we're also very aware of the hard economic times that everyone is facing. So we're in the process of...part of this efficiency is us being able to come up with appropriate policies and procedures. But short of that what I can say is that once we've identified who these companies are they get notices. We hope that they come in and talk to us. We see if there can't be any kind of plan worked out. If there's no plan that can be worked out, which seems to be at least the case of one of these companies, we will do a referral to Corp. Counsel. We also have the authority to close those accounts as well, too.

VICE-CHAIR PONTANILLA: Thank you. I, I hope we can work, you know, in a win-win situation. I hate to see a company close down, you know. You know we need to collect our, our monies and, and at the same time we got to be, I guess, soft, soft in regards to, you know, having or, or have, having the business work out a plan with us so that, you know, they don't totally close off. You know my concern is and because of the economic hard times, you know, employment is very important, you know, today, so.

MS. OKUMA: Yeah. You raise a good point. I can say that at least with some of these companies the arrearage goes back prior to the, the downfall of the economy. So some of these balances have been carried for quite a while on the books. I realize the economy makes it hard but the reality was some of these balances were carried even prior to the economy. And we are open again to discussing a payment plan. Those who have come to us and responded to us, we sit down with them, I sit down with them. But we already know there's one, it doesn't appear they're not going to be able to make much headway at all and, and that becomes, as you note, a very difficult situation.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Mahalo, Mr. Pontanilla. Before I recognize the next Member, Members, I just want you to know that the Director of Finance, Mr. Kalbert Young, is available also in the gallery for any questions you may have of him. Member, Mr. Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chairman. Just following up on the question that was brought up by Mr. Pontanilla, Madam Director, about payment plans. So I'm appreciative that you're looking at that to work with businesses who are, well especially the businesses who have just recently been affected by the economic

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downturn. And it was quite surprising to me that you were getting delinquencies from businesses even prior to the downturn in economy. So I think, you know, I don't know what flexibility or discretion you have or the Finance Director would have in making payment plans. I'm hoping that you take that into consideration as well, you know, especially with companies who didn't pay when the economy was good. I would be more sympathetic to arranging a payment plan with those companies who have just been hit with the economic downturn.

MS. OKUMA: Right. And, and you raise a good point. I think from the Department's standpoint that's, that's one of the first things we would like to work out is a payment plan. And I just want to note that we work closely with Corp. Counsel as well. So, you know, confer with them in terms of whether or not we can proceed down some of these paths. But at this moment at least from our Department as long as they're responsive and they show good faith in coming up with some plan to address the arrearage then we will listen to that. The problem is where if they don't contact us at all, they fail to show us a good faith effort, then that becomes a very difficult situation.

COUNCILMEMBER MOLINA: And I'm glad you mentioned Corp. Counsel 'cause it's going to segue into kind of, into my next question, Mr. Chair. In terms of privacy issues, you know, there's been, I don't know if it was our County or in other counties where they would publish the names of individuals, for example, who wouldn't pay their real property tax or are delinquent. Can we do that for something like this with businesses who've frequently been delinquent with their payments to the County? Is there any privacy issues? Can, can we do that legally? 'Cause sometimes just the threat of that will motivate some of these businesses to get their accounts caught up.

CHAIR MEDEIROS: Mr. Galazin?

MR. GALAZIN: Yeah. Mr. Molina, thank you for that question. I'm not personally familiar with the specifics. I have heard of, as you mentioned other, other jurisdictions where they've, they've posted delinquent, the names of, of delinquent people or companies. I could tell you that from my standpoint, from the Department's standpoint if somebody were to request documents showing financial information--it may be a government record-- you know, under Chapter 92F of the Hawaii Revised Statutes which would mean that unless there was some kind of specific reason to withhold it would probably be able to be released to the public. Of course that's a very different scenario than, than the government actively publishing it. I don't, you know, there's not enough information to go on right now for me to say specifically one way or the other. But as a general rule, I think it would probably be public information to begin with and probably not protected, at least the names of people who are behind. Maybe not the amounts, maybe not other information but, but names would probably be okay.

COUNCILMEMBER MOLINA: Yeah. Okay. Thank you. Thank you for that comment. And yeah my, my thing wouldn't be no requirements to post how much that, that organization owes, but I think it gets to a point where I would see it as a last resort. You know the

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County can only give, you know, either members of the public or businesses so much of a rope, you know, but after a while it gets old. You keep asking and you, you're hoping that the, the respect and trust can be returned by those who are delinquent. But if it's not being done in that fashion and in good faith well then I guess it's the last resort, just put the names out there just to get some, some of these folks motivated to do their part. So, anyway, that's all I have for now at this time, Mr. Chair. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Molina. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Mr. Chair. And of course this makes me even more concerned about our ability to undertake our ambitious plans when, you know, we can't even collect the money that, you know, these small amounts of money, relatively small amounts of money. So I think what we're facing is yes we are having difficult economic times but, you know, I used to work with a lot of economically disadvantaged people, and one of the things that we tried to do with them was credit counseling. And just like you say, you know, the first step is to come and talk to the person you owe the money to. Acknowledge that you have a debt. Explain your situation about why you cannot pay and try to work something out. But often people are either embarrassed and they don't want to come in and talk to you, or the other reason is they feel that you're not going to do anything to them so they just ignore it. Which brings me to my question and the question is, what is the penalty for not paying? Do they have to pay interest? Do they have to pay fines? Or do we simply take away the bin and that's it?

MS. OKUMA: Okay. They do have to pay interest. That's by ordinance.

COUNCILMEMBER BAISA: What is the interest?

MS. OKUMA: One percent? You know, we'd have to go back and check. I thought it was something like one percent or something. I, I could be wrong but we would need to check on that one. But in terms of the rest of the enforcement action, currently what we would do is we would refer the matter to Corp. Counsel. My understanding and Dave's here to address it but Corp. Counsel can then take the matter and reduce that to getting a judgment. They can get a judgment upon which they can enforce a lien. From the Department's standpoint we have the authority by ordinance to then shut them, shut their account down, basically not accept their loads anymore at the landfill.

COUNCILMEMBER BAISA: The reason why I raise this is again the motivation for taking care of the, the problem is either coming in to talk to you or this attitude of well they're not going to do anything to me so I'll pay my other bills first and I'll pay this last. But, you know, as the Council Members of this County, we have a fiduciary responsibility to make sure that we safeguard the assets of the County. And accounts receivable are assets of the County. So we have to try to be proactive and help you in getting this money in 'cause we really need it. And I think that, you know, particularly for these large accounts, you know, if people owe us some of the kind of money that we heard about

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today then we need to go after it and try to get it in by whatever means we have to. And it really distresses me. You know I really don't think that's it worth the, having a collection agency and going to court and doing all that for \$70 or \$60 or whatever 'cause we're going to lose more in the process. But when you start talking about hundreds of thousands of dollars then it's worth our time to go and deal with it. And I would say that we have to, you know, take a position of you have so long to come in and straighten this out with us and work a plan or else; otherwise, it's just not going to happen. Thank you.

CHAIR MEDEIROS: Mahalo, Ms. Baisa. Members, any other questions? Member Nishiki?

COUNCILMEMBER NISHIKI: Out of the...and, and, and this is impressive for me but out of the residential from 2000 you've dropped down to 350. That 350 accounts that you're talking about now of dropping what is the total amount owed?

MS. OKUMA: The 350 delinquent accounts were closed. That amount owed is 37,000, about \$38,000.

COUNCILMEMBER NISHIKI: And, and do you know whether these are renters or property owners?

MS. OKUMA: We, we'd have to look, check the database for that. I don't know that we can...

COUNCILMEMBER NISHIKI: I guess, I guess if they're...

MS. OKUMA: I'm told we wouldn't know.

COUNCILMEMBER NISHIKI: If they're renters it'd be tough. Now this is good homework but, to do. But if they're property owners then you could as been suggested many times that you could attach it to their property tax or whatever. You'd have to figure that one out --

MS. OKUMA: We'd have to figure it out.

COUNCILMEMBER NISHIKI: --and, and, and pursue it in that manner. In regards to the commercial you mentioned 450 which equates to 6 million. We now have that many people on a commercial basis in business?

MS. OKUMA: Yes.

COUNCILMEMBER NISHIKI: Still?

MS. OKUMA: Yes.

COUNCILMEMBER NISHIKI: Wow, that's amazing. Then out of that which is real important, I know if you live in an apartment or condo that many of us live in we have to hire a

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commercial contractor. And I, I, I like to see if those are so again in that area you can again go and attach it to their property taxes for those specific ones. Now when you get down to seven accounts, 665,000, \$100,000 on the average . . . I, do you happen to know whether they're big commercial companies?

MS. OKUMA: They're, they're...I don't know how large their companies are in terms of revenue generating. But all we can tell is that we consider their accounts large because of, of the, of the amount, dollar amount they owe.

COUNCILMEMBER NISHIKI: The dollar amount is, is, is important, but what is the time that these people owe over? I mean you've given us for commercial 60 days.

MS. OKUMA: More than 60 days delinquent.

COUNCILMEMBER NISHIKI: More than 60?

MS. OKUMA: Uh-huh.

COUNCILMEMBER NISHIKI: More than 60 but how much more, a long time?

MS. OKUMA: These, these delinquencies, some of them have been carried a long time, especially the two largest, as I mentioned. The...

COUNCILMEMBER NISHIKI: Molokai and Lanai.

MS. OKUMA: Uh-huh. Yes.

COUNCILMEMBER NISHIKI: Okay. And on Molokai how many commercial vendors do we have?

MS. OKUMA: It's one vendor.

COUNCILMEMBER NISHIKI: So this is the only one?

MS. OKUMA: Yes. Oh, I'm sorry. What? No, this is...huh? . . .*consulting with Chief of the Solid Waste Division*) . . . I guess this is the largest vendor on Molokai with that large amount. Apparently there are other smaller vendors who have accounts with us.

COUNCILMEMBER NISHIKI: Okay. And, and, and so again it would be of interest, I think, for, without telling you what to do, for the Administration to look at if these people collect from apartments and condos also. Because that would be a way you can immediately start some kind of collection on these people after all. You can attach it to their property.

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MS. OKUMA: I, I believe the attachment will be to the company's assets. We'd have to ask Corp. Counsel but I believe we would, it would have to attach legally to the company's assets. The judgment would be rendered against the company. Now it, the company may have a claim against their customers, but for the County, I don't want to speak for Corp. Counsel but I believe that's what it would be . . . *(inaudible)* . . .

COUNCILMEMBER NISHIKI: Yeah --

MS. OKUMA: Yeah.

COUNCILMEMBER NISHIKI: --and, and, and it's something that he may not know so I won't ask the question. He may have to do some research on that. But it seems like legally we can still go after those people that haven't paid their commercial accounts via this company but for you to look at. Lanai, how many carriers there? It would seem like on Lanai if there are more than one it'd be too many.

MS. OKUMA: We have one big vendor, one large company, and then I'm told that there's probably some smaller, smaller vendors.

COUNCILMEMBER NISHIKI: Now, if I may ask, are many of these companies, say like on Molokai and Lanai, also have a bigger company on Maui that they go under the same name?

MS. OKUMA: You know, I can't speak to the smaller companies but and I'm not sure. I think, I think our, our belief is that they're only on Lanai and Molokai. These are two different companies, yeah. I don't know that they have arms reaching onto island of Maui. I don't believe so but we would have to check.

COUNCILMEMBER NISHIKI: Okay. And so because of Mr. Pontanilla's concern, the Administration is now going to take more of an aggressive role. Until then we've not really been --

MS. OKUMA: We were...

COUNCILMEMBER NISHIKI: --that aggressive?

MS. OKUMA: We were in process of dealing with this. As I mentioned, the Director of Finance and I had actually talked about this concern, and so this is why we proceeded down the path of getting an assessment done. Because we believe that there was room for improvement. It recommended to us, as I mentioned, the need to hasten the fill of the Accountant I position. We are in that process but because we couldn't wait because of our concern we've hired someone temporarily until we can fill, actually fill that position permanently.

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COUNCILMEMBER NISHIKI: Okay. You got 22 accounts, 1 million and then you got seven accounts, 665,000. So obviously those seven make up a bulk of a collection on Maui.

MS. OKUMA: It's in Maui County. It includes Lanai and Molokai.

COUNCILMEMBER NISHIKI: And Molokai. Okay. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Any other questions, Members? If there's no further discussion...

COUNCILMEMBER NISHIKI: Yeah. I got a question.

CHAIR MEDEIROS: Go ahead, Mr. Nishiki.

COUNCILMEMBER NISHIKI: You know, you said you sent out notices to the, to the residential and that's the reason why it was cut back. Isn't that what I heard? How did you move from 2,000 all the way to 350 so quickly?

MS. OKUMA: That's in the last previous billing cycle. The process is, so the last billing cycle was January through June of 2000 [sic], June of 2009. And so for people who did not pay we recently sent out a delinquent notice. Okay. So we're going to see whether those delinquent accounts, how many of those people are going to pay up. But for the 350 delinquent accounts were closed that was from the, the prior billing cycle.

COUNCILMEMBER NISHIKI: Okay. So that's not what is only left of that 2,000 accounts. These are the...or is it?

MS. OKUMA: What's that? I'm sorry.

COUNCILMEMBER NISHIKI: You said you had 2,000 which represented 8 percent.

MS. OKUMA: Right. For the...

COUNCILMEMBER NISHIKI: Now you say you're down to 350 that you're going cut off. So that doesn't mean that approximately 600, 1,600 people now are not delinquent. We may still have it. However the 350 are the real delinquent ones.

MS. OKUMA: Yes. Because we closed them.

COUNCILMEMBER NISHIKI: Okay. So we don't know whether or not we're making a dent.

MS. OKUMA: Well, it's based on our past experience that that's about what it brings it down to. Every time we send out a delinquent notice it does bring the delinquency down. So based on our past experience we actually end up at about a 2 percent rate, as I understand --

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COUNCILMEMBER NISHIKI: So...

MS. OKUMA: --once we go through the whole process of sending out delinquent notices and reminders to people to pay.

COUNCILMEMBER NISHIKI: Right. So that 8 percent really doesn't or you don't really know whether because of the economic downturn it's at 8 percent. You don't have five years prior to this to show that we only had a 4 percent delinquency?

MS. OKUMA: We, I guess if, if you go, want to go back we'd have to look back in our records and pull that together and see what that, it looks like.

COUNCILMEMBER NISHIKI: Yeah. I'm just curious if that's the impact --

MS. OKUMA: Of the economy.

COUNCILMEMBER NISHIKI: --so, therefore, we need to look at that as we deal with 'em. Thank you. I'm done.

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Members, any other questions or discussion? Seeing none, the Chair is prepared to make his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR MEDEIROS: Thank you, Members. In order to allow for future discussions and updates on this item, especially since the concern for the delinquent dollars concerns which affects revenues which subsequently affects our budget, and the economic conditions and the dynamic changing situations and levels for people and businesses the, without objection the Chair will defer this item.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. This item is deferred.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.** (excused: SPK and DAM)

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: Members, we're going to get close to losing quorum. We have Mr. Pontanilla, I believe, will be leaving between now and 11:30, and then we also have Member Baisa that will be leaving at noon. We will check to see if Member Kaho'ohalahala is available to join us, but uh...

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**ITEM NO. 23: PERMITTING REQUIREMENTS FOR THE CONSTRUCTION OF LANAI ENCLOSURES (C.C. No. 09-217)**

**CHAIR MEDEIROS:** So, Members, we're going to take up the final item as we bring down our other Administrative representative, Director Arakawa. Is he still around? I saw him sitting in...here he comes. Okay. We're going to give him some time to get down here. Good morning, Director Arakawa. Thank you for being here. Okay, Members. The third and final item on our agenda this morning is the IM-23, relating to the proposed bill to provide exemptions from the Building Code for the construction of lanai enclosures. And this was presented to the Council and Committee by Councilmember Johnson. And we welcome Councilmember Johnson back to our meeting. At this time I, I'm going to first allow Mr. Arakawa, our Director, for any opening remarks or overview, and that would be followed by Councilmember Johnson, if she has any opening remarks. Director Arakawa?

**MR. ARAKAWA:** Thank you, Mr. Chair. And we appreciate the opportunity to provide comments on this item submitted by Councilmember Johnson. And I would also note that yourself as Committee Chair also submitted a proposed bill on this item as well. The bill before you proposes a building permit exemption on work to enclose a lanai or a patio in which no, no square footage is added to an existing structure. I just have some general comments. I would note that the general process of obtaining a building permit involves submittal to the Department of Public Works, and Public Works then circulates the building permit application to applicable State and County agencies including our own Department for review and comments. Thus the proposed bill involves the deletion of this review process. I would also note, for the Committee's information, there is an appeal pending before the Board of Variances and Appeals on the County's determination that enclosing an exterior lanai requires automatic fire sprinklers. And a ruling on the matter is anticipated around October of 2009. Given that, as far as the bill that's before you today we do have some concerns and questions relating to the bill. We feel the proposed exemption is quite broad. There is no size limitation on lanais or patios, thus the square footage could be quite substantial and it could be included as parts of buildings up to the height limit which in Maui County the tallest zoning district goes up to like 12 stories. There are also building integrity and safety concerns with the proposed permit exemption. For example, the exterior wall of the building normally has a fire rating, and the exterior wall also should form a weatherproof barrier from the elements. There are also minimum light and ventilation requirements which are reviewed through the permit process. There are also emergency escape window requirements on the exterior wall and this is required for all sleeping rooms. Guardrails may be required if there are unprotected openings in the walls, and safety glazing of windows may also be required if windows are located in hazardous locations. Lanais also should be structurally evaluated prior to enclosure. As an example, there are many lanais which protrude from the building face or are cantilevered from the building. These lanais may not be structurally sufficient to permit enclosure as well as additional load requirements necessary to meet minimum safety parameters. It is noted that all of the forgoing reviews

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would be deleted if there is no building permit required for enclosure of lanais or patios, and that concludes my comments.

**CHAIR MEDEIROS:** Mahalo, Director. At this time I'm going to offer Councilmember Johnson, who introduced this, to make her remarks. Member Johnson?

**COUNCILMEMBER JOHNSON:** Yes. Thank you very much, Chair Medeiros. I introduced this measure simply to begin the dialogue, because I was having no luck working through this on my own. And because we're a legislative body, I felt that if we can bring some clarity to something that not only has become an issue at this condominium but at many condominiums and apartments throughout Maui County to at least codify and try to come up with some uniform standard so that this issue can be resolved to everyone's satisfaction. One of the most difficult things I think is in drafting legislation I am not a person who is familiar with building ordinances, with all of the things just mentioned by our Director. Also with Mr. English, I did have a meeting with him and I explained to him why I was doing this, and that the only way that we were going to expose the problem that exists is to actually enter into a dialogue. So I offer both Mr. Arakawa as well as Mr. English an opportunity to make constructive suggestions as to how we can work through this particular measure. Unfortunately, because I've been dealing with this for more than a year, and the individuals, as you saw, Ms. O'Brien this morning, it's deeply disturbing to people that have lived in a complex for 30-plus years, maybe not them necessarily but this has been going on. So I felt that to at least get it before your Committee, Mr. Chair, and talk about what possible solutions we could have so that we could come up with a win-win situation. My view of County government is not to punish but to help and assist, because we are public servants and we are doing the bidding of the people who we serve to be really open and try to bring people into compliance, and try to find a way that we can come to creative and positive solutions for these difficulties. The most frustrating thing for me, Mr. Chair, was that I could not get consistent answers from our various departments. One department was telling me, oh well this is how we're going to handle it. Another department is telling me, no this is how we're going to handle it, and the two were not ever going to meet in the middle somewhere. So if you can't get there from here, what is the point of having a government that really doesn't serve the needs of the public? So what I did was I asked that a bill be prepared to enter into this dialogue. My view and this is what I discussed with Mr. English is that if I'm living in an apartment and I have...let's say for example it's winter time, let's pretend we're, you know, in snow country. And I go and I put on a storm window or I put up a screen for whatever purpose. Those things can be taken down at will and they usually are done, they're a temporary type of situation. So not knowing and all the different lanai enclosures 'cause there were several different configurations. Some of them have actually built walls, you know, where there were none on the exterior before. Other things have taken place. So they're all different situations. Some of them just merely moved the sliders from the inside to the outside. So my view was that if it is something that can be put back upon the, you know, person vacating that space, that in my view is a temporary item. It's something that you could put it back the same way that it was before simply either by removing the track on which the sliders go or by reconfiguring with a

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few very basic I guess construction amendments. You could put it back the way that it was. So the bill doesn't address all the issues that were mentioned by Mr. Arakawa. But what it does is it gives you an idea of the challenges that I have had in trying to come up with a solution which has so far eluded me. And I, as you all know, we as a legislative body are prohibited from directing the actions of Administration. So because I could get nowhere with our Administration and came up against a brick wall, you know, it just was very frustrating. So that is why this item is here in Committee. And if there are any questions, I'd be happy to elaborate on some of my frustrations, Mr. Chair, and the inconsistencies in information that I was being given. But Mr. O'Brien, I did visit with him extensively and also Mr. Grabil, and I have copies of letters in, in my files and I can get them also from Mr. O'Brien to show that this has been an ongoing problem and it is not being resolved. Thank you.

CHAIR MEDEIROS: Mahalo, Member Johnson. Members, I'm going to open the floor for discussion. Before I do that I'm going to offer Director Arakawa if he has a response.

MR. ARAKAWA: Mr. Chair, not so much a response but a suggestion. The comments that I had presented are comments from the Department Public Works' standpoint. And the Committee has rightly called the Department of Fire Control and Planning Department here. It might be prudent from the Committee's standpoint to also hear their points of view as well before...and we're all here to answer any questions that may arise after that.

CHAIR MEDEIROS: Thank you, Director Arakawa. And I will further that by saying we do have representatives here from the Fire Department and the Planning Department. Members, if any, any of you need to ask questions of those Administrative, Administration representatives we can call them down. So I'll open the floor and if you have questions for them they can come down. Member Molina?

COUNCILMEMBER MOLINA: Thank you very much, Mr. Chairman. And I'm glad you brought that up because we did receive a written testimony from Mr. Schulz in relation to Mr. English from the Fire Department. So I'd like to request if Mr. English could join us this morning.

CHAIR MEDEIROS: Certainly. Without objections, Members, we're going to call down Lieutenant English.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: I hope, I hope I didn't promote you or demote you but, it, Lieutenant, right? Okay. And he's here from the Fire Department. And, Mr. Molina, we'll continue with your questions.

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Mr. Chairman. Good morning, is it Captain? Lieutenant? Just for the record. Get there, your rank straight.

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MR. ENGLISH: It's Lieutenant.

COUNCILMEMBER MOLINA: Lieutenant, okay. Well first of all, thank you for being here. And as I mentioned earlier to the Chair we did get a written testimony from Mr. Schulz, and I'll just briefly read a portion of it. So because I guess apparently there's been some disagreement between yourself and him with regards to his request. I guess the third paragraph down, Mr. Scott English of the Maui Fire Department's opinion that a lanai off a secondary bedroom adds to the safety of the occupants is erroneous and without merit and without any support of the above quoted safety codes. And then next paragraph basically states about his, your visit with him. And then we heard from a testifier this morning directly read the, that next, I guess that final paragraph again and she wanted it read into the record. And I think it's only fair that we hear from your perspective as well. Because now that, their, well Mr. Schulz's opinion has been made public I think it's only fair that you give your side of the story, if you will, Mr. English. And I'll just read again what Mr. Schulz wrote in his written testimony that was read by a testifier. It states, Mr. English also stated in writing that the Kaanapali Royal buildings meet a one-hour fire resistant standard; however, all buildings at the Kaanapali Royal with exception of the pool and recreation center are built entirely of concrete and masonry units, CMU, which brings the entire project into a three-hour fire resistant standard. This error in judgment where the Chief Plan Checker of the Maui County Fire Department does not know the difference between a one-hour fire resistant building to a three-hour fire resistant building makes his judgment and competence highly questionable. Now I want to first state I'm not an expert in this stuff as well as Member Johnson had mentioned earlier. So, you know, we rely on your expertise as the, you know, representative of the Fire Department as it relates to public safety first and foremost. So if, Mr. English, if you could just give us, I guess, your side of the story with regards to this matter?

CHAIR MEDEIROS: Lieutenant English, go ahead.

MR. ENGLISH: Thank you, Chair Medeiros. Thank you, Mr. Molina. I'm going go back a little further. Right now as you see in front of you the, Mr. Schulz did file appeals with the BVA for the lanai enclosures. We had a hearing in the end of last July, at the ending part of July hopefully with some kind of response by this year October. As far as the buildings itself, today's Code requires any building three stories or more in height to be sprinklered or containing more than 16 units. Okay. The Kaanapali Royal is more than...it's three stories, and the...made up of three different buildings totaling 107 units. So when the permits came to our office the permit showed that they removed their lanai doors from their bedrooms to the lanai area and then they enclosed the outside lanai. Knowing that they increased the bedroom or the inside of their unit to the outside and making a little more fire hazard as far as emergency rescue, I required that the buildings be up to compliance by installing sprinklers. Also, that some of the buildings did not meet the required 150 foot access to all exterior walls of the building. So my letters pretty much to the applicants was all pretty much a cut and paste, reciting the same section of the Code. There was a letter that I sent out when I met with the owners requesting if they could sprinkler just the individual units. For example, Buildings F to S

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is all under one roof and it's staggered, and if they could show me that the buildings were separated all the way to the roof that they could sprinkler just Building F by itself and not the whole complex. And from what we found out that the attic area is not separated. It's all wood construction so the building cannot get a fire resistant rating because of the roof structure. So even though the separation wall is maybe a two-hour, three-hour wall they cannot get that classification because the attics and the roof area is not rated.

COUNCILMEMBER MOLINA: So, so, Lieutenant, so with, with your opinion, your assessment of the matter you had, you know, went through your superiors as well to get, I guess, you know, you, you shared with them your, your, your comments as well and I guess basically got the blessings of the whole Department. Am I correct?

MR. ENGLISH: Yes. The first letters I sent out was probably in 2005 for the third-story units, and then during that process the first and second units got dragged into the permit process, and then majority of the permits were applied for in '07. Like I said, several meetings with different owners, and they put together a board of Kaanapali Royal to try to get a solution. Like I said, they did appeals, hearing, two-day hearing, everything was brought up on the table and Judge McConnell will make a ruling on the decision as far as if they need to upgrade the buildings with fire sprinklers or they have to bring the, the buildings back to how it was original. And the sad part about it, a lot of the owners that bought into Kaanapali Royal they bought the unit as is, and like was mentioned before, somewhere in the '80s they say some of the building officials said no permit was needed but there was nothing in writing, and that's how we got to here, to today.

COUNCILMEMBER MOLINA: That's unfortunate. One last question, Mr. Chair, with regards to the proposed bill. Any concerns with the amendments that you can share with us? And what are its impacts? I know the majority of the testimony and concerns have come from, you know, the Kaanapali Royal but what, what in your, well, first of all, your comments on the bill, the proposed amendment and the overall impact it could have to the County as a whole.

MR. ENGLISH: Yeah. As far as the bill, proposed bill I have a lot of concerns because the Fire Code as well as the Building Code requires certain size openings out of the sleeping rooms. So if people are, are allowed to enclose their lanais, which are their only way out of the sleeping room, those windows have to be sized to a certain size, and without a building permit process we're not able to determine if they have the proper size openings. Also, the Fire Code requires that buildings that are not sprinklered have certain size openings every 50 linear feet so Fire Department access can be allowed. And once again if the permit is not required for the enclosure we cannot address, require the certain size openings. Another concern would be the type of construction of the building so if say this County building was an apartment building it's, it's a fire-rated building. All their bearing walls and partition walls are fire-rated. If someone was to do a lanai enclosure without permit how are we going to determine if they're using the proper material to do the enclosure if their framing is going to be, meet the building standard or they're going to just use standard wood framing which would not be allowed. So like I say, I don't

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think so the present Building Code and Fire Code has anything wrong with the lanai enclosure. We do have one problem area that's generating all these, these amendments. But I think the, how it's working right now it's, like I said, I've been reviewing the plans for the last eight years and I don't see a problem with it.

COUNCILMEMBER MOLINA: Okay. All right. Thank you. Thank you, Lieutenant. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Molina. Members, other questions? Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And, and thank you very much for addressing the issue and for meeting with me on this particular measure. As was mentioned, other jurisdictions, I believe, Kauai and also Oahu have addressed this issue adequately to resolve the measure that also takes into consideration safety and also fire-rating. So are you familiar with how they could address this issue and we're unable to do so?

MR. ENGLISH: I am not sure if they have...they had maybe local amendments that may addressed the situation. Right now our amendments that we have do not address the situation.

COUNCILMEMBER JOHNSON: Would you be willing, as you had offered, to take a look at the bill, would you be willing to look at those and find out what it is that's unique to those situations that would not be or would possibly have applicability to ours? Or would you prefer that Corporation Counsel and another department do that?

MR. ENGLISH: See I'm not sure if it says a Fire Code amendment or a Building Code amendment on Oahu and Kauai. If it's a Fire Code amendment I do work with the Fire Plan Reviewers on the different islands. I can contact them personally. But if it's a Building Code amendment, I don't have really the contacts so maybe another department may be better for that.

COUNCILMEMBER JOHNSON: Yeah. And, and the only reason I ask that is because if your concerns are specifically Fire Code which you're stating are, you know, a difficulty or whatever I just want to understand so that we can work our way through this. Because as I had discussed with you, if they're leaving a sliding glass door or they're leaving that in place and there's no structural change, that, that might be a possibility where there's no plumbing, there's no electrical. They're just simply moving out a sliding glass door which is not a weight bearing wall. So I, I don't know if you could look at that from a Fire Code perspective with your contacts. Would you be able to do that?

MR. ENGLISH: Yes. I'll get in contact the other, on Kauai and Oahu. My major drive behind requiring the sprinklers is that in 1988, that was the first year the Fire Code required sprinklers in three-story buildings. We adopted that Code in '96 and then in 1997 the Code that we're in present also require the buildings three story in height and more to be sprinklered. And then in, in the beginning part of the Code in Article 1 or 2 requires,

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there's a retrofit activity that we can retroactive the, the Code if we feel if it's a life safety hazard. So the way I'm looking at this lanai enclosure, especially Kaanapali Royal, by removing that lanai door which is the only door out of that bedroom, removing it and enclosing the lanai they lost a barrier. So if there is a fire and they're trapped in their bedroom they could go to the lanai, close the door behind them, and that lanai door which is weather tight will buy them some time from smoke whether it be two minutes or half an hour, we don't know, depends on the fire. By removing that sliding door and there's a fire and you're trapped in your bedroom now you're going to your lanai, which you don't have no barrier to stop the smoke, and now you have a lanai enclosure, a window there that, like I said, you're going to open it, you're going to add that air into the fire make enough to intensify the fire. You're going to let smoke go up to the third floor and put those other people maybe in risk, and now if we do have to have a rescue instead of rescuing you from an open balcony or over a guardrail now we have to get you out through a window. So knowing all of that thinking did that lanai enclosure change the life safety of the building? I say, yes, so that's why I enforce with the sprinklers or put the, put the unit back to how it was.

COUNCILMEMBER JOHNSON: Okay. The, the change you cite which was the sprinklering requirement came in, in '96 or '97. Is that correct?

MR. ENGLISH: The, the first year that the sprinkler requirement in three stories was 1988. The Uniform Fire Code and Building Code in 1988 published required sprinklers in buildings three stories or more in height for apartments or containing more than 16 units. That Code was adopted in '96 by the Fire Department. I think it was adopted by the Building Department in '94. I don't, and then the next Code that we adopted is 1997 Fire Code which we're in present also had that same language as far as requiring the sprinklers.

COUNCILMEMBER JOHNSON: So as far as enactment it was '94 was the earliest that it was enacted or adopted?

MR. ENGLISH: I, I can only answer for Fire. We adopted the '88 in 1996. I'm not sure when...I know Building was couple years before us. I'm not sure what the exact date was.

COUNCILMEMBER JOHNSON: Okay. And, and the reason I ask is because some of these units, the modifications predate that particular adoption, and so I guess the legal question comes in, you know, they're not making the modifications subsequent to the enactment of that ordinance. Many of these units are also on the first floor so the issues that you raise are not applicable in my view. But even if there's a way that we can address those issues my whole thrust in this is to try to come to a meeting of the minds or find a way that we can ensure safety, ensure the structural integrity, allow them an escape route even if it's an escape ladder, you know, that you require. Because this is not just with this condominium. There are many apartment buildings all over this County that have this problem. And rather than just shove it aside or just say oh, that's the people at Kaanapali Royal I would rather deal with it in a constructive and meaningful way as opposed to

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handling it any other way. So I'm looking for guidance. I'm looking for some kind of positive action so that we can resolve this, because it's not just with this condominium complex. So anything that you can do, Mr. English, to help move things along so that we may better serve the public and protect their life, health and safety I am completely open to.

**CHAIR MEDEIROS:** Let, let me interject something, Member Johnson. I think Lieutenant English did answer that he'll try talk to the other counties and see what kind of action they took, and if it's, you know, something possible for us or applicable to us. So I, I don't think...you have any further information to offer Member Johnson, or you offered what you felt you, you could get?

**MR. ENGLISH:** Yeah. I guess right now my main, I guess the main thing is wait for the appeals hearing to get the results of...from Judge McConnell. And then if you feel like we have to amend our Codes by addressing, I don't say requiring to take out the requirement for a building permit for a lanai enclosure maybe we should address something about sprinklering buildings. Maybe we, we still want a building permit for the lanai enclosure but we can retrofit something in the Building and Fire Code that may not require sprinklers in certain type buildings that may do minimum alterations. 'Cause I think the lanai, the building permit for the lanai enclosure is very important. We need building permits for that. We need to make sure that we have the openings, construction type is made. If the problem is the sprinklering which is the cost we should and address that. Put that, some kind of amendments in our new code that will address the sprinklering in that we don't have to sprinkler existing buildings three stories or less and we put that in our Code. And then we, like I said, you guys are the, the code makers and we can address that that way. I think that would be the solution, not to just delete the building permit for lanai enclosures.

**COUNCILMEMBER JOHNSON:** And, and, Mr. Chair, if we could also have a similar investigation done on the part of the Building Department. 'Cause Mr. English does not really know that much about that Code. I would really appreciate the assistance in researching that. Because obviously this is not a new problem, but the problem will not go away, and I prefer to deal with it in a proactive way so that other people do not have to go through the nightmare and the whole philosophy that government, you know, is supposed to assist people in coming into compliance instead of punishing. And right now, you know, while Mr. English is correct this issue with regard to the sprinklering is pending before the Board of Variances and Appeals, it does nothing to address the actual construction of these particular units. And how this all came about on this particular property was that there were third-story structures where individuals were given notice by their association that they were not in compliance with the requirements of the association, and they could not enclose, I guess, that third floor, so they did so. And they began to inquire well if I, you know, have a problem and I can't do this then how come the other individuals who had just simply enclosed their lanais where they don't have that same configuration how can they do it? And so it was a case of they asked these questions which then triggered this whole series of events. So those individuals who did

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do those other, I think it was the things that Mr. Nishiki had asked about where they might have had plumbing modifications or electrical, those were deemed even by the association to not be in conformance. And they have, from my understanding, been put back the way that they should be. So right now we're dealing with this other issue. But any assistance that your Committee may give these individuals it is of no use to have laws that are unenforceable, but by the same token I really think that as government we should really try to serve the people and make sure that we're consistent in the answers that we give. And when people rely on the representations made over these many years we do need to address that issue. And if it's addressing it now I think we should do that. Thank you.

CHAIR MEDEIROS: Okay. Thank you, Member Johnson. And I want to remind Members that we do have Mr. Cerizo here from the Planning Department also. And I think Member Johnson's inquiry about the Building Codes has been heard by Director Arakawa and can pass that on. So, Members, any other questions?

COUNCILMEMBER NISHIKI: I'd like to hear from Mr. Cerizo.

CHAIR MEDEIROS: Okay. Before Mr. Cerizo is coming down I'm going to take a short three minute recess. We'll be back at five to. Okay. This meeting is in recess. . . .(gavel). . .

**RECESS: 11:52 a.m.**

**RECONVENE: 11:55 a.m.**

CHAIR MEDEIROS: . . .(gavel). . . The meeting of the Infrastructure Management Committee of August 31, 2009 is reconvened after the recess. At this time, Corp. Counsel would like to make some comments. Corp. Counsel?

MR. GALAZIN: Thank you, Chair. I just wanted to respond real quickly to something that Member Johnson had raised, a question that she had asked perhaps not directly. But with the people who had built some of these enclosures back, you know, many years prior, under a different version of the Code that's really inapplicable, because they built without a permit and basically you have to come into compliance at the time when you're, when you're cited. So when we find that there was the construction without the permit whatever the current requirements are is what would be required whether it was built ten years ago or whether it was built last year. So it would be the same.

CHAIR MEDEIROS: Thank you, Corp. Counsel. Members, any questions from the Members first? Seeing none, Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I just wanted to ask Corporation Counsel because many times, you know, and, and there are reference letters made by people subsequent, you know, of course to I guess the original enactment of the change in the ordinance requiring either sprinkling or different code. Because those representations basically would give

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credence to the statements being made by individuals that they were advised by someone within Planning or more than one individual within Planning that they were not violating anything, there were no, I guess, conflicts. The reliance, I guess, would be on the information that they had received from the Planning Department. Because they did not get this in writing are you or are they in a position to now not have any defense, because they failed to get this in writing from the individual who they relied upon to say they didn't require permits?

MR. GALAZIN: Yeah. It'd be really difficult for, for me to say that they would have a reliance argument primarily based, A, because there is nothing in writing and there's no documentation. But B, we don't know who told them and if the person who told them that had any authority to speak to that matter. I mean I know we've seen in other situations, you know, even with TVRs where somebody might have said, oh, well, you can go ahead and do this, but this person had no authority to, to speak to it one way or the other. So I think those are the two issues: A, the documentation and B, no knowledge that, that the person was even authorized to speak to that matter directly.

COUNCILMEMBER JOHNSON: Okay. So pretty much they're out of luck because of whatever, you know. Okay. Well to the members of the viewing audience, I offer you one bit of suggestion, get it in writing, memorialize it and document, document, document. Because you cannot rely on anything you are told by County government. Thank you.

CHAIR MEDEIROS: Okay. Thank you, Member Johnson. If there are no further questions we're going to lose quorum in about a minute. Member Baisa has to leave. So because of that the Chair would like to offer his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR MEDEIROS: Thank you, Members. Because of the information that has been requested, further information and, hopefully, we can get our departments to meet and, and decide what would be their recommendation for this particular bill, the Chair without objection will defer this item.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.** (excused: DAM, MJM, and JP)

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: So that is the conclusion of our agenda, Members. And so at this time, the Chair will be adjourning this meeting of the Infrastructure Management Committee of August 31, 2009. Meeting is adjourned. . . .(gavel). . .

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**ADJOURN:** 11:59 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair  
Infrastructure Management Committee

im:min:090831

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

I, Daniel Schoenbeck, 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 the 15<sup>th</sup> day of August, 2009, in Pukalani, Hawaii

  
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Daniel Schoenbeck