

INFRASTRUCTURE MANAGEMENT COMMITTEE
Council of the County of Maui

MINUTES

January 11, 2010

Site Inspection

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Bill Kauakea Medeiros, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho`ohalahala (arrived at 9:03 a.m.)
Councilmember Danny A. Mateo
Councilmember Michael J. Molina
Councilmember Michael P. Victorino

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki

STAFF: Michael Geers, Legislative Analyst
Carla Nakata, Legislative Attorney

Kathy Kaohu, Executive Assistant, Councilmember Sol P. Kaho`ohalahala
Lei Kihm, Executive Assistant, Councilmember Bill Kauakea Medeiros
Kelly McGinnis, Executive Assistant, Councilmember Joseph Pontanilla
Jock Yamaguchi, Executive Assistant, Councilmember Wayne K. Nishiki

ADMIN.: Milton Arakawa, Director, Department of Public Works
Lance Nakamura, Engineer, Development Services Administration, Department
of Public Works
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel
Stephen Orikasa, Sergeant, Department of Police

OTHERS: Francis Torres
Irene Bowie
Hal Davis
Lisa Davis
Others (3)

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IM-34 BILL RELATING TO DEVELOPMENT ON STEEP TERRAIN
(C.C. No. 09-291)

The Committee assembled at the mauka terminus of Kulaiwi Drive in the Wailuku Heights Subdivision.

Chair Medeiros convened the site inspection at 9:01 a.m. to allow the Committee an opportunity to view an area that is representative of the type of steep terrain envisioned in the proposed bill and to hear from the local community. The Chair explained that this particular location was selected due to its proximity to the County building and as just one nearby example of how grading provisions in the proposed bill might be applied.

Four individuals testified.

Francis Torres stated his concern that grading and grubbing on the steep terrain above his residence could create a dangerous situation, noting that boulders may roll onto his property and injure someone. He asked that debris on County property in the vicinity be removed. Mr. Torres further stated his concern that altering the steep terrain will cause an alteration of the natural drainage patterns during heavy rains and could potentially damage his property. He was particularly concerned about boulders, tree trunks, and other debris being washed downhill as a result of land alteration. He stated that when he purchased his property, he was told that the property above his was forest reserve.

Members Pontanilla and Kaho`ohalahala both sought clarification on the location of Mr. Torres' property.

Irene Bowie reminded the Committee that approximately 400 acres mauka of the site inspection location are currently designated "Agricultural", which would allow a large number of homes to be built on the steep terrain above the Wailuku Heights Subdivision. She suggested the land designation in this area be reclassified to "Conservation", due in part, to environmental, health, and safety concerns related to potential and current development on steep terrain. She stated she viewed the proposed bill as a start to reining in development and questioned specific indicators of development in the area.

Chair Medeiros reminded the Committee that the site inspection does not target a specific property, but had been scheduled for illustrative purposes only.

Hal Davis reported that he believed an unpermitted shed was constructed mauka of his property, and that grubbing and grading work had been done without a permit. He stated that after-the-fact permitting should be discontinued as a practice and that fines should be tied to the length of time the violation has been committed in order to have the desired detrimental effect on "illegal" construction. He also mentioned suspected violations against the homeowners association's by-laws.

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Member Nishiki questioned how the testifier knew the shed was illegal.

Mr. Davis stated that he could not be certain because he did not have access to the property. He mentioned prior conversations with the Department of Public Works in this regard.

Jock Yamaguchi testified, in his individual capacity, in general support of the proposed bill and asked that the Committee consider various health and safety issues related to development on steep terrain, as well as other ill effects of unregulated environmental alteration. He inquired into the exact grade of the property observed at the site inspection, whether the grade was natural or had been cut, whether the County is requiring a revegetation plan, and how compliance would be enforced if the proposed bill is enacted. Additionally, he stated that grading and grubbing on steep terrain mauka of the site inspection location could have a detrimental effect on downhill property owners, including property damage, unintended land alteration, and potential for personal injury.

Lisa Davis expressed concern about the amount of grubbing and grading that have occurred above the Wailuku Heights Subdivision. She stated support for the proposed bill. She noted that for a period of 10 to 12 months, at a rate of approximately one truck per hour, dirt was transported away from the steep-terrain area. She expressed concern over signs of erosion, noting that the owner is doing a wonderful job of trying to revegetate the land but that she did not know if it could be accomplished.

There being no other testifiers, public testimony was closed at 9:28 a.m.

The Director of Public Works provided an overview of the permitting process and how the proposed bill might affect this, or other, Departmental processes. The Chair also requested that, due in part to time constraints, the members consider tailoring their questions to those germane to the physical characteristics of the site, its topography, or other issues for which presence at the site inspection is particularly helpful.

The Director of Public Works reminded the Committee that the proposed bill would trigger the requirement of an engineering slope hazard report where a slope percentage is determined to be greater than 40 percent. He noted the Committee is also considering an amendment to the proposed bill to lower to 25 percent the slope percentage that would trigger the requirement of an engineering slope hazard report. He advised that the proposed bill would apply Countywide, and that the property being viewed by the Committee is just one example of how the proposed bill might be applied.

The Director stated it is difficult to answer questions about slope percentage without addressing a specific area. He noted that the slope percentage in the general Wailuku Heights area, as a point of reference, was between 10 and 25 percent, with a greater incline as properties

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continue mauka. He stated one purpose of the site inspection is to give the Committee some examples of slopes so that it would have a better idea about what the threshold percentage should be in considering the proposed bill.

The Director stated that, if the Committee feels fines should be imposed, it could write such a requirement into the proposed bill. He could not say anything about representations made to buyers years ago. He noted the Council could separately pursue a change in zoning for properties if that is something it is interested in. The Director noted Ms. Bowie had mentioned an ordinance from Boise and that Boise regulates steep slope development. He noted that such regulation is generally discretionary. He advised that if the Committee is interested in enacting an ordinance that would further regulate development on slopes, the Department of Planning should be consulted concerning any hearings requirements and other procedures that might apply.

Member Kaho`ohalahala stated that by observing the site, as well as properties in West Maui, such as Launiupoko, it is evident that the mountains are being cut for development. He said it is an appropriate time for the Council to address, while it is just beginning to occur, whether this is something that should be permitted. He asked for coordination, so that whatever policies the Council thinks should be implemented can be addressed.

Member Molina asked about fines that might apply for such unpermitted activities.

The Engineer from the Development Services Administration, Department of Public Works, stated that the fine for proceeding without a permit is \$200 or double the permit fee, whichever is greater. In addition, an administrative fee is assessed after a certain period. He further noted that two warning letters may be issued and daily fines can be imposed.

Member Molina asked what the City and County of Honolulu has in place to regulate site development.

The Director said the proposed bill introduced by Member Kaho`ohalahala had been modeled after a Honolulu ordinance. He stated the Department is in support of the proposed bill, with a minor modification of requiring that the report be prepared by an engineer.

Member Molina stated he wanted to make sure that the required nexus can be shown for any proposed legislation the Council might consider.

Member Pontanilla questioned what a 25 percent slope would look like.

Mr. Nakamura estimated that the lower portion of the driveway approximates a 25 percent slope. He estimated that further up the driveway might be closer to a 50 to 60 percent slope.

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Chair Medeiros asked whether, in computing slope, the percentage would be comparable to a percentage on a compass. Mr. Nakamura responded that it would not be the same.

Member Nishiki pointed to different portions of the property immediately (which had been estimated to have different percentages of slope). He asked what portion would be used to determine the percentage of slope, for application to the proposed bill.

The Director stated that if the proposed bill was enacted, the Department would evaluate the slope in its existing condition. He noted that the property being viewed by the Committee had already been developed.

Member Nishiki expressed concern over possible erosion, and asked whether the Department knew how much vegetation had been removed from the property being viewed.

Mr. Nakamura stated that when someone takes a chainsaw and saws down a tree, leaving a stump, that action is not regulated by the Development Services Administration.

Member Molina asked for information from the Department of the Corporation Counsel on when applicable fines had been established.

Member Pontanilla asked for information on slope percentages. He also requested an opinion from the Department of the Corporation Counsel on potential liability concerns should the Council change the acreage from Agricultural to Conservation District, and whether such action would constitute a taking.

Member Kaho`alahala asked whether there are permit requests currently pending before the Department of Public Works for areas on the Island of Maui that the Department considers questionable in terms of slope.

The Director of Public Works stated there are no pending grading applications in the area above the Wailuku Heights Subdivision that he is aware of. He also stated that the Department has followed up on all allegations concerning violations on a specified property, and that thresholds have not been exceeded and there are no "violations per se".

Mr. Nakamura stated that grubbing without a permit is allowed for areas up to one acre, and that the properties surrounding the inspection site were all believed to be smaller than that. He also stated that grading permits are required when grading 100 cubic yards or a change of four feet in elevation. He added that there are three inspectors who monitor compliance for the entire County and they are often tasked with other duties.

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Member Mateo asked whether a date is being considered for a meeting in the Council Chamber on this matter. Chair Medeiros indicated he wants to make sure that the members' inquiries can be answered before scheduling this matter again.

Member Nishiki expressed concern that if the matter is not scheduled soon, people may obtain permits in the interim. He stated that if it will take awhile to scheduling another meeting, a moratorium may be appropriate.

There being no further questions or discussion, Chair Medeiros adjourned the inspection at 9:54 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair
Infrastructure Management Committee

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