

# INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

## MINUTES

December 14, 2009

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

**CONVENE:** 9:02 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Bill Kauakea Medeiros, Chair  
Councilmember Joseph Pontanilla, Vice-Chair (Out 10:54 a.m.)  
Councilmember Sol P. Kaho'ohalahala  
Councilmember Danny A. Mateo  
Councilmember Michael J. Molina (Out 10:54 a.m.)  
Councilmember Michael P. Victorino

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki

**EXCUSED:** Councilmember Gladys C. Baisa

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

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Milton M. Arakawa, Director, Department of Public Works  
Wendy Kobashigawa, Civil Engineer, Engineering Division, Department of  
Public Works (Item No. 9)  
Lance Nakamura, Civil Engineer, Development Services Administration (DSA),  
Department of Public Works (Item No. 34)  
Greg Nakao, Electrical Engineer, Development Services Administration (DSA),  
Department of Public Works (Item No. 27)  
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation  
Counsel

*Seated in the gallery:*

Francis Cerizo, Planner, Zoning Administration and Enforcement Division,  
Department of Planning (Item No. 34)

**OTHERS:** Irene Bowie, Executive Director, Maui Tomorrow, Inc. (Item No. 34)  
Garret Hew (Item No. 9)  
Henry Lau (Item No. 9)  
John Grant (Item No. 9)  
Steve Goldstein (Item No. 9)  
Kelly Hew (Item No. 9)

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

Robert Sam Fevella (Item No. 9)  
Colleen Doyle (Item No. 9)  
Fran Levin (Item No. 9)  
Hal Davis (Item No. 34)  
Charlotte Torres, Wailuku Forest Preservation Coalition (Item No. 34)  
Doreen Gomes (Item No. 9)  
Gina Flammer (Item No. 9)  
Jill Cost (Item No. 9)  
Julie Kean (Item No. 9)  
Eight (8) additional unidentified attendees

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

---

CHAIR MEDEIROS: . . .(*gavel*). . . Aloha and good morning, everyone.

VICE-CHAIR PONTANILLA: Morning.

COUNCILMEMBER VICTORINO: Good morning, Bill.

CHAIR MEDEIROS: Aloha. This is the Council of the County of Maui Infrastructure Management Committee meeting. I will now call it to order. Present this morning is myself, I'm Bill Kauakea Medeiros, I'm the Chair of this Committee. And with us this morning we have the Vice-Chair of our Committee, Member Pontanilla.

VICE-CHAIR PONTANILLA: Morning.

CHAIR MEDEIROS: Good morning, Joe.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR MEDEIROS: Excused this morning--I'm trying to go down the line here alphabetically--is Member Baisa. And then next we have Member Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Good morning.

CHAIR MEDEIROS: We have Council Chair Mateo.

COUNCILMEMBER MATEO: Good morning.

CHAIR MEDEIROS: Good morning. We have Council Vice-Chair Molina.

COUNCILMEMBER MOLINA: Morning, Chairman.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Morning. And we have Member Victorino.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MEDEIROS: Good morning. Thank you, Members, for being here early. We know this Committee meeting comes right after the weekend. Kind of tough to wake up sometimes but good to have you all here. And also present this morning is a Non-Voting Committee Member and we appreciate his attendance, and that's Member Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MEDEIROS: Good morning, Wayne. So this morning, Members, I want to introduce Staff, who's with us this morning and representatives from the Administration. From the Department of Public Works we have the Director Arakawa. Morning, Milton.

MR. ARAKAWA: Morning.

CHAIR MEDEIROS: And you can introduce your associate there.

MR. ARAKAWA: With me this morning I have Wendy Kobashigawa from our Engineering Division.

CHAIR MEDEIROS: Thank you. Thank you for being here, Wendy. And I, I'm not certain where our...here he comes. Okay...*(laughter)*... And while he's making his way down I'll introduce our Committee Staff. To my very far left is Camille Sakamoto, who's our Committee Secretary; and to my near left is Mike Geers, our Legislative Analyst. And arriving here is our representative from the Department of Corporation Counsel, Mr. David Galazin. Morning, David.

MR. GALAZIN: Morning.

CHAIR MEDEIROS: Thank you, Members and everyone else, for being here. And thank you, those of you in the gallery, for being here bright and early on a Monday morning. We appreciate your attendance and your participation in, in this process. Members, we have scheduled on our agenda this morning three items: IM-9 which is the repair of Polipoli Bridge and culvert and Middle Road due to storm damage, and this is in the Kula area; we also have IM-27 which is adoption of the 2008 National Electrical Code® with local amendments; and our third item is IM-34, bill relating to development on steep terrain. At this time, the Chair will open up the opportunity for public testimony, and before we do that, we'd like to give you some of our ground rules on that. If you haven't already signed up, the availability to sign up is out in the lobby at the desk out there, and if you're interested in testifying and you have not signed up we would encourage you to go out and sign up now. You have three minutes to testify and give your testimony. It'll start with a green light, at, when you have 30 seconds left a yellow light will come on, and then you need to conclude your testimony. And I will remind you once the red light comes up to

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

please conclude your testimony. And when you do come up would you state your name clearly for the record, and also if you're representing any organization also state that. At this time, we'd like to ask our Members as well as those of you in the gallery to turn off or to put your cellphones on viber mode and any other devices you may have that may go off during this proceedings. We'd appreciate your cooperation so that there wouldn't be any interruptions to our meeting this morning.

. . . So I have received the list of people signed up for testimony from our Secretary, and at this time we, we're going to start with our testimony. So coming up first is Ms. Irene Bowie, and she'll be testifying on IM-34. Is it Ms. Bow-e or Bo-we?

MS. BOWIE: Bo-we.

CHAIR MEDEIROS: Bowie. Okay. Good morning and welcome, and you can start your testimony.

*...BEGIN PUBLIC TESTIMONY...*

MS. BOWIE: Thank you. Irene Bowie, Executive Director of Maui Tomorrow Foundation. Good morning, Chair and Council Members, and mahalo for your work on this important bill on slope-side development. Maui County joins numerous other local governments regulating hillside development for the protection of lives and property from land, landslides and fires; natural resources such as water supply; environmental features and systems such as wildlife habitat and natural vegetation; aesthetic or scenic quality; and access for residents, visitors, and public service providers. Communities need strong ordinances as allowing intensive hillside development can permanently change the character of a community. Steep hillsides are inherently unstable and less forgiving of construction errors than developments on level ground. Soil slips which cause avalanche-type failures and slower-moving earth flows can occur on slopes of 25 percent or more. Serious erosion can also occur on much shallower slopes. Soil reports on any proposed slope-side project should be prepared by a *registered* professional engineer, soil scientist, or engineering geologist. The Maui County ordinance should be sure to protect natural conditions and respect existing topography. It should prevent inappropriate development; preserve the aesthetic and scenic qualities of Maui's hillsides; and most importantly ensure public's health, safety, and general welfare. We ask that this ordinance include provisions that would place an absolute prohibition on grading and grubbing if the project area equals or exceeds a 25 percent slope--a 15 percent slope limit is recommended in many other communities; require a fulltime project engineer paid for by the developer to be in, in ongoing consultation with the County as the project is developed; include full and comprehensive requirements for terrain restoration in order to avoid the unfortunate scarring of the landscape as was recently seen in the project above Wailuku Heights; and require community *notice* and input as to any slope-side grading and grubbing plan; and lastly to include a right to challenge the Director's discretion in court. We would ask you today to defer this bill in order to include these provisions and for you to go and do a site inspection of the area up above Wailuku Heights. We also

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

have sample ordinances that we can provide you from other communities around the country. And I would just lastly like to add that we've had the Wailuku Heights folks that are very concerned about this issue, have had numerous conversations with the Director of Public Works with really no success in moving forward in this. So I, I hope that you'll strongly consider these provisions and defer the bill today. Thank you.

CHAIR MEDEIROS: Mahalo, Ms. Bowie, for your testimony this morning and for being here. Would you remain there in case the Members have any questions? Members, any questions for the testifier? Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Morning, Irene.

MS. BOWIE: Good morning.

COUNCILMEMBER NISHIKI: I was reviewing this bill and some of these recommendations that you've made are taken from...I know that the bill that in front of us is one from the City and County of Honolulu.

MS. BOWIE: Right.

COUNCILMEMBER NISHIKI: The bill that you mentioned about the 25 percent . . .

MS. BOWIE: . . . Slope?

COUNCILMEMBER NISHIKI: . . . slope and not allowing any grading--this is a bill from where?

MS. BOWIE: *That* particular bill is from Jackson County--I believe in, I believe that's in Florida possibly. But we have numerous other sample ordinances from various places around the country--California, West Coast, East Coast, all around. And I think this is, you know, a pretty urgent matter when you consider that there's a **400**-acre property up above Wailuku Heights right now that could be developed at any time. There's also another **50**-acre property that could be developed, and that's right above Leona Wilson's, or actually it's surrounding it in a "U" shape. So the folks there, like these people across the country that have felt the need for this, are really concerned about landslides that could affect their homes and their safety.

COUNCILMEMBER NISHIKI: Okay. And so, and so right now up in Wailuku Heights there are existing circumstances that are posing, perhaps, a safety concern?

MS. BOWIE: Absolutely. I think if you would do a site inspection you'd see it. We, you know, we've all been up there, hiked around on the area, and, and some of it is, is *very* steep terrain. And Maui County right now, there's no ordinance that differentiates grading and grubbing on slopes like that versus level ground. So, you know, when you, when you go into these and read what happens with these avalanche-type movements that can happen

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

as the ground starts to go, it's really scary and there's a lot of testing that needs to be done--and ongoing also as, as we mention in this provision. We'd like to have included that it be something that there's consultants that are working as, you know, with the County as the project is going. We think that, you know, we're *really* appreciative of this ordinance. It's just as we've been researching further we think 40 percent is probably not enough, that we need to *at least* go 25. And as I mentioned some communities, with the ordinances that I can send to you, have gone as much as 15 percent.

COUNCILMEMBER NISHIKI: Do you know, because it's Wailuku Heights and there's a, probably a great amount of rainfall in this area compared to I don't know what municipality you're quoting that ordinance from--was this ordinance created because in that area there was a lot of rainfall and that erosion problem. . .perhaps this

MS. BOWIE: No, actually not. It's not in a, in a more rainy community at all. And, and where we've taken this isn't even from one particular ordinance. It's really, you know, researching these types of ordinances in *general*. So the 25 percent isn't even from one. It's from *various* communities with various levels of rainfalls. You know and I think we're a little bit complacent right now because--

COUNCILMEMBER NISHIKI: Yeah.

MS. BOWIE: --we've been in such a drought. But . . .(laughter). . . a, a rainy winter could come at any time and it could *really* be disastrous. When you look at the work that was done on that one property up there, it's, it's *really* pretty, pretty *shocking*. And, and, you know, those of us that watched it, as it was going along before the retaining walls even went in, were really shocked by it. And also in this, you know, we're asking that there's not a *cut* like, like that particular property--that things be, you know, more fitting with the landscape and that people aren't allowed to just *cut* right into the mountainside, that they have to work with the slope--for, for aesthetic value as well as safety.

COUNCILMEMBER NISHIKI: Okay. And, and you did not name any specific project up there now that you may have a concern with. I hope that you may share so that if and when we decide to go on a site inspection we can go specifically to those projects.

MS. BOWIE: Yeah. I would, I would mention that the one that's the 50 acres around Leona Wilson's property there's already a building permit on that. Now the building permit is for a *lower* portion of the property. So as we looked at *that* it's really, you know, not, not a threat to the neighbors right now. *But* they've got a water meter on the other side that's up above a lot of the folks that are here *today*. That's a very steep slope. So we know that that particular person is probably looking to do a lot more than just the one building on the 50 acres. And *again* the 400 acres, who knows what's going to happen with that. That's all above old Wailuku Heights, and so many people don't even realize that that's land that's going to be developed, that that's land that's zoned as Ag. Everybody, you know, has been under a false impression that it was conservation forest land that was never going to be developed.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER NISHIKI: Okay. Thank you very much.

CHAIR MEDEIROS: Thank you, Member Nishiki.

MS. BOWIE: Thank you.

CHAIR MEDEIROS: Any other questions? Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Irene, for being here. You had mentioned that you and others have had...spent some time with Public Works to go over this. Do you want to describe that?

MS. BOWIE: Actually myself, I had, I've had just a couple of conversation monitoring the permit of the 50-acre parcel. But I know other folks that are here today--members of the Wailuku Forest Preservation group have had numerous, numerous conversations, have been very concerned, have *asked* to be updated on these things, particularly that particular property and they never were as this building permit was, was given. We kind of found out about it long, long after the fact. So I don't think there's been really a good faith relationship for those people that, that have really legitimate concerns for their health and welfare.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So attempts were made then to try and stay on top of this from a community but have had, in your response then, no, no...

MS. BOWIE: No.

COUNCILMEMBER KAHO'OHALAHALA: No...*(Inaudible)*...

MS. BOWIE: Exactly. I think that they're very frustrated. I, I've been involved with these folks for about two years and I know they, you know, they were concerned even before that. And they've, you know, sent the sample ordinances, tried to have conversations, and it's really just gone nowhere. And they're really at a point of being very exasperated and concerned.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you.

MS. BOWIE: Thanks.

COUNCILMEMBER KAHO'OHALAHALA: Appreciate that.

CHAIR MEDEIROS: Thank you, Member Kaho'ohalahala. Members, any other questions? Member Nishiki? And before you ask your question, Member Nishiki, ma'am, just would you answer the question that they have and not expound--

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES  
Council of the County of Maui

December 14, 2009

---

MS. BOWIE: Sure.

CHAIR MEDEIROS: --on other areas? Thank you.

COUNCILMEMBER NISHIKI: Thank you. Are these ag subdivisions?

MS. BOWIE: Excuse me?

COUNCILMEMBER NISHIKI: The subdivisions that you talked about that may be getting building permits, are they ag subdivisions? Or these are subdivisions that are zoned already and perhaps are now being able to be developed?

MS. BOWIE: I *believe* it's ag subdivision right now for that 400 acres. I believe--

COUNCILMEMBER NISHIKI: Okay--

MS. BOWIE: --I'm not sure.

COUNCILMEMBER NISHIKI: Yeah. And these never come through the Council, and that's probably the reason.

MS. BOWIE: Yeah. Right.

COUNCILMEMBER NISHIKI: But anyway no excuses. Thank you.

MS. BOWIE: Thank you.

CHAIR MEDEIROS: Mahalo, Member Nishiki. Members, any further questions for the testifier? Seeing none, thank you very much for your testimony this morning. Okay. Next we're going to call up, the Chair will call up to testify also on IM-9, Garret Hew, please.

. . . Good morning.

MR. HEW: Good morning. Aloha and good morning, Chair Medeiros, Members of the Infrastructure Management Committee. My name is Garret Hew. I'm a resident of Polipoli Road and a lifelong resident of Maui. First of all, I'd like to thank Councilperson Gladys Baisa for bringing this issue up to this Committee. I know she's in Mexico doing good deeds with her husband. . .but thank her for that. I'm here today because two years ago on December 5<sup>th</sup>, 2007, there was a huge, huge rainstorm up in the Kula area, and what happened at that time was the Waiohuli Bridge, A and B, and culvert washed away stranding many, many residents of that area. In the audience are members of the community here that will testify also. But I'm here today just to find out what the process is to get this road, bridges fixed. It's been over two years, like I say. Right now I have couple pictures of the existing road one day after the rainstorm. And it has been this

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

way for the last two years. I think it's a, a very dangerous situation because there's no guardrails, there's some plastic reflectors. There are many people that need to access this road. Also there are many people that are, you know, walking their dogs, bicycling, and just enjoying the view Upcountry. My family has owned property up in the Polipoli area from the homestead days--so that's over 85 years ago. And, you know, we love this area. We want to see the community be safe and our neighbors be safe driving this road. And I just ask you folks to see what can be done in a quick manner so that we may avoid any accidents or any tragedies on that road. Basically that's why I'm here today--to follow up on what's happening with that road situation there. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Hew, for waking up early with us to testify this morning. Would you remain there? Members, any questions for Mr. Hew?

. . . Mr. Nishiki, are you raising your pencil?

COUNCILMEMBER NISHIKI: No.

CHAIR MEDEIROS: Oh, okay. All right. Thank you once again for being here this morning.

MR. HEW: Mahalo.

CHAIR MEDEIROS: And, and we'll certainly follow up with the questions you have with our departments.

MR. HEW: Thank you.

CHAIR MEDEIROS: Thank you.

. . . Next testifying on IM-9, we have Mr. Henry Lau. Mr. Lau, if you would come forward, please?

MR. LAU: . . . Good morning. Thank you, Councilman Medeiros and the rest of you. My name is Henry Lau. I have been here before this Committee before.

CHAIR MEDEIROS: Mr. Lau, hold on, please.

MR. LAU: Yes.

CHAIR MEDEIROS: Mike, if you can start his time? Thank you. Proceed.

MR. LAU: Yes. Two years is, is a long time depending on how you look at it. . .it's time for reelection? For a guy like me it's, is really a long, long time. There was a terrible storm, a lot of damage. It was a . . .State disaster, the Mayor, County disaster. Civil Defense, everybody got involved. A lot of losses. You know some people were homeless. I was homeless for eight months. Lost cars all over. But now two years pass, everything is

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

back to normal. Yeah, I fixed my house, people got back to their homes--except Polipoli Road. It's, you've seen pictures, it's just as bad as it was two years ago. Now why is that? I took up a mortgage to fix my house. You know you got to take up a mortgage to fix that *road because* it's *dangerous*. Every day. There are 80 mailboxes on Polipoli Road and there, you know, each house has two or three cars, they go back and forth. And we have visitors, we have service people, everybody, tourists--they use that road a lot. Daytime it's not too bad. You can see. You know, Polipoli is winding, it's narrow. Before the storm came, by that Polipoli culvert and bridge there was a stone wall, there was metal guardrails, there were shoulders. Today there's nothing, and the gulch is more deep too, so this is *dangerous* every day. The County knows about this and still nothing is done today. So there's a lot of liability. I see cars screech to a halt, exchange mad faces, somebody back up. But a car could easily roll in the gulch. But that's not only it. The other thing is there's a small little puka which is a culvert that's supposed to drain the water from the big gulch. That's not working. I've lived there 40 years plus. This is the third time it's blocked up. So you gotta allow for the natural water to go. And the engineers, I know they're working on that. Because every time it storms, it rains, I fear for my life now. It's gonna block up again. If it storms next week, it's going to block up. So you have danger from the cars every day and the potential danger to cause. . .you know, harm to my life and my property--not only me but everybody else on the road. So please hurry it up. Yeah, I don't have too many years yeah. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Lau. Would you remain there, please?

AUDIENCE: . . .(applause). . .

CHAIR MEDEIROS: Thank you. Members, any questions for Mr. Lau? And we certainly, you know, hear your concern. And we, the reason for this meeting is, is to update ourselves on how our departments are doing with the plans to make the mitigation measures there. But thank you for being here this morning.

MR. LAU: Thank you.

CHAIR MEDEIROS: Okay. Next testifying on IM-9 is Mr. John Grant. Mr. Grant, would you come forward, please?

. . . Good morning.

MR. GRANT: Morning, Chair. My name is John Grant, and I thank you all for allowing me to talk today. I'm not like Mr. Lau. I've only been there about ten years. The situation on the bridge is very dire. I think the, it's generally understood that the function of any government or government organization is to taking care of the health and the safety of the people that they govern. That's the job of the Council, the Mayor. The situation is very bad on that bridge. If you walk the bridge, and I do walk it with my dog quite often, you can see...well, it's not a bridge anymore, it's just a piece of asphalt over some narrow culvert. There's cracking and fracturing in the side of the asphalt. There's a lot

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

of people who drive big tractors, rigs up there with cattle and horses and I follow them down and up. And you can see in several cases the wheels are one, the outside wheels are *off* the road. They cannot, it's too narrow now for them to do it. That's really bad. There are a lot of older people that live up there, including myself. I'm 68 and I consider that pretty old. And we are not as quick as we were mentally or physically and there is going to be some damage there one day. Somebody is going to drive off that road or be pushed off by buses. School buses go through regularly with children. . .and I think that's a concern that we all need to think about. There are lots of school buses--twice a day, three school buses--and they go up and they go down. There are occasional tour buses that come through there with the tourists or visitors on 'em. And I think that the County knows of this situation, I think there's a certain liability that's accrued to that. Have to ask the Council about that. But there's a certain liability to the Council [*sic*] there if something does happen and there is loss of life from this, this happening. And I don't want to pay my taxes more to pay lawsuits that are lost because we don't take care of the issue. It's, I think it's very important that this be dealt with. And it really is scary. Okay. I thank you all very much and wish you a happy Hanukah and happy Christmas. Thank you, all.

CHAIR MEDEIROS: Thank you. And, would you remain there in case the Members have any questions for you, Mr. Grant? Members, any questions for Mr. Grant?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MEDEIROS: Member Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. And thank you, Mr. Grant, for being here and for your concern. The, the concern I had was when you said large vehicles and *trailers* that their wheels are off to the side. What kind of vehicles? Are they *service* vehicles --

MR. GRANT: No.

COUNCILMEMBER VICTORINO: --or are they *resident* vehicles with trailers?

MR. GRANT: Sure. There's cattle ranching up there and horse ranching, and the only access they really have is going down that road. And they do have sometimes roundups and taking the cattle to market or to, or to pasture. And the, if you, sometimes they're double-wheeled and one of the other wheels will be off the road. I've seen that happen twice now. I saw a big, large service truck going up there, oh, about a year ago and he hung over a wheel and a half. It was a construction kind of thing. I've also seen on that road, on that bridge even before it was broken. . .vehicles bringing big Caterpillar tractors and stuff down and they've actually hit the bridge. That's, you know, the way it is. It's scary. Mr. Lau made a point that really needs to be addressed--is the *narrowness* of the culvert. It's a little 2½-foot, 3-foot metal pipe, and when the, you know, that this whole thing started when the forest fire was fought and they put timbers across gullies to allow

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

access to the firefighting vehicles and stuff like that. And they didn't remove it and that blocked it up and formed...I walk up there and there's big dams, pools up there, and that's where it all started, that's where, that's where it all happened. And then the rain builds up in that big storm and then they just blew out that, came down, took out Mr. Lau's house. I mean just took out the corner of his house, took a brand-new truck down the hill. And it could have killed him and his wife very easily. It's a *very, very* bad situation. The culvert needs to be *much* bigger, and the, and the bridge needs to be wider. And it's a *real* liability issue and is scary. It's very scary for the residents. And I thank you very much for listening to our concerns.

COUNCILMEMBER VICTORINO: Thank you. Thank you, Mr. Grant. Thank you, Mr. Chair.

CHAIR MEDEIROS: Hold on, Mr. Grant. Members, any more questions for Mr. Grant? Member Nishiki? Mr. Grant?

COUNCILMEMBER NISHIKI: I, I, I think maybe one immediate thing...I mean there's short-term and long-term situations here. But you mentioned specifically about a fire that occurred and then trees being laid down, I guess, for people to traverse across, and now these trees still lay there.

MR. GRANT: They've been blown out by the rain last, two years ago.

COUNCILMEMBER NISHIKI: Oh. So it, it did disappear when the rain came?

MR. GRANT: Well, it went down and knocked down Mr. Lau's house is what it did.

COUNCILMEMBER NISHIKI: Okay. Okay. So that's still not, *that* does not exist anymore?

MR. GRANT: No, unless...I've not walked there since there though but it, it looks like all that rubble, if you went down to the highway, to the Kula Highway down below, it was all stacked up against the culverts down there.

COUNCILMEMBER NISHIKI: Right. And, and so the, the concern that Henry raised about clearing because of the concern of clogged, clogged drainage way still exists?

MR. GRANT: It does in this, to this extent--I should say that I was, I spent a lot of my time as a limnologist before I became...I was a marine biologist but I started out my career as a limnologist dealing with stream flows. Okay. What's happened now is that *above* the culverts, above the bridges, an awful lot of trees have grown in and brush has grown back in again. So if we had another big rain again there'll be some obstruction. That'll pool up and then come down again. The culvert is very, very narrow. Okay. It's, I mean come, *really*, come look at it. If you come look at it...

COUNCILMEMBER NISHIKI: We've seen the pictures.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. GRANT: Well, you need to come look. If you come look, you'll see exactly and you'll *act* immediately. If this Council goes up there and looks at it, you'll go holy cow and you will fix it. Okay? Any further questions?

COUNCILMEMBER NISHIKI: No.

MR. GRANT: Thank you, sir. Thank you *all* for your time.

CHAIR MEDEIROS: Mahalo, Member Nishiki. Thank you, Mr. Grant. And testifying next on Item IM-9 is Mr. Steve Goldstein. Mr. Goldstein, would you come forward, please?

. . . Good morning. Would you state your name and any organization you may represent?

MR. GOLDSTEIN: I'm Steve Goldstein and I represent myself. I travel with, with my cars and my wife, and I travel Polipoli Road every day up and down. And I noticed that...we, we have a photograph of the damage that happened on December 5<sup>th</sup>, 2007, with us. I have two photographs that I took yesterday which I'll put, I'll put with you guys. And you can see that in fact the road situation in the last two years has deteriorated significantly. The road has gotten narrower. The undermining of the road because of the heavy truck traffic and the rains has made the road, *even* if there was a guardrail, a dangerous place to drive because it's *very* difficult now for two cars to pass. But there is no guardrail. What we have to guard, quotes, the safety of the public on that road are thin strips of plastic which basically say this road is too dangerous, be careful when you drive here. I have night, literally, I have nightmares about cars missing that, the curves, going through those plastic signs, and rolling over, and someone getting killed. The *drop* from the roadbed to the, the, the, to the rocks below is as much as *20 feet* in some places. There will be a *death* on that road. I am *amazed* that someone hasn't been killed on, on that road on those curves. So that's really all I have to say. My . . .(change tape, start 1B). . .

CHAIR MEDEIROS: Thank you, Mr. Goldstein. Members, any questions for Mr. Goldstein? Seeing none, thank you for your testimony this morning.

MR. GOLDSTEIN: Thank you.

AUDIENCE: . . .(applause). . .

CHAIR MEDEIROS: Next to testify on IM-9 is Kelly Hew. Kelly, would you come forward please?

. . . Good morning.

MS. HEW: Good morning. My name is Kelly Hew and I am here today to ask that Polipoli Road be fixed from damages that occurred from heavy rainstorms two years ago. I am also here on behalf of my grandmother who lives off Polipoli Road on Middle Road. She is 90; and although she no longer drives, her friends do. Her friends pick her up weekly

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

and they do activities together. I believe that the condition the road is in today is unsafe for my grandmother and her friends. It has been two years too long that the road has not been fixed. So I kindly ask you today to please help in fixing the road conditions to make it safer for everyone.

CHAIR MEDEIROS: Thank you, Ms. Hew, for your testimony and for being here this morning. Members, any questions for the testifier? Seeing none, once again thank you. Next to testify--

AUDIENCE: . . .*(applause)*. . .

CHAIR MEDEIROS: --on IM-9. . .is Mr. Robert Sam Fevella. Would you come forward, please?

. . . Good morning. Good to see you this morning.

MR. FEVELLA: Good morning, Bill. Good morning, Members. Hey, Wayne.

. . . I'm here this morning. . . I guess I got to say my name.

CHAIR MEDEIROS: Yeah. Please?

MR. FEVELLA: Okay, Bill.

CHAIR MEDEIROS: Even though everybody knows you.

UNIDENTIFIED SPEAKER: . . .*(laughter)*. . .

MR. FEVELLA: Yeah. My name is Robert Fevella. This morning most of what I wanted to say has been said but we got to go back. I've lived up in that area since the early '60s and that culvert by Henry Lau's house, there used to be a box culvert there. For those of you that don't know what a box culvert is. . .well, you could, you couldn't even call it a box culvert. It was a U-shaped culvert and there was planks across, something like the planks in the back of the mountain that replaced all those bridges. That's what we had. And I could actually walk under that culvert. And we had a big storm, rocks came down that gulch, washed a car from Koheo(?) Road, blocked that stream. And in the wisdom of our County of Maui. . .our Director of Public Works, Mr. John Fernandez--I don't know if some of you remember him--decided to take that culvert out and put a round culvert, 4 feet. Now when you talk a 4-foot culvert, you don't have 4 feet all around. You got 4 feet in two places. This way and that way. The rest is all narrow.

. . . We have seen that culvert. . .every time it rains, you know, you get four, five inches of rain, three inches rain, that gulch is going to run. And we got wattles that grow up there like hair. A wattle tree can grow 12 feet in a year, and all you need is one wattle tree across that culvert and it plugs up. And what happens is the water from that gulch

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

will go down the road and into Mr. Furokawa's yard. This is an 85-year old man. . .and his wife lives in this house. Four times he has to clean up his place because the water from that culvert is going down into his yard. He has written letters to the County, taken pictures, and nothing has been done. Why? And then this happening. Uh. . .I was there when this storm happened. I was right there at the culvert trying to clear the culvert so the water wouldn't go down to Mr. Furokawa's yard when the, when everything just came down. The rocks, the stones, the water, everything went right over my son-in-law and my son, hit my son against Henry Lau's mailbox. He was stuck in the, in the twigs. That was the same wave that took his truck and his garage.

CHAIR MEDEIROS: Mr. Fevella, thank you, but can you just conclude, please?

MR. FEVELLA: So I'm saying that it's about time we do something. The State repaired their roads *ages* ago. What are, you know, what, what is the County waiting for?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR MEDEIROS: Thank you. Thank you very much. Remain there.

AUDIENCE: . . .(*applause*). . .

CHAIR MEDEIROS: Thank you. Yeah. And, Mr. Fevella, thank you for sharing your knowledge and history of that area. That helps us get a broader and picture of it. Members, any questions for Mr. Fevella? Seeing none, thank you for being here.

MR. FEVELLA: You know, Mr. Chairman, I feel very slighted. Nobody has one question.

AUDIENCE: . . .(*laughter*). . .(*applause*). . .

CHAIR MEDEIROS: I, I think you did such a great job in your testimony it didn't require any questions . . .(*laughter*). . .

AUDIENCE: . . .(*applause*). . .

CHAIR MEDEIROS: Thank you.

COUNCILMEMBER NISHIKI: We scared ask you questions.

ALL: . . .(*laughter*). . .

COUNCILMEMBER VICTORINO: Yeah, we no like you bark.

ALL: . . .(*laughter*). . .

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Okay. Coming up to testify next is Colleen Doyle. Ms. Doyle, if you'd come forward please?

. . . Good morning, and if you'll state your name for the record, please?

MS. DOYLE: Yes. Good morning. I'm Colleen Doyle. I live on Middle Road off of Polipoli. I, like Steve and Fran Goldstein, drive that road just about every day, and I'm here simply to say the road is an accident waiting to happen and, and to ask that the County act and act now. We have garbage trucks going up and down that street on a weekly basis and I don't know how they do, how they go around both of the culverts. As my husband pointed out, we have a school bus that goes up and down that road twice a day, and what's very interesting is we used to have a *big* school bus go up and down that road every day, and that big school bus can no longer do that. They now moved to a smaller school bus 'cause they can't, they can't make it around the two culverts that are, that are a mess. So it's important that the County act. It's a very, very, very dangerous situation. Thank you.

CHAIR MEDEIROS: Thank you for sharing your testimony this morning. Members, any questions for the testifier? Seeing none, thank you once again.

AUDIENCE: . . .(*applause*). . .

CHAIR MEDEIROS: Next testifying on IM -9 is Fran Levin.

. . . Ms. Levin, if you would come forward, please?

. . . Good morning and your, state your name for the record.

MS. LEVIN: Good morning. Good morning, everybody. After all of this, it's very hard to expand except to say we drive up and down this road every day along with the buses, the garbage, the . . .UPS. . .FedEx.

. . . It's very narrow. I ask you *please* come up and make a site inspection and see what we're talking about. It's very dangerous. It's dangerous to drive, it's dangerous to walk, and some evening somebody will go over. Thank you.

CHAIR MEDEIROS: Thank you. And I'm not sure, did you state your name?

MS. LEVIN: Fran Levin.

CHAIR MEDEIROS: Thank you. Members, any questions for Ms. Levin this morning? Seeing none, thank you once again for being here.

AUDIENCE: . . .(*applause*). . .

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Next testifying on IM-34 is Hal Davis. Is Mr. Davis here? Please come forward, and. . .he'll be followed by Charlotte, is it Torres?

. . . Okay.

MR. DAVIS: Good morning.

CHAIR MEDEIROS: Mr. Davis, good morning.

MR. DAVIS: Hal Davis. I'd like to let you know that I live in Wailuku Heights at about 700-foot elevation. And above my property is the Wilson property which is at about **2,000** feet. They've taken the entire **top** of the mountain off and it's just an eyesore, number one. Number two, it's also dangerous. They have retaining walls that go up through the property that must be 35 to 40 feet high. I'd like to see you come out and look for yourself, touch it, feel it, and experience it. The Casey(?) property that is behind my property is another one in question. Behind my home, when I bought it I thought it was. . .conservation land. After I found out it wasn't, I went back to the people who **told** me it was conversation land and of course they got amnesia, you know, they didn't know anything about it then. So now Mr. Casey(?) goes up and there's 100-year, I believe, I might be wrong, or 1,000-year, a stormwater ditch behind the home, my home, that comes all the way down the mountain through the Casey(?) property. He just, in order to have access to that property over that ditch, puts in a corrugated pipe, I believe maybe 18 to 24 inches, covers it over and proceeds to grade and grub X number of acres without a permit. I believe we stopped him. The County comes out and looks at it and says well, yeah, I guess it's okay, gives him a permit, and he continues on. I don't believe that the corrugated pipe will take the water flow that it was **intended** to when they put the ditch in. That needs to be taken care of. I **hope** we can benefit from the experience of Oahu and **stop** the steep slope development before. . .tragedy happens. And that's all I have to say. Thank you.

CHAIR MEDEIROS: Thank you, Mr. Davis. Any questions for the testifier? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. You know I, I can relate to this Oahu situation just because it was my cousin's daughter that got crushed by that boulder in Nuuanu, 20-some year old dead now. I went to bury her. So now this one Casey(?) property that's got this corrugated pipe, has the drainage way now been diverted in a different manner where the water is now going to . . .(*inaudible*). . .

MR. DAVIS: I don't believe its been **diverted**.

COUNCILMEMBER NISHIKI: Okay.

MR. DAVIS: It is just now going to be **enclosed**. No longer can it **overflow** the banks. It also cannot keep itself clean--as the Polipoli Road. Any time you put in a, a restriction for

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

water flow, one twig, one branch stops it and then the dam happens and then we have a bigger problem. So I don't understand why they, number one, let the man *continue*--

COUNCILMEMBER NISHIKI: Right.

MR. DAVIS: --after he just goes up and does it willy-nilly with *no* regard or respect for *any* of the County ordinances at all. But yet now he has a water meter, so now I know he's going to build a house and, and/or houses. And with his track record, I would say he's going to do it the way he wants to and you'll have to come and chase him.

COUNCILMEMBER NISHIKI: Okay. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Any more questions for the testifier? Seeing none, thank you, sir--

MR. DAVIS: Thank you.

CHAIR MEDEIROS: --for being here this morning. Testifying on IM-34, Charlotte Torres. Come forward please. State your name for the record. Good morning.

MS. TORRES: Good morning. My name is Charlotte Torres. Hi. Thank you for having me. I'm a member of Wailuku Forest Preserve Coalition. I am a lifetime Maui resident and have lived in Wailuku Heights for about 20 years. Many of you recall the Coalition's lawsuit against the County several years ago that we filed in order to *stop* illegal grading and grubbing. I was personally affected in that case because the backhoe showed up one day and the, and the property owner began to illegally grub and grade land at a 30 percent incline about 50 feet from my home. We withdrew the lawsuit in the hope that the County would closely monitor development above our homes to *prevent* unlawful grading and grubbing. But there has been more than one occasion since that time where property owners *illegally* changed the mountain only to receive a slap on the wrist by the County. I want to thank the Council for considering this new ordinance as it is the first step in preventing future illegal grading and grubbing; however, this ordinance is only the first step towards a full discussion on development above our homes. Approximately 400 acres above our homes are zoned Agriculture which means that a large number of homes on five-acre plots can be built on obviously steep mountainside land under the County's *current* ordinance. Before the first development permit is issued, not after, is the time for all Maui residents to debate and appreciate the consequences of additional development above our homes. Important safety and environmental issues are at stake because once development occurs it is almost impossible to stop. We've seen this time and time again on Maui, and we want to *prevent* unrestricted development from occurring in the future. The quality of the environment on our island is our most precious resource and cannot be repaired once damaged. In closing, I would like to request that this plan address safety, soil integrity, environmental issues, archeological preservation, and water rights. Please keep this in mind as you consider this new ordinance. Thank you.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Mahalo, Ms. Torres. Members, any questions for the testifier?

COUNCILMEMBER MOLINA: Chair?

CHAIR MEDEIROS: Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chairman. Good morning, Ms. Torres. Not so much a question, but could we have a copy of your testimony for the item?

MS. TORRES: Sure.

COUNCILMEMBER MOLINA: Or we could ask our Staff to make a copy.

MS. TORRES: Sure.

COUNCILMEMBER MOLINA: Yeah.

MS. TORRES: Okay.

COUNCILMEMBER MOLINA: Thank you.

CHAIR MEDEIROS: Any further questions, Members? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you. The 400-acre which you think is a ag subdivision, do you know the name of that subdivision?

MS. TORRES: No, I don't. And I don't even think it's a *subdivision*. I think somebody bought property up there.

COUNCILMEMBER NISHIKI: Uh-huh.

MS. TORRES: You know I think they're based in San Francisco or someplace like that. So I, I don't know if, that there's any name. All I know about is the Casey(?) property and Leona Wilson's property.

COUNCILMEMBER NISHIKI: Right. Okay, we've got...

MS. TORRES: That's all I know.

COUNCILMEMBER NISHIKI: Okay. Thank you very much.

MS. TORRES: Okay.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Mahalo, Mr. Nishiki. Any further questions, Members, for the testifier? Seeing none, if you'll leave your copy of your testimony with our Staff, they'll make copies for the Members. Thank you. And while we're talking about that, those of you that brought photographs which you'd like to have the Members have copies of, you can present them to our Staff and at, when they can, have time, they'll make copies and include it in our binders. So coming up to testify next is Ms. Doreen Gomes. Ms. Gomes, if you'd come forward please? And she'll be testifying on IM-9. Good morning.

MS. GOMES: Good morning. Good morning, Chair Medeiros and Members of the Council. My name is Doreen Gomes and this morning I am representing the Kula Community Association. In December of 2007, a flash flood in the Polipoli area of Kula caused a considerable amount of damage throughout the County of Maui, most especially the Waiohuli, Kula areas. The Polipoli Bridge was washed out by the massive flooding and to this day remains in dire need of repairs. It is a constant reminder of the winter storm of 2007, especially to those that live in the area. Since then, our Association surveyed its membership on road improvement priorities. Residents responded that dangerous conditions continue to exist at the bridge on Polipoli Road. The Association has been very concerned about the safety of these residents using this bridge and ask for your consideration of the funding needed to having it properly repaired. Thank you.

CHAIR MEDEIROS: Mahalo, Ms. Gomes. Members, any questions for the testifier? Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Good morning, Ms. Gomes. Thank you for your testimony. Has your Association talked about the possibility of restricting certain types of vehicles from using that road, you know, any vehicles over a certain weight? I mean has that been . . . *(inaudible)* . . .

MS. GOMES: No, we have not.

COUNCILMEMBER MOLINA: Is that something you think the County should consider? Place a vehicle weight . . . *(inaudible)* . . .

MS. GOMES: I would have to defer that to the Association.

COUNCILMEMBER MOLINA: Okay.

MS. GOMES: The board.

COUNCILMEMBER MOLINA: Yeah. I think that would, if that could be brought to the Association's attention, that might be something to look into since the issue is safety and these bigger vehicles using these roads, yeah.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MS. GOMES: I'm sure we could discuss that and then take it to the, the general community for some kind of a buy-in or...

COUNCILMEMBER MOLINA: Okay, great.

MS. GOMES: . . . discussion.

COUNCILMEMBER MOLINA: Thank you.

MS. GOMES: You're welcome.

COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR MEDEIROS: Mahalo, Member Molina. Any other questions for the testifier? Seeing none, thank you so much for your, being here this morning and for your testimony. Next testifying on IM-9 is Gina Flammer. Good morning. And if you'll give your name for the record please?

MS. FLAMMER: Good morning, Chair Medeiros, Vice-Chair Pontanilla, and Council Members. My name is Gina Flammer and I'm here today as a resident of Kula. Though I'm not one of the 80 mailboxes along the road, I do travel the road pretty frequently. We have family friends up on Middle Road. I will tell you that there is a natural drainage way that runs right through it and it's downright scary. I drive a minivan, which is not a large truck, but there's not much room. There are bikers that bike, the recreational bikers that come up the loop from Middle Road down to Polipoli. There's people that walk. There are cattle trucks that go up there. I've slammed on the breaks more than once with my kids in the back. I don't even like to travel it at all.

. . . The, the bridge is on a *curve* which makes it even more dangerous. If you're coming at night there's really no way besides your, your headlights to, to *see* the curve. And if you drop on the left, it's *solid* rock. And you're looking at maybe 10, 15, 20 feet 'cause it continues to go down. So I know that these are tough economic times and that I ask that if the money's there, if more money is needed, that you really make this a priority and go ahead and get it fixed. Thank you.

CHAIR MEDEIROS: Thank you, Ms. Flammer. Members, any questions for the testifier? Seeing none, thank you for being here this morning and for your testimony.

AUDIENCE: . . .(applause). . .

CHAIR MEDEIROS: Testifying next on IM-9 is Ms. Jill Cost. Ms. Cost, if you'd come up please and give your name for the record?

MS. COST: . . . Do I talk now or . . .

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Yeah. Proceed.

MS. COST: I am a resident. My name is Jill Cost and I've been a resident of Polipoli Road since 1973 and traveled the road many, many times, I mean every day two, three times. And it's no where like it used to be. It's very dangerous. And the thing that concerns me most is I don't know if engineers have come out to look to see about the integrity of the road. There's cracks in it. It's falling off. The other thing that concerns me is our neighbor across the street has started to plant things in the waterway, and there's a building, there's sort of a makeshift building. And if that was to run again, all of the...there's Eucalyptus trees now and wattle trees that are probably 12-foot tall which grow almost overnight as everyone else, you know, everybody has mentioned all this stuff. But the other thing that is sort of an aside is that twice since this incident of December 5<sup>th</sup>, water has run down this gulch and it wasn't due to the storm, it was over 24 hours. . .water was running from a huge pipe. And I don't know if it was something that the Department of Water, but we called and it ran for 24 hours and *millions* of gallons of water were lost. And *that* really concerned me. I didn't know what they were doing. And if there's any way to look into that as well.

. . . So. . .do you have any questions?

CHAIR MEDEIROS: Are you done?

MS. COST: Yes, I'm done.

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Thank you for your testimony, Ms. Cost.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Any questions for the testifier? Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. Just some clarification, Mr. Chair, if I may?

CHAIR MEDEIROS: Sure.

COUNCILMEMBER VICTORINO: You, Ms. Cost, you mentioned about this water running down for *24* hours.

MS. COST: It was over 24 hours.

COUNCILMEMBER VICTORINO: Over 24 hours?

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MS. COST: Uh-huh.

COUNCILMEMBER VICTORINO: And do you know where the source?

MS. COST: Well, you can't really walk up, you know, above the, the waterway. But it seemed like it was coming from a water pipe. I mean it was millions of gallons 'cause our, we had a stream running right past us 'cause we own part of the gulch and it...

COUNCILMEMBER VICTORINO: Okay. Okay. I'll take a look . . . *(inaudible)* . . .

MS. COST: And I think that needs to be looked into. I don't know what the Department of Water is doing, but that's happened twice and just recently as well.

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. I'll--

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: --I'll look into that matter.

CHAIR MEDEIROS: Okay. All right.

COUNCILMEMBER VICTORINO: Okay. Thank you.

CHAIR MEDEIROS: Mahalo, Mr. Victorino. Ms. Cost, you did say that you folks did contact the Water Department to inquire?

MS. COST: Uh-huh.

CHAIR MEDEIROS: And what was the reply?

MS. COST: It was on, I think, I believe it was on a Sunday. They didn't fix it until Monday afternoon.

CHAIR MEDEIROS: So it was something connected with the Department of Water Supply?

MS. COST: Uh-huh.

CHAIR MEDEIROS: Okay. Thank you for that information.

MS. COST: Okay.

CHAIR MEDEIROS: Members, any other questions for the testifier? Seeing none, thank you for being here this morning.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MS. COST: Thank you very much.

AUDIENCE: . . .(applause). . .

CHAIR MEDEIROS: Okay. Last to testify that has signed up on, and this is on Item 9, is, I believe this is Julie Kean. Yeah. And anybody, you know, wanting to testify that did not sign up, the signup table in the lobby is still open. If you're interested, please go there. Ms. Kean, good morning.

MS. KEAN: Good morning. Good morning, Council Members. Thank you for letting me speak. I am a resident of Polipoli Road about a mile up from the highway. So I cross both of these gulches that have no guardrails or anything on them a couple of times a day. I also am a crisis outreach worker for the State of the Hawaii Access Line and respond to crisis calls for families with adolescents. I'm on call three days a week, 24/7 which means if I get a call at two o'clock in the morning I have to drive down the road over these un-guardrailed gulches. And it's terrifying. And I'm, you know, close to 60 and you get called at two o'clock in the morning, you're not as sharp. I'm an accident waiting to happen, as well as the many bicyclists that ride our road. Go up on a Sunday morning. The road's crowded with bicyclists. There's children on dirt bikes, ATVs. This is not a question of if. This is a question of when an accident happens. And I also wanted to take the opportunity to address, you know, should we limit vehicles coming up the road? Why punish us? Let's fix it . . .(laughter). . .

AUDIENCE: . . .(applause). . .

MS. KEAN: Don't punish us. Thank you.

CHAIR MEDEIROS: Okay. Thank you for your testimony. If you'll remain there please, ma'am? Member Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Good morning. Thank you for your testimony. My, my question to the earlier testifier was just in response to the concern that was, that was being expressed to us about vehicle, the road's integrity. So it was in *no means* taking a particular position. So I just want--

MS. KEAN: I--

COUNCILMEMBER MOLINA: --to make that clear. But we have to hear all sides of the issue.

MS. KEAN: I...

COUNCILMEMBER MOLINA: So I did not take any position, okay?

MS. KEAN: Yeah.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES  
Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER MOLINA: I just want to let you know that. Thank you.

MS. KEAN: I, I, I, understand that --

COUNCILMEMBER MOLINA: Thank you, Mr. Chair, I'm done.

MS. KEAN: --but please don't punish us . . . *(laughter)* . . .

CHAIR MEDEIROS: Okay. Thank you, Member Molina. And thank you for being here this morning and for your testimony.

AUDIENCE: . . . *(applause)* . . .

CHAIR MEDEIROS: Okay. We have completed the people who signed up to testify this morning. I'll give one more opportunity for those of you in the gallery that have not testified. If you want to come up to testify at this time, I'm offering you that opportunity. And nobody's approaching the podium. So without objections, Members, the Chair will close testimony for this morning's meeting.

COUNCILMEMBER VICTORINO: No objections . . . *(inaudible)* . . .

CHAIR MEDEIROS: Thank you. Members, so ordered.

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

CHAIR MEDEIROS: So, Members, if you look at your agenda this morning. . .we have three items that are on our agenda: IM-9 which is repair of Polipoli Bridge and culvert and Middle Road due to storm damage in the Kula area; IM-27, adoption of the 2008 National Electrical Code with local amendments; and item three, IM-34, a bill relating to the development on steep terrain.

**ITEM NO. 9: REPAIR OF POLIPOLI BRIDGE AND CULVERT AND MIDDLE ROAD DUE TO STORM DAMAGE (KULA) (C.C. No. 09-142)**

CHAIR MEDEIROS: So, Members, we're going to go to the first item which is Item 9. And this is repair of Polipoli Bridge and culvert and Middle Road due to storm damage in Kula. The Committee is in receipt of County Communication No. 09-142, from Councilmember Gladys C. Baisa, relating to the repair of Polipoli Bridge and culvert and Middle Road in Kula, Maui, due to storm damage. Member Baisa is not here this morning. She's excused from the meeting. But at this time I'd like to ask the Director of Public Works, Director Arakawa, to give us an overview and possibly an update on this item. Director Arakawa?

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. ARAKAWA: Thank you, Mr. Chair. As you've noted, this item pertains to an April 29, 2009 communication from Councilmember Gladys Baisa regarding repair of Polipoli Bridge, culvert, and Middle Road due to storm damage. The Infrastructure Management Committee discussed this matter at its meeting of September 28, 2009. At that time, it was noted that the project is in design, and we can provide some additional information on the process. R. T. Tanaka Engineers is our consultant doing the design, and it is being close to being finalized at this point. Changes are being worked out with the Department of Water Supply to accommodate an existing waterline. The existing culvert, as you've heard in the testimony, is approximately 4 feet in diameter. In order to accommodate the flows through this area, the plans propose a 20-foot by 7-foot Conspan. So it's significantly larger than what currently exists. We need to obtain the rights of entry and easements from the four owners abutting the proposed Conspan. We have contacted or are in the process of contacting the owners to explain the project details and request their cooperation and support in this matter. A rough estimate of the construction cost for the project is \$2 million. There is no construction funding for the project at the present time, and I would note that the project does not qualify for American Recovery and Reinvestment Act funding or any Federal highway funds because Polipoli Road is not a major collector road nor is it on the list of roads that qualify for Federal funding. So at this point it is one of many projects being considered for inclusion within the proposed Fiscal Year '11, Fiscal Year '11 Budget. That concludes my comments. I'd be happy to answer any questions. And with me this morning I have Wendy Kobashigawa from our Engineering Division, who is the Design Engineer. So with that, Mr. Chairman, I'd be happy to answer any questions.

CHAIR MEDEIROS: Mahalo, Director Arakawa. Members, the Chair will open the floor to discussions and questions. Member Pontanilla, followed by Member Victorino, followed by Member Molina.

VICE-CHAIR PONTANILLA: Thank you, Chairman . . . (*change tape, start 2A*) . . . back in March of this year, the Budget and Finance Committee met and the Administration asked for some budget amendments which we provided \$250,000 for the design of this particular . . . project. And at that time though, the, the Director also noted that it would take \$1 million to, to reconstruct Polipoli Road. But this morning I hear now it's going to cost the County \$2 million, and I just want to be sure that, you know, the dollars that we talk about are the dollars that we want to spend for reconstructing Polipoli Road. Mr. Arakawa, can you explain the difference between the 1 million and 2 million dollars?

MR. ARAKAWA: Well, at the time we went before the Budget and Finance Committee, we knew that we would need to upsize the culvert; however, the design was not done at that point in time. So it was basically a rough guess. At this point, the design is almost complete. We've come up with, we feel, a better estimate, but of course it still has to go out to bid and we, of course we're not sure what the bid is going to be. But we basically have more information at this point to give you a better estimate of the construction cost.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

VICE-CHAIR PONTANILLA: Let me ask you this question. When we go out for bidding, the bidding process, how long does it take to, to send out the bids, get a bid cost, and award the contract?

CHAIR MEDEIROS: Director?

MS. KOBASHIGAWA: It typically takes about a month for us to advertise for bids, then we open the bids, evaluate it, award the contract. Typically, I would say around from the time we award project, I mean, advertise for bids 'til the time we go into construction maybe about three to four months at the very earliest.

VICE-CHAIR PONTANILLA: So after the three to four months, we still need to review the project plan for various approvals? And if we do, how long will that take?

MS. KOBASHIGAWA: The project, the plans have been in review already so that's why we have, we are addressing Water Supply comments right now. I'm also trying to meet with the residents to make sure they're, they know what the project is about. So by the time we advertise for bids, all comments should have been addressed.

VICE-CHAIR PONTANILLA: Thank you. And, and the reason why I ask about timeline, in the last couple Budget and Finance Committee meetings we've had, we've reviewed a lot of major CIP projects, and one of the concerns that we have is that, you know, we always say that we're going, we're going to do something but it take us years to do it. And one of the things that hang up the County, even a County project is the permitting process. And one of the process that's holding up some replacement for bridges is approvals from the State of Hawaii. Does this project require approvals from the State of Hawaii?

MS. KOBASHIGAWA: At this time, we did not, as far as I know, we don't need. . .State, State permits. Um . . .

VICE-CHAIR PONTANILLA: So the permitting process will be strictly County then?

MS. KOBASHIGAWA: Pretty much, as far as I can tell right now.

VICE-CHAIR PONTANILLA: Okay. Thank you.

MS. KOBASHIGAWA: You're welcome.

VICE-CHAIR PONTANILLA: Thank you, Chairman.

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

COUNCILMEMBER VICTORINO: Thank you. Thank you, Chair. Mr. Arakawa, I, my memory kind of goes back a couple of years ago when this disaster occurred, and they were going or there was attempts with FEMA and other because these areas were

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

considered disasters. I know the State went in and the State was putting money in under that auspices. So why doesn't this qualify as far as, you know, emergency funds from FEMA? And I think you once explained it, but just so that the public because it's been a long term and people forget. But I'd like to know why it doesn't qualify for repairs as far as FEMA is concerned.

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Victorino, we have actually tried to get some reimbursements from FEMA for repairs. But just for the Council's information, FEMA will only reimburse just that, just *repairs*. They will not reimburse *upsizing* and further improvements. So we have a number from FEMA. I believe they're going to be reimbursing us somewhere in the neighborhood of around \$128,000, so it's very short of the total construction cost that would be needed. So we still need to *apply* for that and FEMA hasn't given us their final determination on it.

COUNCILMEMBER VICTORINO: My other question is, you know, there was a bridge there and it's not now anymore. You know, I've been up there a couple times and I understand what you guys have done. But why wasn't any consideration for guardrails--especially in the area of the two gulches, especially the makai gulch, which drops 10, 15, 20 feet and, and continuously falls--to prevent such things as vehicles going off the side of the road? Why wasn't that ever done? And I mean I, wouldn't that be considered a *repair* cause that was *there before* this *occurred*?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Victorino, the guardrails, if people want guardrails. . . basically we have to be aware that guardrails need basically a firm foundation for its erection. And portions of the, the culvert, as you know, has, have washed away. If we were to erect guardrails, we would probably have to make the road even *narrower* than it currently is. And we'd probably have to do some other research into whether or not the, the ground is even stable enough to, to handle it. So the, the preferred option actually, but probably not the preferred option from the residents' standpoint, is probably to just to close the road to ensure that people are safe. But we've basically just kept it open and tried to basically get the design done and hopefully get the funding for the construction and just get the, the thing repaired.

COUNCILMEMBER VICTORINO: All right. Thank you, Mr. Arakawa. I just find it hard to believe, and even if we just went with the makai side the, the, the deeper area of the culvert, and at least that part of the gulch would be protected from vehicles going off. I think the people, after two years, deserve better answers than this, but that's another issue and I'm not going to get into it, Mr. Chair. But it's been a long time and I, I don't believe that we've done enough, and so we better get moving on it before, like they said, a disaster occurs and then we're all up a creek with no paddle. Thank you, Mr. Chair.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Mahalo, Member Victorino. Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chair. Good morning, Mr. Arakawa. You know, from our last meeting we've seen a significant increase in the amount of testimony related to this road. So there's certainly a sense of urgency and, like my colleague Mr. Victorino, we need to get this thing really moving. And I know there's a process but at the same time it's incumbent upon all of us whether it be through funding or just moving this whole idea of the engineering of the project itself. My, my question, I guess, it has been talked about enough with regards to the bridge and everything else as far as the flooding. Now we heard from testimony this morning from people concerned about the safety, the amount, the *increased* amount of vehicles using the road, especially the *large* vehicles. And I know we had a testifier this morning tell us don't punish us. Well, to me when it comes to safety it's, if people consider safety a *punishment*, I don't know . . . *(laughter)* . . . how that can be thought of as *that*. But the integrity of the road, Mr. Arakawa, with the large amount of buses and, I guess, cattle trucks, is the integrity of the road still there, the bridge, to handle these amount of vehicles and the weight? Should we be looking at potentially putting signage, at least signage there to indicate that certain vehicles or certain vehicles that weigh an amount that is inappropriate, should we be warning the public about this? Because I don't want a lawsuit, Mr. Chairman, you know. And if that is becoming an increasing issue with the residents there, I think we should look at it. Mr. Director, can I get your comments on that?

CHAIR MEDEIROS: Director?

*NOTE: Silence.*

MR. ARAKAWA: . . . Councilmember Molina, I suppose we could look at additional signage to let people know that the road is narrow at the crossing.

COUNCILMEMBER MOLINA: Uh-huh. And, and then you stated the road is not considered a major collector road, but it would sound like it's becoming a major thoroughfare for a lot of people--you know, bicyclists, tour buses, you know. When I see, hear of tour buses going through what's supposed to be primarily a *residential* road it kind of, it's a concern, Mr. Arakawa. What about that issue?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: . . . Councilmember Molina, as far as vehicle weight limits. . .if you want us to do a proposal to you, we can take a look at that. But otherwise any vehicle weight limits on any County road needs to be established by ordinance. So I mean if the Council Members want to take a look at that, we can certainly come back to you with a proposal and you can debate that.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Director. Yeah, Mr. Chair, if that's possible--at least just to take a look at it and for, for discussion. And as I had asked the

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

testifier, the lady who represented the Kula Community Association, to at least bring that issue to their attention for discussion and feedback. So anything we can do to address the issue of safety, I think, would be appreciated. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Member Molina. And you are correct. I think we need to address this issue from many different angles and not be stuck on just one project plan. So we need to see what we can do immediately in trying to mitigate some of the problems that exist today. Members, questions? I'm going to allow Council Chair Mateo, and then Member Nishiki, and then Member Pontanilla.

COUNCILMEMBER MATEO: Thank you, Mr. Chairman. I guess the question would be for Corporation Counsel. Now that the particular community has come out and advised us of the unsafeness [*sic*] of the roadway, now that the County is very much *aware* of the conditions of the roadway to a point where we had hired a consultant to redesign and perhaps reconfigure certain components of the roadway, can you tell me what the County's exposure is at this time?

MR. GALAZIN: . . .(*Clears throat*). . . Excuse me. Yes, Council Chair Mateo, certainly the longer we go without doing anything the greater liability that the County becomes exposed to. You know, certainly budget considerations are part of government's function and if we don't have the money to do it right now that would be one factor that, you know, God forbid something happens and we end up in court, that a court would look at it in terms of assessing the reasonableness of our actions. I think, you know, certainly the way that Public Works is proceeding so far--getting their studies done, getting their, their proposed budget for it, being ready to go out for bids--they seem to be proceeding down a reasonable path *so far*. But, you know, I do agree the longer this goes on without being addressed, you know, certainly our risks increase.

COUNCILMEMBER MATEO: Okay. Thank you. And, Mr. Chairman, the only reason I ask is because it just seems to be inevitable at this particular point in time. One accident would cost us probably more than \$2 million. So I guess, as Mr. Pontanilla had kind of inferred a little earlier, we have millions of dollars tied up in a lot of CIPs, millions of dollars that is really being held for God knows what reason because projects are not moving. It's time for us to reevaluate, take a look and prioritize projects like this, and get the damn job done. It's, you know, it, it, perhaps may be too simplistic in, in concept, but if we're holding millions of dollars and projects are continuously being delayed, then I think in order to us to avoid this kind of potential litigation, I think it becomes incumbent upon us to reassess our priorities and work with the Department to get projects like this done. I think what worried me most is primarily the fact that our future is at risk, because there is that school bus that transfers kids up and down this particular roadway, and that sure as hell worries me. And I think two years. . .it's, it's inexcusable. And I think it's time, and time to not only tighten our belt, but to readdress our CIP process and take a look at how we can shift monies around to get the appropriate jobs done. Thank you, Mr. Chairman.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Thank you, Council Chair Mateo. And you, you make very good points and they're well taken and should be addressed. I believe Member Nishiki, followed by Member Pontanilla.

COUNCILMEMBER NISHIKI: Thank you. Milton, I was looking at the area where the culvert is and the washout occurred in the pictures. Has the storm damage eroded the narrowness of the existing roadway? Did the roadway become narrower as perhaps some of the testimony today was given? Or is it still the same width? I mean it seems like people were concerned about now they've got to step on their brakes and as Danny alluded to that a different size bus is being used.

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Nishiki, we are aware that at least the wall washed out. But the road. . .before this latest storm, you know, *was* a substandard road, and it still *is* a substandard road. Um...

COUNCILMEMBER NISHIKI: Okay. Okay. And, and because of the storm perhaps the drop now off of the roadway in some areas they say is 15 to 20 feet. *That* has changed, the physical drop if a vehicle goes off the road?

. . . No?

MR. ARAKAWA: Um--

COUNCILMEMBER NISHIKI: Yes?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Nishiki, perhaps the residents could be, could answer that question better. But we --

COUNCILMEMBER NISHIKI: Okay.

MR. ARAKAWA: --aren't familiar exactly what happened, what the conditions were *before* the, the storm.

COUNCILMEMBER NISHIKI: Okay. And then the, the question asked, when is this project going to take place. I think, I think this is where the line of questioning about a statement made--we may have to close the road because of the seriousness of this situation. You've already accepted the fact that, through testimony and even your statement, that this is a very dangerous situation.

CHAIR MEDEIROS: Director, you want to respond to that?

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. ARAKAWA: Well, the road is certainly substandard --

COUNCILMEMBER NISHIKI: Yes.

MR. ARAKAWA: --and of course if we had to design it again, we would not design it the way it currently is.

COUNCILMEMBER NISHIKI: Yeah. Mr. Chairman, the reason why I ask, I, I, I ask these questions to, to validate perhaps the direction is this--you know when we have our beautiful hotels or whatever being threatened by a tsunami, ho, man, the County just come and they just put whatever barricades or whatever and they try to protect these things. Oh, even when we had a situation where we don't have enough stands and we needed to get our precious Hula Bowl there because it's going to cost us millions of dollars because...ho, man, all of a sudden the County hires people and, and we get the stadium in line to where we can hold the Hula Bowl and satisfy those promoters. And we put all our County funds and people to work. I think in this situation if this Council and, and, and, and you've heard the stories now, if you Members consider this to be an emergency, then by all means get the County now to deal with this roadway and, and widen it in an emergency situation. And as testifier said, hey, we don't want this place closed. But by all means the County has a plan, it may be longer than we anticipated, but if this is an emergency, then act like it's an emergency and open up that road. We do it all the time and we put our resources and everything else. But if this Committee is really not seeing that this is an emergency, then we won't act in this way. But I'm surely, Mr. Corporation Counsel, if we deem this as an emergency, can't we tell the County to act differently and create safety on this roadway by widening it or putting guardrails or whatever it takes to do it to achieve the concern?

CHAIR MEDEIROS: Mr. Galazin?

MR. GALAZIN: Member Nishiki, you know, I can appreciate your, your zeal in this. I don't know that it's the Council's--

COUNCILMEMBER NISHIKI: It's not a *zeal*. It's not a zeal. It's a question.

MR. GALAZIN: Okay. To answer your question, I don't know that your declaration of this as an emergency would make any difference in how the Department views it. But that's really up to the Department. It's not a legal question, though.

COUNCILMEMBER NISHIKI: Yeah. And, Mr. Chairman, you know. . .

. . . if, if what we say we mean I, I want to know how we move this Administration to move *different*. I mean the Council Chair has said that it is life or death. We've seen by the size of a bus now being changed to perhaps address the safety. I mean these are kind of common sense actions that we see people doing. We see residents that live there say that they're, they're concerned that one slip can mean dying. I mean,

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

Mr. Corporation Counsel, I'm asking you how does the Council direct this Administration to move as if it were an emergency?

CHAIR MEDEIROS: Uh--

COUNCILMEMBER NISHIKI: Give me that answer, and we may not act--

CHAIR MEDEIROS: Mr., Mr. Nishiki? Mr. Nishiki--before you answer, Mr. Galazin, I think Mr. Galazin's . . . previous reply was that there is a process for this, but it isn't through the Corporation Counsel, the Department. So we would need to find how we establish an emergency status so that we can proceed with what we need to do. So, Mr. Galazin, I don't know if you have any further comment to that question from Mr. Nishiki?

MR. GALAZIN: No, Chair. That sums it up. Thank you.

CHAIR MEDEIROS: Okay, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I, I, I guess it's not acceptable because now we're asking our legal arm to give us an area in which we can direct this Administration to move quicker, use up funds. We got funds. We've heard all these people say there's money but projects aren't moving. We heard that this project has been two years in the waiting, and, and now it, it takes a community now and, and, and perhaps what, an election so we got to move now to make us move? My question is how do we make them look at this as an emergency and act? Do it.

CHAIR MEDEIROS: And, and, Mr. Nishiki, I think, as a Committee here, we can direct our Staff to find out exactly how to do that and, and proceed in that direction. But I don't think we'll get anything further from the Department, Corporation Counsel, on telling us how we can get the money and, or how we can act on that. So you, you make a good point, a very important point, and we will, you know, follow through on this.

COUNCILMEMBER NISHIKI: . . . Well, I, I guess I'll, I'll accept you, your direction, Mr. Chairman. But, you know, I remember Henry Lau telling us that during that storm one of his friends kind of put their selves and their lives in jeopardy because they were trying to clear out that accumulated brush. And, and so for many us I think, you know, this, this, this can occur again. And so Henry goes and puts himself in debt and goes and repairs his home because he said he was homeless for a while. So we hear all of this story and, and yet, you know, here goes a sincere resident that has probably lived here all his life now coming and, and saying, hey, come on, do something. But today, and thank God, you know, like when you, when you're in a fight you look and you go oh what, who else going back me up. Okay. So today he got all his backers out there to, to, and he's not looking for a fight, he's just looking for help.

CHAIR MEDEIROS: Uh-huh.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER NISHIKI: And, and so now I'm just saying hey, again, what, we're just going to go, you know, shine these people? I think that the circumstances presented to us, pictures, stories . . .

CHAIR MEDEIROS: Yeah.

COUNCILMEMBER NISHIKI: . . . is enough to, to shake all of us here to, to, to demand more from this Administration to act. That's all I'm saying.

CHAIR MEDEIROS: Okay. Mr. Nishiki, and, and I, I think all the Members here feel the same way, and we're trying to get to the same result as quickly as we can. And I think the discussion here helps with that.

COUNCILMEMBER NISHIKI: Yeah. I think it's a little different, Mr. Chairman. Because I said if it's an emergency, then perhaps things move differently.

CHAIR MEDEIROS: Yeah. And, and we're, we're going to check on how we can establish that and what process we need to involve ourselves in. So thank you for the points you made --

COUNCILMEMBER NISHIKI: I'm done.

CHAIR MEDEIROS: --Mr. Nishiki. Member Pontanilla, followed by Member Kaho'ohalahala.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Just a question for the Public Works area, you know, one testifier talked about engineers coming to inspect the roadway. Do we make, like say, periodically inspection to see the integrity of the road banks so that it doesn't collapse?

CHAIR MEDEIROS: Director?

MS. KOBASHIGAWA: . . . During the course of the two years, we have been going out periodically to check the roads, to take pictures of the conditions. So we have been monitoring.

VICE-CHAIR PONTANILLA: So you do that presently?

MS. KOBASHIGAWA: Last time I went out there to meet with a couple residents, I did go and take some pictures again. And that was, I think, in September or October . . . no, October.

VICE-CHAIR PONTANILLA: Okay. So you did it recently then?

MS. KOBASHIGAWA: Yes.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

VICE-CHAIR PONTANILLA: Chairman, just to provide you some information regarding Capital Improvement Projects. As you know at the last meeting that we had, the Budget and Finance, we discovered that there were approximately \$25 million that was unencumbered. And knowing the process how long it's going to take for the design, the permitting, the bidding process, it's going to take another six months. But so by the time we get to this thing here, funding this particular project probably we'll be into the 2011 Budget year. But if the Administration can take a look at all of their Capital Improvement Projects that are *not* encumbered at this time and the possibility of, I, I guess, making the process go faster. . . maybe, maybe we could use some of those encumbered money to, to fix this road earlier than 2011. Thank you.

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

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair. For, for the Department, earlier you gave us an, with regards to the design, do you have a specific timetable when the design will be done? I know it was stated that they're close to getting it done. But I think for myself and maybe the Committee and, and the residents, can we have an idea as far as the specific, what, what is close? A month from now? Three months from now? A week? Any idea?

CHAIR MEDEIROS: Director?

MS. KOBASHIGAWA: Oh, I can answer that. Right now, we just recently submitted our revised plans to Department of Water Supply. I'm also trying to meet with a couple more residents to get their input. Everybody else has either provided their comments or have not given any comments back. So once those comments are addressed by Water Supply and they're okay with that, and I think our design could be wrapped up as soon as they're done reviewing it. I would like to say maybe in about a month.

COUNCILMEMBER MOLINA: About a month? And this is--

MS. KOBASHIGAWA: Yeah.

COUNCILMEMBER MOLINA: -- the R. T. Tanaka firm that's going to be doing the design?

MS. KOBASHIGAWA: Yes. They finished the design already.

COUNCILMEMBER MOLINA: So about a month?

MS. KOBASHIGAWA: Yeah.

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

CHAIR MEDEIROS: Mahalo, Member Molina. Member Kaho'ohalahala?

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. Thank you, Chair. First of all, just a question off of your comments, the Department of Water Supply, what is their review in this, this process?

MS. KOBASHIGAWA: . . . There’s an existing waterline that’s underneath Polipoli Road. In order for us to install the new Conspan structure, the waterline will have to be lowered underneath the Conspan structure.

COUNCILMEMBER KAHO‘OHALAHALA: And so this, this comment by the Department of Water Supply has been what’s holding you up then?

MS. KOBASHIGAWA: I, I don’t want to say they’re holding us up, because we just recently submitted, I think, last week. So they just received their comment, I mean our revised plans.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Chair, on the responses that the Department sent to you on your questions about where we were at in terms of Federal Emergency Management monies, the comments here say that the, that we’re unable to complete the work on Polipoli Bridge within six months of the rainstorm event due to insufficient funding for the design and construction of the culvert replacement. So and then your comment after that says that because we did not meet the six-month timeframe to complete the project, we have a requested a time extension which is still pending. So first of all, you’re saying that you could not meet at least one timetable of six months of seeking some funding, because there was insufficient funds for you to even do the design component--is, is that what your, your statement says?

CHAIR MEDEIROS: Department?

*NOTE: Silence.*

MS. KOBASHIGAWA: . . . Yes. We didn’t have design funds at the time.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. But this is, when did, like this letter is dated on the 9<sup>th</sup> of October ’09, 19<sup>th</sup>, I’m sorry. But this *process* in which you’re involved in, you just earlier stated it takes you only three months to put together a design. So I’m trying to--

MS. KOBASHIGAWA: Oh, no, I’m sorry--

COUNCILMEMBER KAHO‘OHALAHALA: --understand obstacles--

MS. KOBASHIGAWA: Let me clarify. The three to four months I was talking about was in response to Mr. Pontanilla’s question on when the project can be advertised for bids . . . *(change tape, start 2B)*. . . design time.

**INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES**

**Council of the County of Maui**

**December 14, 2009**

---

COUNCILMEMBER KAHO‘OHALAHALA: Okay. But the insufficient funds here in this statement mean that you were not able to respond or get any application into FEMA to...and then your comment about it's still pending, can you explain that part? Are you still expecting, then, to be funded?

CHAIR MEDEIROS: Department?

MS. KOBASHIGAWA: We did...FEMA funding did expire, so before it expired I applied for a time extension. We did get a, we did get a letter from the State saying that they had forwarded our request to the FEMA Department and that was in May. But when I last checked, they had not responded back to us yet on whether or not the time extension has been granted or not.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And in this particular request then, how much funding were you looking for?

MS. KOBASHIGAWA: The initial amount they approved for us was about \$128,000. That was just to include repairs for the headwall and the guardrails.

COUNCILMEMBER KAHO‘OHALAHALA: . . . Okay. And then at this point is that still pending?

MS. KOBASHIGAWA: Yes.

COUNCILMEMBER KAHO‘OHALAHALA: So you may in fact be able to get some repair money then?

MS. KOBASHIGAWA: Hopefully.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then the only other parts, I think in here in your responses, talk about the ARA, ARRA funds, and you said that this particular project does not qualify because Polipoli Road is not a major collector road. What, what determines a major collector road, just so we understand.

CHAIR MEDEIROS: Department?

MR. ARAKAWA: Councilmember Kaho‘ohalahala, it's basically the classification of the road and the amount of traffic that it carries.

COUNCILMEMBER KAHO‘OHALAHALA: And, and that is?

MR. ARAKAWA: Well, Polipoli is basically not in that collector road classification because of the, because of its function and the amount of traffic that it carries.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So, yeah, can you tell me what is that, that quantification part on the amount of traffic? If that’s a criteria, then how do you quantify that?

MR. ARAKAWA: Uh. . .I don’t know what the exact number is offhand, but basically we have, all the roads here in the County are in a hierarchy. We have, of course, the arterials which are the State highways which carry high-speed traffic. We have the collector roads which are primarily County roads which basically collect traffic from the local roads, and the local roads are what Polipoli Road would be considered. It’s basically people, where people have their driveways onto, and where they have their homes. And basically it’s lower-traffic, lower-speed roads. So that’s basic, the basic hierarchy--and Polipoli, it’s basically considered a local, local road.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. I’m just looking at a map of Polipoli Road itself and how it makes a, sort of a loop and interconnects with Middle Road. And they seem to be two roads that will lead into the State highway. And are those not the collector roads ‘cause these are the only two access highway roads, local roads to the State highway.

CHAIR MEDEIROS: . . . Department?

MR. ARAKAWA: No. It’s not considered a collector road.

COUNCILMEMBER KAHO‘OHALAHALA: Other than that, there’s no other access then to the State highway from, other than from Polipoli and from Middle. Is that, is that correct?

MR. ARAKAWA: That is correct. There are a number of other roads that do not carry, you know, significant amounts of traffic. For instance, you may have a subdivision which has only one entry and exit onto a State highway. We wouldn’t consider those collector roads as well.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. I just think for some clarification since that’s something that we determine is not eligible under ARRA, that we at least let the community know how that’s being defined or quantified so they understand why they are considered *not* to be a collector road. Because then if it, if it were then we’d be in a different situation. But anyway it seems that to me, in my, my way of thinking and looking at just the mapping and the roads, that there’s no other access to a State highway except from this Polipoli Road so--

CHAIR MEDEIROS: And, Member Kaho‘ohalahala, we’ll have Staff make a note of that and inquire about.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER KAHO'OHALAHALA: Okay. And then the only last question I have is that after all of this discussion we still don't know how we're going to complete the work.

CHAIR MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: What is the, the Department's proposed timetable to complete this work, and what needs to be done so that the Council can fully understand what will be *our* responsibility in trying to assist the Department in getting that, this work done?

CHAIR MEDEIROS: I think all the Members, you know, raise good questions having to do with a timetable. And I think one, one thing the Department talked about was the design, when that will be ready and, you know, of course, the contracting. But, Department, you have any comments in reference to what Member Kaho'ohalahala just asked?

MR. ARAKAWA: Mr. Chair, the thing that the Department still needs to do, of course, we need to finish the design, as was mentioned, and we still need to obtain rights of entry and easements from the owners. We need to get the construction money. That will probably, as Councilmember Pontanilla pointed out, be considered as part of the Fiscal Year '11 Budget. So that's going to be the next decision point for the Administration as well as the Council. And as you know, the budget gets submitted to the Council in March. So that would be the next decision for the funding, the construction funding for the project.

CHAIR MEDEIROS: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Just a follow-up. If, if the Administration saw this as an important project and saw that it was lacking funding the Administration is well within their authority to come back to this Council and propose an amendment to that budget, and that would mean that as soon as you want to bring it forward we can start talking about it. And then the Administration in doing so would also identify where she thought that the monies were available to help put forth for this project to be completed. But if you're saying that the only option is in a budget process and we're looking at 2011, then that means that we will be doing nothing at all. That's how I see it.

CHAIR MEDEIROS: Department, would you like to comment?

MR. ARAKAWA: Councilmember Kaho'ohalahala, the first thing is that, you know, we still need to obtain all of these, the rights of entry into the property. That, that will take some time. So even if we come forward with a supplemental budget amendment now, we would not be able to encumber the monies now. So, you know, there, there's still some issues we still have to clear up. You know, we're, we're hopeful that we can obtain the cooperation and support of the, the owners involved to, to get their, their approval to enter onto to their property. Because as I mentioned, it is going to be an expansion of the

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

existing culvert, and, you know, it is going to cost more and it, it is going to involve some land rights.

CHAIR MEDEIROS: Member?

COUNCILMEMBER KAHO'OHALAHALA: How many rights of entry are we talking about, and how many people are actually property owners are we talking about when you describe that?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: You're talking about the four owners that about the existing culvert.

COUNCILMEMBER KAHO'OHALAHALA: And so you have had a difficult time in getting that kind of cooperation?

MR. ARAKAWA: No. I believe we've talked with two of the owners and we still have to talk with two more. But it's a matter of getting all of the, the documents all drafted, reviewed, signed, and executed.

COUNCILMEMBER KAHO'OHALAHALA: So you have four but you've only spoken to two so far?

MR. ARAKAWA: That's correct.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Is there a reason why you haven't approached all four since you've already identified them as part of this mitigation?

MR. ARAKAWA: We're just in the process of contacting the remaining two.

COUNCILMEMBER KAHO'OHALAHALA: So this is part of the time delay--was because we have not even completed this kind of discussions for a right of entry then?

MR. ARAKAWA: Well, as I've mentioned, we, we need to complete the design first before we can tell the owners exactly how much land we need from them, so we can show them the exact proposed development.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you.

CHAIR MEDEIROS: Thank you, Member Kaho'ohalahala. The Chair just would like to ask a couple questions of the Department. First of all, what is our right-of-way width that exists for that road and bridge?

MR. ARAKAWA: . . . Offhand, I'm not sure, Mr. Chair.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Okay. Are you going to attempt to look it up on the map? And while you're doing that, I can ask you my second question unless you find it.

. . . And, and the reason for that question is doesn't that bear on the design that's going to be done to know the right-of-way width that we're working with?

...Department?

MR. ARAKAWA: Mr. Chair, the right-of-way width is, I guess, approximately 40 feet. It's just that, you know, you know, offhand I'm not, you know, certain what it is. But it's around 40 feet, and yes the right-of-way width, the existing right-of-way width would have a bearing on the final design.

CHAIR MEDEIROS: Right. And, and the right-of-way width may involve the sloping part of that area also?

MS. KOBASHIGAWA: . . . Yes, it does.

CHAIR MEDEIROS: Okay. My next question is and, and, Department, this is not to put you on the spot. But there's been many occasions in my experience with Public Works Highways, and one being when the road collapsed in Wailea there was an immediate response from all the districts' assets to get down there and do that repair. What is the difference between *that* and this road at Polipoli, being that it was part of the damage caused by a storm? Why can't we respond in the same way with all our assets? Because our assets from Hana, West Maui, Central Maui all responded to that emergency in Wailea. Could you, would you have comments on that please?

MR. ARAKAWA: Sure, Mr. Chair. The big difference in those cases is that we were talking about basically *replacing* what was there previously. What was there previously would have met the, the current standards. In Polipoli Road's case, we are clear that the existing culvert was inadequate. So we had to do a redesign and basically upsize the culvert--which is going to take additional time and it's going to cost additional money.

COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . .

CHAIR MEDEIROS: Okay. With that response, my next question is we did do in-house projects, I know, in Hana and West Maui where we used our own assets to put in larger culverts, especially in the Kaupo area where the, the stream, the highway ford goes through the stream. . .in Nuu and, and those areas. And we did change the size of the culvert to a larger culvert and we did it with in-house assets. So being that this isn't a very large area, why can't we do it with in-house assets?

MR. ARAKAWA: Mr. Chair, I think the, the, the basic mission of at least our, our Highways Division is, is basically repair and maintenance. As, as you mentioned, we can do some upsizing, but I think in this particular case in Polipoli Road, as, as I mentioned, we're, the

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

existing culvert is basically a 4-foot wide culvert, and the design shows what's needed is a 20-foot by 7-foot Conspan--which is significantly larger. And in, in our view it's basically beyond our capabilities to handle in-house. We would need to basically contract this thing out.

CHAIR MEDEIROS: Okay. Director, thank you for your responses. We, we, we just, you know, this Committee sees the urgency been expressed by the members of that community and those that use that road. And we're, we're just searching for a way to, to respond quicker than it seems we're going to respond. And so that's a major concern--that we wouldn't have a contingency B plan where A is going to take too long available to us. So, Members, with all that is said any further questions? Otherwise, the Chair is prepared to make his recommendation.

COUNCILMEMBER VICTORINO: Recommendation?

COUNCILMEMBER MATEO: Recommendation?

CHAIR MEDEIROS: Thank you, Members. So for the following reasons--being that the Chair will consider probably doing a site inspection so that everybody has a firsthand knowledge of what this looks like and is; and because the. . .the Member that introduced this County communication, Member Baisa, is not here and will be back, in her consideration; and also all the questions that Members had, such as can we create an emergency status for this so we have a quicker response and so forth which my Staff will research and, and go ahead with it. Because of all of this reasons I'm much more...and because of our research by the Members and by our Staff to see how we can expedite this process--it may not be a process of what's being considered now, but I think we have to open up our minds to what can we do in the more immediate status to address some of the more important safety concerns of the community and the users of our roadway. So with that said, Members, the, without objection, the Chair will defer this item.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER PONTANILLA: No objection.

CHAIR MEDEIROS: Okay. So ordered. So this is deferred.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.** (excused: GB)

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: Members, I'm going to take a quick ten-minute break, or close to ten minutes to allow you time to take care of personal needs, and then we'll return for the other two items on our agenda. So this meeting is in meeting to 11:00 a.m. . . .(gavel). . .

**RECESS: 10:53 a.m.**

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

**RECONVENE: 11:07 a.m.**

CHAIR MEDEIROS: . . .(*gavel*). . . The County of Maui Infrastructure Management Committee meeting is reconvened after the recess. Members, thank you for the recess. We're looking at the time, Members, right now and we do have some people in the gallery that are here for Item 34. Without objections, Members, the Chair would like to move up in the calendar IM-34 ahead of IM-27. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members, so ordered.

CHAIR MEDEIROS: So at this time, Members, I turn your attention to IM-34.

**ITEM NO. 34: BILL RELATING TO DEVELOPMENT ON STEEP TERRAIN**  
(C.C. No. 09-291)

CHAIR MEDEIROS: . . . And IM-34 is a bill relating to development on steep terrain. The Committee is in receipt of the following:

1. County Communication No. 09-291, from Councilmember Sol P. Kaho'ohalahala, transmitting a draft bill to require, under certain conditions, the submittal of an engineering slope hazard report with a grading permit application.

No. 2, Correspondence dated November 13, 2009 from the Department of Corporation Counsel transmitting a proposed bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.08, MAUI COUNTY CODE, RELATING TO DEVELOPMENT ON STEEP TERRAIN. The proposed bill incorporates nonsubstantive revisions to the draft bill.

So at this time, Members, I'd like to first of all recognize Councilmember Sol Kaho'ohalahala, who brought this communication to the Council. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Thank you, Chair. I'm appreciative to, to be able to help a community bring some of these issues that I think are dealing with health and safety issues here in Maui County. In the testifier that came forward, questions were asked about their discussions with, with the Department of Public Works, and it seems to me that the, very little came about from that. So I wanted to take this opportunity, Chair, to ask the Department what was the outcome of the meetings that were held with the, I guess, the association that they--let's see, they had a title to their organization--the Wailuku Forest Coalition, I guess?

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Okay. Department Director, if you'd like to make your comments, opening comments on this item at this time and possibly address Sol, Member Kaho'ohalahala's question? Director?

MR. ARAKAWA: Mr. Chair, with regard to previous discussions that we've had with the, the organization that was mentioned, the Wailuku Forest Preservation Coalition, we had a number of meetings with the Coalition primarily about concern for any erosion or, or drainage impacts on the existing Wailuku Heights. And as was mentioned in those meetings, we will seek to enforce the existing provisions of the Grading Ordinance to the, to the fullest extent possible which is what, which is what we did. Uh . . .

. . . There were some statements made regarding . . . development or, or at least people's understanding that the property above Wailuku Heights was *not* going to be developed; however, the property was zoned Agriculture for quite a significant period of time. So if people, owners of the property above Wailuku Heights wanted to develop that property then they could do so in accord with whatever regulations that are applicable at the time that they apply. If the problem is development, per se, what we had mentioned to the Coalition was that they really need to look at zoning or, or planning to try to either limit or try to eliminate development from occurring above Wailuku Heights. But as far as grading, basically the purpose of the Grading Ordinance is to prevent, erosion control, I mean, to basically control erosion and minimize any kind of drainage impacts. And that, basically that's . . . what the Grading Ordinance does. So I mean that's basically what the, the gist of the conversations were in the past.

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

COUNCILMEMBER KAHO'OHALAHALA: Um. . . yeah.

. . . So all you're saying then at this point in time, that you have mitigated the concerns for the, the drainage and runoff. Has that been communicated with these organizations that have met with you previous?

MR. ARAKAWA: Yes.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So they are all aware of what has been done in terms of the, that mitigation?

MR. ARAKAWA: That's correct.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And is there anything that's left undone for that particular issue?

MR. ARAKAWA: No. Councilmember Kaho'ohalahala, the concern, I think, that the folks have up there in, some folks have in Wailuku Heights is the fact that development, future development *may occur* on property above Wailuku Heights. So that's, that's the basic

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

concern. As far as what we do, basically if any development proposal comes in we will just have to check to see if it meets the existing provisions of the Code.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And I, and I think that beyond the, the concern for the environmental issues, the development issue, I think, has a lot to do with what was raised in testimony as health and *safety* concerns. So in, in that regard if we have no provision right now in our, our State, I mean, our, our County codes to accommodate that kind of issue, how will you continue to move the potential pursuit of these kinds of development in high or steep slopes if you’re saying that you’ll address them in accordance with applicable regulations?

MR. ARAKAWA: I, I guess I’m. . . maybe I didn’t make my point clear. The entire purpose of the Grading Ordinance *is* health and safety.

COUNCILMEMBER KAHO‘OHALAHALA: . . . Okay. Then I’ll, I’ll defer this and then we’ll just work on the, the language that’s being proposed in, in an ordinance, Chair.

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MEDEIROS: Mahalo, Member Kaho‘ohalahala.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Member Victorino, followed by Member Nishiki.

COUNCILMEMBER VICTORINO: Thank you. And, Mr. Arakawa, in this proposed resolution that was brought forward--which is much more comprehensive than we presently have, am I correct in saying that?

CHAIR MEDEIROS: . . . Director?

MR. ARAKAWA: Councilmember Victorino, the bill that you have before you, proposed by Councilmember Kaho‘ohalahala, basically is just requiring an engineering slope hazard report. And that would be required in conjunction with a grading permit application. So it basically supplements what’s in the Code presently.

COUNCILMEMBER VICTORINO: So am I correct in saying or all of these provisions here--A through T--in provision No. 1(B), B(1), erosion control and as well as engineering reports, all of these things presently is in our Code. . .that this grading permit, all of this is in our Code right now?

CHAIR MEDEIROS: Director?

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. NAKAMURA: Yes, it's in the Code right now.

COUNCILMEMBER VICTORINO: And may I ask who you are just so that...

MR. NAKAMURA: Lance Nakamura with Development Services Administration, Engineer for Public Works.

COUNCILMEMBER VICTORINO: Okay. So these, this verbiage and the wording that we have presently in our Code is exact or is like this one that is being proposed?

MR. NAKAMURA: Yes.

COUNCILMEMBER VICTORINO: Okay. And so when you're talking, Lance, the safety and again, again we talking health and safety, I think, beyond the environmental issue, do you feel that the present Code *covers* what is *necessary* or this revision here needs to be added to our Code?

MR. ARAKAWA: Councilmember Victorino, we have reviewed the bill proposed by Councilmember Kaho'ohalahala. We have only a minor revision that we are proposing. But other than that we are in support of the bill, and we believe it should be added to the Grading Ordinance.

COUNCILMEMBER VICTORINO: So this will strengthen our Grading Ordinance, Mr. Arakawa?

MR. ARAKAWA: This, this addresses the concerns--and as Councilmember Kaho'ohalahala mentioned, this bill was modeled after the ordinance that was passed in the City and County of Honolulu which attempted to address rocks falling down from, basically, cliff sides. So this engineering slope hazard report attempts to address that, that concern.

COUNCILMEMBER VICTORINO: And last question, Mr. Chair, if I may?

CHAIR MEDEIROS: Proceed.

COUNCILMEMBER VICTORINO: A testifier brought up the issue about 40 percent, 25 percent of grading slope. Can you explain to the public that reference and what that means as far as this ordinance is concerned?

CHAIR MEDEIROS: . . . Department, go ahead, proceed.

MR. NAKAMURA: I believe 40 percent. . . is about, is it 2½ to 1. . . a slope 2½ over, 1 foot up.

COUNCILMEMBER VICTORINO: Okay.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. NAKAMURA: I think 25 percent would be, you know, 4 foot over, 1 foot up. You know, currently our Code allows slopes, you know, normal max slope we will use is 2 to 1. I guess that's 50 percent slope.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: This is saying that if you hit 40 it would then trigger the need for this engineering report.

COUNCILMEMBER VICTORINO: Uh-huh. Okay. I just wanted so that the public was under, clear on that and for my, my own, my own self, clear on what that was in reference to so that they understand what this 40 percent, 25 percent slope grade, you know, what that meant to the layperson that is watching this right now. And that would also, when you change it from the 50 percent which have right now to the 25 percent that they were, or the 40 percent, would that make it safer? Would there be less possibilities of rock fall and, and landslides and avalanches or whatever else, you know, that could, could occur? Excuse me for avalanche.

COUNCILMEMBER MEDEIROS: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: Excuse me, Mr. Chair.

COUNCILMEMBER MEDEIROS: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: We getting in, I've been watching too many TV shows lately.

ALL: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: I was watching Alaska last night so I was watching avalanches in Alaska. But go ahead, I'm sorry, I didn't mean to say, use avalanche . . .*(laughter)*. . . But erosion that would cause landslides.

CHAIR MEDEIROS: Department?

MR. NAKAMURA: I guess generally the flatter the slope the more stable it would be. This ordinance is not reestablishing a maximum slope that could be allowed per the ordinance. Those would remain. What this is saying is that if you hit **40 percent** for a certain *height* it would then trigger the need for the additional report. So, you know, I, I think one of the testifiers *was* asking for additional provisions to be added to say that certain slopes, you know, if you hit those slopes. . .you couldn't develop at all or that the report would be triggered at a lesser slope. But, but as written, it's just 40 percent is what is going to trigger the additional engineer report.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER VICTORINO: And then let me close by saying it's my understanding that if a developer or a property owner goes ahead and starts grading before a permit is approved, you know, normally you guys will rush up there and tell them to cease and desist. And then they get what we, I've been told an "after-the-fact permit" which basically says okay, now you can go ahead. Is there any penalty in place right now which, you know, would *penalize* that individual for starting without a permit, number one, which then, you know, we're up, we're up against the creek already, you know. We've already started without.

MR. NAKAMURA: Yes. The penalties are established, number one, in Code--

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: --and also in the Administrative fines which we have rules for.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: The Code says that if you start grading without a permit--

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: --and then receive an after-the-fact permit . . .

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: . . . you need to pay \$200 or double the permit fee, whichever is greater. You know, a permit fee for, let's say, just 100 cubic yards is \$30. So in, in, for a small permit, you know, you would add 200 to the \$30 and pay 230 so, you know, it's *not* a significant fine. If they did *not* correct the violation for grading without a permit--

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAMURA: --you know, we'd go through a violation and warning process, again established by rule. And then they would be hit with an initial fine and then, later on daily fines that could. . . I think would start off around \$100 a day and could go up to \$1,000 a day.

COUNCILMEMBER VICTORINO: Sounds like not much if somebody wants to get ahead, ahead of the curve and not wait. But okay. I mean we, let's not get into that discussion.

MR. NAKAMURA: But that's just if--

COUNCILMEMBER VICTORINO: I'm sorry.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

MR. NAKAMURA: Yeah, if you wanted to change that, that would have to be, again, changed by ordinance.

COUNCILMEMBER VICTORINO: Yeah. That's, that's a different section. I didn't mean to get into that. Thank you. Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Victorino. Members, any more questions? Member Nishiki?

COUNCILMEMBER NISHIKI: Thank you. This engineering slope hazard report, are you saying that right now it is required?

. . . Do you have a requirement right now that someone has to produce this report?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: No. This is --

COUNCILMEMBER NISHIKI: Okay.

MR. ARAKAWA: --in addition to . . . *(change tape, start 3A)* . . .

COUNCILMEMBER NISHIKI: . . . this report in lieu of what has occurred in other municipalities is something that we should adopt.

MR. ARAKAWA: We are saying or we are in support of that. Yes.

COUNCILMEMBER NISHIKI: Okay. Right now, have there been instances where. . . as occurred in the Wailuku Heights situation, it could have been. . . it could not have happened had we had this ordinance?

MR. ARAKAWA: I think the slope hazard report, as I mentioned, it primarily is intended to check if the development that's being proposed will. . . will cause some rocks to fall or something to that effect. But I, I just want to point out that the current Grading Ordinance has a number of controls already which deal with not only erosion control but also drainage, because we, we do require, we could require, for instance, an erosion control plan, drainage plan and report, as well as a soils report done by a soils engineer.

COUNCILMEMBER NISHIKI: Yeah. I know. But this is a problem, Milton, okay.

Right now you may say you have it but in the end under 20.08.100, under Permit Denial, Members, it says: if the Director finds that the road work as proposed by the applicant is likely to endanger any property or public way, the Director shall deny the grubbing and grading permit. It goes on to say factors to be considered in determining probability of hazardous conditions shall include, but not limited to, possible saturation of the ground by rains, earth movements, surface water runoff, subsurface conditions such as

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

stratification of faulting of rock, nature, and type of soil or rock. And then, failure of, of the Director to observe or recognize hazardous conditions. . .or failure to deny the grubbing or grading permit shall not relieve the owner or his agent from being responsible nor cause the County, its officers or agents to be held responsible for conditions or damages resulting there from.

Now there have been instances where, couldn't you say, that you people have been *neglectful* and that's the reason why an after-the-fact permit has been given and also a fine assessed, because a owner did not do what he was supposed to do and, and, and also probably not submit a report? Is this true?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: Councilmember Nishiki, we have received calls from many, many people over time regarding possible grading violations. Once we receive these calls, we go out and check to see if it's in compliance with the Grading Ordinance. I mean if it is not, then we basically try to bring the person into compliance via either asking him to do so; if not, then basically citing him and imposing the necessary penalties.

COUNCILMEMBER NISHIKI: Let me ask you this. Because perhaps we don't have a stricter slope hazard report. . .does this put the County in a concern for liability because a person has no guidance to comply with it?

MR. ARAKAWA: Well, Councilmember Nishiki, our position is that we support the inclusion of the engineering slope hazard report into the ordinance. We, we did talk with staff at the City and County of Honolulu to see how, at least their view as far as how this engineering slope hazard report has been working. And it seems to be working quite well there to try to flag out any kind of hazards that may occur with development. So as I mentioned, we're in support of getting, putting this additional provision in the ordinance.

COUNCILMEMBER NISHIKI: Okay. So, so, you're, you're, you're saying that perhaps, well maybe you're not saying this--testimony has said that perhaps the slope in regards to what is now written and the ordinance is not strict enough. Your comment?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: I think the Grading Ordinance already has a number of provisions, but I think the, in the case of the City and County of Honolulu, you know, there were, for instance, a number of developments where you, you're building up the side within the valleys, on the ridges. It's basically very dense type of development and that has caused this concern, rightfully so, over rocks that may be falling down onto developed areas. So I think it's a good precaution to include this requirement in the County Code. We haven't *had* this type of big issues *here*, that I know of; however, I think it's a good idea to, to include it.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER NISHIKI: Didn't the, didn't the. . .didn't the Coalition file this suit because of their concern? And, and, and, and, and *this* is basically a *result* of the safety concern which now perhaps doesn't require a strict application or report?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: Councilmember Nishiki, I think the Wailuku Heights issue is. . .that, that was brought up earlier, several years ago --

COUNCILMEMBER NISHIKI: Yes.

MR. ARAKAWA: --was, at least in our view, it's basically an issue dealing with whether development should occur above the existing developed area of Wailuku Heights. If you look at what has occurred on the Wilson property, the existing house that was built there it was...

COUNCILMEMBER NISHIKI: Wilson and Casey.

MR. ARAKAWA: On the Wilson property.

COUNCILMEMBER NISHIKI: Okay.

MR. ARAKAWA: There was an extensive grading that was done, a house was built, and they did everything in accordance with the existing provisions of the Code. And there were no major incidents as far as erosion control problems or drainage issues that, that came up. Yeah. It was built, they did a really good job as far as complying with the *Grading Ordinance*. I think the issues that have come up on the Wailuku Heights issue with the residents there is what *may* happen on the Casey property. And I think that's the, the main concern that has been brought up. And I as mentioned, if, if permits are filed on the Casey property, we basically would review those in accordance with the, the existing provisions of the Code.

COUNCILMEMBER NISHIKI: So. I, I, I think this may be a, a concern that we have right now, Milton--the fact that should the Casey property file an application. . .what are going to be your concerns as we now deal with this ordinance? And I guess the question is will you or can you or can *we*. . .hold this off because of health concerns?

MR. ARAKAWA: But, but again, Councilmember Nishiki, what we will do is we will take every precaution to make sure that if, if the property is developed it is done, it is done so in compliance with the Grading Ordinance. I mean that's the bottom line. So if there are additional reports that are required or are warranted, we will require them. I believe if the Council passes this bill for an engineering slope hazard report, *if* it meets the provisions there, we will require it as well. So I mean that's basically, basically our bottom line. We will make sure that whatever development occurs, occurs in conformance with the Code.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER NISHIKI: I guess, Mr. Chairman, the, the, the concern has to be . . .with this Casey property and what this Administration, in the past, has allowed to occur and, and perhaps the arrogance of certain owners that don't comply and, and perhaps the penalties that we should place on them which probably should be bigger.

. . . The public is now asking us to wait until a . . .site inspection has been held, also to, I guess it, it is, make stricter these slope requirements. And, and, and my concern is that Public Works may not use the stricter application should we adopt an ordinance. So the question lies with asking our Corporation Counsel should we adopt something now because of the concern of public health and safety, an ordinance. . . but if we want to make the ordinance stricter in regards to the slopes, what happens with, or how do we stop ordinances that are coming through the process now that may pose a problem? Can we direct this gentlemen here to stop?

CHAIR MEDEIROS: Mr. Galazin?

MR. GALAZIN: Member Nishiki, to answer your questions, first of all, I guess I'll start with the last one. No, you cannot dictate directly to the Director of Public Works to stop processing permit applications that are coming through. Secondly, if we do not adopt this ordinance that you're looking at today, you have to remember that the County is not a guarantor of anybody's work. You know, if a landowner comes through, applies for a grading permit, grades, and by their actions they cause damage to somebody else's property they're going to be liable for that, not the County--as a general rule. I mean every situation is going to be different. But we're talking generalities here. It is certainly within your purview to make this more strict than the proposal is. If you want to try and encompass a broader range, you know, start the, start the percentages at a 40 percent, go down to 25 percent, like, like, I believe, some of the testifiers expressed an interest in. Those are certainly all within your purview. But deciding to delay and reconsider doesn't necessarily put the County at a greater risk, because, like I said, we, in administering the Grading Ordinance we're not guaranteeing that all work *done* by a property owner is going to be free and clear and not cause any damage. But if it does *happen*, that's the responsibility of the person *who did it*, not the County--as a general rule. If that answers your question?

COUNCILMEMBER NISHIKI: But, but let me ask you this. In this situation, we're talking about areas of development that have very steep terrains. Okay? So going short of...perhaps we can by issuing a moratoria, a moratorium. That's probably in our set of tools to do it. But we may want, now, this Administration to, to slow down in areas where there is definite concern about steep terrains like in the Wailuku Heights area that specifically people have testified and the Public Works Director has identified. So how do we give Milton more direction as to hey, you know, we're concerned about this and, and, and we, we're thinking about dropping that percentage down to 25 or whatever as was given in testimony? I want to know how we can get Milton to, to listen. 'Cause I don't think, not "I don't think", I think he's going to go, well, I'm making the decision

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

and we've got some areas that we're following right now in our Grading Ordinance *that*, *that* are not as *strict* as what. . . is now or, or want to be proposed. And we want Milton to, to listen to our concerns, not pass it through and then us be negligent because, you know, he, he decided, well, this is what is written right now and I don't agree with it, I'm, I'm following the law.

CHAIR MEDEIROS: Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah?

CHAIR MEDEIROS: Yeah. Give us a question to be . . .

COUNCILMEMBER NISHIKI: The question is how can we direct Milton? I think he wants to be directed.

CHAIR MEDEIROS: David, Mr. Galazin?

MR. GALAZIN: Okay. I, I will point out a couple of things. The constraints that we're operating under set forth by Charter, set forth by ordinance that's been passed by this Council, this body in, in one iteration or another. In Section 3-8 of the Charter, you know, certainly there's a prohibition against *directing* the Administration from doing any particular *acts*. I'm sure you're well aware of this. So you cannot just tell the Director you don't want him to approve permits that follow certain conditions. You brought up the possibility of moratoria. That is something that you might have available to you, and you would have to look further into that. The other thing that Milton has to operate under is, in the Code, typically with a lot of these development permits if they meet certain requirements, the Director must issue the permits--if the applicant meets the certain requirements. He does not really have discretion to decide which permits to issue and which to not if they, if they meet all the requirements. So you would be, even if you were to try to do that, that would open up the County for liability for, you know, probably equal protection violations. So. . . you know, I hope that, that kind of gives an answer to your question of what the availability is and the constraints under which, you know, both you and the Administration are operating under.

COUNCILMEMBER NISHIKI: Yeah. And, and, Mr. Chairman, without being irresponsible. . . if we're not going to look at moratoria in a certain areas because of the concern for public health and safety, which I think is valid--

UNIDENTIFIED SPEAKER: Uh-huh.

COUNCILMEMBER NISHIKI: --and, and, and otherwise people wouldn't have brought it up. The other question is, the validity is in an instant [*sic*] where somebody was fined because they decided to disregard the, an, an ordinance. So you've got circumstances that we can really have valid reasons why, and specifically in this area that we know of. Also rainfall--

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Yeah--

COUNCILMEMBER NISHIKI: So. . .be not deal with it today is my concern that somebody may try to slip under this situation.

CHAIR MEDEIROS: Okay. . . .*(inaudible)*. . .

COUNCILMEMBER NISHIKI: But maybe we should use a stricter number --

CHAIR MEDEIROS: Okay. And I, I think...

COUNCILMEMBER NISHIKI: --by going 25 percent as was talked about.

CHAIR MEDEIROS: I think you raise...

COUNCILMEMBER NISHIKI: So at least these guys will stop.

CHAIR MEDEIROS: Yeah. You raise that concern. I'm going to allow other Members to ask questions at this time, Member Nishiki.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MEDEIROS: Because, you know, I think the Chair has been generous in allowing you that time. Any other questions from the Members? And we are running short of time, Members. So if the questions can be brief and concise, the Chair would appreciate it in the interest of time. Any more questions on this? Otherwise, the Chair...go ahead, Member Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. The testifier that came earlier, Ms. Bowie, also presented alternatives for these, the, the slope percentage. And as was brought out by Department here, currently the, the language is at 40 percent but it can go as, as low as 25 percent. So what was the Department's response to 25 percent?

CHAIR MEDEIROS: Department?

MR. ARAKAWA: . . . Councilmember Kaho'ohalahala, I. . . basically you're just asking for an off the, off-the-cuff answer. I think basically it's, it's going to be a policy decision on the Council's part. If that's the law, that's what we'll follow.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you for that response. Then I would be in agreement, Chair, at this time, and I'm, I'm just looking at where this is going. If we passed out this item today, Chair, we would not be dealing with this immediately. We'll be looking at the new year, probably, when this body would be reviewing this for first and second reading then. And I'm just thinking in that timeframe

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

before first and second reading if there are other amendments that are being anticipated that might come forward, we, we would have an opportunity at, or, or prior to first reading, I guess, to provide that in the full Council. The other part is, is perhaps a site inspection, and I'm not sure what the Chair's thoughts on a site inspection would be. But you know, it could be possible that site inspections could occur prior to that timeframe as well. So I'm just trying to understand what is most efficient in this Committee in terms of dealing with this particular ordinance before us and in the timeframe in which we could accommodate, I guess, those additional concerns if they, if they come forth. But, Chair, you have any, any concern with that?

CHAIR MEDEIROS: I, you know, listening to the testifiers this morning. . .it brings up the same points you have, you know, just expressed about their suggestions of some revisions to the bill to incorporate items that they have discovered in other already existing ordinances from other jurisdictions. And I think that would be helpful for us to incorporate that. We are tied in time right now, not only for this meeting but because the budget process comes up in the middle of March. And we, we have to place a process for ourselves of should we go ahead as it exists with possible amendments, or should we make it the best possible bill we can by doing the research that we need to do, incorporating suggestions that have been made by testifiers that have done some of that research? So it, it lies with this Committee, you know, to decide. And for, for me I, I have a, a recommendation that I think would be helpful in, in this, discussing this item. But any other questions? Member Victorino?

COUNCILMEMBER VICTORINO: Yeah and Chair, thank you. And, and because it affects my area more profoundly--but it's a Countywide issue 'cause it's not the only area that this is occurring in, and many other areas this will be happening in the very near future, you know, and we don't need any more lawsuits and all that. So but I, I like Ms. Bowie's suggestion to defer this matter, and I don't know what you're thinking. And hopefully bring it back at our very next or our first meeting in January with all the revisions, and Mr. Kaho'ohalahala has been working with Ms. Bowie. So I don't see why that couldn't be done so that we have a more refined bill, and, you know, really have, you know, the, the things that we want, the 25 percent and some other things. Because you don't have to recreate the wheel, we already have existing ordinances from other jurisdictions that can really help us.

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER VICTORINO: I think that's so very important. And there is a sense of urgency so, you know, I wouldn't want this sitting around till next year at this time to be talking about it. So I, I tend to agree with that. But that's my feeling on this, I'd like to see this move as quickly as possible, but I'd like to be, I'd like to see it done as correct as possible so that we don't have to go back and make amendment after amendment after amendment. So that's something that *has*, and I will be researching the other side on the penalty area, because I think the penalty area is another area we need to look at--but that's another discussion. But I would prefer with Ms. Bowie's help and

**INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES**

**Council of the County of Maui**

**December 14, 2009**

---

Mr. Kaho'ohalahala's help that we bring back something the first meeting of January and, you know, really get a good bill and bring it forward. Then the whole Council can, you know, sit there. Right now we're down to only three Members, three Voting Members also, I mean four.

CHAIR MEDEIROS: Four.

COUNCILMEMBER VICTORINO: Yourself, yeah, I'm sorry, I didn't mean. But only three or only four of us here so just that's my suggestion, Mr. Chair.

CHAIR MEDEIROS: Thank you, Mr. Victorino. And that's also my concern right now--we're bare quorum. And I think I'd like to have further discussion on this with more Members present. We appreciated Member Nishiki being here and his discussion on the matter. Any other questions or points you want to raise? Member Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Yeah. Chair, if, if we could, Ms. Bowie is, is still present here, and I just wanted to ask her, her thoughts about the current language in the bill and the idea of a 25 percent slope. 'Cause the bill being offered right now simply asks that there is one more layer of review and that has to do with the grading.

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: And that would mean that in the grading they'd have to comply to one more set of, of documentation on the land that's being altered or graded. The part that's in there that, that may be of question is when, when it's triggered. So is it triggered at 40 percent or is it triggered at 25 percent? And as was said by the Department, it's up to the policymakers to determine when that trigger should be. So it seems to me that the bill is a very simple bill incorporating this new language requiring the, this kind of report be done, and the question is, is it 25 percent or is it 40 percent or something other than that? And I wanted to ask Ms. Bowie if the, the reason that she was looking for a deferral was because there was more information that this bill needs than just this requirement for the grading.

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: So if the Chair doesn't...

CHAIR MEDEIROS: Okay. Before I ask the Members if there's any objections on bringing Mrs. Bowie down, I also want to let the Members know we did invite the Director of Planning to be here and he wasn't able to make it. But we have a representative here, Mr. Cerizo is here. We don't have much time, and, and that's why I, I think more discussion on this would be more productive than trying to decide today on a bare quorum with yet Administration representatives that are available that we haven't asked

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

anything of. So, Members, without objection we'll call, the Chair will call Ms. Bowie down. Any objections?

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER NISHIKI: No objections.

CHAIR MEDEIROS: No objections, so Ms. Bowie, would you come down and restate your name for the records, please?

. . . And we're going to need to keep this as brief as possible because we have another item that I have to take action on as far as . . .

COUNCILMEMBER KAHO'OHALAHALA: Thank you.

MS. BOWIE: Irene Bowie, Maui Tomorrow Foundation.

CHAIR MEDEIROS: Thank you.

COUNCILMEMBER KAHO'OHALAHALA: Thank you. I, I just wanted to clarify your position because your statement said earlier that you would rather this be *deferred*, that you had more information that you thought would be helpful in terms of helping the ordinance come forth. At this point my question is this, in the, the language that's proposed right now before us for consideration. . .is there more information that you believe that you wanted to *add* to this to, to, or is the language acceptable today perhaps reconsidering the percentage of slope from the, the 40 to, to 25?

MS. BOWIE: I, I think that, you know, we do share Councilmember Nishiki's concern that deferring could allow a builder to, to go farther in the interim. But along with the 25 percent which we really hope you'll, you'll go with, we do have a few other areas that we feel are important. And if, if it could be deferred and we could get that information to you and, and just have a really stronger bill, we'd be pleased with that.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you. That clarifies. Okay, Chair, no more

CHAIR MEDEIROS: Other Members, any questions for Ms. Bowie? Okay. Seeing none, if there's no further discussion, the Mayor would...the Mayor . . .(laughter). . .

COUNCIL MEMBERS: . . .(Laughter). . .

CHAIR MEDEIROS: Not there yet . . .(laughter). . .

ALL: . . .(laughter). . .

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER MEDEIROS: I don't know where that came from . . . *(laughter)*. . .

ALL: . . . *(Laughter)*. . .

COUNCILMEMBER VICTORINO: Whoa!

ALL: . . . *(laughter)*. . .

COUNCIL MEMBERS: . . . *(inaudible)*. . .

ALL: . . . *(laughter)*. . .

CHAIR MEDEIROS: . . . *(laughter)*. . . I, I, I think because of an event tonight . . . *(laughter)*. . .

ALL: . . . *(Laughter)*. . .

CHAIR MEDEIROS: But the Chair would like to make his recommendation.

COUNCILMEMBER VICTORINO: Recommendation, Chair? . . . *(laughter)*. . .

CHAIR MEDEIROS: Okay. Thank you . . . *(laughter)*. . . The Chair's recommendation, because of the points raised--would give us better opportunities to, to make changes in the bill to make it a better bill even though it, it's a good bill right now, we want to be sure we can do the best that we can before sending it out. So without objections, the Chair will defer this item.

COUNCIL MEMBERS: No objections . . . *(laughter)*. . .

CHAIR MEDEIROS: Thank you, Members.

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

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: Okay. Members, we're on the last item.

**ITEM NO. 27: ADOPTION OF 2008 NATIONAL ELECTRICAL CODE<sup>®</sup> WITH LOCAL AMENDMENTS** (C.C. No. 09-244)

CHAIR MEDEIROS: And that would be IM-27, adoption of the 2008 Electrical Code with local amendments. And . . .

. . . as we make some Administrative representation changes.

**NOTE: Pause.**

## INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER MEDEIROS: So at this time, Members, this Committee is in receipt of County Communication No. 09-244 from the Director of Public Works, transmitting a proposed bill entitled A BILL FOR AN ORDINANCE REPEALING CHAPTER 16.18A, MAUI COUNTY CODE, AND ESTABLISHING A NEW CHAPTER 16.18B, MAUI COUNTY CODE, PERTAINING TO THE ELECTRICAL CODE. The purpose of the proposed bill is to amend the Maui County Code by repealing Chapter 16.18A and adding a new Chapter 16.18B which incorporates the 2008 National Electrical Code® with local amendments. So at this time, Members, I'll call on the Department for comments on this item. Department?

MR. ARAKAWA: Thank you, Mr. Chair. As you noted, the item before you stems from an August 20, 2009 communication from the Department of Public Works, pertaining to the proposed adoption of the 2008 Electrical Code with local amendments. The Infrastructure Management Committee discussed this matter at its meeting of September 28<sup>th</sup>, 2009, and as was noted at that meeting, the 1999 version of the National Electrical Code is currently in effect. The proposed adoption of the 2008 National Electrical Code® includes the latest Code requirements for new equipment and technology. And what is before you is the proposed adoption of the 2008 National Electrical Code® with local amendments. And the local amendments were discussed at the September 28<sup>th</sup>, 2009 meeting of the Committee, and the copy of the PowerPoint presentation is in your documents for your review. Back at the September 28<sup>th</sup> meeting, Committee Members expressed the concern about two of the local amendments. First, Section 104-4(8) proposes *...(change tape, start 3B)...* circuits in single-family dwellings from electrical permits and inspections. This means that electrical permits and inspections would no longer be required for solar water heater installations, security systems, and landscape irrigation controls for single-family dwellings. The other concern which the Committee Members raised at that time is a proposed provision in Section 104-4(10) which exempts electrical installations from special events. . .uh, electrical installations for special events from permits and inspections. So electrical permits and inspections would no longer be required for carnivals, food and beverage events, sporting events, and the like. The Department has no objection to deleting these two local amendments. . .which, of course, would mean that electrical permits would now be **required** for solar water heater installations, security systems, and landscape irrigation controls for single-family dwellings; and permits would also be required for special events. So if the Committee is still agreeable, the bill needs to be revised to delete these two local amendments. And the bill before you is entitled A BILL FOR AN ORDINANCE REPEALING CHAPTER 16.18A, MAUI COUNTY CODE, AND ESTABLISHING A NEW CHAPTER 16.18B, MAUI COUNTY CODE, PERTAINING TO THE ELECTRICAL CODE.

. . . Uh, if the two local amendments are, are deleted. . .basically we'd have to ask Corporation Counsel to do the revised bill. But basically we are asking that the Committee approve the proposed bill as amended, as amended before you today.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

CHAIR MEDEIROS: Thank you, Director. Any questions for the Director? Mr. Victorino?

COUNCILMEMBER VICTORINO: So say it real quickly, then you're saying "with the amendments today" was the two that you just referred to?

MR. ARAKAWA: That's correct.

COUNCILMEMBER VICTORINO: So those will be taken out; that, that are presently in would be taken out? So inspections would, will be necessitated for those two particular groupings?

MR. ARAKAWA: That's correct.

COUNCILMEMBER VICTORINO: Okay. Thank you.

CHAIR MEDEIROS: Any other questions, Members? Members, the Chair needs to take a really quick recess. This meeting is in recess. . . .(gavel). . .

**RECESS: 11:56 a.m.**

**RECONVENE: 12:00 p.m.**

CHAIR MEDEIROS: . . .(gavel). . . The Council of the County of Maui Infrastructure Management Committee meeting is now reconvened after the short recess. Thank you, Members. So, Members, it has been identified that possibly some amendments will be made. The Chair will entertain a motion for those amendments.

COUNCILMEMBER VICTORINO: So move, Mr. Chair.

COUNCILMEMBER MATEO: Wait, Chairman. Chairman?

COUNCILMEMBER VICTORINO: Oh . . .(inaudible). . .

CHAIR MEDEIROS: Excuse me. Go ahead.

COUNCILMEMBER MATEO: Prior, prior to the motion, can I just. . .can I just get Mr. Arakawa to. . .go back to 104-4(8)--

CHAIR MEDEIROS: Certainly.

COUNCILMEMBER MATEO: --the exemption low-voltage control, et cetera? And, Mr. Arakawa, I guess, I guess these, these amendments stemmed from the Committee discussion prior? And if you can, once again, reiterate *why* we would be omitting 104-4(8)?

**INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES**

**Council of the County of Maui**

**December 14, 2009**

---

MR. ARAKAWA: Councilmember --

CHAIR MEDEIROS: Director?

MR. ARAKAWA: --Mateo, I'll ask Greg Nakao, who's here with me with, from our electrical section to answer your question.

COUNCILMEMBER MATEO: Thank you.

CHAIR MEDEIROS: Mr. Nakao?

MR. NAKAO: Committee Chair, Member Mateo, I think last meeting it came up that, you know, primarily with solar water heaters and when this amendment was initially written, Maui Electric had inspections during their rebate program. And since then, Maui Electric is no longer involved with the rebate program, so they're no longer doing inspections on solar water heaters. So I think that was the, probably the motivating factor for this amendment change now.

COUNCILMEMBER MATEO: Okay. But No. 8, that No. 8. . .also include things like video systems, telephone systems--and that just seems not very cumbersome enough to actually require an additional, an additional permit. So I don't know if we're kind of overextending. Even, even lawn sprinkler systems does not seem too cumbersome a thing to, you know, now require permits for.

CHAIR MEDEIROS: Department?

MR. NAKAO: Well, currently, the low voltage, the telephone systems, computer wiring, and things like in single-family dwellings, we don't require permits or inspections on those things. The only things we really require right now are the, the low-voltage controls for the irrigation, the solar water heaters.

COUNCILMEMBER MATEO: Security system.

MR. NAKAO: And security systems. Yeah.

COUNCILMEMBER MATEO: And what kind of an impact do they have in terms of, you know, how critical a need is it for us to require permits for these?

CHAIR MEDEIROS: Department?

MR. NAKAO: I, I, I wouldn't have put the amendment forward if we felt that it was a severe hazard. For the most part, you know, these systems are, are low-voltage so they don't have the, the arcing or the fire, fire-initiating, you know, hazards like regular 120 volt systems or higher. There's, there's limited power behind these power supplies so they don't have that ignition source as much, yeah.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER MATEO: And right, and right now they're exempt?

MR. NAKAO: The telephone, computer systems are exempt right now, yeah.

COUNCILMEMBER MATEO: Not these?

MR. NAKAO: Not the irrigation, not the solar water heaters, and not the. . .the, the alarm systems.

COUNCILMEMBER MATEO: Okay. Okay. Chairman, thank you. I just, I just still don't see, you know, at this point why we would require it at this point. Because I just don't see the importance to. These seems like kind of like minor kind of. . .processes, I guess, that requiring a permit just seems a little too excessive. I just have a hard time looking at 104-4(8) as something that would be, you know, necessary for us to, to in, you know, to support at this time. Thank you, Mr. Chair.

CHAIR MEDEIROS: Thank you, Member Mateo. Any other questions here? Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: I concur with Member Mateo --

CHAIR MEDEIROS: Okay.

COUNCILMEMBER KAHO'OHALAHALA: --in this particular section.

CHAIR MEDEIROS: And you're speaking of Page 6 of the bill, Section 104-4, number 8?

COUNCILMEMBER KAHO'OHALAHALA: Correct.

CHAIR MEDEIROS: Okay. And there was a concern to, not "a concern", but there was a recommendation to delete, and you, you support that?

COUNCILMEMBER KAHO'OHALAHALA: . . . I guess what I would be in support of--that's why I think I wanted the clarification is that currently as it's written in this bill and I'm looking at your August 20...am I looking at the right...

CHAIR MEDEIROS: Staff, is the--

COUNCILMEMBER KAHO'OHALAHALA: Yeah.

COUNCILMEMBER MEDEIROS: --is that the most current bill?

MR. GEERS: August 20.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER KAHO'OHALAHALA: August 20<sup>th</sup>.

CHAIR MEDEIROS: August 20<sup>th</sup>. Right.

COUNCILMEMBER KAHO'OHALAHALA: Yeah. And then as I read that section 104-4--

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: --Permit Required, exceptions. . .so it's saying that the following work and installation shall not require a permit. So if we leave it as is, then it means that this entire section would not be requiring additional permits.

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: And then I guess is there an amendment to delete some of that, that section? Some...

CHAIR MEDEIROS: What, what I heard was to delete that *entire* section. Is that correct, Department? Or--

COUNCILMEMBER KAHO'OHALAHALA: Is that the...

CHAIR MEDEIROS: Because I think we, we kind of losing track of where we are. And, Members, because there may be a back and forth on this and we're, you know, already extended into the time when there's an afternoon meeting coming up. . .if there's more questions or, Department, could you answer that please for us?

MR. ARAKAWA: Sure. The bill that you have before you actually would *not* require a permit for those types of residential low-voltage types of uses. At the last *Committee* meeting, there was some discussion that perhaps a permit *should* be required.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. ARAKAWA: So we're saying today that well, if that's the Committee's. . .inclination, then we're okay with *requiring* the permit as well. So I, I think it's going to be, you know, a policy decision on the Committee's part as to whether you want it. . .you want a permit required or not.

CHAIR MEDEIROS: So if we, we, we, we consider action to delete that section it, it would mean that now they become required to get a permit. Okay.

MR. ARAKAWA: That's correct, Mr. Chair.

CHAIR MEDEIROS: Right.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Follow-up?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. And, Chair, then I would not be in support of that.

CHAIR MEDEIROS: Uh-huh. Okay. Member Victorino?

COUNCILMEMBER VICTORINO: I think if we recall the discussion, I think it really involved, really, a lot around solar water heaters because. . .that was a little different entity than the rest. Okay? And maybe the Department can clarify that for me, because you're saying solar water heaters don't use 120 voltage outlets? If you could explain that? Again I think it's centered around that and that *primarily*. I mean all the rest, I don't know how it got encumbered, but I, I, you know, maybe if we can straighten that, you know, if you could answer that, please?

MR. NAKAO: Sure.

COUNCILMEMBER VICTORINO: Mr. Chair, would you allow...I know we're going --

CHAIR MEDEIROS: Yeah.

COUNCILMEMBER VICTORINO: --and it's hard, you know --

CHAIR MEDEIROS: Yeah.

COUNCILMEMBER VICTORINO: --we get to this point, yeah?

MR. NAKAO: Yeah--

CHAIR MEDEIROS: Department, would you like to respond or comment?

MR. NAKAO: Yeah. Thank you. The problem with solar water heaters is it also involves an electric water heater. You know the system has an electric power backup. So there are, you know, regular 120 and 240 volt connections to the solar, to the water heater system involved. Yeah. Yeah.

COUNCILMEMBER VICTORINO: So, Mr. Chair, I, I think if, if the Committee were, if I was to delete something, that would be the only item that I would recommend to be included, not to be deleted--

COUNCILMEMBER MEDEIROS: Uh-huh.

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES

Council of the County of Maui

December 14, 2009

---

COUNCILMEMBER VICTORINO: --is solar water heaters. But again the discussion was, was long term and, you know, some of the people that were, are not here today. And that's why it's real difficult to, to know. I know what I was focusing on. But I'm not sure on what others and how this was taken, taken by the Department, Mr. Chair. Sorry.

CHAIR MEDEIROS: Thank you, Mr. Victorino. Other Members, any more questions? Otherwise the Chair will make his recommendation.

COUNCILMEMBER MATEO: Recommendation?

CHAIR MEDEIROS: Thank you . . .*(laughter)* . . .

COUNCILMEMBER VICTORINO: Go ahead, Mr. Chair.

CHAIR MEDEIROS: Thank you. Because I don't think we're at the point that we know what we want to really vote on, because there's fewer Members left. . .we're down to bare quorum actually . . .*(laughter)* . . . So I'd like to give us more time and the other Members time to further discuss this item. We did check with the Department if there was a time sensitivity on this being passed, and the response we got is no, so long we can do it as quickly as we can. So the Chair's recommendation is to defer this item without objections.

COUNCILMEMBER VICTORINO: No objections.

CHAIR MEDEIROS: Thank you, Members. We are at the end of our agenda. We have completed our work and will continue on the deferred items.

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

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: So at this time, we want to thank the Administration representatives for being here--the Department of Public Works and our Department of Corporation Counsel. Thank you to our Staff--the Secretary, Camille; and our Legislative Analyst, Mike. Okay, Members, thank you for being here and for . . .being here so we have a quorum . . .*(laughter)* . . . So at this time, the Council of the County of Maui Infrastructure Management Committee meeting for December 14<sup>th</sup>, 2009 is now adjourned. . . .*(gavel)* . . .

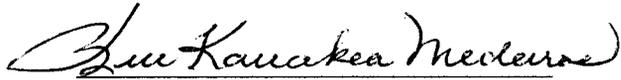
**ADJOURN:** 12:12 p.m.

**INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES**  
Council of the County of Maui

**December 14, 2009**

---

APPROVED:



BILL KAUAKEA MEDEIROS, Chair  
Infrastructure Management Committee

im:min:091214

Transcribed by: Daniel Schoenbeck

INFRASTRUCTURE MANAGEMENT COMMITTEE MINUTES  
Council of the County of Maui

December 14, 2009

---

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 6<sup>th</sup> day of January, 2010, in Pukalani, Hawaii

A handwritten signature in black ink, appearing to read "Daniel Schoenbeck", is written over a horizontal line.

Daniel Schoenbeck