

# INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

## MINUTES

February 1, 2010

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  
Councilmember Gladys C. Baisa  
Councilmember Sol P. Kaho'ohalahala (In 9:17 a.m.)  
Councilmember Michael J. Molina  
Councilmember Michael P. Victorino

NON-VOTING MEMBERS:

Councilmember Jo Anne Johnson (In 10:35 a.m.)  
Councilmember Wayne K. Nishiki (Out 10:59 a.m.)

**EXCUSED:** Councilmember Danny A. Mateo

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

**ADMIN.:** Milton M. Arakawa, Director, Department of Public Works  
Greg Nakao, Electrical Engineer, Development Services Administration (DSA),  
Department of Public Works (Item No. 27)  
Jarvis Chun, Supervising Land Use and Building Plans Examiner, Development  
Services Administration (DSA), Department of Public Works (Item No. 23)  
Russell Higa, Land Surveyor and Right-of-Way Agent, Engineering Division,  
Department of Public Works (Item No. 29)  
Scott English, Lieutenant, Fire Prevention Bureau, Department of Fire and  
Public Safety (Item No. 23 and 29)  
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation  
Counsel

*Seated in the gallery:*

Paul Haake, Captain, Fire Prevention Bureau, Department of Fire and Public  
Safety (Item No. 29)  
Jeff Hunt, Director, Department of Planning (Item No. 29)  
Francis Cerizo, Planner, Zoning Administration and Enforcement Division,  
Department of Planning (Item No. 29)

**OTHERS:** James O'Brien (Item No. 23)

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Margy O'Brien (Item No. 23)

Thirteen (13) additional unidentified attendees

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

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CHAIR MEDEIROS: . . .*(gavel)*. . . Good morning, everyone. Members, thank you for being here. This is the Infrastructure Management Committee meeting of the Council of the County of Maui for February 1<sup>st</sup>, 2010, and the time is two minutes after 9:00 a.m. I am Councilmember Bill Medeiros. I am the Chair, Chairman of the Infrastructure Management Committee. At this time, I'd like to introduce the Members that are here this morning joining us bright and early on a Monday morning. First, we have the Vice-Chair of the Committee, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Morning.

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

COUNCILMEMBER BAISA: Good morning, Chair.

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

COUNCILMEMBER MOLINA: Good morning, sir.

CHAIR MEDEIROS: Good morning for being here. We have Member Mike Victorino.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MEDEIROS: Good morning. And we have a Non-Voting Committee Member, Mr. Wayne Nishiki, joining us this morning.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MEDEIROS: Good morning. Excused at this time is Member Kaho'ohalahala and Member Mateo.

. . . I'd like to introduce the rest of the members that are here, well not so much "members" but Administrative representatives. First, we have from the Department of Corporation Counsel, we have Mr. David Galazin, Deputy Corporation Counsel. Good morning.

MR. GALAZIN: Morning, Chair.

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

MR. ARAKAWA: Morning.

CHAIR MEDEIROS: Good morning. And from our Committee Staff, we have Committee Secretary, Ms. Camille Sakamoto; and our Legislative Analyst, Mr. Mike Geers. We also have some other representatives and resource people from the Administration that will be arriving at different times and we'll introduce them as they come in. Members, once again, thank you for being here bright and early on a Monday morning. We have three items on our agenda this morning. If you would look at your agendas, the three items are IM-27, adoption of 2008 National Electrical Code<sup>®</sup> with local amendments. The second item is IM-23, bill relating to permitting requirements for construction of lanai enclosures. And the number three item is IM-29, a bill to exempt County-initiated or County co-sponsored projects from subdivision requirements. At this time, Members, the Chair will allow for public testimony, and so far I have from the Committee Secretary one person that has signed up to testify. And members of the public, people in the gallery, if you wish to testify, I would direct you to the lobby of this floor, and you can sign-up up there and fill in a form that we would require. And before we allow testimony to start, at this time I would like to ask all of you, including our Members and those in the gallery to please silence your cell phones or any other devices that may go off during the proceedings of this meeting. There will, testifiers will be allowed three minutes to testify. A yellow light will come on at 30 seconds which you have remaining, and when the red light comes on, I ask you to conclude your testimony. So at this time, we'd like to call the first person and the only person that has signed up so far to testify, and this is Mr. James O'Brien who will be testifying on Item 23. Mr. O'Brien, would you come forward please. . .and state your name for the records and any organization you may be representing.

*...BEGIN PUBLIC TESTIMONY...*

MR. O'BRIEN: Good morning, Mr. Chair--

CHAIR MEDEIROS: Good morning.

MR. O'BRIEN: --Council Members. My name is James O'Brien and I've been a resident of the Kaanapali Royal condominium complex for the past 15 years. And I'm here testifying on behalf of our lanai enclosures. During--oh, in the interest of brevity there's a number of us here that came today but I'm the only who signed up to testify. But if I may have the people back here stand or the people who come all the way over from Lahaina today in support of this proposal?

CHAIR MEDEIROS: Okay. Thank you for being here, ladies and gentlemen. Proceed.

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MR. O'BRIEN: In a, in a previous meeting discussing this item, it was recommended that you wait to get the Hearing Officer's Report from the Board of Variance and Appeals. We did receive the Hearing Officer's Report, and last Thursday, I sent by e-mail his complete first, first one was called Findings of Facts and Conclusions of Law, which was 15 pages; and then his recommendations to the Board of Variances and Appeals, which was seven pages. I'd like to just briefly do like a half a page, on Page 14 of the Finding of Facts and Conclusion of Law where the Hearing Officer, the Honorable retired Judge John McConnell says the work done to enclose petitioner's lanai conforms to existing building code requirements. The enclosure of petitioner's lanai did not create an unsafe condition in the existing building or structure. The enclosure of petitioner's lanai did not result in the existing building being more hazardous than it was before the lanai was enclosed. The enclosure of petitioner's lanai did not create a distinct hazard in the existing structure. The decision not to approve petitioner's after-the-fact building permit by the Department of Fire and Public Safety was clearly erroneous. The decision not to approve the petitioner's after-the-fact building permit application by the Department of Public Works was clearly erroneous. The decision not to approve the petitioner's after-the-fact building permit application was based on an erroneous application of the law. And I'll just stop there. I think that gives the, the flavor of the entire document, and so that concludes my testimony.

CHAIR MEDEIROS: Thank you, Mr. O'Brien, for your testimony. Would you remain there? Members, any question for the testifier? Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. And thank you very much for being here . . . *(inaudible)* . . . and giving us, and I got your copies. Thank you very much. And in reading through it, I was curious, you know, you were right in what Judge McConnell said but it--and, and correct me if I'm wrong--it was based upon the fact that fire sprinklers were required and that this ruling is basically, said no because it would not, as you stated, make it any safer in the building because of the addition of fire sprinklers which the Fire Department was requiring to be put in if you wanted to do that lanai, the enclosed lanai. Am I correct in what I was reading or did I read it wrong?

MR. O'BRIEN: The . . . when we applied for the after-the-fact building permits, this came after . . . through the previous four Administrations, we were told by the County we did not need building permits.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. O'BRIEN: But then this Administration said we needed building permits. So we applied for after-the-fact building permits, and the Fire Department said no, we had to either return our lanais to the original condition or install fire sprinklers.

COUNCILMEMBER VICTORINO: Okay.

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MR. O'BRIEN: One of our residents appealed and some others intervened in that appeal through the Board of Variance and Appeals. This has been going on for more than two years.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. O'BRIEN: And the County and the appellant and the interveners' attorneys all agreed to the Hearings Officer, Judge McConnell, and he held hearings for two days, two full days. He heard from professional engineers, experts on fire code analysis, two architects, and the Fire Department.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. O'BRIEN: At the conclusion of those two days hearings he asked all the attorneys including the County's attorney is there anymore witnesses you want to bring and they all said no, and then he wrote his report taking into full consideration all the testimony. And in fact, if we went into the rest of this document, you can see how he goes line by line. . .of all the testimony of all the parties. And these were his conclusions.

COUNCILMEMBER VICTORINO: Okay. Thank you. I, I just wanted to make sure that I was clear on, on, on the way the ruling was being interpreted, and as I was reading it, you know, it was clear in my mind that the sprinkler wasn't the overlying. . .ruling or the overlying answer to the, to the ruling, yeah?

MR. O'BRIEN: Yes.

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

CHAIR MEDEIROS: Thank you, Mr. Victorino. Any other questions, Members, for the testifier? Seeing none, thank you, Mr. O'Brien, for your testimony.

MR. O'BRIEN: Thank you.

CHAIR MEDEIROS: . . . Ms. Sakamoto, any other signed up, testimony?

MS. SAKAMOTO: Mr. Chair, I haven't received any forms, but I don't know if anyone--

CHAIR MEDEIROS: Okay. I'm . . .

MS. SAKAMOTO: --is signing up--

CHAIR MEDEIROS: Yeah. And I'm looking up there and she's saying no. Anyone in the gallery wishing to testify at this time that haven't signed up, this is your opportunity to do so. You could come up, testify, and then fill out our document. So I'm giving the, that last opportunity for those of you that wish to testify that did not sign up. And seeing no

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one coming forward, without objection, Members, the Chair will close testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. So ordered.

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

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

CHAIR MEDEIROS: . . . At this time, Members, we, we're going to proceed with this, with item, the number one item on our agenda, IM-27. So if you'll turn to that?

. . . And we have another resource person here for us this morning. And if you would introduce yourself please, or, Director?

MR. ARAKAWA: Thank you, Mr. Chair. With me this morning, I have Greg Nakao. He's the head of our electrical section.

CHAIR MEDEIROS: Thank you. And welcome, Mr. Nakao. Thank you for being here.

MR. NAKAO: Good morning.

CHAIR MEDEIROS: Okay. Our first item, Members, is IM-27, adoption of 2008 National Electrical Code® with local amendments. The 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, as in alpha, MAUI COUNTY CODE, AND ESTABLISHING A NEW CHAPTER 16.18B, as in bravo, 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. At this time, I'd like to have Director Arakawa and his associate, to give them an opportunity to give us an overview of this item. Director Arakawa?

MR. ARAKAWA: Thank you, Mr. Chair. The item you have before you pertains to a proposed bill 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. The Committee met on this item on September 28<sup>th</sup>, 2009, and on December 14, 2009. By way of background, the 1999 version of the Electrical Code is currently in effect. The 2008 National Electrical Code® includes the latest code amendments for new equipment and technology. The proposed bill before you is the 2008 National Electrical Code® with those local amendments. At previous, previous

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Committee meetings, concern was expressed regarding two local amendments. The first pertains to Section 104-4(8) which exempts low-voltage control signaling and power-limited circuits in single-family dwellings from electrical permits and inspections. This means that electrical permits would no longer be required for things like solar water heater installations, security systems, and landscape irrigation controls for single-family dwellings. The Department believes that this type of installation poses a minimal hazard to the community and should be exempted for single-family dwellings. The other concern which Committee Members raised is a proposed provision in Section 104-4(10) which exempts electrical installations from, 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 actually has limited effectiveness in regulating these installations due to their immediacy and short duration; however, installation is, would still be required to be performed by a licensed electrical contractor. Although the Department's position is to *not* require electrical permits in the above two instances, if the Committee feels permits *should* be required, we can also support the Committee in that regard. If the Committee feels permits are necessary in the previously mentioned cases, the bill needs to be revised to delete the two local amendments. A 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 has been drafted. A decision by the Committee is needed in the case of the forgoing local amendments; otherwise, the Committee's review and approval of the proposed bill is respectfully requested.

CHAIR MEDEIROS: Mahalo, Mr. Director. Would Mr. Nakao want to add any comments?

MR. NAKAO: No comments.

CHAIR MEDEIROS: Thank you. Members, the floor is now open for questions. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. And thank you, Mr. Arakawa and Mr. Nakao, for being here this morning and explaining to us again. And I remember now, you know, 'cause I mean you asked me earlier, Mr. Nakao, and I couldn't remember my, what I had brought up. But again I think the concern I had wasn't so much for the sprinkler systems or, or, or even the low-voltage alarm systems. The one I was concerned about still the solar water heaters, and I just recently had to redo mine and it was no low-voltage involved, you know. It was actually a new box, new timer, new pump, and new electrical had to be installed. So this is the concern I have--is that *one* I wouldn't consider low-voltage, and that's *within* my home and if it's done wrong it could cause major damage, possibly fire. That was my first concern. And going to the second part, for small events, one-day events, yeah, I can see the, the hassle of trying to get somebody to inspect something of that nature. Usually it's said and done. But there are big events and I'll take a case in point, the Maui County Fair. And I realize that there is a lot of electrical work that is done to put on that Fair, and that's a major event in my mind.

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And, but so I would like to know how would you ensure making sure that something with that much electrical inclusion--because they go from almost nothing, they got boxes, and then they wire everything from that point--when you have almost 100,000 people in a four-, five-day weekend coming through, to protect the public how would you ensure that? And I think you mentioned, Mr. Nakao, an electrical contractor. But if there's no permit, then how do you know an electrical contractor would be doing the work? So the two questions is solar heater, because I think that's a separation of, of the other two. And then the second question, is major events for which I wouldn't consider them to be a one-day event, they're, they're, they're a major event and how do you make sure an electrical contractor does the work and not somebody else when there's no permitting involved? That's my question. Thank you, Mr. Chair.

CHAIR MEDEIROS: Director or Mr. Nakao?

MR. NAKAO: Member Victorino, regarding the solar water heaters, the first item. The exemption does not exempt any of the power connections on the power side of the low-voltage transformer. So any power connections for the solar water heater, for the heating elements, power to the controller itself would still require a permit and inspection approvals.

COUNCILMEMBER VICTORINO: So what are you exempting then if you say solar water heaters, if I may ask?

MR. NAKAO: Technically just, just the, the control from the controller to the sensor on the roof, basically. That's the only part that really would be exempted. There's a, there's a temperature sensor on the, on the roof panels, yeah, that comes down to the controller.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. NAKAO: Yeah.

COUNCILMEMBER VICTORINO: Okay.

MR. NAKAO: But any power connections would not be exempt. So technically if someone were to say I have an existing receptacle near my water heater, I'm using the same water storage tank, I'm just installing solar panels. . .the controller will be plugged in to an existing receptacle outlet right next to the water heater, technically there's no power connections involved, you know, something like that would not require a permit or inspection approval.

COUNCILMEMBER VICTORINO: Okay. I can accept that. So now answer me on the second part.

MR. NAKAO: Okay. On the second item regarding the--

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COUNCILMEMBER VICTORINO: Sorry, Mr. Chair.

MR. NAKAO: --special events. . .yeah, without requiring a permit, there's no guarantee that installation will be performed by a licensed electrical contractor. We feel that that would really be the event organizers' responsibility. It would fall back on them.

COUNCILMEMBER VICTORINO: Okay.

MR. NAKAO: But we would be out of the enforcement responsibilities for that event. There's really no mechanism to ensure that, yeah.

COUNCILMEMBER VICTORINO: Okay. And I guess the concern as I stated, yeah, Milton, and again if you, one-day events I can understand, it's almost impossible to track them. But when you have large events where I know there's a lot of electrical setup, I'm very concerned. I mean the public safety, first and foremost, is in my mind. And I'd like to know how you would address it, Mr. Arakawa, if you have an, an answer to that. Thank you, Mr. Chair.

CHAIR MEDEIROS: Director Arakawa?

MR. ARAKAWA: Councilmember Victorino, again these are the Department's concerns and we actually are proposing to exempt these two categories through our local amendments. If the Council believes that we should take a more conservative route and require the permits, we can certainly appreciate that, and we would, we would support that as well. So kind of leave it up to the policymakers as to what you believe is in the best interest of the public.

COUNCILMEMBER VICTORINO: Thank you, Mr. Arakawa, for your response. Mr. Chair, I'll let the other Members ask questions. At a later point, we can discuss that more further. Thank you.

COUNCILMEMBER MOLINA: Chair?

CHAIR MEDEIROS: Okay. Mahalo, Mr. Victorino. Before I recognize the next Member, I'd like to recognize the presence of Member Sol Kaho'ohalahala to our meeting this morning.

COUNCILMEMBER KAHO'OHALAHALA: Morning, Chair.

CHAIR MEDEIROS: Morning. Member and Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. So, Mr. Nakao, regarding the solar heaters, you do have a demarcation point where the, the point where you require a permit and the point where you don't require a permit. And what is that point, the control box?

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MR. NAKAO: Yeah, that's correct. Any time power connections would be required--installing a receptacle outlet for the solar water heater controller, replacing or relocating the, the water storage tank would require another 240 volt connection to the new tank location, things like that--that would trigger the need for an electrical permit and inspection . . . *(inaudible)* . . .

VICE-CHAIR PONTANILLA: Okay. So there is a demarcation--

MR. NAKAO: Yes.

VICE-CHAIR PONTANILLA: --demarcation point where a permit is required?

MR. NAKAO: Yeah. The, the, the problem I guess is that, you know, when you generalize things, you know, some people in the industry might assume that they're, they won't need a permit if they've heard that one installation didn't get, get a permit. But, yeah, we would just have to be very specific in, in our permitting applications--that we, we emphasize that any power connections is required to be permitted and inspected.

VICE-CHAIR PONTANILLA: Thank you. Thank you for that response. And then the other one I, you know, tend to agree with my fellow colleague over here. You know, the Maui County Fair, it's a four-day event that utilize a lot of power usage, and, and in my mind I'm sure there are locations where 240 volts is required, you know, within the County Fair grounds. And one of the issues that I have is basically public safety. How do we protect the public from anything in regards to those high-voltage consumption, you know, within the fairground? So, and I understand Milton Arakawa, you know, either way we go would be fine with the Department. But, you know, for me it's the public safety that I look at. So I tend to agree that--I don't know about the rest of the Members--that a permit for that kind of event should be required. Thank you.

CHAIR MEDEIROS: Thank you, Mr. Pontanilla. Other Members? Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman. Mr. Chair, my question would be, in, related to Mr. Victorino's inquiry. For the Members info, under your signature, Mr. Chairman, you sent a letter to the Department, dated December 18<sup>th</sup>, related to that exemption for 104-4, and the Department did respond in writing with a letter dated January 19, 2010. And I notice on the second page it does make reference to the solar water heater issue that Mr. Victorino brought up. So they do have a response in writing. And my question is related to that last paragraph. I guess if Mr. Nakao or Mr. Arakawa could respond just for clarification sakes? It says solar water installations require both low-voltage control wiring as well as power wiring for the water heater coil and system controller. These power wiring connections would not be exempted under this paragraph. So am I to interpret this as, so you have these high-voltage systems that Mr. Victorino had, they would not be exempted, right?

MR. NAKAO: That's correct.

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CHAIR MEDEIROS: Department?

MR. NAKAO: Yeah. That's correct. The power, the power connections would not be exempted.

COUNCILMEMBER MOLINA: Okay. 'Cause I understand the concern with higher-voltage, you know, systems not getting a, or being exempted, I should say. And I guess for Mr. Galazin, so I, I, we presume that liability issues with, now with these proposed exemptions, we're okay? I mean *if*, God forbid, a fire would occur, you know, say this passes with all these exemptions and some incident happens either in a residential subdivision, or at a small event, or a big event like the County Fair--so we're okay then in terms of liability?

MR. GALAZIN: Yes. Thank you, Member Molina. Putting in these Codes with all the amendments that we have locally, you know, it still does not make the County a *guarantor* of any of the work that is performed. You know, the liability is still on the person performing it. I think with these low-voltage situations, I think what Mr. Nakao, what Public Works is saying is that this doesn't present much of an issue where they think it needs a lot of *oversight* from the County. In terms of the temporary measures at, for example, the fairs or, or temporary, other temporary events, what, what this amendment that they're seeking to put in would do is really shift the burden onto the organizers of the event. You know, we would still have recourse if there's not a licensed contractor performing the work. But I think from Public Works' standpoint, we have a very limited enforcement mechanism currently if, if we say they have to have a permit, and the day rolls around, they don't have one, and we go back in and say well you need to get an after-the-fact permit. . .but by the time they would even start filling out the paperwork, the event's over. And it's, you know, a \$50 fine or a \$100 fine. So there's really kind of a limited enforcement anyway, and I think what this would do is shift some of the burden on the event *operator* to make sure that they have a licensed contractor, shift the burden on the licensed contractor to make sure that the work is performed correctly. And the hook that the County still *has* is if they're getting some fly-by-night operator who is not a licensed contractor to do the electrical work, then we still have the ability to go in and put a stop on it.

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

CHAIR MEDEIROS: Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. I've been listening to this discussion about, you know, having permits and possible liability, and all of the above. It appears that we're, particularly in the second issue where we're talking about, you know, these events in the community that happen, and they happen very sporadically and quickly, and they're all over the place so it's hard to kind of keep an eye on it. I can understand that. *Maybe* if we could somehow craft language that says if it's a regularly scheduled event

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that, you know, everybody does every year like an annual event or it's over a matter of days like, you know, the County Fair is Thursday, Friday, Saturday, Sunday, and we do that every year; whereas, you know, we're going to sell hotdogs on Saturday . . .(laughter) . . . at a baseball park. I mean it's a *different*, it's, it's a one-time thing, it's quick, and you're in and out. Maybe *that* would cut down on, you know, a lot of it. And yet we know that, you know, nobody is safe 100 percent time. But, you know, I've been involved in a lot of fundraising over the years for churches, and schools, and God knows what else. And a lot of it *is* kind of spontaneous. You know, we decide we're going to do something this weekend at the baseball game or whatever. And to require that to go through a permitting process and spend the money for it and the time and energy, I don't know if it's worth it. But I think for the big events that are regularly scheduled annually and over a matter of days, that that's a different story.

CHAIR MEDEIROS: Thank you, Member Baisa. Department, would you like to comment on Member Baisa's concerns or comments?

. . . Director?

MR. ARAKAWA: Mr. Chair. . . I think. . . as I mentioned, you know, we are, we are fine either way. Our recommendation is to *exempt* these two types of situations. But we can see there could be some issues, and, you know, if the Committee feels it should be, you know, on the safe side and require permits, we are fine with that.

CHAIR MEDEIROS: Thank you, Director. Member Baisa, any follow-up?

COUNCILMEMBER BAISA: Just to be very clear where I'm going. I agree with the exemption, but I also have the caution of my colleagues for the big events. You know and there's some we do ever year, like we do the Fair every year. We do Barrio Fiesta every year. And, you know, those are *major* events that, you know, have many, many tents and, and buildings and *much* electrical installation over a period of days. I think that's a *different* animal from the tiny, little, we're going to plug in a hot plate or, you know, maybe make some charcoal to do some teriyaki plates or whatever. I think it's a different situation. I think they should be separated.

CHAIR MEDEIROS: Thank you, Member Baisa.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Member Victorino?

COUNCILMEMBER VICTORINO: Thank you. And, and, and, and Ms Baisa brings up a good point, and I know for a fact that the Department of Fire Safety requires if you erect a tent for, I think, three days or longer that you must get a permit. . . or two days. So there's, there's a point that you have to get a permit if you erect a *tent*, other than that it won't. So maybe some kind of language in *that* regard where the event is more than a day or,

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you know, more than one day, it's not a one-day event, something of that nature. And then that may be where we need to go with this. You know, that way protect ourselves, as we said, for the major events where we know *major* electrical outlets and power sources are . . .(change tape, start 1B). . . some barbeque and stuff and sell plate lunches, they don't have to go through that, through that hassle. So I'd be fine with some kind of amendment that would put that in place to protect, you know, the County from major sources. And the other thing I have to put to Mr. Galazin--and he's saying that we putting the onus on, on the, on the event organizer or the event. . . person or whatever the club or organization would be. I want to remind him that in many cases, we already exempt because we, we make sure that we're added as additional insurer. 'Cause many of these events are held in County property, parks, community centers, and such as that. Some are held in schools. Well, that's a little different. But the vast majority are held on County property. That *does not*, and then, Mr. Galazin, you tell me if I'm wrong, does not guarantor, guarantee us that we will not get sued. Because where is the event being held? On County property. Now you can be an additional insured, but if something goes wrong with the additional insured and it doesn't work out or the insurance is not ample or whatever, what is the word we use? Deep pocket. Moi. The County. And I don't want the taxpayers, as much as possible, be put out whenever and wherever possible. I'd rather protect that. So anyhow, Mr. Chair, I would like to hear what, what, what the Department and Mr. Galazin would answer on those two questions.

CHAIR MEDEIROS: Yeah. I'd like to recognize Mr. Galazin first. Corp. Counsel?

MR. GALAZIN: Yeah. Thank you. To start off first to answer Member Baisa, one suggestion might be to look at how we characterize these special events, because the exemption is for, was for special events as we *define* them itself in the Chapter. And currently we have them defined as, as lasting less than 14 consecutive calendar days. And that might be an area where you could pare that down and say special events are only going to last, you know, two calendars days or more, or any kind of number that you want to pick if the Committee felt more comfortable doing it that way. That might be an avenue that you want to pursue amending. And to answer Member Victorino, yes, obviously that, you know, it's a separate, tangential issue, but, you know, we are still *often*, often going to be involved in these projects in one way or another. And no, you're correct that we are the deep pocket and we are going to be looked to. But even, even with a *permit* process in place, that doesn't necessarily secure us any better than, than making sure that the work is a licensed contractor, so. There's, it's, is another check and it's something that we could put on or, or . . .or not, but--

COUNCILMEMBER VICTORINO: Thank you, Mr. Galazin, and thank you, Mr. Chair. And again I agree with you. There is no perfect system but when there is a *permit* there is some check in that respect. So long, and I guess that's all I'm asking for and I think I hear the same thing from some of the other Members--is some methodology for which we can check, Mr. Chair, to make sure when a major event occurs in this community and a lot of voltage is used for the, the event itself, that the public's protected. Again one day

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maybe the, the threshold, I don't know, and we can discuss it further. Thank you, Mr. Chair.

CHAIR MEDEIROS: Thank you, Member Victorino. Member Pontanilla, followed by Member Nishiki.

VICE-CHAIR PONTANILLA: Thank you, Chairman. You know, for those one-day events, I can see, and in fact some of the organizations, they utilize portable generators which provide that 120 volt. But in, in the case of when we need to touch the power line or somebody needs to touch the power line, how does Maui Electric take that as--do they require a permit before they touch the 120 or 240 line that's stringing overhead or underground?

CHAIR MEDEIROS: Department?

MR. NAKAO: Generally whenever a new service is requested, Maui Electric generally requires a County inspection approval before they'll energize it. Unless there's a specific legislation that exempts that installation from our approval, Maui Electric would generally require our inspection approval.

VICE-CHAIR PONTANILLA: Just the inspection approval?

MR. NAKAO: And generally that, that ties into requiring a permit. Yeah. Generally, we don't inspect unless we collect some fees either through a permit or through an inspection request.

VICE-CHAIR PONTANILLA: And what, what is the, maybe Mr. Galazin, what is the liability to the power company should anything happen?

MR. GALAZIN: That I don't know. And, you know, they probably got their attorneys who are intimately familiar with that question.

VICE-CHAIR PONTANILLA: Yeah. Maybe they listening.

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman . . .*(laughter)*. . .

CHAIR MEDEIROS: . . .*(laughter)*. . . Thank you, Mr. Pontanilla. Member Nishiki?

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

COUNCILMEMBER NISHIKI: Mr. Nakao, how do we handle Barrio Festival and Maui County Fair right now? What, what is the . . .process?

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MR. NAKAO: Currently, the electrical contractors apply for a permit. And we struggle to keep up with the inspections 'cause they usually come very close to the opening, opening day. The installations are being made all, all the way up to the opening hour. So it, you know, it's really difficult for us to really check the installation. But a permit currently is applied for. The Fair is generally handled, I believe, by a single contractor. They coordinate, like, generally I think it's Wasa Electric, it's been for the last few years, and they take care of all the electrical installation for the Fair, for the. . .the, the lighting as well as the concession stands and things like that. The actual *rides* itself, those cables are installed by the Fair. . .rides people, I think E. K. Fernandez, so.

COUNCILMEMBER NISHIKI: Okay. And so . . .

MR. NAKAO: But, but Wasa takes care, takes, applies for the permit, yeah.

COUNCILMEMBER NISHIKI: So right now there is a permit requirement?

MR. NAKAO: Correct.

COUNCILMEMBER NISHIKI: Okay. And, and in this process you're saying the timing is real awkward for you people. What does this do in regards to, because there is a permit requirement, what about the inspections? Is this performed also during the weekend when the event is being, is occurring, like say Barrio is during the weekend, County Fair is during the weekend. So those are the two major ones that I think we're concerned about.

MR. NAKAO: Well, generally inspections are supposed to be approved prior to the start of the event but that's not always the case. Sometimes inspection requests come in too late for us to accommodate. You know, we already committed to other inspections, so we may not be able to complete the inspections prior to the start of the event.

. . . So it's not always properly inspected. . .and that's where we, we're coming from with this exemption. The contractor puts in the request. . .at noon on the, the day before the event. You know, it's a Friday afternoon, we get the inspection request, the event's going to be Saturday morning. You know, how do we accommodate? We can't inspect until Monday morning and by then the event is being torn down already. So, you know, that, that's our position on this, yeah. The contractors don't always request the inspections in a timely manner, and these events, they're, they're scrambling to get everything organized and put, installed prior to the starting event all the way up to the opening hour. So, you know, how thorough an inspection can we really do, yeah?

COUNCILMEMBER NISHIKI: And I mean we've, we've been going through this for years now annually. So what has been the--despite of all of the last-minute type of requirements because now we have a process--what has been the outcome of these inspections? You, you end up doing them, obviously, because you have a law that requires it. So you, you, you do it.

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MR. NAKAO: Well, there are . . .

UNIDENTIFIED SPEAKER: . . .*(sigh)*. . .

MR. NAKAO: . . . there are instances when the inspections are not performed because there's not . . .*(inaudible)*. . .

COUNCILMEMBER NISHIKI: They're not?

MR. NAKAO: They're not performed because sometimes they're not requested by the contractor. Other times they are done, I mean the request is too late. It's, it comes in on the day before the event and, or the afternoon before the event and inspections aren't done before the start of the event. So it's not always inspected, let's just put it that way. And there's no recourse because the installation is torn down the following Monday, right.

COUNCILMEMBER NISHIKI: Yeah. But I guess, I guess how, how can that change because we know it's occurring? Is it because all of this is, has to occur and, and the inspection cannot be done until it's completed? Is what, is what it is then?

MR. NAKAO: Generally, yeah. A thorough inspection cannot be done until the installation is completed. We could do partial inspections. . .but we generally inspect at the request of the contractor. And if the contractor doesn't submit the inspection request in a timely manner, it doesn't get inspected, yeah.

. . . And there's no point in, in issuing a violation the following Monday. I mean we, we generally don't issue a violation for installation that isn't inspected.

COUNCILMEMBER NISHIKI: Well, let me ask you this. . .just because I think the whole thrust of the concern is liability. . .is liability. So have you ever had any kind of violation that you've found, despite that it might have been after-the-fact?

MR. NAKAO: There's been times when we found discrepancies on these installations, these temporary event installations. The results are sent back to the contractor, but before any re-inspection is done to confirm that things have been corrected, the event's over.

COUNCILMEMBER NISHIKI: And no one, despite that these violations have occurred, no one got hurt?

MR. NAKAO: Yeah. That's correct. Not that I'm aware of that there was any event. I mean, we hear, we hear of outages during some of these events and things like that, but not that I am aware of any physical injuries.

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COUNCILMEMBER NISHIKI: Mr. Galazin, so this, you hear the process. Is there, is there a way in which we can make it . . .

. . . foolproof as far as all of these things being done? I mean, you know, you know, we don't want to be the, the bad ass and go, oh, hey, you guys can't do it, this event now, you can't put on the Fair because the inspections are not finished. So where, where is the compromise?

CHAIR MEDEIROS: Corp. Counsel?

MR. GALAZIN: I, I don't know that, that from a legal standpoint, I know that there's a, a workable compromise that's going to fit every situation perfectly. You know and the law recognizes the fact that municipalities have limitations in, in how they can enforce things. You know we can say that the speed limit on a certain road is 50 miles an hour. If somebody flies down it at **100** and, you know, kills somebody, we're not liable because we didn't, we couldn't have a cop sitting out there with a radar gun.

COUNCILMEMBER NISHIKI: These are very specific but. We're talking about time and dates, and, and, and requirements that need to be made . . .(inaudible). . .

MR. GALAZIN: The only thing that, the only thing that you, that I can think of that you could **possibly** do is require that these permits be approved far enough in **advance** of these events such that they get the work **done** so many days before the event starts, and then it's inspected and if work needs to be done to change it or correct something that's built into the process. But, you know, that adds, that adds a heck of a lot of **cost**, I would assume, to any kind, any events like this. But that might be one way to, to try and approach it.

COUNCILMEMBER NISHIKI: . . . Administration, **this** seems to be the common occurrence for these events, isn't it? Barrio and County Fair, it's until the very end that all of these things are completed. You don't, never have any circumstances where all of these things have been done prior to the event so, therefore, you're not scrambling. I mean you talk about, you talk about scheduling of inspections. Okay? But you already know that these are major events. Milton's saying well, we'll, we'll, we'll handle it either way, whatever policy you guys set we'll do. But even if we set a policy where these are going to be done, it doesn't guarantee us anything from what I hear. Milton?

CHAIR MEDEIROS: Director?

COUNCILMEMBER NISHIKI: If you set a policy that these requirements are not exempted.

MR. ARAKAWA: Yes. Councilmember Nishiki, I, I think the thing to remember too is that many of these special events, they're put on by nonprofit folks, community events. They're run by, you know, volunteers who are trying to put it together. And to require that the permit application be, be sent in to us by a certain date, you know, if that doesn't

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happen what is the recourse *then*? Is our option to basically cancel the event? It, it seems rather harsh for us to, to do that--especially if we're talking about community events or nonprofit types of events that, you know, basically, you know, benefit the, the larger community as a whole. So that's kind of our, our quandary here. But as I said, you know, if the Council feels a permit is necessary in this instance, I mean we certainly can support you in that regard.

COUNCILMEMBER NISHIKI: . . . I, I guess, Mr. Chairman, if you're going to do it then we need to call these people in front of us and say hey, you need to cooperate also. I mean, you know, we don't want to shut you down. You know, all your nonprofits that participate in selling food at the Fair will be lost. These people are ordering whatever, food and, and making it. So sounds like *they* have a problem, you know, with the cooperation from the major people that are putting on these events. And I don't know how if we're going to set the law with no exemption. You know we gotta help these people out too by telling these guys hey, shape or else, you know, you're going, by your irresponsibility you, you subject all your nonprofits to losing money. And . . . *(inaudible)*. . . *(laughter)*. . .

CHAIR MEDEIROS: Yep. Well, Mr. Nishiki, I think, yeah, I think you bring up good points and so do the other Members, but also we need to be realistic on what we can *do*. If, if we require a permit that's been discussed, is it realistic that our departments can enforce the requirements and conditions of that permit? As explained by the Department if the permit, I mean if the event's on the weekend and as Mr. Nakao said, if the contractor requests a late inspection on a Friday say or, you know, how can they comply? Yeah. And so it puts, puts them in a position to almost, like Director Arakawa said . . . *(laughter)*. . . so if the requirement of the permit is made and they can't meet the requirements, do we close down a large community event like the County Fair because they haven't met the requirements? So that's a serious consideration in, in doing that. And I think, let, let me ask the Department this. Director or Mr. Nakao, are you aware how the other counties in their handling of special permits, I mean special events handle their Fernandez fairs, their school fairs, their State fairs, you know, all of that?

MR. NAKAO: I'm not real sure about the other Neighbor Island counties, but I'm pretty confident that City and County of Honolulu doesn't regulate those installations.

CHAIR MEDEIROS: So they, they don't require a permit?

MR. NAKAO: Yeah. Uh--

CHAIR MEDEIROS: I mean . . . *(inaudible)*. . .

MR. NAKAO: I think it *may be* not, you know, it doesn't have an exemption in their Codes.

CHAIR MEDEIROS: Right.

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MR. NAKAO: But I don't think they *actively* enforce it.

CHAIR MEDEIROS: Yeah.

MR. NAKAO: Yeah.

CHAIR MEDEIROS: Yeah. Yeah. I, I think there's some realistic considerations here on what can be done . . . *(laughter)*. . . Certainly we would like to be on the side of caution and, and require, you know, the permit, not exempt this. But if we do that can we realistically enforce it, and on the other hand, are we prepared to shut the event *down* should they not comply? So I think those are serious considerations of safety and being realistically, you know, being able to enforce it. Any more...okay, Mr. Victorino, followed by Member Baisa, followed by Member Pontanilla.

COUNCILMEMBER VICTORINO: Again thank you, Chair. And I'm, you know, I'm, I'm thankful that you're trying to get this moved on and, and, and the clarification. You're right, it is a virtual *impossibility* to control everything.

CHAIR MEDEIROS: Uh-huh.

COUNCILMEMBER VICTORINO: I think when you're talking the Fair and some of the major events and because I had many years experience in there, I know there was never, oh, not "never", there were very few times we had any challenges because Wasa and whoever our electrical contractor made sure all of the things were completed before that. I've had issues with the Fire Department but they had rules and the vendors had to follow, the nonprofits had to follow. And there were instance where they weren't going to open and they could not open. So once you get that enforceability and once it's done, let me be honest, everybody from that point forward, they follow the rules. So sometimes maybe one time you may have to do this to make everybody understand that if we do have some kind of rule in place that's important for the safety of the public then we need to enforce. I'm saying, like the Fire Department, if you get one event that's more than a day long then we can exempt, you know, those may be something we need to check. Because those are regular events, like Ms. Baisa mentioned, we *know* they come every year, we *know* that entails a *great* deal of *work*. So it's not something that off the cuff. So again I think we got maybe 10 or 12 of what I call *major* events every year you can count on in this County, every year. And I call major events, I'm talking like the Fair, the Barrio Fiesta, Maui Matsuri. I mean you name the events that are major and more than a day. And maybe Maui Matsuri may be only a day, but others are a *number* of days. So maybe a day thing, like Mr. Galazin said, instead of 14, maybe a one-day exemption or something of that nature which would be a simplified way of amending this, this whole thing and not have to redo everything. However, I still caution on the side of...and, and let me say it this way, again I really don't care what other counties do, because I'm not in that other county, I'm here, and I want to make sure the people of Maui County are protected within reason, Mr. Chair. Not, you know, I, I gotta admit we cannot do everything, but within reason. So that's all I'm trying, trying to clarify and if there's

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some kind of way we can make the major events, the ones that are annual, that are more than a day long and have them to comply, then I think, I think that would be fair. And then the rest hey, fine, if you want to exempt it, I can live with that. I mean I part of many stir-fried chicken and huli huli chicken sales and I've, like Ms. Baisa and you, Mr. Chair, and almost everybody on this table, we've done enough fundraising in our life. If we had three lifetimes, we'd never catch up. So we're okay with this. We just want to make sure it's safe. And as far as going back to the solar, I'm comfortable with that because that does, as your response has. But I wanted to make sure that that response was clarified to the public. I'm comfortable with that, Mr. Chair, so I'll wait to see what our other Members say and I'll await your recommendations, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Victorino. Department, you looked this way, did you want to respond to something?

MR. ARAKAWA: Mr. Chair, you know, if the Committee sees fit, you can certainly add some language in the local amendment basically to put a time limit on it, maybe, you know, electrical installations maybe not exceeding one day or two days or three days that what, whatever the Committee sees fit. You know, we'd certainly be open to an amendment like that.

CHAIR MEDEIROS: Thank you, Director. Member Baisa?

COUNCILMEMBER BAISA: Chair, thank you. I'll defer to Member Kaho'ohalahala, he hasn't had a turn. With your permission.

CHAIR MEDEIROS: Oh, certainly.

COUNCILMEMBER BAISA: . . .*(laughter)*. . .

CHAIR MEDEIROS: Member Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Member Baisa and Chair.

COUNCILMEMBER BAISA: I see him trying . . .*(laughter)*. . .

COUNCILMEMBER KAHO'OHALAHALA: No, my only comment was--and to kind of reiterate, I'm a little concerned about the fact that we would place a lot of emphasis on the fact that if someone is not responsible in fulfilling requirements for a safe event that it would be *easier* for us to just exempt it. As a, as a policy I think that that's not a prudent direction. So that was going to be my comment to the Department. I would be supportive of the, the proposed language that is coming about with looking at some trigger. And, you know, it was commented earlier by, I think, Member Victorino about at some point in time, the event organizers are going to *have to* know that it is our responsibility for, for safety of the general public of which are going to be participants at these kinds of events. And if something should occur, it would be too late if we had not

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already put in a place a policy that would show that we are serious about making sure that events are safe. So to me that's a dangerous kind of . . . (*laughter*) . . . situation to even contemplate. So I would rather that we put a little bit on the front end than worry about what might occur at the back end in this regard. So I would now defer. And thank you, Member Baisa, for giving me a chance to--

CHAIR MEDEIROS: Okay. Member Baisa?

COUNCILMEMBER KAHO'OHALAHALA: --make comments. Yeah.

COUNCILMEMBER BAISA: Thank you very much, Chair. I appreciate your indulgence but, you know, it's important that we get everybody's perspective. I just want to say again. . .the *timing* of this action is very important. You know, I think that we're, we know we're all in very hard financial times, and if anything the nonprofits are going to have to work even harder to raise money. I think that we don't want to be part of the problem, we want to be part of the solution. I think common sense should rule. For me I would be very comfortable if we were to amend the language to say events that don't last more than a day. Because the other events that go to two and three days normally are planned far in advance, and I think that if we inform everybody that there's a new rule here and it's part of your planning, you know, most finance committees that are planning major events plan them right in the beginning of the year for the whole year, or you finish one and you start planning the next one. And I know all of us have that experience. So it should be added to the list of things that you must do--and that is to apply for the permit. But I think we've, you know, we've got to take action. We just cannot play with this . . . (*laughter*) . . . anymore. I am very comfortable if the Committee decides to say okay, more than one day you need a permit. And then we need to get that information out and everybody needs to comply. You know, we've got to do what we've got to do, but I certainly don't want to hurt the little nonprofit groups, and the cheerleaders, and the athletic clubs, and the canoe clubs and everybody who's trying to raise money for some good cause in our community, 'cause we cannot afford to pay for everything. Thank you.

CHAIR MEDEIROS: Thank you. I think Mr. Pontanilla was next, followed by Mr. Molina.

VICE-CHAIR PONTANILLA: Thank you, Chairman. And, you know, Mr. Nakao, you mentioned that, you know, if an event is held over the weekend by the time we get the permit we cannot do the inspection. Do we charge overtime in regards to inspections that we do after hours? . . . (*inaudible*) . . .

CHAIR MEDEIROS: Department?

MR. NAKAO: Yeah. There is a, there is a charge to the, to the contractor for inspections after hours. It generally is a two-hour minimum and includes any of the, the collective bargaining benefits that the employee is entitled to.

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VICE-CHAIR PONTANILLA: I know that the nonprofits, you know, are hard pressed. But again. . . I don't know how many of these events that, you know, they call in on a Friday to be inspected Friday and you don't have anybody scheduled. But by calling out someone to do the inspection that it is charged, you know, I have no problems with that. The other thing that I'd like to mention is that, you know, just a caution whenever we touch or whenever a contractor touch power lines, you know, I have an issue with that in regards to, you know, how do we protect the public in regards to now we touching a power line without any permit? Or you know, what is the, if any, issues that Maui Electric have in regards to whenever someone touches their facility? So, you know, Chairman, this is not easy.

CHAIR MEDEIROS: No.

VICE-CHAIR PONTANILLA: You know, even for that one-day event--if someone needs to touch that power line then there's liability involved both for the County as well as the. . . electrical company. So I don't know, maybe if you can make any comments to that, how do we deal with that type of issue?

CHAIR MEDEIROS: Department, you have any further comments on that?

MR. ARAKAWA: . . . We have, we have no further comments, Mr. Chair.

CHAIR MEDEIROS: Yeah. I, I think that was raised and I think they tried to . . . *(laughter)*. . . answer it as best as they could.

COUNCILMEMBER VICTORINO: . . . *(laughter)*. . .

CHAIR MEDEIROS: Okay. Member Pontanilla, any further questions?

VICE-CHAIR PONTANILLA: Oh, no. Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Okay. Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. Mr. Nakao, you mentioned the concern about where you have people having events, and 24 hours prior to the event then they call your office and say we want an inspection. Obviously it doesn't seem like that's something easy for your Department to handle. Because, Mr. Chair, I'm looking in the direction as well to maybe incorporate language... I don't know if it's here or what other part of the Code where people who *have* events--whether it be, you know, 24 hours, two days, three days. I think it's only fair to the Department that they establish, I guess, some sort of parameters where, you know, they've got to be notified at least, what, maybe 72 hours. Is that something, Mr. Nakao, that should be considered as well? Because I don't know how much inspectors you have, and sometimes you have all these events occurring at once and, you know, your inspectors only have a limited amount of time and, you know, to be notified 24 hours, I can certainly understand the concern you have.

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Should we establish parameters or insert language that events must notify the Department at least 72 hours prior to an event to request an inspection? Can I get your comments on that?

CHAIR MEDEIROS: Mr. Nakao?

MR. NAKAO: Yeah. There's, there's already a provision in the Electrical Code that the inspection request is supposed to be 48 hours--

CHAIR MEDEIROS: Forty-eight hours?

MR. NAKAO: --in advance. But, you know, we need to keep in mind that most of these provisions apply to *permitted* construction. So, you know, I think that's where we're running into the issues here, yeah, because this is something that's for such, such a short term that it's going to be taken down, you know, in the near future, so.

COUNCILMEMBER MOLINA: Uh-huh.

MR. NAKAO: I guess that's where the enforcement issues start, you know, getting, becoming difficult.

COUNCILMEMBER MOLINA: Uh-huh. And, and you mentioned the events. Can you cite for us examples of events that have occurred where, you know, you get notified 24 hours or after-the-fact? You know, the, you can't obviously stop the event but, you know, these guys didn't have inspections. Has this been occurring frequently over the years since you've been with the Department? And can you tell us *what* particular events these types of incidents have occurred? 'Cause I want to know that if it's occurring frequently, Mr. Chairman, I'm, I'm concerned because all it takes is *one*, one mishap and all hell is going to break loose, Mr. Chair. So I want to be sure that we can, you know, make sure we crack down on this kind of stuff, so. Because I'd hate to, if this happening frequently I think we need to be on high alert here. Mr. Nakao?

MR. NAKAO: Well, I don't, I don't want to, you know, identify any *specific* events but, you know, there's a lot of events that we don't even get permit applications for the installations. So, you know, it's, the County Fair is one of the few events the regularly submits permit applications for their event installations.

COUNCILMEMBER MOLINA: One, one of the few. So are you saying that we have a lot of other *small* events that are not submitting?

MR. NAKAO: That's correct. Yes.

COUNCILMEMBER MOLINA: ...*(whistle)*... Okay. Thank you, Mr. Nakao. Thank you, Mr. Chair. This is going to be a tough one.

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CHAIR MEDEIROS: Yeah . . .*(laughter)*. . . Thank you, Member Molina. And, and I, I think maybe a further comment on that because of Mr. Nakao's comment about those that don't even apply because they're smaller and so forth is we've got to remember normally our process is complaint-driven. So unless somebody complains . . .*(laughter)*. . . about somebody not having a permit, the Department would not know that unless they so happen, inspect . . .*(change tape, start 2A)*. . . then inquire. So, yeah, it is a difficult situation to be in. And let, let me ask the Department, on a regular electrical permit process, how much in advance do they need to get that permit approved prior to the event? And the reason I ask that is does that permit go through the process of review and comments from other agencies?

MR. NAKAO: The electrical permit is just done in-house within my section. It doesn't require the approval of other agencies unless there's structures involved. If there's structures involved, generally then a building permit is required first before we can issue the electrical permit. So that would be the delay. We would probably have to hold off issuing the electrical permit if they're erecting structures that require a building permit first.

CHAIR MEDEIROS: Okay. So someone can come in Friday afternoon at three o'clock and ask you for a permit, and because it's done in-house you would try and approve that permit?

MR. NAKAO: It would go in . . .*(laughter)*. . . the bottom of the pile. So, yeah.

CHAIR MEDEIROS: Oh, I see . . .*(laughter)*. . .

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

MR. NAKAO: You know, it's, it's not like we, we're waiting at the counter . . .*(laughter)*. . . twiddling our thumbs--

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

MR. NAKAO: --for the next application. Yeah.

CHAIR MEDEIROS: Right. Right. Right. Okay. That, that's . . .*(laughter)*. . . that's a very honest answer. We appreciate that. But, Members, you can see that it, it is difficult all the way around on, on what we decide to do. And if there is . . . suggestions of amendments or change in the language in the proposed bill, it seems like that's going to be a little bit more complicated than doing it here. So think about that. Member Victorino?

COUNCILMEMBER VICTORINO: Mr. Chair, with your permission. . . there is a person in the house right now, Lieutenant English, and he has a kind of real working knowledge of all of these issues. Even though it's not fire-related, and I will admit that. But electrical also comes through them as part of their process because it falls under fire safety. And he

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can, he's just informed me if he would be allowed a few minutes he could maybe give us some insight and some clarification on some of the questions we're asking. But I leave it up to you, Mr. Chair--

CHAIR MEDEIROS: Uh-huh.

COUNCILMEMBER VICTORINO: -'cause he was not scheduled to speak on this.

CHAIR MEDEIROS: Right. And, and--

COUNCILMEMBER VICTORINO: He's scheduled for something else.

CHAIR MEDEIROS: --I appreciate that. But I think my question to Mr. Nakao just told us that that permit doesn't go anywhere except to them. They do not circulate that permit with other agencies. And so, you know, that, that's my thinking--is if it's only done at their Department. You know, but certainly, Members, would you want to hear a representative from the Fire Department? Okay--

COUNCILMEMBER VICTORINO: Yes. Yes.

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

CHAIR MEDEIROS: Okay.

COUNCILMEMBER VICTORINO: With your permission.

CHAIR MEDEIROS: Without objection? Okay. Could we have Lieutenant English come down and . . . give us your insight or experience in this matter of electrical permits?

MR. ENGLISH: . . . Good morning, Chair and Members. My name is Lieutenant English from the Fire Prevention Office. Just to touch bases on the temporary structures or the event fundraiser, basically on County property and Parks' land, the event does not require a building permit as long as the event doesn't last more than 72 hours. So, and in our Fire Code, Article 32, we do allow temporary wiring and they do have to follow minimum standards as far as if they have a generator or the setback and type of wiring they can use. It doesn't require an electrical permit. They just have to follow general rules, UL safety equipment like extension cords and appliances. And like I said, those events, the permit doesn't even go to building department, it comes only to Fire for approval. And like I said, our Code does cover the temporary wiring as far as minimum safety requirements.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MEDEIROS: Member Victorino?

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COUNCILMEMBER VICTORINO: Couple of quick questions, and, you know, I don't want to prolong the discussion. But thank you for that information. So when you get these permits, do you over the weekend, do inspectors check these various setbacks and minimum requirements of setup and electrical and all that? Do you have people that go around to check on these events? Or is it just like Mr. Nakao said, no more time so we don't have anybody going around?

MR. ENGLISH: I would say on the larger events we do inspect.

COUNCILMEMBER VICTORINO: Okay.

MR. ENGLISH: The smaller events we try go out, send an inspector out there Friday afternoon to see the setup and cover it.

COUNCILMEMBER VICTORINO: Okay.

MR. ENGLISH: But we don't get a chance to inspect all of them. Like East Maui Taro Festival, we send an engine company down there. We try to use the engine companies to check out the ones that kind of out of our district.

COUNCILMEMBER VICTORINO: Okay. Okay. Thank you, Mr. Chair. I wanted just clarification on that.

CHAIR MEDEIROS: Thank you. Members, any other questions for Lieutenant English? And just to clarify, Lieutenant English, so what you're talking about is temporary electrical power that would fall under the Fire Code--is what you're talking. You're not talking about Electrical Code as it falls under the building division?

MR. ENGLISH: Yes. For the event, our Code does require them to use, allow to use temporary wiring like extension cords and generators of which I don't think...the electrical permit covers more *permanent* wiring, not *temporary* use.

CHAIR MEDEIROS: Right. Thank you for that clarification. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. So it's only those times that you guys go inspect and approve applications when they plug into a 120 outlet to provide power to a tent of some kind or utilizing a power generator to produce electricity. That's the only exceptions that you guys have. But whenever they touch a power line that is not exempt?

MR. ENGLISH: Yeah. Basically our inspection would be getting a source, plug it in extension cord, using a generator, and limited to that kind of use.

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

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CHAIR MEDEIROS: Thank you. Any other Members' questions for Lieutenant English? Seeing none, thank you, Lieutenant English for coming down.

. . . Okay. Members, the floor is still open for questions. Member Baisa?

COUNCILMEMBER BAISA: Yes, Chair. How urgent is it that we pass this new 2008 National Electrical Code? I think that's a important question because, you know, we could spend some time trying to wordsmith here and come up with some amendment or whatever. But how important is this to the Department to get this passed?

CHAIR MEDEIROS: Okay. Let's present that question to the Department.

MR. ARAKAWA: Councilmember Baisa, there is some urgency. There's no urgency to have the Committee act on it *today*. But we are in the process of updating all of our Codes. You might remember we, we sent in the latest update on the Energy Code. The Electrical Code was submitted to the Council and we intend to submit additional codes for updating as well. So, and, and the intent is to basically update it as these new national edition of the Codes come out every several years. So there, there is some urgency.

COUNCILMEMBER BAISA: Thank you very much. I think it's important that we know that because of the point that we're at here, where we don't have a whole lot of more meetings before we get into budget, Chair. So I think this, you know, if we can resolve this it'll be great. Thank you.

CHAIR MEDEIROS: Thank you, Member Baisa. Yeah, and to followup on the Director's response, you know, we're currently in the 1999 National Electrical Code which was approved in 2000. So I think as the Code is upgraded and updated, it's to incorporate the new equipment and technology that comes around that has to be, you know, included in the Code. So I, I think there is some urgency and we'll leave that to the Department. Other Members, any more questions?

. . . Okay.

COUNCILMEMBER KAHO'OHALAHALA: Chair?

CHAIR MEDEIROS: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Yeah. It, it seems that we're just kind of looking at this one section of, of concern and perhaps amended language. But would this Committee be able to consider moving the item forward and then looking at providing for amendments in language that we've already pretty much had a chance to discuss at your first reading, and that would be, you know, help to suffice the movement of the item?

CHAIR MEDEIROS: Uh-huh. Thank you for that suggestion, Member Kaho'ohalahala. And I, I think the, if the Members pretty much in consensus of that, which is a good idea, then I

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could make the recommendation after all questions have been asked. Any other Members waiting to ask? Okay, seeing--

COUNCILMEMBER VICTORINO: Recommendation?

CHAIR MEDEIROS: --no further questions, so the Chair will entertain...Member Pontanilla?

VICE-CHAIR PONTANILLA: What was that recommendation again?

CHAIR MEDEIROS: I'm--

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

CHAIR MEDEIROS: --just making it now.

VICE-CHAIR PONTANILLA: Oh, okay.

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

VICE-CHAIR PONTANILLA: No, no, the suggestion that--

CHAIR MEDEIROS: Oh, what was--

VICE-CHAIR PONTANILLA: --Member Kaho'ohalahala had.

CHAIR MEDEIROS: --Member Kaho'ohalahala's?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MEDEIROS: He, he said in consideration of the little urgency we have for this and also the budget cycle is coming up that'll shut down all our Committee work, that we should consider moving this forward and then presenting the required amendments or the suggested Members and language, you know, at first reading.

VICE-CHAIR PONTANILLA: So in that case, though, what I want on your signature--

CHAIR MEDEIROS: Uh-huh.

VICE-CHAIR PONTANILLA: --to follow up with the power company in regards to their comments in regards to, you know, what we're discussing today, that one day and four, you know, longer type of events--

CHAIR MEDEIROS: Uh-huh.

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VICE-CHAIR PONTANILLA: --and what is their issue, if any, in regards to people touching power lines. So, basically, I'm looking at the safety aspects.

CHAIR MEDEIROS: Right. Right.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MEDEIROS: Okay, Member Pontanilla. And I'll ask Mr. Nakao again. I think there was...anytime any contractor is going to connect to the power lines on the poles, they need a permit from Maui Electric Company? Is that correct?

MR. NAKAO: Anytime someone requires new utility service--whether it's temporary for a special event or, or permanent, they need to coordinate with the utility as well as get a permit and inspection approval from us. The utility will not energize the service equipment, which is the meter enclosure, without an inspection approval from the County. So that's the general. And Maui Electric works very well with the County on that.

CHAIR MEDEIROS: Uh-huh. So, Member Pontanilla, if you'd like us to still send an inquiry to Maui Electric Company under my signature and our Committee, we can do so.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MEDEIROS: Okay. We'll do that. And any other discussion, Members? Okay. Recommendation?

COUNCILMEMBER BAISA: Yes.

CHAIR MEDEIROS: Thank you. The Chair will entertain a motion to recommend passage of the proposed bill and the filing of the communication.

VICE-CHAIR PONTANILLA: Chairman, I move to move forward 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.

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

CHAIR MEDEIROS: It's been moved by Member Pontanilla, seconded by Member Victorino. Any further discussion?

COUNCILMEMBER MOLINA: Chairman?

CHAIR MEDEIROS: Member Molina?

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COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. I will support for the sake of moving it out of Committee with some hesitancy. It's unfortunate our Council Chair is not here. I look forward to the proposed amendment or amendments, whoever will make that. It may get drawn out into a lengthy discussion at the Council level for first reading, but it is what it is. So it would seem that the major concern relates to the special events and proposed exemptions. So I, I look forward to whatever language is incorporated. And, and I know there is a sense of urgency on the Department to incorporate the 2008, like you know, standards. But at the same time we're dealing with public safety, so that's why for me we got to be real careful on this. And I know there was concerns that oh, and the little guys going cost them more money and, you know, but sometimes you, we have to weigh public safety versus money and inconvenience. So again I'll support for the sake of it getting it out to Committee with some hesitancy, because for me I, I could come back, I'm open to coming back, deferring this, coming back for one meeting and then hashing out all the amendments at that point to make sure we get the language that everybody can agree to. But...if it's the will of the body to have this discussion at the Council level, then so be it. So--

CHAIR MEDEIROS: Yeah.

COUNCILMEMBER MOLINA: --those are my comments, Chair. Thank you.

CHAIR MEDEIROS: Thank, thank you, Member Molina, for your comments. And I, I'd say for us to have another meeting on it would not be realistic before the budget because of items I have on my master agenda already. So, but I appreciate that insight. Any...Member Baisa?

COUNCILMEMBER BAISA: Yes, Chair. Thank you very much. And of course I share Member Molina's sentiments. It's difficult for us to do amendments at, on the floor. But we are in an unusual situation here with, you know, the budget looming and we're running out of time. So we may have to, you know, make an exception--particularly in light of the fact that the Code we're operating under is 1999. That, that's not all that good, and I think we need to get up to speed here. The other thing is whatever amendments are going to happen, I'd like to see some consideration of, you know, one-day events. Also I am concerned about Member Pontanilla's issue, and if we could also exempt little, you know, one-day chili sales that *don't* touch the electrical system but just use, you know, electric cords or generators or whatever it is they do. And apparently it's already exempt under our Fire. So, you know, I think as long as we have an amendment that is concise and clear and legal, we should be able to move fairly quickly at the Council meeting. Thank you.

CHAIR MEDEIROS: Yes. And as far as the small events with extension cords and auxiliary generators, it does come under the requirements of the Fire Code. Right. Other Members? Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you, Chairman. You know, in regards to the solar water heating issue, you know, I can support that 100 percent. But it's the big events when we, whenever we go in and, and, you know, having nonprofits or electrical contractors contacting power lines. You know, because I think public safety is our number one issue. Thank you.

CHAIR MEDEIROS: Thank you, Member Pontanilla. And I agree. I, I think we all have that same concern about public safety. Member Victorino?

COUNCILMEMBER VICTORINO: Yeah, real quickly. I'll, I'll concur with, with Pontanilla, Member Pontanilla's assessment. And as far as the solar, I agree, you know, now that that's been built in, no problem. But it's the major events, and again I know for many years working with the Fair, we always complied. But, you know, again I just saying there's other big events that happen over a two- or three-day period that I feel that should still comply under that issue. So it's just a matter of word-smithing, like Member Baisa said. But let's get it right so that we do as much to protect the public as we're here to do. Thank you, Mr. Chair.

CHAIR MEDEIROS: Thank you, Member Pontanilla. Any other questions or discussions, Members?

COUNCILMEMBER VICTORINO: Victorino.

CHAIR MEDEIROS: I mean Victorino. What I said?

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

CHAIR MEDEIROS: Pontanilla? Oh, see, Joe, was da kine, looking at me--

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

CHAIR MEDEIROS: --that's why . . .*(laughter)*. . . 'Eh, you never got mixed up that way, yeah? . . .*(laughter)*. . .

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

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

CHAIR MEDEIROS: So seeing no further discussion, Members, we do have a motion on the floor, and that motion is to . . .to recommend passage of the proposed bill and the filing of the communication. So I will call that question to the floor at this time. All in favor of the motion say "aye".

COUNCIL MEMBERS: Aye.

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CHAIR MEDEIROS: All oppose?

. . . Okay. The motion passes with. . .six “ayes” and one “excused”.

COUNCILMEMBER VICTORINO: . . . Seven, Chair.

CHAIR MEDEIROS: Six “ayes”, one “excused”. We have one Non-Voting Member.

COUNCILMEMBER VICTORINO: Oh, I’m sorry. Pardon me, I’m sorry. Thank you, Chair.

CHAIR MEDEIROS: Thank you.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Mateo.**

**MOTION CARRIED.**

**ACTION: Recommending FIRST READING of bill and FILING of communication.**

CHAIR MEDEIROS: Members, at this time the Chair will call for a short recess. We’ll take care of your personal needs, and we’ll have some other members of the Administration come down, and we’ll be taking up the second item. Let’s make this, returning to the Chambers by 10:30. This meeting is now in recess. . . .(*gavel*). . .

**RECESS: 10:23 a.m.**

**RECONVENE: 10:35 a.m.**

CHAIR MEDEIROS: . . .(*gavel*). . . Members, the Chair now reconvenes our meeting of the Infrastructure Management Committee for February 1<sup>st</sup>, 2010. Thank you for that short recess, Members. Now we will continue with our agenda.

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

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CHAIR MEDEIROS: We are now on Item No. 2. And that is IM-23 which is our second item in, on our agenda. And Item IM-23 is a bill relating to permitting requirements for construction of lanai enclosures. The Committee is in receipt of the following: County Communication No. 09-217, from Councilmember Jo Anne Johnson, transmitting a draft bill to provide exemptions from the Uniform Building Code for the construction of lanai enclosures in which no square footage is added to the existing structure; correspondence dated August 18, 2009, from the Department of Corporation Counsel, transmitting a proposed bill entitled A BILL FOR AN ORDINANCE AMENDING SECTION 16.26.106, MAUI COUNTY CODE, PERTAINING TO THE UNIFORM BUILDING CODE AND CONSTRUCTION OF LANAI ENCLOSURES. The purpose of the proposed bill is to provide exemptions from the Uniform Building Code for the construction of lanai enclosures in which no square footage is added to the existing structure. At this time, Members, I'd like to have the Director of Public Works provide us with an overview on this item. Director Arakawa? And if, I'll give you the honor of introducing your associate there.

MR. ARAKAWA: Thank you, Mr. Chair. With me this morning I have Jarvis Chun. He's with our Development Services Administration, Plans Review Section. The item that you have before you pertains to a proposed bill introduced by Councilmember Johnson, and the bill proposes a building permit exemption on work to enclose a lanai or patio in which no square footage is added to an existing structure. It's noted that the general process of obtaining a building permit involves submittal to the Department of Public Works. We then circulate the building permit application to applicable State and County agencies, including within our own Department. And it's circulated for the purposes of review and comment. Thus the proposed bill involves *deletion* of this review process for lanai enclosures. For the Committee's information, an *appeal* was filed with the Board of Variances and Appeals by several residents of Kaanapali Royal, who enclosed lanais to their units without first obtaining a building permit. The Hearing Officer, E. John McConnell filed the Hearing Officer's Recommended Findings of Fact, Conclusions of Law and Order in consolidated appeals, dated September 16, 2009. The report stated that the decision not to approve the after-the-fact building permit application was based on an erroneous application of the law. However with all due respect to the Hearing Officer, we have filed a challenge to his recommendation, and the Board of Variances and Appeals' decision on this case is still pending. Regarding the *bill* which is before the *Committee* for consideration, we have noted to the Committee that we have *concerns* which extend *beyond* the existing case at Kaanapali Royal. The proposed exemption is quite *broad*. There is no *size* limitations on lanais or patios, and thus square footages could be quite substantial and it could be *included* as part of buildings up to 12 stories in height. More importantly there are building integrity and safety concerns with the proposed permit exemption. Exterior wall, for instance, of a building normally has a fire rating and it should form a weatherproof barrier from the elements. There are also minimum light and ventilation requirements which are reviewed *through* the permit process. An emergency escape window on the exterior wall is required for all sleeping rooms. Guardrails may be required if there are unprotected openings in walls. Safety glazing of windows may also be required if windows are located in hazardous locations.

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And all of the reviews are necessary in order to ensure a safe and sound living environment. Without permit reviews there is no *assurance* that these items will be constructed in the manner that ensures the health and safety of its occupants. Lanais also should be *structurally* evaluated prior to enclosure. Just as an example, there are many lanais which *protrude* from the building face or are cantilevered from the building. These lanais, as well as others, may not be structurally *sufficient* to permit enclosure as well as to accommodate additional *load* requirements to meet minimum safety parameters. So in a worse-case scenario, structural failure is a possibility without permit reviews. In conclusion, we have serious concerns regarding the bill in its present draft and that concludes our, our comments.

CHAIR MEDEIROS: Mahalo, Director Arakawa. Mr. Chun, you have additional comments you'd like to make at this time?

MR. CHUN: Chairman, none at this time.

CHAIR MEDEIROS: Thank you, Mr. Chun. And, Members, I'd like to tell you that we do have other departments here, should we need them--the Fire Department and the Planning Department. And I ask you to look in your binders and review the letters in response to our Committee's letter under my signature asking for their comments. There are three letters in your binders from the Department of Planning, Department of Public Works, and the Fire Department. So without calling them down until we need them, at this time I'd like to recognize Member Johnson who initiated this matter for any comments. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I, I want to thank you for taking this matter up today. I know one of the things we had waited for was the determination of, you know, the, the Hearings Officer so that at least we could review the findings. I understand Mr. Arakawa's concerns. I think one of the ways that some of the things could be addressed when you're looking at, and I know you were just going through some components of the Building Code itself. Some of the things when administrative rules are adopted or, you know, the parameters, not all the details are listed, you know, what, what the definitions are and everything within our ordinances. I think that that can be something reasonable that the Department could certainly work toward as far as laying out, you know, what their particular rules are in order to qualify for this particular exemption. With regard to hazard, I think the hazards that were outlined--and I know that I've visited in the past with Mr. English and he basically has...to my knowledge anyway, there have been no deaths or fatalities here on Maui. There *may* be in other places. One of the things that was raised today, which I had not previously heard though, was the, the weight-bearing aspect of lanai that may protrude from the side of a building. What many times occurs is when you have a party and you have a large party. . .that it doesn't make any difference if the *use* of that particular area, if you're just simply enclosing it, if you have a large party that has 50 people out in the lanai, I think there is a greater likelihood of some kind of incident occurring as opposed to maybe enclosing an area and then putting a desk or something out there that you could use for a little office.

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I, I don't have a problem with that, and I think that the things that Mr. Arakawa has raised, I think the things that Mr. English has raised we can, we can do those things based on certain recommendations that they make. But I would rather address this because there are *so* many people in this County that have already enclosed their lanais. I don't know if this will help all of them because obviously where there's plumbing, where there's electrical, where's there a lot of other structural changes in weight-bearing walls, they may not qualify at all under this section of the Code. But I think at least if those individuals would then be granted some kind of a, I don't know, grandfathering or whatever it might be because they've *made* these improvements in the past and they come underneath these kinds of terms, I think that's fine. For people that have other more extensive renovations, this may not help them. But I think it is a step in the right direction and I think that the Hearings Officer *was* correct in his assessment. I think that some of the concerns raised today are perhaps outside the parameters of that. I recognize that an appeal could possibly overturn that. But I *prefer* to deal with it in a *positive* way rather than wasting Milton's time or Mr. English's time or the County's money in going through all of these kinds of things. I'd *rather* concentrate on the this one area and then come up with reasonable accommodations so that this can move forward. And I agree with Corporation Counsel's draft of it, and sometimes you do have to be a little bit broad so that when administrative rules are drafted, they can actually outline some of the details. But that's my only comment. And with all due respect to the Departments, I just would rather see something *positive* come up, you know, with this and move forward because of the huge problem--not that exists just at Kaanapali Royal but throughout the County. Thank you.

CHAIR MEDEIROS: Mahalo, Member Johnson. At this time, Members, the Chair will open the floor for discussion. Any questions at this time, Members?

*NOTE: Silence.*

CHAIR MEDEIROS: . . . I'd like to ask, Corporation Counsel, if you could give us comments on the . . . the results of the Board of Variance and Appeals that was mentioned by the Director, what part does it play in our proceedings, if you would please?

MR. GALAZIN: Yes. Thank you, Committee Chair. The matter currently before the Board of Variances and Appeals is a consolidated appeal which basically questions whether or not the County was correct in denying an after-the-fact building permit application for these enclosed lanais. The report that's been prepared is a Hearings Officer report. Now it's up to the BVA to take that report and make their ruling. Currently this is ongoing. As Director Arakawa noted, the County is asking that more evidentiary, another evidentiary period be opened. The County doesn't believe that some of the findings within the Hearings Officer report are correct. I, you know, I haven't been personally involved with the appeal itself so I don't know the specific information about it, but the matter is still *pending*, I guess, is probably the biggest thing to remember and that the *issue* being considered by the BVA at this time is not whether or not a building permit *should apply* to these enclosed lanais, but whether or not the Department was correct in not approving

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the building permit applications. So I'll leave it, I'll leave it at that, and if, I guess, if Members have specific questions, I can try and answer them as best I can.

CHAIR MEDEIROS: Thank you, Mr. Galazin. Members, any questions at this time? Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I, I just would like to ask, is there anything that would preempt us taking a *positive* step in moving forward with this regardless of the outcome? In other words, we're making a policy call that, I mean, may render any other decision moot. Is, is that, is that possible . . . (*change tape, start 2B*). . .

MR. GALAZIN: . . . status of this matter, and you can feel free to, as a body, move this forward or move, you know, a modified version of it forward. So, yeah, that wouldn't preclude you from that.

COUNCILMEMBER JOHNSON: Okay. Thank you. Mr. Chair, with that in mind rather than have this . . . (*laughter*). . . languish on or linger on I would rather we have so many other things pending in so many other committees, I believe that we can work with the Administration. They can tweak this. I, I would really, because I don't have a vote on this Committee, I would respectfully ask that the issue be moved forward for the full Council to vote on this. You know, and that, that's my only take. I don't think we should be constrained by waiting. The original opinion was given. I think it would save all of us a lot of time, and perhaps a lot of effort, and a lot of complaints being filed . . . (*laughter*). . . you know, in other condominium complexes who have not yet been forewarned of this particular problem. So I would rather nip it in the bud and have the Members go forward with this. Thank you.

CHAIR MEDEIROS: Mahalo, Member Johnson. Member Baisa?

COUNCILMEMBER BAISA: Yes, Chair. Thank you very much. Before we proceed I have a question. Member Johnson brought up the idea of *grandfathering* and I know she said, you know, she used that just as an example and not particularly wedded to that term. But I'd like to ask if there is a possibility to do that to take care of some of the existing issues and not allow this to, you know, open the floodgates and allow everybody to do anything?

CHAIR MEDEIROS: Okay. Member Baisa, let me ask our Corporation Counsel, and let me add to what you're suggesting--

COUNCILMEMBER BAISA: Yes.

CHAIR MEDEIROS: --that the *result* of any decision would affect every project in Maui County including Molokai and Lanai, and all of the island of Maui. So with that in mind, Corp. Counsel, would you respond to Member Baisa's question?

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MR. GALAZIN: Yes. You know, as, as the Committee Chair points out, anything we do here is going to have applicability for *every* project that, that is taking place from here on out. With the concept of grandfathering. . . what this bill would do, if for example, you passed it as it stands right now, anybody who had been cited for a violation for building it without a permit would still have a *violation* for having built it without a *permit* because that was the way the law existed at the time. What it would do is stop any further *fin*es from occurring. Right not a lot of these violations that have been noted have daily fines that are continuing to accrue. So passage of this bill would, would basically stop the administrative fines at a certain point, but it would not necessarily *relieve* the underlying violation. It would allow it to be corrected. It would allow the fines to stop, but it wouldn't, it wouldn't cure the initial violation.

CHAIR MEDEIROS: Member Baisa?

COUNCILMEMBER BAISA: Yes. One step farther, I always enjoy these legal opinions. You have to kind of take them apart. When you say it won't necessarily, you know, let it go, what is the remedy then? It'll stop the fines but what about correcting the issue? Does it have to be corrected or does it just say okay, well, that's it, you know?

MR. GALAZIN: Well, for example, if a person had built, had enclosed in a lanai without a building permit, say five years ago, and three years ago the County sent an inspector out and gave them a notice of violation. For the past three years fines would have been accruing, not from the five-year period but from when it's *noted*.

COUNCILMEMBER BAISA: Right.

MR. GALAZIN: If this bill is *passed*, then the fines would stop at that point, because their manner of correcting the violation and then abating the violation--is, is the terminology--normally it would be successfully getting an application, an after-the-fact building permit application. But if none were *required*, then the passage of the bill would basically act as, as a proxy for that. So it would allow them to *correct* the violation, but it would not wipe out any fines.

COUNCILMEMBER BAISA: So that means then regardless of what they did--although the fines would stop--that they still need to undo it or, or make it comply or?

MR. GALAZIN: Well, if you passed the bill what work they had done would now be permitted so they could just, they would be in compliance now. So they wouldn't have to tear anything out.

COUNCILMEMBER BAISA: Right.

COUNCILMEMBER VICTORINO: Yes.

COUNCILMEMBER BAISA: And if we *don't* pass the bill, the opposite is?

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MR. GALAZIN: Either they get the building permit application which would have to comply with, you know, the Fire Department's requirements, whatever or other agency requirements, whatever they might be; or remove the unpermitted work.

COUNCILMEMBER BAISA: Okay.

CHAIR MEDEIROS: Are you done, Member Baisa?

COUNCILMEMBER BAISA: I guess for now, yes.

CHAIR MEDEIROS: Okay. Thank you. Other Members, any questions? I, I remind you again that we do have the Fire Department here for any questions you may have. We also have the Planning Department here for any questions you may have. Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. Just one question for Corp. Counsel. Has there been given a specific date when the Board of Variances will hold their hearing, any time table?

MR. GALAZIN: None that I'm aware of. As I mentioned before, I think the County is asking for another evidentiary period to be opened, so I think that may push it back. But I'm not, I'm not certain on the specifics on that.

COUNCILMEMBER MOLINA: Okay. So potentially how long could the wait be?

MR. GALAZIN: Well. . .all right, hold on. Actually, I think Jarvis might be able to answer.

CHAIR MEDEIROS: Department?

MR. CHUN: Yes, I believe it's February 11<sup>th</sup> the, the . . .

COUNCILMEMBER MOLINA: Board of Variances.

MR. CHUN: Yeah. The Board of Variances and Appeals.

COUNCILMEMBER MOLINA: February 11<sup>th</sup>. So that's ten days from now, right? Okay. Thank you. Thank you, Chair.

CHAIR MEDEIROS: Thank you, Member Molina. Director, let me ask a question because you did say the County and Department have filed a challenge to the Board and Variances, Appeals' [sic] decision. So possibly that hearing can go on the February 11<sup>th</sup> meeting? Is that correct?

MR. ARAKAWA: Mr. Chair, we filed a challenge to the Hearing Officer report.

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CHAIR MEDEIROS: Okay.

MR. ARAKAWA: And the Board of Variances and Appeals decision on this case is, is still pending.

CHAIR MEDEIROS: Say that again, the ending part. It's pending?

MR. ARAKAWA: It, the decision of the Board of Variances and Appeals is still pending. . . (inaudible) . . .

CHAIR MEDEIROS: Still pending as far as the *challenge*? Or . . .

MR. ARAKAWA: Yes.

CHAIR MEDEIROS: Okay.

MR. ARAKAWA: Well, as far as accepting any, any portions of the Hearing Officer report or making a decision on this matter.

CHAIR MEDEIROS: So the existing Board and Variances, Appeals [*sic*] Hearing Officer's report, *that* is still pending as, as far as the, the compliance of that order?

MR. GALAZIN: Yeah. Basically the Board of Variances and Appeals, when they hear an appeal they have two choices. They could either hear the appeal as a body, collectively as themselves; or they could appoint a Hearings Officer who holds a separate hearing, prepares a report and makes recommendations, submits it to the, back to the Board. Then the Board convenes and decides whether they agree with it, agree with it in part, or disagree with it. So they basically, the Hearings Officer's report serves as the evidence gathering *portion* for them, and then they get the report and they, they act on that. But they have not acted on that yet. I believe, as Jarvis pointed out, it's February 11<sup>th</sup> when they are next going to convene to consider the matter. So nothing has been *decided* yet. The report's been *prepared*, but it's not been submitted to the Board for action yet.

CHAIR MEDEIROS: Thank you, Mr. Galazin, for that clarification. So we, we do, do know that, you know, that report is still pending as far as acceptance or adoption or by the Board and Variances and Appeals [*sic*]. So that's information for you, Members. Any other questions, Members?

. . . Okay. Hearing what some of the Members have been saying and because of the pending report from the Board of Variances and Appeals the Chair would like to make his recommendation at this time.

COUNCIL MEMBERS: Recommendation?

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CHAIR MEDEIROS: . . . Mahalo, Members. So in order for us to have some time on this, in order to move forward, the Chair without objection will defer this item.

COUNCILMEMBER VICTORINO: No objection.

COUNCILMEMBER MOLINA: No objection.

VICE-CHAIR PONTANILLA: No.

CHAIR MEDEIROS: Okay. So ordered.

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

**ACTION: DEFER pending further discussion.**

CHAIR MEDEIROS: Members, so we will defer this item and, and act on it or try, try to schedule it in another meeting.

*NOTE: Silence.*

CHAIR MEDEIROS: Okay. Members, we now will proceed to our third item.

*NOTE: Pause.*

COUNCILMEMBER VICTORINO: . . .(inaudible). . (laughter). . they not leaving happy today.

CHAIR MEDEIROS: Well, . . .(inaudible). . .

COUNCILMEMBER VICTORINO: They not leaving happy today.

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

CHAIR MEDEIROS: Oh, that's fine. Thank you. Okay.

**ITEM NO. 29: BILL TO EXEMPT COUNTY-INITIATED OR COUNTY CO-SPONSORED PROJECTS FROM SUBDIVISION REQUIREMENTS (C.C. No. 09-260)**

CHAIR MEDEIROS: Okay. Members, we are now on agenda item number 3, which is the IM-29. And IM-29 is a bill to exempt County-initiated or County co-sponsored projects from subdivision requirements. The Committee is in receipt of the following: County Communication No. 09-260, from the Director of Public Works, transmitting a proposed bill to exempt County-initiated or County co-sponsored infrastructure projects from subdivision requirements; correspondence dated November 18<sup>th</sup>, 2009, from the Director

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of Public Works, transmitting a revised proposed bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS. The purpose of the revised proposed bill is to exempt specified County-initiated or County co-sponsored infrastructure projects from subdivision requirements.

. . . So, Members, at, at this time, part of the Department's and the Director's overview would be a presentation of a PowerPoint. So we'll take a short recess to arrange the Chambers for that PowerPoint, and then we'll come out of recess after that. So at, at this time the Chair will call this meeting to recess, and we'll be called back in order by the Chair. . . .(gavel). . .

**RECESS: 10:59 a.m.**

**RECONVENE: 11:04 a.m.**

CHAIR MEDEIROS: . . .(gavel). . . The meeting of the Infrastructure Management Committee of February 1<sup>st</sup>, 2010 is now reconvened after our short recess to set up the screen and PowerPoint presentation. We are on Item IM-29, a bill to exempt County-initiated or County co-sponsored projects from subdivision requirements. At this time I'd like to recognize Director Milton Arakawa who will be making the PowerPoint presentation. Director?

MR. ARAKAWA: Thank you, Mr. Chair, for the opportunity to, to do the presentation. And it's fairly brief, maybe about a ten-minute presentation so let me just get right to it.

CHAIR MEDEIROS: And, member, I mean, Director Arakawa, before you proceed. Members, this morning was passed out a hard copy of the presentation if you'd like to follow along on that. That was given to you this morning. Director Arakawa, proceed.

MR. ARAKAWA: Okay. Thank you. The item that you have before you, IM-29 pertains to a proposed bill which is intended to streamline the subdivision process for County infrastructure projects. This would help County projects proceed in a more timely manner. And the bill that you have before you is being proposed by the Department of Public Works. The Infrastructure Management Committee last discussed this item on October 12, 2009. Basically when County projects require land acquisition--and we're talking things like road widening, sewer lines, drainage lines and so forth--the necessary land area needs to be subdivided out from the existing parcel, and subdivision requirements currently apply to the newly subdivided lot as well as the remainder lot. The newly subdivided lot is then improved as part of the County project; however, the provisions of the Subdivision Code are also imposed on the remainder lot. The County is required to pay fair market value for the property that it wishes to acquire, and the responsibility to bring the remainder parcel into compliance with all applicable codes lies with that property owner. We can go over an example here just to go over, you know, some of the issues that we, we are faced with. If you take a look at the graphic on the

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left, very difficult kind of situation where you have a lot with one house on it, you may have an existing stone wall along the front property line and a driveway which leads to the street. And if we have a road-widening lot--you can take a look at the graphic on the right--what the County needs to do, we need to subdivide out the land for the road-widening lot, basically provide all of the metes and bounds to, to properly define that road-widening lot. The County would need to conduct an appraisal to determine the fair market value of the land that it wishes to purchase, and the County replaces existing improvements which were within the road-widening lot. So in this particular case, if, if the owner has an existing stone wall within the road-widening lot we would replace it at County expense on his property, on his remainder lot property. And similarly we wouldn't just cut off his driveway and leave him like that. We would construct an apron to current driveway standards on his property. Basically the current subdivision provisions would require compliance as if the remainder lot is being developed; however, in a great majority of cases the owner of the remainder lot has no plans to develop his property. But the owner would be required to comply with all subdivision provisions as well as the requirements of other departments. There are a number of instances where we run into issues but let me just give you some examples. Like if you look at this graphic, there may be for instance an encroachment along the rear property line of the, of the remainder lot. This would need to be remedied at the remainder lot owner's expense. He may be required to do an archaeological inventory survey for instance on the, all of the remainder lot although he has no plans to develop the property. The other, other complications, maybe he has built a wall higher than six feet in height and did not obtain a building permit along his rear property line. Now these types of things would have to be remedied before the subdivision gets approved, and it's basically just a small sampling of the kinds of requirements which may apply. Thus what we run into is that many owners are reluctant to agree to a subdivision with the County. And we realize that many of the subdivision requirements are troublesome for an owner *if* there are no plans to develop the property. So when the County desires to acquire land for a needed public improvement, we would propose that the subdivision be exempt from subdivision requirements. Once the County acquires the land it needs, the intent is to improve it for a public purpose. If and when the owner of the remainder lot develops his property, the applicable provisions of the Code would apply at the time of development. So after all is said and done, basically this is what the, the fifth, the final condition would be. We would basically rebuild the stone wall on the remainder lot and rebuild the driveway apron. And the County basically would have to compensate the owner for the land that it purchases. This is another situation which we run across on an occasional basis. Let's assume on--if you look at the graphic on the left--you have two narrow roads which intersect each other at a 90 degree angle. Over time, vehicles may basically try to cut the corner and basically run over a portion of a private property owner's lot. And this is actually based on an actual case that we had to deal with. So the property owner basically asked us to purchase that corner rounding. So what we had to do, we have to subdivide out the land that the County needs, the County would have to conduct an appraisal to determine the fair market value, and the County would then pay fair market value and replace any existing improvements that are within that portion of land that it wishes to purchase.

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. . . The State Department of Transportation faces this exact same problem when it needs to purchase property. In their case the Legislature has passed Act 12 in 2008, and this allows the State Department of Transportation to exempt itself from County subdivision ordinances when acquiring property for a State highway. At the previous meeting, the Infrastructure Management Committee asked how the County could possibly obtain reimbursement from private owners who subdivide their property after the County has constructed improvements along adjacent roadways? And the Department of Corporation Counsel has provided a response dated November 19, 2009.

. . . And basically what, what Corp. Counsel has said is that in the absence of a preexisting or other applicable obligation of a property owner or developer to pay for roadway and frontage improvements, the County may obtain reimbursement through the use of impact fees. And impact fees may be collected in anticipation of future improvements or collected on a pro rata basis for construction projects that have already taken place. So it may be assessed for retroactively or it may be assessed for future improvements. However, and this is a big however, there is a need for a public facility needs assessment study, and it should be emphasized that the Planning Department is currently working on that study to implement impact fees. You might recall a couple years ago there was this study that was presented to the Council on the establishment of traffic impact fees, and basically the Planning Department is redoing that study to try to provide an adequate basis. And that's the crux of it--is that the needs assessment study provides the basis for the establishment of impact fees. The bill that you have before you, the proposed amendments would allow for a faster delivery of County infrastructure projects. And a bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS has been drafted. And I would note that we have submitted a revised proposed bill, dated November 18<sup>th</sup>, 2009, that's in your binders, and language has been added to note that all applicable provisions of the Code shall apply to subsequent development of the remainder lot. The Infrastructure Management Committee's review and approval of the revised bill is respectfully requested. And that concludes presentation, and I'll be happy to answer any questions the Committee may have.

COUNCILMEMBER NISHIKI: Chair?

CHAIR MEDEIROS: Okay. Mahalo, Director. What we're going to do is we're going to take another short recess of three minutes to raise the screen. And then you can return to the desk upfront, Director, for questions on the PowerPoint presentation. So, Members, we are now in a three-minute recess. . . .(gavel). . .

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

**RECONVENE: 11:14 a.m.**

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CHAIR MEDEIROS: . . .(*gavel*) . . . The Infrastructure Management Committee meeting of February 1<sup>st</sup>, 2010 is now reconvened after the short recess. Members, the floor is now open for questions or discussions. Any questions for the Director? And, Director, would you introduce your associate, please?

MR. ARAKAWA: Yes, Mr. Chair. With me I have Russell Higa. He is our County Surveyor within the Department of Public Works.

CHAIR MEDEIROS: Thank you, Director. Members, the floor is now open for discussion. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Good afternoon, or good morning, Mr. Director. Just one quick question. Do we have any examples of any County projects that might have been or have been impacted because residents, you know, maybe have issues with cooperating with the County as it relates to subdivision requirements? Can you cite any examples at this point?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: I guess the most outstanding example is probably Lower Honoapiilani Road Phase IV where we have to deal with a number of small lot owners who are long-time residents.

COUNCILMEMBER MOLINA: Okay. And that's just one. Are there others? I mean . . .

MR. ARAKAWA: Another one that will be coming up which you're familiar with is that Makawao-Makani Road project, a Federal aid project. We're in the planning stages but there are also some acquisition that we're hoping to do up there as well.

COUNCILMEMBER MOLINA: Okay. Yeah. I'm certainly familiar with that one. I heard, heard that one loud and clear. Okay. So I can understand the Department's interest in getting this proposal out. Thank you, Mr. Director. Thank you, Chairman.

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

*NOTE: Silence.*

CHAIR MEDEIROS: . . .(*laughter*) . . . Seeing none, but I'd like to ask the Director. . .the. . .well, and, and give the information to our Members, and I don't know if you covered this in your PowerPoint, Director. But the revised proposed bill would also change the definition of "Director" from Planning Director to the Director of Public Works. Is that correct?

*NOTE: Silence.*

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CHAIR MEDEIROS: . . . Director?

MR. ARAKAWA: Yes, it does. That's primarily a housekeeping change based on the . . .the Charter basically delegating the, the task within Title 18 to the Public Works Department.

CHAIR MEDEIROS: Okay. And that's already incorporated in the revised proposed bill. Is that correct?

MR. ARAKAWA: That's correct.

CHAIR MEDEIROS: Okay. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, I am very interested in the referrals to impact fees in this PowerPoint. During my stint as the Chair of the Planning Committee, I got involved in trying to get impact fees for transportation passed, and I'd like to know the status of where that is right now.

CHAIR MEDEIROS: Director, would you, are you prepared to respond to that?

MR. ARAKAWA: Mr. Chair, I'm not sure about the exact status. I do know that the Planning Department is embarking on the, the needs assessment studies for a *variety* of public improvements that may come up, including roads and *other* types of infrastructural improvements. But exactly when that will be presented to the Council, I, I, I'm not sure.

COUNCILMEMBER BAISA: Thank you very much. The reason I ask the question is, you know, I was extremely frustrated to inherit a matter that I think was like 30-years old. And, you know, much development *has* gone on and much development *will* go on, and much money, millions, I'm sure, many, many millions of dollars are involved in this idea of not having the traffic impact fees approved. And, you know, it's a big part of this because if we're going to proceed with condemnations or eminent domain or whatever it is or allowing people to do things--including the County--I think this is a piece of, of work that needs to be *done*, and I'm reluctant to say well, we're going to do this again when I don't think we've done very well . . .*(laughter)*. . . And it really bothers me.

CHAIR MEDEIROS: You make a good point, Member Baisa. And, Director, I think you, you know, tried to give an answer to that. But could you expound on what is the status of that and how do we move that forward as far as the completion of that kind of legislation or ordinance?

MR. ARAKAWA: Mr. Chair, I mean, yeah, we can check with the Planning Department on the exact status. But I, I would note that any impact fee legislation is quite, as you, recall quite extensive. We need to establish an adequate basis to levy the fees on a number of different types of situations that may come up, and that was part of the problem last time around--was that that basis wasn't adequately established. So basically the Planning Department had to go back to the drawing board and try to come up with an adequate

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basis. So I don't believe it's a really *simple* matter as far as getting the impact fees, but Councilmember Baisa is certainly correct in that we certainly need it sooner than later. And we'd like to see it come up, you know, very soon actually, because as you said there are all these other developments that do come up, and they're not subject to impact fees.

CHAIR MEDEIROS: Thank you, Director. Member Baisa, any follow-up?

COUNCILMEMBER BAISA: Yeah. I'm not quite finished. Like, like Member Molina, I'm very aware of some of the issues that have arisen over the widening of Makani Road and Makawao Avenue. And I'm thinking how this law would then apply to those people, who will be affected because there's a lot of walls along that road. And they're already, you know, very concerned and very upset, and in the case, of course, one of those walls I think is, is on historic property. And I think we have to, I, I realize we need to fix the road. This is the problem that, you know, Public Works Department has to deal with--is the road needs to be improved, everybody wants it improved, but yet nobody wants their property to be affected by this. And so this becomes a, you know, it may seem like a very simple piece of legislation when you look at it, but then when you take it to, *apply* it to a particular area. . .it, it is *not* a simple piece of legislation. I mean I can just see us condemning or buying walls along Makawao Avenue and tearing them down. I mean the community will be up in arms. And I don't know about other places specifically because I'm, I'm in the middle of this one, and I'm sure there are many *others*. So I think, you know, this gives, should give us some pause before we just pass this. You know, what happens in a case, particularly where there's historic issues?

CHAIR MEDEIROS: I, I think that's a good point. And, Director, can you comment to that? You know, what happens if the portion that the County needs for highway improvements is in an area of, that has been given the title of, you know, historic district or how, how does the County comply with that . . .(*inaudible*). . ., Director?

MR. ARAKAWA: Mr. Chair, first of all, in the case of the Makawao-Makani Road improvements or any major project that we are involved with, we have to do an Environmental Assessment and get all of our necessary permits before we can proceed. And so we, we would have to enter into this discussion, a general community discussion about whether the improvements are warranted and needed, and how much road widening is needed, and so forth and so on. So that's the stage we're going through right now in the case of the Makawao-Makani Road project. Once that's settled, then we would basically need to start the, the land acquisition to actually acquire the land that has been approved through the Environmental Assessment process.

COUNCILMEMBER BAISA: So, so, Chair?

CHAIR MEDEIROS: Go ahead, Member Baisa.

COUNCILMEMBER BAISA: Because that is a required process, are . . .(*change tape, start 3A*). . . and give them a "get out of jail free" pass?

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CHAIR MEDEIROS: So, so you're, you're saying that, as explained by the Director, there is a process that the Department *has to* go through to determine all of that, and, and, and you're satisfied that that, that procedure is in place?

COUNCILMEMBER BAISA: If it is in place, yes. Now my question is *if* we are to pass this bill *exempting* the County from any of that, will that *change* that or will we still have that, that process and that safeguard in place?

CHAIR MEDEIROS: And that's a good point. Director, yeah, what happens if in the process that you do determine it's a historical area or part of a lot and then the County *cannot* use that portion, and so you would have other portions along there that you can and that one you can't? How, how does the County approach that?

MR. ARAKAWA: Generally any issues regarding historic properties--

CHAIR MEDEIROS: Uh-huh.

MR. ARAKAWA: --would, would be resolved through the Environmental Assessment process, because we'll have to get reviewed by the State Historic Preservation Division. They will tell us what is the appropriate mitigation, if any, for any historic property. If they decide, you know, it shouldn't be touched, then we'll have to adjust our designs accordingly. So, and there may be other mitigations involved too. It may be we have to just do data recording, and maybe, you know, it's, it's not as significant as originally thought or--but in any event those issues get resolved through the Environmental Assessment process, and so it goes through this public process to, to basically come out with a . . . a proposed plan, proposed *approved* plan.

CHAIR MEDEIROS: Member Baisa, any further comments?

COUNCILMEMBER BAISA: So *even if* we were to pass this bill, we would still have those safeguards?

MR. ARAKAWA: That's correct.

COUNCILMEMBER BAISA: Okay.

MR. ARAKAWA: So any land acquisition would need to follow the Environmental Assessment.

COUNCILMEMBER BAISA: So this does *not* exempt the County from *that* process?

MR. ARAKAWA: No, it does not.

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COUNCILMEMBER BAISA: Okay. We just want to be sure that folks are protected and that County doesn't get a free pass, because, you know, we need to respect other people's rights just as much as everybody else. Thank you.

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

COUNCILMEMBER JOHNSON: Yes. And this would be, I guess, you know, follow-up to the questions that Member Baisa was asking. Because the presentation included the PowerPoint. . . portion where the individual who, let's say, on historic property is then forced to incur any expenses with regard to obligations like reconstruction of the wall--they have to make sure that that area where it's going to be placed is going to be alright, like there's no burials or anything else that or is in that new area. What, obviously when you were doing the presentation, those costs are not to be borne by the County because that is now when we're reconstructing the wall--which I have a second question . . . *(laughter)*. . . about--but we're reconstructing a wall on their private property. They would then be obligated to provide any of those studies, is that correct?

CHAIR MEDEIROS: . . . Department?

MR. ARAKAWA: Councilmember Johnson, *if* the existing wall is within the area that we wish to acquire and we need to replace the wall on the remainder lot, then we would pay for it. And if there are any clearances that are needed from the State Historic Preservation Division, then we would do so. But the, the dividing line is that, let's say there is a wall that extends along the side property line, and the rear property line, and the other side property line and the owner wants all of those replaced. Then we will not replace those. We'll simply attempt to *match* the replacement stonewall with what's existing on the remainder lot.

COUNCILMEMBER JOHNSON: Okay. So, so you would then--and this is, I guess, the second part of my question--you're constructing improvements paid for by the County on property that we don't own, is that correct?

MR. ARAKAWA: That's correct. *If*, if we are buying a portion of someone's lot and we need to replace the existing improvements, we obviously cannot replace the existing improvements within the road right-of-way, so we'd have to construct it on private property, on the remainder lot.

COUNCILMEMBER JOHNSON: Okay. And you do that through right of entry or other mechanism?

MR. ARAKAWA: Usually through right of entry.

COUNCILMEMBER JOHNSON: Okay. And *if* those individuals, let's say for example, have a deferral agreement in place and have not *paid* for any obligation, that now they're getting these improvements made, what will you do? In, in the way that I read the bill they may

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be exempted from having to pay those. So I, I want to know . . .(laughter). . . you know, are we now giving away . . .(laughter). . . and having to incur additional debt since we haven't collected a *dime* on any deferral agreements . . .(laughter). . .?

MR. ARAKAWA: If there are any existing deferral agreements, we will collect on those. If the owners decide not to pay then, I guess, we would have to turn it over to Corp. Counsel for collection.

COUNCILMEMBER JOHNSON: But we definitely would *not* be *constructing* improvements at *our* cost on *their property* if they owe us money. Is that accurate?

MR. ARAKAWA: Well, we would need to basically enforce the terms of the, the deferral agreement, whatever they are. If they have an existing stonewall on the property that's, you know, they would have to basically redo it, I assume, at their expense because of the deferral agreement and the obligation that they have to the, to the County.

COUNCILMEMBER JOHNSON: Yeah. And, and, Mr. Chair, I would like to see something--which I don't see in this bill--that specifically addresses existing deferral agreements or obligations, that before any *additional* expense is incurred on the part of the taxpayer, that those monies must be collected prior to any improvements being made in that particular area. I think that's a key component because. . .it's not right when you have a legal obligation--and many of these are done in the Lower, on the Lower Road area, and there's *millions* of dollars that we have not collected on the Lower Road. We haven't collected anything and yet it's not only one set of improvements, but in some cases, *two* different sets of improvements that have been made on the frontage and not a dime collected. So, you know, I, I have another way of dealing with this which is not a subject for today. But I. . .I really get upset when we're *not* collecting money and then all of a sudden now I read oh, gee, they might be exempted. I want to make it crystal clear and not *cloud* the issue that if they have an existing deferral agreement that all monies must be collected on that deferral agreement. And in that light too, statements made about impact fees--deferral agreements are *totally* different animals because what you're doing is you already *know* the cost of the roadway improvements in front of the property. If it's sidewalk, if it's drainage, whatever improvements are made, you already know that. So the cost is already there. I, I, I don't see that as an issue. That's not an impact fee. Those are real incurred costs to property that has already been improved, now which increases the value of that holding to the taxpayer. And I don't think it's fair to ask the rest of the taxpayers to subsidize those kinds of things. So I would like to see something, though, that does not create a *clouded* area. And the way that I read this right now, it's, it's going to muddy the water and on money that we haven't collected a dime on. So it makes it even worse and maybe more *difficult* because of people challenge this. So anyway I just want to, I, I think it needs a little, this bill needs a little bit more work to address that issue specifically. Thank you.

CHAIR MEDEIROS: Mahalo, Member Johnson. Director, in the bill or in the existing ordinances, is Member Johnson's concerns addressed?

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MR. ARAKAWA: Councilmember Medeiros, in the case of any preexisting agreements, I mean the bill doesn't affect the existing agreements. The existing agreements still are in full force and effect, so it's our intent that if we do a project where there is a deferral agreement, we will collect on it.

CHAIR MEDEIROS: Okay. Thank you. Corp. Counsel, would you want to add some comments to that?

MR. GALAZIN: Yeah, I would. These deferral agreements, and, and it depends on the specific one in issue, but generally speaking these are *contracts* that *we have* with these private individuals who have done development at some point. And oftentimes, and maybe Public Works can speak to it more, but oftentimes there would have *been* a roadway lot existing but they just wouldn't have done the improvements on it. But either way, you know, we can't pass legislation that's going to destroy an existing contract right. And what they usually agree to--and in all the deferral agreements that I've seen, and, and since we've done away with that I haven't seen that many, but still they come through every now and again--what, what they state is that upon actual development they, they pay a pro rata share of the cost. And it's not what, what's required by a certain subdivision ordinance. It is what is the County putting in and you're going to have to pay a portion of that. So it really, you have, I mean you bring up a great point. But I think within this language talking about being exempt from certain subdivision requirements, you're in a, you're in a slightly different arena from the subdivision deferral agreements that we already have, these existing contracts that we already have with these landowners out there. So we're in a, we're in a good position.

CHAIR MEDEIROS: Yeah. Thank you, Corp. Counsel. Members?

COUNCILMEMBER JOHNSON: Yeah. Mr., Mr. Chair?

CHAIR MEDEIROS: You have a follow-up?

COUNCILMEMBER JOHNSON: Yes. I, I appreciate that because I want to make it crystal clear that it, in many of these--and particularly along the Lower Road and perhaps this is a secondary issue because it's a Special Management Area, because *everything* to the makai side of Honoapiilani Highway falls in a Special Management Area, I guess my other question would then be in, if it's in an *SMA* area which has a whole different set of rules, how does this integrate with SMA rules? Like I know that we're required to do certain things in certain areas because of the environmental sensitivity. So how does this impact those kinds of situations in an SMA area as opposed to other areas or even in a historic district?

MR. GALAZIN: There, there wouldn't be any, any change because what this bill is doing, if you look at it . . .

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. . . all that we're doing is just dealing specifically with certain requirements as they exist within Title 18 right now. And SMA requirements are not a part of that. So all this does is say that there are certain Title 18 requirements that currently apply; that when the County, when Public Works initiates a subdivision *just* for the purpose of only these specific reasons, that those specific Title 18 requirements won't apply. But it won't touch SMA, it won't touch historic district, any of that stuff. This bill just doesn't, doesn't have that wide of a scope. It's only confined within Title 18.

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

CHAIR MEDEIROS: Thank you, Member Johnson. I'm going to ask one question before I call on Member Pontanilla, and this is for the Director, the Department. Here, here's a scenario. If the property that the County needs a portion of for highway improvements sits in a zoning of minimum two-acre lots, the County comes along and needs a portion of that, which makes that lot now less than two acres, which would be in noncompliance. How is that affected?

MR. ARAKAWA: Mr. Chair, we would basically need to purchase the land we need, and then *if* the property, the remainder lot is less than two acres, it would be basically nonconforming. But we would have to pay fair market value for the property that we are wishing to acquire. So *that* should be taken into consideration when, when we acquire the, the road-widening lot.

CHAIR MEDEIROS: So if the lot now becomes nonconforming, the property owner would not be allowed to subdivide it any further. So what happens then?

MR. ARAKAWA: Well, if it's two acres, he wouldn't be allowed to subdivide it further anyway. But it just would be. . .slightly less than two acre as far as the, the area involved.

CHAIR MEDEIROS: So maybe this next question is for Corp. Counsel. Now that we may put a property owner in that predicament, Corp. Counsel, is that or would that be considered a taking?

MR. GALAZIN: Well, you know, takings analyses are very, very fact specific. So, you know, you would have to look at the property itself, what the--you know, if you're talking about something where you're not taking the entire property, you're only taking a portion of it which somehow reduces the development potential--

CHAIR MEDEIROS: Right.

MR. GALAZIN: --you've got to look at what the distinct investment-backed expectations were of the person who owned the property; whether the regulation itself, which would be in this case the, the carving out of road-widening lot would be unreasonable, and the burden that it would place on the landowner. So it's, you know, it's really fairly technical and

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requires a lot of investigation. It's possible it could be. It's likely it wouldn't be. Every situation would have to be examined differently, and of course it would probably behoove the Department of Public Works to examine that thoroughly before they propose subdividing out any particular piece.

CHAIR MEDEIROS: And just a follow-up question, Director. So say we're looking at a 6,000 square foot lot which is the minimum size lot allowed in that zoning, and we take a portion of it making it a noncompliance, nonconforming lot, and that now the property owner can't build on a house on it. So how, how do we approach that?

MR. ARAKAWA: No, the property owner would still be able to build a house on it if it were vacant. It's just that the lot itself would be nonconforming size.

CHAIR MEDEIROS: But the property owner would have the opportunity to still build on it?

MR. ARAKAWA: That's correct.

CHAIR MEDEIROS: Okay. Thank you for that response. And then I guess this is something that we're reviewing and looking at to kind of expedite things for our Department and for the County. How does this legislation affect any projects that we may have in the planning stages?

MR. ARAKAWA: I, I guess the biggest thing is that Makawao Makani project which I just mentioned. We, we do have a number of other requests where there are encroachments where perhaps the road is not where it's mapped and you know that second sample that I showed in the PowerPoint. So those we'd have to resolve as well. Those are on, ongoing issues that are brought up from time to time.

CHAIR MEDEIROS: Okay. Thank you, Director. Members?

COUNCILMEMBER KAHO'OHALAHALA: Chair?

COUNCILMEMBER KAHO'OHALAHALA: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. You know, I want to get back to the intent of the bill, and I am making reference to the communications that came dated November 19<sup>th</sup> from the Corporation Counsel. And just for clarification, Chair, in your analysis and discussion on--I guess this would be Page 2. . .you said that Chapter 18.20, Maui County Code, requires a subdivider to make certain roadway and frontage improvements as a condition of subdivision approval when a subdivision contains or is adjacent to a substandard roadway. So just for my own clarification then, this is a *requirement* in a subdivision. Okay? And then this leads us to some of the questions that have been raised about deferrals, because these are requirements for the subdivision for anyone fronting a roadway. And then in the deferral it means that we have currently

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instead of collecting those costs for improvements, we've termed them to be deferrals. Is that correct?

MR. GALAZIN: Yeah. Yeah. That's correct. Because that's, that was our practice up until a couple years ago.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And then further in your, your discussion here, you say in the second paragraph, depending on the circumstances, certain property owners may be obligated to make roadway improvements or frontage improvements, or to fund such improvements in whole or in part pursuant to the preexisting agreements or pursuant to conditions imposed by permits or land use entitlements. Is this circumstances then you're talking about all the individual kinds of reasons or conditions under which deferrals exist?

MR. GALAZIN: No. What that was meant to spell out were all the different situations in which a property owner might have to pay for roadway improvements. So it's not only if you do a subdivision you have to pay for roadway improvements, but also it might be for an SMA permit, you might have to--and if we spell them out, you know, conditions of zoning, different other Land Use Commission permits might *require* a property owner to do roadway improvements. The only ones that we did defer, that we had the ability to defer were the ones by subdivision, and those we did allow a deferral in certain circumstances, like I said, up until we, the Council, you guys went ahead and, and . . .

COUNCILMEMBER KAHO'OHALAHALA: Okay. So my question then to you about the deferrals that you said, that you were just now referencing. Are those deferrals recorded anywhere that they are documents of, of which there is an obligation to the subdivider that is written and that is something that we have an accounting and a record of?

MR. GALAZIN: I would suggest you ask the Director, but they should all be recorded by the subdivider before final approval is granted.

MR. ARAKAWA: Yes, Council Member. They're all recorded in the Bureau of Conveyances.

COUNCILMEMBER KAHO'OHALAHALA: So right now then you know exactly how many of these deferrals are out.

MR. ARAKAWA: I couldn't tell you right now but we can certainly go through our files. But it is all recorded to give notice to any subsequent purchasers of the property that this agreement exists.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And these deferrals then represent a cost that the individual subdivider is obligated to, to the County then?

MR. ARAKAWA: Any purchases or subsequent purchases have that obligation, yes.

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COUNCILMEMBER KAHO‘OHALAHALA: So it’s, it’s a dollar amount then?

MR. ARAKAWA: The dollar amount is not listed in the agreement itself, it just mentions a pro rata share of the improvements.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

MR. ARAKAWA: So the County would have to *determine* what the pro rata share would be.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Then how would the County come to that, that pro rata share amount?

MR. ARAKAWA: That’s going to be determined when the, the project reaches the design and the construction phase basically to get that amount.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Are we any, in any position right now where some of those have already been completed and that we do know the costs and that deferrals are still outstanding?

MR. ARAKAWA: The issue that I, the project that I can think of is that Lower Honoapiilani Road Phase IV.

COUNCILMEMBER KAHO‘OHALAHALA: And your answer is?

MR. ARAKAWA: There are deferral agreements and . . .

COUNCILMEMBER KAHO‘OHALAHALA: Of which you have a pro rata share kind of formula that’s already known because of what your costs are?

MR. ARAKAWA: No. The, the design of the plans are done, but we haven’t acquired all of the properties, so we haven’t approached each of the deferral agreement holders with an amount on the pro rata share. But we have to complete the land acquisition *first* and then we can, when, as it get closer to construction we will collect on the deferral agreements.

COUNCILMEMBER KAHO‘OHALAHALA: And in the deferral agreements, are there other conditions that exist that hold that subdivider so that aside from the payment of these deferrals are there other conditions that exist that hold, hold them to bear or carry through on these?

MR. GALAZIN: Well if, if a person who owns a lot that is subject to a deferral agreement subdivides further I think at that point that would extinguish their deferral agreement because they would have to, they can’t extend that. They have to put in their own particular improvements at that time.

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COUNCILMEMBER KAHO‘OHALAHALA: Okay. Can you state that one more time? The defer . . .

MR. GALAZIN: If there’s a lot owner and say he bought a lot that was subject to a deferral agreement already, and then that lot owner, that new lot owner chooses to subdivide that lot into two, then at that point, improvements would have to be put in, they couldn’t be deferred. So that . . .

COUNCILMEMBER KAHO‘OHALAHALA: Now what happens to the original deferral?

MR. GALAZIN: Well, the other lots, if they are not developed, they would still be subject to that agreement.

COUNCILMEMBER KAHO‘OHALAHALA: So we’re still holding a deferral, but we’ve allowed now a new owner to subdivide further, and we’re saying that the new owner is obligated to the improvements. But we’re still holding an outstanding deferral from the original subdivision.

MR. GALAZIN: That’s correct. Because if, if, you know, you subdivide ten parcels, they’re all subject to a deferral agreement, and then one of them decides they want to subdivide further, you know, you would, you would otherwise have to require all the other nine lot owners to then go ahead and do the improvements at the same time even if they are not developing their properties further at all.

COUNCILMEMBER KAHO‘OHALAHALA: . . .*(laughter)*. . . Well, this is getting even more interesting. What about the title to the original subdivider, to their property? Are they restricted from any, can they sell their property? If you have a deferral can you sell your property?

MR. GALAZIN: Yes, absolutely. And that’s the whole reason why they’re recorded so that, that potential landowners have, are noticed that the land is encumbered by the agreement.

COUNCILMEMBER KAHO‘OHALAHALA: Meaning that the new owner would be obligated now to carry on the, the deferral obligation?

MR. GALAZIN: That’s correct.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

. . . Yeah. Chair, I’m, I’m getting a little confused because our, our bill today is asking for us when we’re involved in what we’re calling a subdivision--and this is subdivision that’s fronting roadways--that we would now exempt. . .our, us. . .are we exempting, are we exempting the--

UNIDENTIFIED SPEAKER: Ourselves.

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COUNCILMEMBER KAHO‘OHALAHALA: --ourselves, but then in fact we are involved in a subdivision of a property of which currently *that* subdivision will obligate *that owner* to improvements. . . .(laughter). . . So . . .(laughter). . . so we’re going to create a subdivision is what we’re doing but this time we’re going to exempt ourselves, and in the process of exempting ourselves we are also exempting the adjacent landowner from what they would have been obligated to if this property were in fact subdivided for road improvements. Is that . . .

MR. GALAZIN: Yeah. The whole reason why Public Works does this in the first place, and I, you know, I think I went over this the last time we met. But the County has two options. If we want to improve a roadway, we can either wait until everyone along the roadway develops their property, and as each person develops we can have them either put in the improvements or if we’ve done an impact fee needs assessment study we can collect money. But either way we can just wait for them to do it piecemeal by piecemeal. Or if we decide that we need to have the road improved without waiting for people to develop their properties, the County, we have to go in ourselves and acquire these roadways. So if we’re going in to acquire these properties, it’s because nobody’s developing them to begin with.

. . . So it’s not a question of we’re doing it in order to give somebody a free pass. We’re doing it because we *have to* do these roadway improvements, and we can’t sit around and wait for somebody *forever* to develop their property in order for us to get a pro rata share out of them.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So it’s, the pro rata share that we’re looking. What, so what, why are not looking at pro rata share today, then, in terms of deferrals?

MR. GALAZIN: No. The deferrals are for previous subdivisions. These are, what I’m talking about are new obligations.

COUNCILMEMBER KAHO‘OHALAHALA: I know. That how it makes it even more complicating because we have current obligations of which we were told that we’d have to figure out some way of deciding pro rata share. Therefore we can’t, we can’t obligate those deferrals, right, yet because they’re still, still in the suspended animation of deferrals. But moving forward, we have no problem in terms of how we’re going to accommodate this, and I find that kind of contradicting that we have yet to bring into the County coffers some of those obligations that are outstanding. But in terms of moving forward, we’re willing now to sort of bypass that. So, Chair, that’s, that’s my concern about how we’re moving forward, because if moving forward means that we’re going to somehow not be obligated to, to take care of what we have in place then that would be very troubling, troubling for me to, to want to continue to moving forward. But that, that’s my concern is that there are these outstanding and that’s not been made good. And we’re coming to these times where we’re looking for how we’re going to perhaps need to

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manage without the kinds of resources that perhaps we need. But here is a source of revenue to the County that's not been utilized because it's sitting out there in suspension. So, so anyway that's . . . *(laughter)*. . . sort of, I'll defer at this time, Chair.

CHAIR MEDEIROS: Okay. Member Kaho'ohalahala, thank you for raising those points of concern and interest. Director, do you have any comments for the Member?

MR. ARAKAWA: Mr. Chair, as I've mentioned before, all the previous deferral agreements, if, if there is going to be a comprehensive road-widening project along a stretch of road, we intend to collect on those. So this bill does not affect that.

CHAIR MEDEIROS: Okay. Thank you. And, and, Director, as far as subdivision, basically what we're trying to do here is just subdivide out the portion that the County needs for road improvements; the remainder lot still has opportunities to develop whenever the property owner wants to do that; and that deferrals are, they go with the land, right, because they're recorded documents.

MR. ARAKAWA: Any preexisting deferral agreements have, do run with the land. So they are still in effect, and as I mentioned, we, we intend to collect on those.

CHAIR MEDEIROS: Thank you, Director. And, Members, we are running short of time. We do have an afternoon meeting. So, Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman . . . *(laughter)*. . . Mine is really short. When you say nonconforming lots, so whenever a setback is jeopardized, then that lots becomes "nonconforming" when we subdivide out for road improvements?

. . . Frontage setbacks.

MR. ARAKAWA: Let's say you have an existing house, and the front yard setback is 15 feet, and we want to buy, you know, say five feet which leaves a ten-foot wide front yard setback. That would be a nonconforming front yard setback. So, but the house can remain there--

VICE-CHAIR PONTANILLA: Uh-huh.

MR. ARAKAWA: --as long as the owner wants it to remain there. It's just that if he wants to rebuild or add a new portion of the house, the new portion . . . *(change tape, start 3B)*. . .

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chair.

CHAIR MEDEIROS: Okay . . . *(laughter)*. . . Thank you, Member Pontanilla.

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

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CHAIR MEDEIROS: Any, any further discussion or questions? Okay. Seeing none, the Chair would like to give his recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR MEDEIROS: And thank you, Members. And before I give that I, I think the Department and Corp. Counsel has tried to clarify our concerns and so forth, and, and very valid concerns have been raised. But the Chair's recommendation at this time is that the Chair will entertain a motion to recommend passage of the revised proposed bill and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that we move forward A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISION.

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

CHAIR MEDEIROS: It's been moved by Member Pontanilla, seconded by Member Victorino. Any discussion, Members?

. . . Seeing none, the Chair will call for the question. All in favor of the motion, say "aye".

VICE-CHAIR PONTANILLA: Aye.

CHAIR MEDEIROS: All opposed?

*NOTE: Silence.*

COUNCILMEMBER KAHO'OHALAHALA: Chair, I'm opposed. Yeah.

CHAIR MEDEIROS: Okay.

COUNCILMEMBER KAHO'OHALAHALA: At this point.

CHAIR MEDEIROS: So we have four "ayes", one "no", and two "excused". Member Molina?

COUNCILMEMBER MOLINA: Chair, Chair, I want. . .I'll support but with reservations. I want that noted for the record.

CHAIR MEDEIROS: Okay. Thank you. And so noted. So the motion does pass.

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**VOTE: AYES: Councilmembers Molina, Victorino, Vice-Chair Pontanilla, and Chair Medeiros.**

**NOES: Councilmember Kaho'ohalahala.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Baisa and Mateo.**

**MOTION CARRIED.**

**ACTION: Recommending FIRST READING of revised proposed bill and FILING of communication.**

CHAIR MEDEIROS: Members, we are, we have completed our work for the day, and I think, I hope I'm correct to announce this--that normally we have Planning in the afternoon, but there has been a swap and so we'll have Land Use in the afternoon. Is that correct--

COUNCILMEMBER KAHO'OHALAHALA: That's correct.

CHAIR MEDEIROS: --Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Correct, Chair.

CHAIR MEDEIROS: So, Members, be prepared for the Land Use meeting at 1:30. So without further, any further business, Members, thank you for your attendance, and, Staff and Administration, thank you for being here. The meeting of the Infrastructure Management Committee of February 1<sup>st</sup>, 2010 at 12:00 noon is now adjourned. . . .(gavel). . .

**ADJOURN: 12:00 p.m.**

APPROVED:



BILL KAUAKEA MEDEIROS, Chair  
Infrastructure Management Committee

im:min:100201

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 18<sup>th</sup> day of February, 2010, in Pukalani, Hawaii

  
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Daniel Schoenbeck