

INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

November 16, 2009

Council Chamber, 8th Floor

CONVENE: 9:02 a.m.

PRESENT: VOTING MEMBERS:

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

NON-VOTING MEMBERS:

Councilmember Jo Anne Johnson (In 9:31 a.m.)
Councilmember Wayne K. Nishiki (In 9:43 a.m.; Out 10:27 a.m.)

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

ADMIN.: Milton M. Arakawa, Director, Department of Public Works
Lieutenant Scott English, Fire Prevention Bureau, Department of Fire and
Public Safety (Item No. 23)
Jeff Hunt, Director, Department of Planning (Item No. 23)
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: William Flint (Item No. 23)
Harold Hyman (Item No. 23)
Margy O'Brien (Item No. 23)
David Goode, President, KRS Associates II, LLC (Applicant's representative)
(Item No. 32)
Eight (8) additional unidentified attendees

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

CHAIR MEDEIROS: . . . *(gavel)*. . . Aloha and Good Morning.

COUNCILMEMBER BAISA: Aloha.

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CHAIR MEDEIROS: This is the meeting of the Infrastructure Management Committee on November 16, 2009. It's about two minutes after 9:00, and the meeting is now called, called to order. At this time, I'd like to introduce the Members that are here this morning. Committee Vice-Chair Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR MEDEIROS: Good morning. We have Gladys Baisa, Member.

COUNCILMEMBER BAISA: Good morning.

CHAIR MEDEIROS: Good morning, Gladys. We have the Council Vice-Chair, Mr. Molina is here.

COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR MEDEIROS: Good morning. We have Member Sol Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Good morning, Mr. Chair.

CHAIR MEDEIROS: Good morning. And we have Mr. Mike Victorino, Member, also.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MEDEIROS: Good morning. And excused this morning is the Council Chair, Danny Mateo. And so, Members, we are ready to conduct our business of this Committee. But before we do that, I'd like to introduce the other Staff that is with us this morning. From Corporation Counsel, Mr. David Galazin. Good morning.

MR. GALAZIN: Good morning, Chair.

CHAIR MEDEIROS: And representing the Department of Public Works, the Director, Mr. Milton Arakawa. Good morning.

MR. ARAKAWA: Morning.

CHAIR MEDEIROS: And from our Committee Staff, we have our Committee Secretary, Ms. Camille Sakamoto; and our Legislative Analyst, Mr. Mike Geers. Members, today we have three items on our agenda, and if you look at your agenda, the first item on the agenda is IM-32, accepting dedication of roadway lots for the Kulamanu Ridge Large Lot Subdivision, which is in Kula. The second agenda item will be accepting dedication, which is IM-30, and it is accepting dedication of road widening lot for the Kaunuohua Award, which is in Lahaina. And the third item is IM-23, which is a bill relating to permitting requirements for construction of lanai enclosures. And before we continue,

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I'd like to welcome our Council Chair and Member of the Committee, Mr. Danny Mateo, to our proceedings.

COUNCILMEMBER MATEO: Morning, Chair.

CHAIR MEDEIROS: Good morning. At this point, Members, we are going to provide time for public testimony, and we will set the rules for public testimony. Anybody wishing to give public testimony is asked to sign up at the lobby at the entrance of our Chambers with our Staff member there. And those, and our testimony we allow 30 [sic] minutes, and the lighting system we use is the green light and then the yellow comes on giving you 30 seconds and, and then the red light will conclude your testimony.

. . . Member Kaho'ohalahala, you have something?

COUNCILMEMBER KAHO'OHALAHALA: Chair, I don't know if you said 30 minutes.

CHAIR MEDEIROS: Oh, I'm sorry . . .(laughter). . . Did I say 30 minutes?

COUNCILMEMBER KAHO'OHALAHALA: Yes.

CHAIR MEDEIROS: Okay. We, we don't want to extend it that long. . .(chuckle). . .

ALL: . . .(chuckle). . .

CHAIR MEDEIROS: Thank you for that correction. Yeah, you have three minutes. The zero has been deleted from that three . . .(laughter). . . So three minutes to do, to do your public testimony. Thank you for that correction.

. . . Okay. And when you come up to testify, we ask you to state your name and if you're representing an organization, would you also state that? And before we get into our public testimony we'd like to ask everyone here, including our Members, if you have any cell phones or if you have any devices that will sound off during our meeting, we ask you to either shut them off, put them on silent mode or vibration so that none of it will disrupt the proceedings of this meeting.

. . . So at this time the Secretary has handed me three testifiers that have signed up prior to the meeting. And first of all, we have testifying on Item 23, Mr. William Flint. Mr. Flint, would you come forward, please?

NOTE: Pause.

CHAIR MEDEIROS: . . . Good morning.

. . .BEGIN PUBLIC TESTIMONY. . .

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MR. FLINT: Good morning.

CHAIR MEDEIROS: Yeah, if you'll state your name.

MR. FLINT: Can you hear me okay?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR MEDEIROS: Yes.

MR. FLINT: Yeah. Aloha, everybody. I'm William Flint, I live at the Kaanapali Royal, and you should each have a copy of my testimony, a written copy and I'd like to read if for the record if I could.

. . . As you are aware, IM-23 is Jo Anne Johnson's draft bill to clarify the permitting requirements for lanai enclosures and would provide exemptions from the Uniform Building Code for the construction of lanai enclosures in which no square footage is added to the existing structure. The primary reason for this bill is . . .being submitted to you for consideration is that inconsistent interpretations of the existing regulations by various County agencies are confusing and have caused many problems for quite a few Maui County residents. Most recently affected are the residents of the Kaanapali Royal of which I'm a resident who, for years, relied on the opinions of several employees of the building department--most notably Clement Enemoto, which many of you may remember who is now deceased--that no permits were required for our lanai enclosures as they were considered alterations and added no square footage to the existing footprint of the structure. Unfortunately, as you are aware also, I'm sure, that when permits are not required, no written evidence of this is ever given the homeowner, who could've...we could've used this to substantiate our claims but have no written record of that, it was more just a verbal okay. As a result, current officials, most notably Mr. Scott English, are insisting our lanai enclosures not only require permits, but the installation of automatic fire sprinklers, not only in the affected units, but the entire 105-unit complex. So in conclusion, it is my understanding that Oahu and Kauai have had laws very similar to this in place for many years allowing for exemptions from the Building Code for enclosed lanais in which no square footage is added to the structure. And I'm told also in Oahu that the laws have been working very well for more than 20 years. So for this reason, I urge the Council to end the ambiguities contained in the existing Building Code by approving IM-23, which would add language to specifically address this issue. And, once again, mahalo for your time. Thank you.

CHAIR MEDEIROS: Thank you, Mr. Flint, for your testimony. If you would remain there, sir, in case any of the Members have questions for you? Members, any questions for Mr. Flint, the testifier? Okay. Seeing none, thank you once again for your testimony. Members, before we call up the next testifier, there were quite a few papers provided for you this morning. Hopefully, you have time to go through that. And so I just want to

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bring that to your attention. The next testifier, also testifying on Item 23, is Mr. Harold Hyman. Mr. Hyman, would you come forward, please?

... And would you state your name for the record?

MR. HYMAN: Harold Hyman. Good morning and aloha. Thank you for the opportunity to comment on the changes to the Maui County Code as it relates to lanai enclosures. My name is Harold Hyman and my wife Vivian and I are permanent full-time residents at the Kaanapali Royal, Unit E-201. The changes you are now considering will impact *hundreds* and probably even *thousands* of properties in Maui County. Condo owners all across the island have enclosed their lanais, mostly without permits, but with the knowledge of the County building inspectors and Public Works' employees. County employees have been on various properties numerous times every year over the last 30-plus years and have not found any fault with the many lanai enclosures. An employee of Public Works a few years ago provided written confirmation that the lanai enclosures at the Kaanapali Royal were done correctly. I'm sure there are many properties in each of your districts where owners have enclosed their lanais and were told, as we were, that no permits were required. Is the County now requiring retroactive building permits for all lanai enclosures? If so, here are three examples of other projects with lanai enclosures on the island, and I have attached two pictures to my testimony that will highlight those two examples. The first one is of the Hololani, an eight-story property, no fire sprinklers in the building and as you can see from the photo that I have attached, they have many lanai enclosures. That is just one wing of that building and shows four lanai enclosures of a possible seven or eight units. The next photo is of the Iron...a unit at the Ironwoods. This, this again has many buildings and some of these units have enclosed lanais similar to the one that I have attached. If you walk along the walk, the walking path along the ocean at Wailea Point, the condominiums there, many of them have lanai enclosures similar to that at the Kaanapali Royal and at other properties around the island. These are only three examples, the many properties with enclosed lanais and I'm sure the County building inspectors can provide you with a complete inventory of all the properties that have similar lanais as those that exist at the Kaanapali Royal. You can remove the uncertainties regarding properties with lanai enclosures by approving the changes to the County Code that you are considering today. You will also, will be eliminating the ambiguity and confusion surrounding lanais and affirming the decisions of the building inspectors and Public Works employees who have conveyed to many owners over the last 30 years that lanai enclosures similar to those at the Kaanapali Royal met all the requirements of the County. Thank you for listening to me and for your consideration. I appreciate it.

CHAIR MEDEIROS: Thank you, Mr. Hyman, for your testimony. If you will stay there for a minute? Members, any questions for Mr. Hyman? Seeing none, thank you once again, sir, for your testimony. The next testifier, testifying also on IM-23, is Ms. Margy O'Brien. Ms. O'Brien, would you come forward, please?

MS. O'BRIEN: . . . Good morning.

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COUNCILMEMBER BAISA: Good morning.

MS. O'BRIEN: This is my third visit with you folks. Maybe we should invite you to Thanksgiving dinner. . . .(chuckle). . .

COUNCILMEMBER BAISA: . . .(chuckle). . .

MS. O'BRIEN: This is really...I, I handed out a copy of this to all of you, but I really would like to read it so it's, actually so it's televised so that folks across Maui will know what's going on with the lanai enclosure problem. We live on the first floor, B-102 at Kaanapali Royal, and have four exits from our home. Our State Farm homeowner's insurance man inspected our lanai enclosure and, with the approval of his underwriters, sent us a letter from his company stating that the lanai enclosure presents, presents no safety issues. My husband already sent you a copy of that letter. If you don't, if you mislaid it, we'll certainly...give you another copy. Our insurance man also inspected our friend's condo, B-302, that also has the enclosures, and he said if he were their insurance man, he would also have his company write a letter stating there are no safety issues with the third-floor lanai enclosures. I want to emphasize that our policy includes coverage for personal injury. Two licensed professional engineering companies, Satish K. Gholkar--he's a Professional Engineer--& Associates--and company--Inc. here in Wailuku, and Thomas M. Dusza--he's also a Professional Engineer--Vice President/Engineering Manager of Schirmer Engineering in Concord, California say in writing that the lanai enclosures present no safety issues. Two licensed architects, Uwe Schulz, A.I.A and Marie Kimmey, A.I.A, also say in writing and testifying under oath that the lanai enclosures present no safety problem. When an insurance company which pays the bills; two licensed professional engineering firms; and two certified architects say that the lanai enclosures present no safety issues, when credentials, what credentials does Lieutenant Scott English have to overrule them? He testified that he went to trade school to become an auto mechanic, but did not receive a certificate. He worked as an auto mechanic, a fireman, and a fire inspector before taking his present position. He did not state whether or not he had even graduated from high school. When the insurance company says the lanai enclosures present no safety issues and when two licensed professional architects say the lanai enclosures present no safety issues; and when two certified professional engineers say the lanai enclosures present no safety issues, why should you listen to Lieutenant Scott English, who testified that he did not even consult the professionals of the associations responsible for writing fire codes before making this irresponsible decision? His position is so outlandish that he insists that we, in a ground-floor unit, need a lanai to wait for our rescue. I also want to emphasize that this draft bill, as written, does not allow any new construction. It amounts to little more than installing storm windows. Please put a stop to this "much ado about nothing"--to quote some of your own County employees--and direct our resources to more productive endeavors during these trying financial times. Thank you for your time and consideration.

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CHAIR MEDEIROS: Thank you, Ms. O'Brien. And, Members, any questions for the testifier? Seeing none, thank you once again. Okay. The Chair has no one else signed up previous to the meeting, but I will give this opportunity to anyone in the gallery wishing to testify that have not testified yet. So if there's anyone up there that wants to testify, you're welcome to come forward and you can sign up later. Anyone wishing to testify at this time, this is your opportunity. Okay. Seeing no one coming forward, Members, without objections the Chair will close public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. So ordered. Public testimony is closed.

...END OF PUBLIC TESTIMONY...

**ITEM NO. 32: ACCEPTING DEDICATION OF ROADWAY LOTS FOR THE
KULAMANU RIDGE LARGE LOT SUBDIVISION (KULA)
(C.C. No. 09-275)**

CHAIR MEDEIROS: Okay. Members, if you'll turn to your binders to the first item on the agenda, which is IM-32...and our first item this morning, which is IM-32, relating to a proposed resolution to accept the dedication of roadway lots in the Kulamanu Ridge Large Lot Subdivision on Kulamanu Circle in Kula. As stated on our agenda, Members, the proposed resolution entitled ACCEPTING DEDICATION OF A ROADWAY LOTS FOR KULAMANU RIDGE LARGE LOT SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE. The purpose of the proposed resolution is to accept the dedication of Roadway Lots 219-A and 219-E, consisting of a total of approximately 0.706 acre, on...Kulamanu Circle in the Kulamanu Ridge Large Lot Subdivision, Kula, Maui, for public purposes, and the TMK is (2) 2-3-23:011. So, Members, at, at this time I'd like to call on the Director of Public Works, Director Arakawa, to give us an overview of this agenda item. Director Arakawa?

MR. ARAKAWA: Thank you, Mr. Chair. The item before you as you mentioned, pertains to a proposed dedication or Roadway Lots 219-A and 219-E for public purposes. The roadway lots are within the Kulamanu Ridge Subdivision in the Kula District. Lot 219-A is .61 acre in area and Lot 219-E is .096 acre in area. Both lots are 44 feet in width and the two lots are an extension of an existing street which is named Kulamanu Circle. The subdivision was granted final approval back in June 9, 1994. The improvements are complete and were approved by the Department of Public Works on April 15, 1994 and the Department of Water Supply on December 7, 1994. Unfortunately, the original developer of the subdivision filed bankruptcy before dedicating these roadway lots to the County, and a number of years later the project was purchased by KRS Associates II, LLC who has been working on getting the road dedicated. We recently received the Warranty Deed and we've reviewed it and found it to be satisfactory. The document has also been reviewed and approved by the Department of Corporation Counsel. ...*(clears throat)*... Excuse me. A resolution entitled ACCEPTING DEDICATION OF

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ROADWAY LOTS FOR THE KULAMANU RIDGE LARGE LOT SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE has been drafted, and the Committee's review and consideration of the proposed resolution is respectfully requested.

CHAIR MEDEIROS: Thank you, Director. Members, the Chair will open the floor for discussion, and the Chair will allow Ms. Baisa if she has any questions or discussion, being the area representative of Kula, the first opportunity. Ms Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I appreciate the courtesy, but my concerns were answered by Mr. Arakawa. I wanted to make sure that the Department was satisfied that the requirements had been met. And, of course, I had the question about why it took so long, which, which he both...answered both questions. So no further questions for me. Thank you.

CHAIR MEDEIROS: Thank you, Ms. Baisa. Members, any further questions for the Director?

COUNCILMEMBER KAHO'OHALAHALA: Mr. Chairman?

CHAIR MEDEIROS: Okay, recommendation--before we do that, Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Director, I'm looking at the map that's included in the communications here and it shows that the, the Lot 219-E is now coming into a portion of Lot 219-D . . .

. . . Yeah? And, and the reason for it being extended into that. . .that small portion 219-E is just a short extension into that other adjoining lot. Okay. And it doesn't, you're saying it's part of street that's called Kulamana, Kulamanu Circle. So can you explain then why this short extension?

MR. ARAKAWA: Yes. Councilmember Kaho'ohalahala, the map that you have before you only shows the roadway lots that are proposed to be dedicated. There were a number of other subdivisions which had been previously approved a number of years ago which included roadway lots have, which have already been dedicated to the County. So Kulamanu Circle is an existing street. And if you'd like, I have some maps which kind of show the roadway lots in the context of the larger subdivision, and I can circulate those if the Committee prefers. But it is part of a larger subdivision and the, the streets that it connects to are already-existing streets.

COUNCILMEMBER KAHO'OHALAHALA: So this short portion, 219-E then, is to connect 219-A to an already-existing street?

MR. ARAKAWA: Yes, 219-A, 219-E already connect to an existing street. That's correct.

COUNCILMEMBER KAHO'OHALAHALA: And then that street is Kulamanu Circle?

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MR. ARAKAWA: Yes.

COUNCILMEMBER KAHO'OHALAHALA: And we're just not showing it here on, on this?

MR. ARAKAWA: It's not shown on the map that you have before you, but I, I can circulate the tax maps, would kind of show that in, in the context of the larger...

COUNCILMEMBER KAHO'OHALAHALA: Okay. Chair, I'm, I'm just confused why it's empty on one, the other end, but he's saying it's already developed. So that was my...

COUNCILMEMBER VICTORINO: Mr. Chair.

COUNCILMEMBER KAHO'OHALAHALA: Yeah.

CHAIR MEDEIROS: You, you have something to provide, Director?

. . . Thank you.

NOTE: Pause while copies of a larger map were distributed to Council Members.

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: Just read the . . .(inaudible). . . from the top, get the whole project . . .(inaudible). . .

CHAIR MEDEIROS: And, Members, for your information we have Mr. David Goode here who's the President of KRS Associates II, LLC, whose project this is. So if you have any questions for Mr. Goode, I'm sure he's been...he would be willing to come forth and answer any questions you may have. Okay. Member Pontanilla, did you have a question?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I just want...you know, was going to point out on the bigger map that we have, on the top section vicinity map it does show what Mr. Arakawa is also passing out. So that's the total subdivision on this map. Thank you.

CHAIR MEDEIROS: Yeah. In your binders, Members, some maps were provided and Member Kaho'ohalahala brings up a good question...which I also, when I first looked at the map, had the same questions. So, Member Kaho'ohalahala, are your questions answered or...?

COUNCILMEMBER KAHO'OHALAHALA: Yes, with the map that was just handed out. Thank you.

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CHAIR MEDEIROS: Okay.

. . . Members, if none of you have any more questions, the Chair has a couple questions. The first one is for Corporation Counsel. In Exhibit "A", Page 5 of 6, it, it...it states that the Warranty Deed is a Limited Warranty Deed. Would you be able to explain to me what the Limited Warranty Deed would be?

MR. GALAZIN: . . . I'm sorry. Can you inform me exactly where you're referring to, Chair?

CHAIR MEDEIROS: I believe it's on Page 5 of 6 as part of the Exhibit "A". Let me, let me double check.

. . . It's right after the Warranty Deed document. Following the document, it's Exhibit "A" and Page 5 of 6, Item 1.

MR. GALAZIN: Oh, you're referring to the recitation as to how KRS Associates II obtained its title?

CHAIR MEDEIROS: Correct. And what does Limited Warranty Deed mean as opposed to just Warranty Deed?

MR. GALAZIN: Well, Chair in a Warranty Deed you can, you can warrant sort of a broad range of items or you can warrant a limited specific, set out a number of items. And a Limited Warranty Deed typically just states what it actually warrants, which is a guarantee that the grantor makes to the grantee, that he will...that the title is, is good, that he will defend if somebody comes and tries to claim better title in the future, that the grantee will be able to enjoy possession of the property. So these are the typical kinds of things. If you just have a General Warranty Deed, it's kind of a blanket. With a Limited Warranty Deed, it's usually spelled out specifically. But as a practical matter, there's really little difference from our standpoint.

CHAIR MEDEIROS: Okay. Thank you, Corporation Counsel. I, I'm looking for my second question here and trying to locate, but anyway the question I had was that...there's a difference on the...again on Exhibit "A", Page 6 of 6 and Item No. 4 where there's an agreement of deferral of subdivision water system improvements. I believe I, I then read on the fact sheet where the improvements were completed. So I was confused from "being deferred" and "being completed". Let's see...okay, on number, on the Fact Sheet, Item No. 12, confirmation that all improvements have been completed; and then it shows Department of Water Supply...I guess improvements completed December 7th, 1994. But then on the previous...section that I cited, it says that the agreement for deferral of subdivision water system improvements is stated. Can you tell me why there's a difference in that? Maybe the Director?

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MR. ARAKAWA: Mr. Chair, as this involves a number of different subdivision applications and it has a long history, I would ask you if you could ask the . . . David Goode to answer that question.

CHAIR MEDEIROS: Okay.

MR. ARAKAWA: They were the entity to actually purchase the property.

CHAIR MEDEIROS: Okay. Members, any objections to having the representative from the developer come down?

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: No objections? Mr. Goode, would you come down to the podium, state your name, and then the Members may have some questions for you or the Director.

MR. GOODE: Good morning, Mr. Chair, Members of the Committee. David Goode, President of KRS Associates II.

CHAIR MEDEIROS: Thank you for being here, Mr. Goode, and thank you for coming forward. Members, any questions for Mr. Goode, or, Director, would you want to ask that question so he can answer it?

MR. ARAKAWA: Mr. Chair, I just wanted to direct the question to Mr. Goode as far as answering the issue on the water agreement deferral.

MR. GOODE: Mr. Chair, my recollection was that the road lots that are before you were part of a large lot subdivision--actually from 19... '98 maybe, '99. So on a large lot subdivision the then-owner--it's not us--did a deferral of water system improvements because they were just creating the large lots. Later each of those large lots were further subdivided into home lots and then sold to lot owners. In order to get that done, they had to put the water system in. So, I think what happened is that water system agreement still showed up on *title*, and so as a result the Warranty Deed had to reflect the encumbrances that were on title. But the system is in as DWS water, all the premises are being served.

CHAIR MEDEIROS: Okay. Thank you, Mr. Goode, for that reply and clarification. Members, any other questions for Mr. Goode? Okay. Seeing none--

MR. GOODE: Thanks for the opportunity.

CHAIR MEDEIROS: --thank for coming forward. Members, any further questions or discussion? Seeing none, the Chair would like to make his recommendation.

COUNCIL MEMBERS: Recommendation.

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CHAIR MEDEIROS: Members, the Chair will entertain a motion to recommend adoption of the proposed resolution and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move to adopt, and the filing of the communication, for the proposed resolution ACCEPTING DEDICATION OF ROADWAY LOTS FOR THE KULAMANU RIDGE LARGE LOT SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MEDEIROS: It's been moved by Committee Vice-Chair Pontanilla and seconded by Member Victorino. At this time, Members, it is open for any questions or discussion. Seeing none, the Chair will call for the question. All in favor of the motion, signify by saying "aye".

COUNCIL MEMBERS: "Aye".

CHAIR MEDEIROS: All opposed say "no". Okay. It's...the motion passes, we have . . . *(change of tape, start 1b)*. . . all Members in the affirmative. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

ITEM NO. 30: ACCEPTING DEDICATION OF ROAD WIDENING LOT FOR THE KAUNUOHUA AWARD (LAHAINA) (C.C. No. 09-261)

CHAIR MEDEIROS: I now turn your attention to Item No. 2 on your agenda, which is Item 30.

. . . And before we proceed on that, Members, I'd like to welcome a Non-Voting Member of our Committee, Mr. Johnson for being here. Thank you.

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COUNCILMEMBER JOHNSON: Aloha.

CHAIR MEDEIROS: Aloha. Okay. We now turn our attention to Item IM-30, which is accepting dedication of road widening lot for the Kaunuohua Award in Lahaina. And if you look at your...the item on your agenda, this is a proposed resolution entitled ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE KAUNUOHUA AWARD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE. The purpose of the proposed resolution is to accept the dedication of Road Widening Lot A-3, consisting of approximately 675 square feet, situated along the westerly side of Front Street at Alio, Lahaina, Maui, for the, for public purposes. So, Members, at, at this time I will call on the Director of Public Works to give us an overview of this item. Director Arakawa?

MR. ARAKAWA: Thank you, Mr. Chair, this item pertains to a proposed dedication of a roadway lot for the Kaunuohua Award along Front Street in Lahaina, and the subdivision was granted final approval on August 10, 2009. The roadway lot is 4.5 feet in width and comprises 675 square feet in area. The Department of Public Works has reviewed the Warranty Deed and found it to be satisfactory, and the document has also been reviewed and approved by the Department of Corporation Counsel. A resolution entitled ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE KAUNUOHUA AWARD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE has been drafted. The Committee's review and consideration of the proposed resolution is respectfully requested.

CHAIR MEDEIROS: Thank you, Director. Members, the Chair will now open the floor for discussion. And even though the Member representing that area is not a Voting Committee Member, without objections I'd like to offer that opportunity to Member Johnson if you have any questions or discussion.

COUNCILMEMBER JOHNSON: No, I don't really on this particular item. You know, I'm here actually for the next time.

CHAIR MEDEIROS: Okay. Thank you.

COUNCILMEMBER JOHNSON: Thank you very much for the opportunity.

CHAIR MEDEIROS: Members, any questions for the Director on this item?

CHAIR VICTORINO: Nope. Recommendation?

COUNCILMEMBER KAHO'OHALAHALA: Chair?

CHAIR MEDEIROS: Okay. Seeing none...

COUNCILMEMBER KAHO'OHALAHALA: Chair?

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CHAIR MEDEIROS: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. I'm just looking at Exhibit "A" and to the Warranty Deed. . .and I guess it's Page 2.

... And I'm just reading this "Subject, however to the following", and you have three items there, and my question is on Item No. 2.

... What, what does that mean? Director? I'm asking the Director. Yeah?

CHAIR MEDEIROS: Director?

MR. GALAZIN: Actually, Member Kaho'ohalahala, I can probably field this one for the Director. What I would presume this means is that in the, in that Land Patent number that's referenced there...as this property was transferred down, it was probably difficult to ascertain the exact names of the individuals who it might pertain to as it got further down the line; and, therefore, it would be, you know, a practical difficulty to extinguish that without, without identifying who might be affected. But, you know, that's a common phenomenon for, for a lot of the property that was part of these Awards. It wouldn't, it wouldn't have any impact on our ability to, you know, use it as a road widening lot to do with the improvements that, you know, I suppose would be contemplated by Public Works in this situation.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Having said that, then, then are we dealing with access over our road areas then?

MR. GALAZIN: Well, without knowing what the specific rights might be, I suppose it could include that. But, you know, again we're talking about a roadway lot here.

COUNCILMEMBER KAHO'OHALAHALA: Okay. I understand that, but I just want to ensure that what this means is that there is an ensured access irregardless of whether we have a road lot or the property owner then of these original lands then?

MR. GALAZIN: Possibly. And I can't speak to that specifically.

COUNCILMEMBER KAHO'OHALAHALA: But as far as we're concerned for *our* portion here, that there is an understanding that there is possibly access through?

MR. GALAZIN: That would be correct, yes.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you.

MR. GALAZIN: Okay.

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CHAIR MEDEIROS: Director, would, would you have any further comments on Member Kaho'ohalahala's question?

MR. ARAKAWA: No, Mr. Chair.

CHAIR MEDEIROS: Okay. Thank you. Member Kaho'ohalahala, any further questions?

COUNCILMEMBER KAHO'OHALAHALA: That's it, Chair. Thank you.

CHAIR MEDEIROS: Thank you. Members, any other questions? Member Johnson?

COUNCILMEMBER JOHNSON: I did have one question. And, and because this is a road widening lot, I just wanted to find out if it's in an area where there may be possibly ADA accessibility, because oftentimes one of the requests I do get is in, all throughout Lahaina town people who have the small, little carts where they're disabled and they can't traverse areas easily. Is this one of those areas that would also possibly provide access for ADA vehicles or, you know, mobility devices?

CHAIR MEDEIROS: Director Arakawa?

MR. ARAKAWA: Councilmember Johnson, the ADA regulations would of course apply. However, this is primarily the residential area of, along Front Street. So we're talking primarily about driveway issues here. So it's, it's not an area where we're going to be dealing with a number of ramp issues or, or sidewalk issues in, in this particular instance.

COUNCILMEMBER JOHNSON: So there's no sidewalk in the area?

MR. ARAKAWA: No, I don't believe so.

COUNCILMEMBER JOHNSON: Will we at some point? Because I have requested and I'm not sure if you're aware that I have requested at least on one part of Front Street because we've had so many . . . *(sigh)* . . . I mean probably hundreds of requests. . . even for women who take their toddlers out in the, you know, walkers and whatnot. They want someplace even if it's maybe not totally wide, to be able to walk safely separated from the traffic. It, would this be eligible at all for anything like that?

MR. ARAKAWA: Um. . . this is fairly far from the, the areas that we've had accessibility requests in the past, where we're talking about more in the business areas of Front Street. And we do have some access improvements that we, we are planning in, planning to propose as the CIP for the next budget.

COUNCILMEMBER JOHNSON: Yeah. 'Cause I'm, the area that I'm looking at specifically is everything from Puamana all the way to 505 Front Street, and *that* is where I've had a great many requests from people that are concerned, especially now that we've limited through the gross vehicular weight the traffic that can come into that area. I, I'm

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supportive of this, Mr. Chair, but I also want to keep in mind that, you know, whatever we're accepting that it it's sufficient for use for ADA compliance and possible construction of sidewalks. Thank you.

CHAIR MEDEIROS: Thank you, Member Johnson. Any further questions?

. . .Seeing none, the Chair would like to provide his recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR MEDEIROS: Thank you, Members. And before I go there, bring that up, I'd just like to reiterate that Corporation Counsel has approved the resolution to form and legality, the subdivision was granted final approval on August 10, 2009, and the Department of Public Works reviewed the Warranty Deed and found it to be satisfactory. So at this time, the Chair will entertain a motion recommending adoption of the proposed resolution and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman?

CHAIR MEDEIROS: Member Pontanilla?

VICE-CHAIR PONTANILLA: I move for the recommendation ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE KAUNUOHUA AWARD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE, and the filing of the communication.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MEDEIROS: It has been moved by Committee Vice-Chair Pontanilla and seconded by Member Victorino. Members, any further discussion on this item and this motion? Seeing none, the Chair will call for the question. All in favor of the motion, signify by saying "aye".

COUNCIL MEMBERS: "Aye".

CHAIR MEDEIROS: All opposed, say "no". The motion passes unanimously, seven votes in the affirmative, and zero votes in the no. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

ITEM NO. 23: BILL RELATING TO PERMITTING REQUIREMENTS FOR CONSTRUCTION OF LANAI ENCLOSURES (C.C. No. 09-217)

CHAIR MEDEIROS: Members, now we will proceed to our Item No. 3 on our agenda, which is Item 23, and it is a bill relating to permitting requirements for construction of lanai, lanai enclosures. So at this time, Members, I will ask the Director of Public Works to give us an overview of this item. Director?

MR. ARAKAWA: Thank you, Mr. Chair. The item you have before you pertains to a proposed bill from Councilmember Jo Anne Johnson, which proposes a building permit exemption on work to enclose a lanai or patio in which no square footage is added to an existing structure. The Infrastructure Management Committee discussed this item at its meeting of August 31st, 2009. Since that time, the Committee has received responses from the Department of Fire Control, the Department of Planning, and the Department of Public Works, and these are all in your binders. I would like an opportunity to summarize the response from the Department of Public Works, and our comments have been submitted by letter dated September 15, 2009. We do have a number of concerns with the bill. First, the bill does not have a size limitation on lanais and patios, which will be exempt from building permit. Thus the square footage is exempt from review, it could be quite substantial and would affect your, the density of a property. There are also serious safety concerns. Permit reviews regulate the type of building materials allowed to be used for a lanai enclosure. The use of combustible materials, such as wood to enclose a lanai is not permitted because these materials can cause a fire safety hazard for occupants. If no permit review is required, proper oversight of building materials would not occur. There are other safety as well as livability issues. The Building Code requires an emergency escape window on the exterior wall of all sleeping rooms. Guard rails and window glazing may also be required for the safety of occupants. There are also minimum light and ventilation requirements, which are calculated as part a building permit. The exterior

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wall of a building is also evaluated for weather protection. Finally, when lanais are enclosed, the load factors and occupancy will likely change. Thus, a permit review should be done to see if the lanai has been structurally designed to handle additional load requirements. Allowing enclosures without a permit could lead to serious safety issues. All of the foregoing Building Code concerns are addressed in the normal course of a building permit review. Exempting lanai enclosures from the building permit process could lead to a serious lack of oversight pertaining to Building Code compliance, resulting in questionable building integrity and serious safety issues for individuals who live and work in these spaces. I would like to emphasize that the general process of obtaining a building permit involves submittal to the Department of Public Works. The application is then circulated to a number of agencies, including our own Department, for review and comment. And I would note that the foregoing comments pertain only to Building Code compliance and do not address comments which other agencies may also have. And that concludes my comments, Mr. Chair.

CHAIR MEDEIROS: Thank you, Director. And, Members, without objections, I will open the floor, but I would like to recognize Councilmember Johnson, as the originator of the proposed bill, to make her comments and questions at this time. Seeing no objections, Member Johnson.

COUNCILMEMBER JOHNSON: Yes. Thank you very much. If the Members would not object, last time I did request of Mr. English with regard to the concerns that were raised both by he, and I also asked Director Arakawa with regard to their specific concerns. If we could address, and I'll just go over some of the things that the Director just mentioned...

CHAIR MEDEIROS: Member Johnson, before you go ahead...

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MEDEIROS: Let, let me let the other Members know that we do have--

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MEDEIROS: --Lieutenant English here from the Fire Department, and we also have Director Jeff Hunt from the Planning Department, who are available for questions on this item.

COUNCILMEMBER JOHNSON: Okay. Thank you very much. And, and if you, if you would like or the Members would like to hear from the also, I have no problem. But specifically what I'm requesting is that the areas of concern which have been raised do not, to me, seem to be insurmountable. If it's a question of size limitation; if it's a question of use of the area; if it's a question of specific materials or window glazing or whatever; if there's a set of standards that can actually be adhered to; and if we can establish criteria within the Code and that individual's lanai--let's, let's just say, for example, they're just

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installing a sliding glass door out on what would be a lanai and they're not making any electrical or other structural changes, I'm specifically asking what would it take in order to be compliant or to mitigate what is being raised as negative concerns in order to make the bill workable? Because I think many of these lanais, all they've done is mostly move out...and there's been no weight-bearing walls or anything changed. In some cases that might not be true. But because this has been done on *thousands*, thousands of units in Maui County with *no* raising of this issue previously, rather than do something really *negative*--because this is selective enforcement in my view--and then subject all kinds of other people to putting more burdens on both our Public Works Department, our Planning Department, *and* our Fire review, I'd rather address it in a positive way instead of just getting negative. So that is my comment and I would welcome their comments--*constructive* as regard the bill, how can we improve it and move it forward? Thank you.

CHAIR MEDEIROS: Thank you, Member Johnson. And, Members, if you look at your binders and--but before I do that, I would like to welcome our Non-Voting Committee Member also to our proceedings, Member Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MEDEIROS: Morning. In your, in your binders. . . I wrote on behalf of the Committee to the Planning Committee [*sic*], the Fire Department, and the Public Works about the concerns raised in our previous meeting on this item, and the responses are in your binders from that three departments. So if you had a time to read them, fine. But I think this is a good opportunity where some of your questions may be answered prior to asking them by calling down the representatives from the Fire Department, Mr. Scott English, and from the Planning Department, Director Hunt, if they would give their comments or, or remarks before we open it up for further questions. Lieutenant English, could you proceed?

. . . And I want to thank the three departments for their responses to our letter of inquiry.

MR. ENGLISH: Thank you, Chair Medeiros. Good morning, Council. My name is Scott English, Lieutenant of Fire Prevention Bureau. Yeah. I had, I had answered Mr., Chair Medeiros' requirement. I had three main concerns about the...bill in front of you. Two of 'em are pretty similar to what...Mr. Arakawa said about the, with the Building Code requirements. But. . .first of all, the, the Fire Code requires an emergency egress windows out of all sleeping rooms. These windows are, like I said, have certain size that has to be constructed. So basically without a permit to enclose the lanai, we have no way of governing this requirement. They can put up any size windows. Second of it, second of it, the Building, the Fire Code requires in unsprinklered buildings that we have certain size opening in every linear feet for Fire Department access, and these windows are designed to a certain size. So, once again, if no permit is required for the enclosure, then we have no ways of governing this requirement. Third is, Mr. Arakawa brought this up, basically the construction type of the building that needs to be followed. So if it's a Type

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I building, like this County Building here, if they were to enclose the lanai, there's no wood allowed in this building. So if they were to frame in an enclosure with wood construction, it will not meet the requirement of the building. So without a building permit, we have no way of governing what's going to be put into this, the building. And I know Ms. Johnson brought up a question the last meeting as far as the City and County of Oahu, Honolulu and Kauai County. I did talk with the fire inspectors and the building inspectors on the two islands, and they do require permits for enclosures, lanai enclosures. It's not exempt. Thank you.

CHAIR MEDEIROS: Thank you, Lieutenant English. And just for consistency, I'd like to call down Director Hunt first before we open it up for questions for all the three departments.

. . . And as I mentioned the Planning Department, Director Hunt did also respond with a reply to our inquiry. Director Hunt?

MR. HUNT: Thank you, Mr. Chairman. The Planning Department responded on September 18th with a memo in response to the proposed bill. The Department staff reviewed the bill and expressed some concerns. By requiring a building permit it allows the Department to review for other issues that, that we deal with; and by exempting it, it would preclude that. And that would, those issues that the staff noted were Historic District approvals. So, for instance, there may be a façade or some kind of impact to the historic structure. Flood permits; there may be an instance where we need to raise the elevation if the building was built after a certain year. The SMA, Special Management Area and Shoreline Setback approvals; there may be instances where we wouldn't approve enclosing a lanai if it's within the shoreline setback. Buildings within the shoreline setback are anticipated or encouraged, the policy is to actually not improve them, not continue that to use, but to, to have a strategic retreat from the shoreline. There's issues with maximum floor area, particularly for farm dwellings that have a size limitation on them. There's concerns that the Business Country Town design reviews would also potentially be impacted. And finally, there is concerns that if there is a change in use that results from increasing that, enclosing the lanai, then additional parking requirements could, could be triggered. So as an overview, the Department staff has concerns with, with the proposed bill based on, on those issues.

CHAIR MEDEIROS: Thank you, Director. So at this time we have representatives from the three departments here. Of course, we'll be short one mic. But so if you would direct your first questions to the Planning Department and the Fire Department who are upfront at the mic, that would be appreciated by the Chair. So, Members, the floor is now open for discussion. Member Baisa?

COUNCILMEMBER BAISA Thank you very much, Chair. Earlier in testimony as well as in written testimony there's a statement that "It is my understanding that Oahu and Kauai have had laws in place for many years allowing for exemptions from the Building Code for enclosed lanais in which no square footage is added to the structure." Could we

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comment, have the Department comment? Is it Planning Department or Public Works or whoever can answer this.

CHAIR MEDEIROS: I believe the inquiry on that was done by the Fire Department, and he did make a statement on that. But would you, would you reiterate your statement? I believe--was it the Fire Department or Public Works?

MR. ARAKAWA: No, it. . .Mr. Chair. It was the Fire Department--

CHAIR MEDEIROS: Okay.

MR. ARAKAWA: -- who made that statement. But I just want to mention we also did check and it is as Mr. English notes--that City and County of Honolulu and the County of Kauai *do* require building permits for lanai enclosures.

COUNCILMEMBER BAISA: So this testimony is in error then?

MR. ARAKAWA: Yes.

COUNCILMEMBER BAISA: Thank you very much. I thought it was important to clear that up. Thank you.

CHAIR MEDEIROS: Thank you, Member Baisa. Questions, Members?

VICE-CHAIR PONTANILLA: Yeah, I get one.

CHAIR MEDEIROS: Member Pontanilla?

VICE-CHAIR PONTANILLA: This is for Mr. Hunt. In regards to Special Management Area, I know anything below the highway do require an SMA. Would this be considered a major or minor?

MR. HUNT: A lanai enclosure?

VICE-CHAIR PONTANILLA: Yes.

MR. HUNT: Generally speaking, we would exempt it, but not in every case. That's, that's the concern from the Department staff. There may be instances where we wouldn't exempt it and where we wouldn't support it.

VICE-CHAIR PONTANILLA: So give me an example as far as exemption?

MR. HUNT: There's a number of permits that are within the Department process right now for the Kaanapali Royal, and we are in the process of issuing exemptions for those because the building is far away from the shoreline. But in instance where somebody wanted to

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enclose a lanai, and pardon me, a lanai that was near the shoreline and particularly within the shoreline setback, that would be a different situation.

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

CHAIR MEDEIROS: Thank you, Member Pontanilla. Members, any other questions? Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chair. I guess a question for Director Arakawa. We've been provided photos of various buildings that have enclosed lanais. Now just for the record, I guess to enclose your lanai, you then gotta get a building permit for this right now. I...do you have any record of what may be illegal out there, if any?

MR. ARAKAWA: No. It, it...people bring these issues to our concern, then, you know, obviously we'd have to follow up on, on them. But we're basically complaint-driven like, like the Planning Department. So if there are unpermitted lanai enclosures, then basically we'd have to follow up on that.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Chair.

CHAIR MEDEIROS: Thank you, Member Molina. Questions? Council Chair Mateo?

COUNCILMEMBER MATEO: Thank you, Mr. Chairman. Mr. Arakawa, can you, can you walk me through the permit process required for the enclosures of lanais?

MR. ARAKAWA: It, it's basically a very simple building permit application that needs to be filed with our Department, and once we receive the application, we circulate it out to a number of other agencies for review and comment. And in the case of lanai enclosures, it usually always goes to the Fire Department as well as to the Planning Department, and I, I'm not sure who else would review it, but definitely those departments as well as our own building plans examiners would review the, the application. Once we receive all of the comments back from the review agencies, if they sign-off on the building permit application, then we issue the, the permit.

COUNCILMEMBER MATEO: So this particular process would take approximately how long?

MR. ARAKAWA: It, it depends on the issues involved and it depends on the...how, how long the applicants take to actually address any concerns that may arise. But it could go fairly quickly if all of the requirements are complied with. But again it, it depends.

COUNCILMEMBER MATEO: So if it's not in an SMA area and it's away from the ocean side, are we talking about *weeks* to get a permit or we're talking *months*, or are we talking a year. . .plus?

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MR. ARAKAWA: Again it, it depends on the requirements that may be imposed by the various reviewing agencies because, you know, a building permit application, there may be other...requirements, maybe...there may be fire sprinklers that may be involved or there may be other requirements. Those requirements need to be done first before the permit application is, is approved by our agency.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Member Mateo. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. You know, I...on one hand I'm listening to Fire and Public Works say that part of the reason for permit requirements is to make sure that structurally you're going to meet some of the other Codes of which you are trying to comply to. And then I'm hearing the Planning Department say that you have the discretion to exempt that. So can you clarify at which point in time and then who, who has authority over final? I mean does Public Works, you make the decision? Does Planning make a decision if they exempt it? Then help me to understand how, how this is coordinated between the departments.

CHAIR MEDEIROS: Director Hunt, if you'd please?

MR. HUNT: The SMA exemption only applies to the SMA regulations. So the SMA rules are an overlay, an, an *additional* layer of regulations in addition to the existing base layer of regulations--zoning, subdivision, building codes, et cetera. So when the Planning Department issues an *exemption*, that exemption only applies to that overlay, the SMA layer of regulations. We don't have the authority to exempt building or Fire. That would be those departments.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So you would only be applying it to SMA, and that's what you meant when you said you have the authority to exempt it?

MR. HUNT: Correct.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And then between the Fire and Public Works then?

MR. ENGLISH: Okay. Chair Kaho'ohano [sic], on the building permit application basically the other departments is just . . .(change of tape, start 2a). . . through Public Works, through DSA. It is filtered down to the different departments. So, for example, if I put down "pending per no fire sprinklers in apartment", the building permit can't be issued because the Building Department need the signatures of Fire, Planning, State Health before the building permit is issued. So if I put down "pending" and my...corrections can't be met, I will not sign off on the building permit and then, therefore, the permit cannot be issued.

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COUNCILMEMBER KAHO‘OHALAHALA: Okay. Okay. Thank you, Chair, that clarifies.

CHAIR MEDEIROS: Okay. Thank you, Member Kaho‘ohalahala. Other Members, any more questions? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and I’m hearing what you’re saying and just for the benefit of the Members of the Committee, I would just share that one of the primary drivers for this bill on my part was that there was no way that Kaanapali Royal was able to achieve any kind of compliance without sprinklering their complex. Many of these lanai enclosures were done 30 years ago, 25 year ago; people have passed away who said, yeah, no problem. To require what you’re saying now--which would be written verification that an exemption had been issued, to go back in time find out what was applicable in terms of the law at that time, what was uniform in terms of the Building Code--it’s rather difficult and it’s a huge time-consuming job. What I’m trying to do and what is driving this, Mr. Chair, is principally to find a workable solution, one that would allow perhaps grandfathering for those units that were done many, many years ago where that proof is not available to try to at least say if that individual is willing to sign off and say that, look, I bought the unit, it was this way--what, whatever it takes to certify that they know that there may be issues that exist currently that may not have existed within particular departments way back when. I’m trying to find a way to work through this without costing our taxpayers and our citizens who have relied on government for years to just be consistent. I’m trying to find a way through this mess, and it is a mess. And to answer Mr...Chair Mateo’s question, this project alone on Kaanapali Royal, it’s taken years, we have been at this for years, and my degree of frustration with Administration deferring, denying, delaying, doing whatever and not being constructive in how they’re resolving problems, that is why I had the bill drafted because government is supposed to be serving the needs of the public. If there are issues that these gentlemen are raising, then I want constructive answers as to *how* those issues are going to be address. I don’t want no can do. I want can do, and I want them to make recommendations to the bill so it can be a *workable* bill. You think they’re frustrated? I’m frustrated because in this economic situation I do not want to have people have to go to court, spend millions of dollars, you know, making improvements for things that have been done many years ago, and that exist throughout this entire County. This particular complex was singled out through a whole series of unfortunate events, and some people went *beyond* the limits of enclosing their lanais and that’s what triggered this particular item. But I want government to do something that is going to help people rather than harm them. There is nothing good about just offering impediments. If you can’t come to the table and bring something constructive along with you, then you are not a public servant. Then you are an obstructionist. And who are you really serving? Certainly not the people behind me and certainly not the thousands of people that have already enclosed lanais throughout this entire County who will now be wondering when the next knock on the door from the enforcement official is going to come. So let’s get real, let’s try and do something constructive, and I would like some positive contributions to this bill to make it workable so that we can *ease* the process and at least make this something that is not an impossible process. So I apologize for my frustration, but I am here to serve the public and I am

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here to do the same things that these gentlemen are doing. They have the expertise and I want them to bring that to the table in a constructive and positive way so that we can get on with other, more important matters, Mr. Chair.

AUDIENCE: . . .(applause) . . .

CHAIR MEDEIROS: Thank you, Member Johnson. Okay, please, we'd like to maintain the decorum of these Chambers. I appreciate your cooperation. Let, let me ask the Director of Public Works...in your experience and you have been with this County for many years--and, and I must also say as we know, we, the Council, are the legislative bodies that make the laws; our departments are responsible to enforce the laws. So they are enforcing what's currently in our County Code. So, Director, has it been your experience in any way where having to do with anything in the permit process where any kind of project were grandfathered?

NOTE: Silence.

MR. ARAKAWA: . . . Projects are grandfathered...all the time under certain conditions. However, it's not grandfathered when, in situations when there. . .may be permits that have, should've been required and should've been applied for. That's, that would be another type of situation. Uh . . .

CHAIR MEDEIROS: . . . And, and, Director, in the process of probably considering grandfathering a project, would that mean that the Department would be required to inspect that project and to somehow find compliance with the Code?

NOTE: Silence.

MR. ARAKAWA: . . . Um. . .I think if you're talking about grandfathering, it's. . .basically the situation where you, when the project was built, you know, it...or when the improvements were built, it was built in conformance with the regulations which were in effect at the time--

UNIDENTIFIED SPEAKER: Uh-huh.

MR. ARAKAWA: --and subsequent to that. . .laws or regulations may have changed so that if any new improvements or new buildings were constructed, they would have to be constructed in accordance with the new regulations. But that would allow for grandfathering of the existing improvements.

CHAIR MEDEIROS: Okay. Thank you, Director. Any other comments, further comments from Planning Department or Fire Department?

MR. HUNT: . . . Thank you, Chair. I, I appreciate your comments, Member Johnson. There's a lot of difficulty in our community from past actions that were based on misinterpretation

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or miscommunication or whatever. The Planning Department deals with this. . . more often than we'd like to. I'd be happy to sit down and talk to the other departments and try and work out some kind of *narrowing* of the bill to where it would not be so broad and not be so. . . *potentially* harmful in the future. If we could address existing situations in the *past* without opening up the floodgates to the future, then perhaps there'd be department support for, for that concept of a bill. I, I think those details are such and those conversations are complex enough to where we're not going to work that out here on the floor. But I'd be happy to meet with the other departments and even you and the Chairman to try and reach some resolution.

CHAIR MEDEIROS: Thank you, Director Hunt. Lieutenant English, would you like to offer any further comments?

MR. ENGLISH: Yes. Thanks, Chair Medeiros. I guess that I've been working on this project from '04 and met with numerous architects--I'm talking about the Kaanapali Royal. I went down to the area and sat down on a meeting with the owners of the building trying to work on a resolution. So as far as being a public servant, I've been...I would say dedicated almost a month of work time on this project. It is in the process on...in going through the BVA, Board of Variance. We went to a hearing officer. We did not get the results yet. I'm not sure what's happening on that, but it's in front of the Board of Variance, Board right now as far as getting a variance for those lanai enclosures for the Kaanapali Royal. So like I said, we've been working on different areas of trying to get this thing in compliance. But like I said, I, I have my hands tied because I have my Codes to enforce. I cannot go below the minimum requirements of our Codes. That's what I do, I get paid to do by the County to enforce the Fire Code. But like I said. . . I feel same as you, Ms. Johnson, I've been on this project for *years*. I'm taking up a lot of time. I would like to get it resolved, but like I said, I got my hands tied enforcing what the minimum requirements are of the Fire Code.

CHAIR MEDEIROS: Thank you, Lieutenant English. Members, any further...Member Pontanilla, followed by Member Victorino.

VICE-CHAIR PONTANILLA: Thank you, Chairman. You know, I, I also, you know, hear what Ms. Johnson had said in regards to this particular ordinance and the possibility of working together, you know, the, the departments in, in trying to get something positive of the *whole* thing. But I just want to say this in support of the department themselves, you know, they do have ordinances that they need to follow and they're *just* doing their job. And, you know, I, I just want to commend the department not only for this project, but for many projects. I, I just did a fast check in regards to lanais. You know, I, I pass Waikapu town quite often, I see some of the buildings had put up lanais, and my staff had investigated and, you know, building permits were issued for those lanais. So, you know, if a solution can be gotten from, you know, the three departments, you know, in regards to covering up your lanai in buildings, you know, like condominium buildings, apartments, then, you know, if we can have a win-win situation, you know, go for it. Thank you.

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CHAIR MEDEIROS: Thank you, Member Pontanilla. Member Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. And I've listened to all sides and believe that the challenge face, facing us right now, Mr. Chair, is the fact that a lot of this was done for whatever reason years ago when it was allowed, wasn't questioned, nobody made an issue of it. And today these three departments along with many other of our departments are just trying to make things compliant, make people understand the rules that are there are there for a purpose and that we're not trying to, you know, make people frustrated. But I know frustration. I've been on the water issues for many years. You want frustration, go Upcountry. Ask Ms. Baisa about frustration. We've got a lot more people up there frustrated than these people back here, unfortunately, and with justifiable reason 'cause we're talking generations. But that's not the issue. The issue is if Mr. Hunt can come up with, with the other departments with some methodology of grandfathering, making these that exist...whatever compliance needs to be met within reason, I think that would be great. I think that would be a *reasonable* way to find a solution. I think they, they're out there trying to do the same thing as a public servant, and I, I don't question what they're trying to do. I think they're just trying to enforce rules. But I think if Mr. Hunt, Ms. Johnson, and yourself and the rest of the departments can sit down and find some *reasonable*, amicable solutions to these situations, I think then we can move on. I'm not prepared to move in any direction myself, personally, because right now there's too much ambiguity out there with this whole situation--and I'm not blaming anybody. It's just the way it came about. And you've been there, Mr. Medeiros, you've seen it many times in, in Public Works, and there's just...things just seem to happen sometimes, yeah, for whatever one, whomever. Sometimes even these people just trying to be nice to move things along...just say, oh, okay, just go ahead, and I don't think they meant any malice, I don't think they meant any disrespect. They didn't think about liability, but the world we live in is litigious--very different today than 25 years ago. So with that said, Mr. Chair, I think if we can allow them to come up with some better workable solutions, put all parties together, maybe involve some of these people, I think that would be a fair way of doing it. And I agree with Mr. Pontanilla, I drive by Waikapu and I did check on the Waikapu Gardens. There's a couple of homes that have enclosed their lanai, and they did have to go get permits. So I, I will say that, you know, today if you ask for a permit, they'll tell you yes, you need to, you know. Maybe back then it was a different scenario and God forgive, you know, it's just the way it is right now. So let's try to work together. Again calling names and making people feel upset doesn't change anything at this point. I'd just like to see all us sit down and try to find something, come back to us, and let's see what we can come up with so that everybody walks away feeling good about it. Thank you, Mr. Chair.

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

COUNCILMEMBER BAISA: Yes, Chair. Thank you very much. I, too, want to tell Ms. Johnson that I have empathy for your frustration. You know, it's very difficult as a Council Member representing a district of people who come to you with a sincere issue

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and it's very important to them, it's expensive, it's affecting their lives, and they want your help. And as a Council Member, that's our job. We're trying to help our constituents. But then there's the other side of this job where we're dealing with laws and regulations and codes and, and the staff who are stuck with trying to enforce those things. However, I happen to be one of those glass half-full people, and I believe that we're all creative, we're smart. We can think of ways to work things out if we are willing to do that. So I think cool heads prevail, everybody sit down and try to find a win-win here. I'm sure we can find one. I know there's issues about liability. I know there's issues about safety and all kinds of things. But, you know, if folks were harmed because they were given permission to do something, although we can't prove that anymore--and I think the word to the wise that I get out of all this is if anybody tells you something, please put it in writing because you can't take it to the bank when it's not there in the future. And, you know, we do things on a handshake, that's the way we've always done business. But we're in a new world and handshakes don't go to court very well anymore, especially when they're very old. So, you know, nowadays if somebody says it's okay, you better tell them to put it in writing, at least in an e-mail, so you have something. Otherwise, you know, it becomes very difficult. But I think we, this is something that we can work out, and I sense a great deal of the ability to do that and the willingness to do that from the folks that are sitting upfront here. And I would, I would think that today would be a good time to just kind of pull back for a little while until they can come back with something else to present to us. And I want to thank the folks that are caught up in this and ask them for a little more patience. Thank you, Chair.

CHAIR MEDEIROS: Thank you, Member Baisa. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, I'm happy to work with the departments because that's what I've wanted to do all the time, you know, that's why I put the bill out there, and I, I ask for their assistance in drafting it and making it something that can be acceptable to all of them. And that if Mr. Hunt says, you know, there's a grandfathering or there is some kind of addressing with regard to when these particular issues surfaced, if they were, you know, lanai enclosures that have been there for a long while, I'd like to find some way, you know, to work through this so that those individuals who we don't even know right now at this point in time who have this situation potentially looming in front of them can also bring that to our attention. Because I guarantee you when people are aware of the situation, then all of a sudden you have many more than just one small complex, and it is a much broader problem because it exists Countywide and not necessarily in SMA areas, not necessarily in Lahaina, but many, many places all over this County. So I'm happy to work with Mr. Hunt and the other departments in coming to some kind of a resolution. It may not address every *single* circumstance, but I think we'll do the best we can and perhaps next time we'll be able to bring a bill forward that has the support of the departments as well as the Council. Thank you.

CHAIR MEDEIROS: Thank you, Member Johnson. Any other questions, Members? Member Molina?

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COUNCILMEMBER MOLINA: Thank you, Chair. Just pretty much my comments sum up what the rest of my colleagues have said, and I want to thank Member Johnson for bringing the issue to the floor and also the departments. And as you have reiterated earlier, Mr. Chairman, it's...we're the legislative body, we create the laws, the Administration's job is to *carryout* those laws. And, and also thank, I want to thank Mr. English for clarifying that information with regards to the other counties, Oahu and Kauai, 'cause when I saw that, this written document here indicating that, it did raise my eyebrows. But I appreciate Mr. English doing the research. 'Cause it would seem very strange when it comes to fire safety, that the counties would be doing things differently. I think they're pretty much the same, they're consistent for the most part, especially when it comes to public safety. So it's my hope that the departments can get together with Ms. Johnson and then, you know, look at, see where in this bill, what can be tweaked, what, what can be...what is realistic. And so first and foremost we've, we've got to keep in mind public safety and we don't want to get the County in any unintended consequences as well. So like with any bill, Mr. Chairman, we've all had the opportunity to introduce bills, sometimes things don't fly on the first try. Bills need to be reworked. So at least the dialogue is now been, being opened up between the departments and Ms. Johnson. So I look forward to further discussions on this matter in the future. Thank you.

CHAIR MEDEIROS: Thank you, Member Molina. Members, any other questions? The Chair would just like to make a few comments, and I appreciate what the departments have done to respond to my inquiry as the Chair of this Committee. And I, I think Member Molina, you know, reiterated what I stated, that the departments are not in a position to make or change policy. That's the job of the County Council. And so their job is to enforce the laws in the book, and it seems that that's what they were doing. But I also want to raise the...there seems to be a consistency with all three departments, that they're concerned of not having a *review* of any kind of construction poses a safety issue for people living there, people that may buy the unit later on and also, because I was in the Fire Department, there's the issue about Fire Department safety in trying to get into the building. And that's why they have Fire Department Codes that protect firemen as well as occupants of those rooms and buildings. So we need to appreciate the perception and the response of the departments that *those* are the concerns that they raise and that they are responsible to enforce. At this time, Members, I'm going to take a short recess for your morning. Before I do that, Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I really appreciate what you have just spoken. And, and, Members, you know, we gotta make sure that, you know, the liability of the County is not jeopardized, and having the department, you know, follow up on the laws that we have, you know, keep us from getting sued. So, you know, when they meet to resolve this issue, that we take a look at the liability of the County, because of the existing structures that are out there--you know, how do we protect ourselves if we move forward. Thank you.

CHAIR MEDEIROS: Thank you, Member Pontanilla. And I agree--

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COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: --liability is a major concern. Member Victorino?

COUNCILMEMBER VICTORINO: Just a quick question. You were going to give us our morning break, but is there anything after this? Will this be the last...

CHAIR MEDEIROS: This is the last item.

COUNCILMEMBER VICTORINO: Well, I, I think...what I think I'm gathering from all of us speaking back and forth...

CHAIR MEDEIROS: Okay. The morning break is so that I can consult with my Staff and with Corp. Counsel.

COUNCILMEMBER VICTORINO: Okay. That's what, that's what we wanted to understand--

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: --what, what that was for. Okay, Mr. Chair.

CHAIR MEDEIROS: Yeah. I realize we're at the end of our agenda--

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MEDEIROS: --and we'd like to complete this, but let me take ten minutes--

COUNCILMEMBER VICTORINO: That's fine, Mr. Chair.

CHAIR MEDEIROS: --to consult with my Staff and with Corp. Counsel on this matter, and then so let us return at 20 to 11.

COUNCILMEMBER VICTORINO: That's fine.

CHAIR MEDEIROS: Okay. So this meeting is now in recess. . . .(gavel). . .

RECESS: 10:27 a.m.

RECONVENE: 10:39 a.m.

CHAIR MEDEIROS: . . .(gavel). . . The Infrastructure Management Committee meeting of November 16, 2009 is now reconvened after the recess. Thank you, Members, for allowing the Chair that recess in order to confer with Staff and Corporation Counsel. Considering the discussion that we had on this item--the recommendation from

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Member Johnson about convening a group of officials of the County to discuss this item and the reply from the Director of Planning, Director Hunt, about feeling that it, it'd be a start in trying to resolve this--I just want to be sure that in doing this and in trying to find a resolution that can be satisfactory to all, that we approach this in an open mind and try to do this and get this done as expeditiously as possible. And that until this matter is finally voted on and resolved, that the current laws and Codes remain and have to be enforced. So we just bring that attention to everyone. And I would also ask, Member Johnson, with your recommendation, to form this committee of members of the departments here and myself from the Committee, that I'll place it in your. . .part of the court to convene people and talk to them and, and get the letters done so that we can meet and, and discuss this and so we can move forward on this item. So, Members, without any further discussion, without objection, the Chair will defer this item.

COUNCILMEMBER VICTORINO: No objections.

CHAIR MEDEIROS: No objections? Thank you, Members.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER pending further discussion.

CHAIR MEDEIROS: That completes our final item.. I want to thank the Staff that has been here for us this morning--from Corporation Counsel, David Galazin; from the Fire Department, Lieutenant English; from the Planning Department, Director Hunt; and from the Department of Public Works, Director Arakawa; and our Committee Staff, Camille Sakamoto and Mike Geers. Thank you, Members, for making yourselves available for this meeting. Have a good rest of the day. So the meeting of the Infrastructure Management Committee meeting of November 16, 2009 is now adjourned. . . .(*gavel*). . .

ADJOURN: 10:41 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair
Infrastructure Management Committee

im:min:091116

Transcribed by: Sandra J. Roman

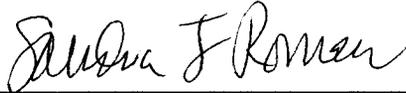
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CERTIFICATE

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

DATED this 8th day of December 2009, in Wailuku, Hawaii.



SANDRA J. ROMAN