

# INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

## MINUTES

June 13, 2011

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

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

**PRESENT:** VOTING MEMBERS:

Councilmember Elle Cochran, Chair  
Councilmember Robert Carroll  
Councilmember G. Riki Hokama  
Councilmember Danny A. Mateo  
Councilmember Joseph Pontanilla

NON-VOTING MEMBERS:

Councilmember Gladys C. Baisa

**EXCUSED:** Councilmember Donald G. Couch, Jr.  
Councilmember Michael P. Victorino, Vice-Chair

**STAFF:** Scott Jensen, Legislative Analyst  
Yvette Bouthillier, Committee Secretary

Sarah D. Dyal Freistat, Executive Assistant to Councilmember Cochran

**ADMIN.:** William Spence, Director, Department of Planning  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Rowena M. Dagdag-Andaya, Deputy Director, Department of Public Works  
Lance S. Nakamura, Civil Engineer V, Development Services Administration Division,  
Department of Public Works  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** **Item 4:** Irene Bowie, Executive Director, Maui Tomorrow Foundation  
Others (2)

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

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CHAIR COCHRAN: ...(*gavel*)... Aloha and good morning. Welcome to the Infrastructure Management Committee meeting on June 13, 2011. Aloha, nice to see all the Members. Before we begin, please turn off all cell phones and silence any noise-making devices please. Thank you. And I'd like to introduce the Committee Voting Members here today. We have Mr. Bob Carroll.

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COUNCILMEMBER CARROLL: Good morning.

CHAIR COCHRAN: Good morning. Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Good morning, Chair.

CHAIR COCHRAN: Good morning. And Mr. Danny Mateo, our Council Chair.

COUNCILMEMBER MATEO: Good morning.

CHAIR COCHRAN: Good morning. And our Council Vice-Chair Joe Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR COCHRAN: Excused today will be Don Couch and Michael Victorino. I also have joining us Administration officials, Rowena Dagdag-Andaya from Deputy Director of Public Works. Good morning, Rowena.

MS. DAGDAG-ANDAYA: Good morning.

CHAIR COCHRAN: And Lance Nakamura, Civil Engineer, Development Services Administration. Good morning. And for Deputy Corporation Counsel, we have Michael Hopper. And also our Committee Staff Members, I have Legislative Analyst Scott Jensen and Committee Secretary Yvette Bouthillier. Public testimony will be taken in a few moments. Please sign up at the desk located on the eighth floor lobby just outside our Chamber gallery. And testimonies will be limited to the item listed on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes with one minute to conclude. When testifying, please state your name and the name of any organization you may be representing. Members, without objection, I will now proceed to have the Committee accept testimony on today's item.

COUNCIL MEMBERS: No objections.

CHAIR COCHRAN: Thank you. Staff, please call the first testifier.

MR. JENSEN: Yes, Madam Chair, the first testifier is Irene Bowie, representing Maui Tomorrow, and Ms. Bowie has submitted written testimony as well.

CHAIR COCHRAN: Thank you. Good morning, Ms. Bowie.

*...BEGIN PUBLIC TESTIMONY...*

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MS. BOWIE: Good morning, Chair and Council Members. I, I did submit, it's actually not my testimony, it's from a study that Honolulu did on development on steep terrain, and, and I thought that you would find that interesting. I am here back again I think for the fourth time on trying to move the Slope Side Ordinance forward. We would like to thank Councilmember Victorino for introducing this, and to Chair Cochran for putting it on today's agenda. We hope that we can move forward on this, as a lot of time has passed and the residents of the Wailuku Heights area in particular, and also the West side of Maui, where some development is happening is, are, are very concerned. The history of this goes back to a site inspection of January of last year, when Council Members did go to Wailuku Heights to the driveway of, of a property up above Wailuku Heights that the ridge was topped, and they have a lot of concern for safety factors there. In putting this ordinance together, there's been a lot of looking at ordinances throughout the country and from Honolulu as well. And we modeled our ordinance closely on the Honolulu ordinance. However, we asked for a 25 percent slope for engineering reports to be done rather than the 40 percent slope that Honolulu has. Across the country you'll find that it ranges anywhere from a 15 percent slope all the way up to 25 to 40 percent. And what this does is ask if this ordinance is passed, the Director of Public Works or in Planning, would look at...actually Planning would look at this development plan and if it is a 25 percent slope, they would ask for Engineering Soil Reports, because the concern of this is landslides, like in Honolulu, that's caused lots of damage and death and cost the County of Honolulu millions of dollars. So this really does help to protect the County of Maui and it ensures the residents, not only of the property that's being built, but the people below them that, that, that slope is in fact safe for development. This ordinance would also prohibit development for anything over a 40 percent slope. And what we find in looking at these ordinances across the country not only safety, but community values, view plane, all of those things are taken into consideration. Environmental concerns, this ordinance is also great in that it asks that re-vegetation be put in place. So, in other words, you don't come in and you top a ridge and then you leave it. You work with the, with the contours of the land, you put plants back in that are gonna help hold the soil, and most importantly, you are doing those Soil Engineer Reports that really test for any of the, the clay-like substance that can be underneath the surface and that's what actually starts the landslides moving, so before you'd ever notice. The people in Wailuku Heights, most of them are working folks and couldn't be here today, they did drop off a letter for me, one of the, one of the residents who said that they have noticed the cracking around their foundation, which indicates this kind of movement. I did also speak to the Department of Permitting and Planning in Honolulu. They said that their ordinance has had absolutely no unintended consequences, they feel that it's really been a help for them. I spoke to the president of the Aina Haina Community Association where they actually passed a resolution that they wanted soil reports for anything over a 20 percent slope.

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Because there's been so much development on the ridges above Aina Haina and they in fact had 900 people show up at a council meeting to, to speak in favor of, of this type of ordinance. So again, the people I think in Wailuku Heights have been more than patient, and it's just, it's smart development, smart growth. It's not preventing development on some of these slopes, the 25 percent slopes up to 40 percent, but it's just insuring the safety. So I really, really hope we can move this forward and I thank you for the time to speak today.

CHAIR COCHRAN: Thank you, Ms. Bowie. Any part of the testimony need rephrasing or clarification, Members? Thank you, Ms. Bowie.

MS. BOWIE: Thank you.

CHAIR COCHRAN: And is there anyone else in the gallery who's here to testify? Well seeing none, I will now proceed to close testimony if no objections.

COUNCIL MEMBERS: No objections. (Excused: DC, MV)

CHAIR COCHRAN: Thank you, Members.

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

**ITEM NO. 4: BILL RELATING TO DEVELOPMENT ON STEEP TERRAIN**

CHAIR COCHRAN: I also want to acknowledge that we do have Planning Director Spence, William Spence here in the gallery and also Joe Alueta, who also were called to attend the meeting and, and submit comments on the item we have here today. So today's item is IM-4, a proposed Bill Relating to Development on Steep Terrain. The bill intends to address potential hazards associated with hillside development by requiring an Engineering Slope Hazard Report in specified instances. A similar bill was discussed by previous Council's Infrastructure Management Committee. That Committee dedicated two meetings to the subject, and convened a site inspection in Wailuku Heights. I have asked the Director, we have Public Works and Planning here to review and provide comment on the proposed bill, and I'm grateful for their presence here today. Without further adieu, I would like to turn the floor over to Ms. Dagdag-Andaya to give us some statements and comments in regards to the item. Thank you, Rowena.

MS. DAGDAG-ANDAYA: Thank you Madam Chair. The item before us this morning is a draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO STEEP DEVELOP...TO DEVELOPMENT ON STEEP TERRAIN". This was first introduced in October of 2009. The purpose of the proposed draft bill is to

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require under certain conditions, the submittal of an Engineering Slope Hazard Report with a grading application, grading permit application. And it is modeled after Ordinance No. 04-27, of the City and County of Honolulu. A copy of this ordinance has been provided for your use and reference in our Department's letter dated June 8, 2011, responding to the Committee's letter dated March 26, to...oh, May 26, excuse me, 2011, requesting a written response on the subject matter. The bill pertains to proposed construction including grading affecting drainage patterns within 100 feet of an existing slope greater than 15 feet in height and with a grade steeper than 25 percent or modification to an existing slope with a cut greater than 15 feet in height and a grade steeper than 25 percent but no less than 40 percent. Now while the establishment of a threshold percentage may be a matter of policy, the issue of concern is the geographic scope of the Engineering Slope Hazard Report. Based on the current draft of this bill, the scope of the Engineering Slope Hazard Report extends out to and includes existing slope areas within 100 feet of the graded area, which may pose certain limitations. As noted in our letter, the Department believes that the proposed ordinance may have significant unintended consequences. For example, if the Engineering Slope Hazard Report is required to cover property beyond the graded area, the land may not be owned by the same person doing the grading. The language in the proposed ordinance may also require that the landowner proposing construction, proposing constructing, to pay for an Engineering Slope Hazard Report and also pay for any mitigated measures on the land that he or she doesn't own. Bridge construction, as we discussed in the, in one of our meetings, well, with our Department, is another example that may be affected by this ordinance. If a new bridge is needed to...across a large gulch, grading may be required on or within 100 feet of gulch slopes. In addition to our letter, we have this morning, provided you with photos of several examples of steep slopes taken at various locations. And I believe this was a request that was made at one of the prior previous meetings. The photos reference the location of these slopes and percentages. With me this morning, is Lance Nakamura, engineer with our Development Services Administration. And Lance has been our point person in the Department with regards to this subject matter. In closing, the Department is in support of the concept of the proposed legislation as its primary intent is to provide additional safeguards and address hazards of potential rock movement for areas proposed for grading. And we also, we support any bill that would mimic the City and County of Honolulu's ordinance. Today we'd be glad to answer any questions from the Committee. Thank you.

CHAIR COCHRAN: Thank you, Deputy Director Andaya. And, is Mr. Nakamura gonna have a statement also or just here for questions?

MS. DAGDAG-ANDAYA: He'll be here for questions. He's very knowledgeable about the, the issue as he's come before the, the Committee previously.

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CHAIR COCHRAN: Thank you. Members, first I'd like to recognize Ms. Baisa--

COUNCILMEMBER BAISA: Good morning.

CHAIR COCHRAN: --just joined us. Good morning. And now I will open to the floor for comments, questions from the Members. Mr. Mateo?

COUNCILMEMBER MATEO: Thank you, Madam Chair.

CHAIR COCHRAN: You're welcome.

COUNCILMEMBER MATEO: Ms. Andaya, thank you very much for your comments. So if the Department has specific concerns regarding the unintended consequences of the ordinance as it exist today, is the Department prepared to address the ordinance itself and help us take out this unintended consequence issue?

MS. DAGDAG-ANDAYA: Okay, are we...yes, Chairman Mateo, we, we've reviewed the City and County of Honolulu's ordinance, and that's what we're kind of looking towards with this proposed legislation. There are, in the, the proposed legislation, there's some language in here regarding Section D, of the Engineering Slope Hazard Report, which differs with the City and County of Honolulu's ordinance. And I think, I have Lance Nakamura here who kind of knows the, the differences between the two, the two ordinances or our proposed ordinance as well as their current ordinance. So we can work on the similarities and differences together, which can help us with our proposed Maui ordinance.

COUNCILMEMBER MATEO: Okay. Then perhaps if...what's his name?...perhaps if Lance could share some information regarding what you see in terms of the differences and how our existing ordinance may be, may be weak in terms of not fully addressing those consequences.

MR. NAKAMURA: The, the two primary differences, you know, the Oahu ordinance does not include a requirement of grading within 100 feet. You know and it, it's...when you add this 100 feet in, then you may, you know, start to get some of the unintended consequences because then you include land that may not be under your control. They also don't have an absolute prohibition of issuing permits. You know, you, they have a requirement that when you hit 40 percent, you need to have a report, you need to have it investigated and studied, and, you know, they can include mitigated measures, but they don't say that once you hit a certain percent, you cannot issue a permit. And that, that absolute, you know, prohibition would cause us problems. Like she was saying if, if you wanted to construct a bridge over a gulch and you needed to do grading for the road near the gulch, or even just for the bridge, you know, foundation itself, if, if the slope of that gulch

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is over 40 percent or and, and, and higher than 15 feet, then you cannot do that grading. Essentially you cannot build that bridge, and that's one of the types of concerns that we have when you include the absolute prohibition on it. You know, in, in the Honolulu case, they could just do a report, and they could determine if there are hazards, they could come up with ways to address those hazards, but the project could proceed. In our case, there, there are no exemptions. It would simply be you, you hit this threshold, you cannot issue the permit, and that would, that would be one of the main concerns for me.

COUNCILMEMBER MATEO: Okay so, so the, the recommendation from the Department then would be to take those two specific areas and more or less adopt the language from City and County of Honolulu's ordinance, and, and, replace our existing language with the language from the Oahu ordinance?

MR. NAKAMURA: Yes, something similar to that.

COUNCILMEMBER MATEO: And that would take away some of the consequences that we're, we're looking at the unintended consequences that, that you mentioned in your communication?

MR. NAKAMURA: I, I think it would take a lot of them away. You know the other pretty big difference is, you know, on Oahu, they don't include language that says grading affecting drainage patterns as being I guess the, the criteria for, you know, triggering the report. And, and for me, that statement is very vague from an enforcement standpoint. You know, grading affecting drainage patterns, it sounds simple, but when you really dive into it, you know, what does that mean, you know, and you could have people claiming that any, any...you put a shovel in the ground, it affects the drainage patterns and--

COUNCILMEMBER MATEO: Okay. Okay.

MR. NAKAMURA: --I don't think that's what is intended. And if that is gonna stay, I would ask that that language be clarified.

COUNCILMEMBER MATEO: Thank you. Thank you, Madam Chair.

CHAIR COCHRAN: Okay, thank you, Mr. Mateo. Any further...Mr. Hokama?

COUNCILMEMBER HOKAMA: In, in general, when the State classifies land such as Conservation class, isn't that by a standard anything over 30 percent the State considers automatically Conservation land until reclassified to another category?

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MS. DAGDAG-ANDAYA: Councilmember Hokama, I'm not aware or I'm not sure about that and I think I would ask or defer that to the Planning Department for response.

COUNCILMEMBER HOKAMA: Okay, we can wait for Planning on that. I, I've heard Mr. Nakamura's concerns, so is the Department gonna propose revision language?

MS. DAGDAG-ANDAYA: We can most certainly work with, with Lance and work with the Council Members on proposed language.

COUNCILMEMBER HOKAMA: Uh-huh. 'Cause in, in reviewing some of the photos you've, you've shared with us this morning and this was helpful let me tell you. But, you know, when you mention things like, you know, that Mokuhaul Road in Happy Valley, on the side of that apartments, Mokuhaul Apartments, you got that natural slope that's 50 percent I guess. What would be the concern there regarding how, how this proposed ordinance is, is being...moving?

MR. NAKAMURA: I think if someone were developing on that slope, we would certainly have a concern. I took that...

COUNCILMEMBER HOKAMA: Even I would have one concern, Mr. Nakamura.

MR. NAKAMURA: Yes, we would...everyone would have...that is obviously the type of situation that you would want to address with this ordinance. The reason I took that picture for the Director was that I wanted to highlight that I was more looking at the condo property across the street.

COUNCILMEMBER HOKAMA: Okay.

MR. NAKAMURA: Okay and if you look at that building—

COUNCILMEMBER HOKAMA: Okay.

MR. NAKAMURA: --you would need to do grading for the foundation of that building.

COUNCILMEMBER HOKAMA: Uh-huh.

MR. NAKAMURA: That building is across the street from this slope.

COUNCILMEMBER HOKAMA: Uh-huh.

MR. NAKAMURA: I don't believe that that is your concern, but with, that is within 100 feet, they would need to do grading. This ordinance would say that they cannot



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do grading for that property if, if you were to say that that grading has affect the drainage patterns.

COUNCILMEMBER HOKAMA: Okay. I, I know you talk...and, and in the photo that the Committee has an opportunity to view, you're talking about that green apartment building—

MR. NAKAMURA: Yes, the—

COUNCILMEMBER HOKAMA: --right?

MR. NAKAMURA: --green building--

COUNCILMEMBER HOKAMA: Okay.

MR. NAKAMURA: --across the street—

COUNCILMEMBER HOKAMA: . . .*(Inaudible)*. .

MR. NAKAMURA: --I don't think that is your concern necessarily. Certainly the slope, but not that building.

COUNCILMEMBER HOKAMA: Uh-huh.

MR. NAKAMURA: That building is within a, within 100 feet--

COUNCILMEMBER HOKAMA: Right.

MR. NAKAMURA: --of that slope.

COUNCILMEMBER HOKAMA: Okay. Okay.

MR. NAKAMURA: You know completely across the street, I, I don't think that would be your concern.

COUNCILMEMBER HOKAMA: Okay, okay. Now as, as you read it and, and you showed us a picture of, on the previous page, Papa Avenue, undeveloped parcel near Lihikai School, 50 percent. So if the proposed grading work would make it so that of course more than likely they going do a cut, unless they want to do a post and pier type of unique project. That would...this is what, the natural terrain, this, this current site? This, this wasn't prepped in this manner right? The guy just cut the lot and this is the undeveloped lot?

MR. NAKAMURA: You're, you're looking at the picture with the bus in it?

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COUNCILMEMBER HOKAMA: Yeah.

MR. NAKAMURA: I, I didn't, I don't know if that exist, that slope was created when they did the road or the subdivision, but I'm, I'm guessing it's close to the natural grade. And again, I wasn't taking that picture to illustrate that specific slope, but I, well, well I wanted to show what percentage that slope was—

COUNCILMEMBER HOKAMA: Uh-huh.

MR. NAKAMURA: --at—

COUNCILMEMBER HOKAMA: Uh-huh.

MR. NAKAMURA: --number one.

COUNCILMEMBER HOKAMA: Good.

MR. NAKAMURA: But I also wanted to show the Director that again the home right next door to it, is within 100 feet of that slope and that, that home potentially could not have been developed under this ordinance because it's within 100 feet of that slope.

COUNCILMEMBER HOKAMA: Possibly the road couldn't be developed?

MR. NAKAMURA: Possibly the road also under this current language, and, and again, it all comes down to how you interpret grading affecting, affecting drainage patterns. You know, you, you could easily claim that that has affected drainage patterns.

COUNCILMEMBER HOKAMA: Uh-huh. Uh-huh. Uh-huh. Okay, no, I'm glad you did this visual for us to assist us, Mr. Nakamura. Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Hokama. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. That photo that we just talked about, I, I think the entrance to that particular lot is from the street above, and, and this is part of the back lot. I don't know if you guys went in through...into 6<sup>th</sup> Increment and take a look at some of the other streets. One of the concerns that I have I, I, I note there's, when I look at the one on Papa Avenue 30 percent, there probably are more of those in that particular subdivision. But as, as we talk about older subdivisions, you know, how do we handle the older subdivisions should a property owner wants to build, you know, a home or rebuild his home? You know, I, I look at some of the criterias [*sic*] that we put on our ordinance in

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regards to some of the things that they need to do, you know, it's gonna cost somebody some money, property owners, and when you look at that subdivision, the type of people that live in 6<sup>th</sup> Increment were, you know, basically are plantation people. So now how do we, you know, reduce their costs should they want to rebuild in, in that particular subdivision, and I'm, you know, just guessing some of the homes are probably 50 years old. And, and when new families come in or extended families come in, they look at rebuilding. How do we keep it affordable, you know, is a question for me?

MR. NAKAMURA: You know, and if I could add to that, when, when someone comes in for a grading permit, let's say just to rebuild their home and maybe just to redo the foundation a little bit, you know, this ordinance would then require me to potentially ask them for a topographic survey within 100—

COUNCILMEMBER PONTANILLA: Uh-huh.

MR. NAKAMURA: --plus 150 feet. Because at the time they come in with their plan, I don't know what is one or two lots away, I don't know what the slopes are without them providing that information. And so when you add this 100-foot, you know, requirement, it, it would add to their, their requirement to maybe potentially provide topographic surveys, you know, in, in the surrounding properties again that they don't own, that they would need to get authorization from the next door neighbor, and the neighbors may not be willing to grant that authorization. So they, they're, they may get stuck with not being able to fulfill our requirements and be dependent on some other party that's not involved in their project.

COUNCILMEMBER PONTANILLA: Thank you for that response, and, and that, that's one major concern that I have especially for older subdivisions throughout Maui County should they wanna, you know, rebuild because of families coming back yeah. And how do we keep it affordable without, you know, adding more cost for, I guess remodeling or, or just doing a new building, so thank you for your response.

MS. DAGDAG-ANDAYA: And, Council Vice-Chair, in addition to what I had mentioned this morning about working on proposed language for it, that's something that Corp. Counsel and I had just talked about it before this meeting is to putting in some language into the proposed ordinance that would allow these families to rebuild on the property. So that's one area that we'd like to explore as well.

COUNCILMEMBER PONTANILLA: Good.

MS. DAGDAG-ANDAYA: Yeah.

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COUNCILMEMBER PONTANILLA: Classic example is your dad's home.

MS. DAGDAG-ANDAYA: Oh.

COUNCILMEMBER PONTANILLA: The driveway.

MS. DAGDAG-ANDAYA: Right.

COUNCILMEMBER PONTANILLA: It's probably more than 40 feet, 40 degrees or whatever, oh, 40 percent.

MS. DAGDAG-ANDAYA: Uh-huh.

COUNCILMEMBER PONTANILLA: It, it's steep. Thank you.

CHAIR COCHRAN: Thank you, Mr. Pontanilla. Any further questions or comments?  
Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair, and thank you very much for the courtesy because I'm not a voting Member of this Committee. However, I'm very concerned about the subject. And I have a question. It's...and I may, may not have...I may have missed something before I got here, but in regards to this letter, June 8, from Mr. Goode, in the second paragraph, he says if the primary intent of this ordinance is to address hazards posed by potential rock movement on steep slopes during development. Is it true that that is the primary intent of this ordinance? Because it appeared to me that there were quite a few reasons why this ordinance has been proposed. And a lot of it, of course, has had to do with what we've seen happen on the hill behind us. Recently, you know, with Wailuku Heights, and with the concerns that were brought to us by people about water and drainage coming down onto their property, and so I think it's more than just possible rock movement. Can somebody answer that?

CHAIR COCHRAN: Department?

MR. NAKAMURA: The, the grading ordinance does have requirements or, or thresholds to trigger licensed engineers to provide drainage reports, so, you know, there are other aspects to this that are already covered under the current ordinance.

COUNCILMEMBER BAISA: Well you know we, when, when we were making visits up there for other reasons, and that's one of the reasons why we have these pictures today is that we went to take a look. And some of the concerns that people had were about not just that, you know, rocks could come falling down on

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them, but they were worried about a lot of drainage coming onto their property and causing problems. So I just, you know, wanted to be clear that, you know, we're more, more concerned here not just about rocks coming down and we've been very lucky, thank God, about not having too much of that except out in East Maui. But it could happen and, but we do have, seem to have a lot of problem with drainage and people's water getting onto other people's property. So that was just my question. Thank you.

CHAIR COCHRAN: Thank you, Ms. Baisa. Any further questions or comments, Members?

COUNCILMEMBER HOKAMA: Can we have Planning, Chair?

CHAIR COCHRAN: Yes. Okay at this time, I'll call down Planning Directors Spence and Mr. Alueta, and I want to thank Public Works for attending and being here and looking forward to those, the revision, revised language to help us move forward with this. Thank you.

MS. DAGDAG-ANDAYA: Thank you.

CHAIR COCHRAN: Good morning, Director Spence and Mr. Alueta.

MR. SPENCE: Good morning, Madam Chair, Members.

CHAIR COCHRAN: Thanks for being here. Mr. Hokama, you wanted to start questioning?

COUNCILMEMBER HOKAMA: I just would ask if the Director would have some initial comments he might wanna give regarding the proposed ordinance first.

CHAIR COCHRAN: Okay. Mr. Spence?

MR. SPENCE: Okay, thank you, Madam Chair and Members. We did write a letter to the Committee, I hope, it was right at the end of the day so I, I...it's...I'm hoping it got to the Committee Members. Mostly what we do, what our comments were, is we support this, the intent of the ordinance. However we defer pretty much to Public Works because they are the administrators of the Grading Ordinance, and they are the experts in this field. I do...if I could just add a couple of comments. I, I look at the requirements for an NPDES permit. I believe...that's a State permit. That's for an acre. My understanding...the State may have changed it in the last six months or so, but my understanding into that's, that permit is only required if you're grading an acre or more. If you're grading an acre...*(chuckle)*...I mean that's for, you know, particularly in this case, when we're just, when we we're discussing a single-family residence, that's, you know,

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a huge house pad. There's gonna be a lot other things that are gonna be triggering review. Anyway, I see the requirement for an archaeologist report, I'm certainly not opposed to that. I know that Public Work, Works already requires that in cases where there's gonna be significant grading on previously, you know, unaltered slopes. I do share some of the concerns about cost because a lot of...if, if you look in places like Pukalani, some of the, the newer, and I'm talking about the urban district of Pukalani near some of those gulches, you know, you're within 100 feet of the gulch, you know, perhaps some of those homes could not have been built. Some of those homes are, are more on the affordable end. We're talking about condominiums, that kind of thing, some of the duplexes that have been built. So it's not just, you know, it's going to affect the cost of some of those kinds of projects as well. So I, I, you know, I haven't seen the pictures that were circulated, but I share some of the unintended...concerns about unintended consequences.

CHAIR COCHRAN: Thank you, Director Spence. Mr. Hokama?

COUNCILMEMBER HOKAMA: So, so, Director, would your Department also have some areas of the ordinance that you would propose revisions to?

MR. SPENCE: I, I would really defer to Public Works to provide that language. They, they know how those things need to be crafted for their purposes.

COUNCILMEMBER HOKAMA: And I understand, you know, Mr. Pontanilla's concern about the old existing areas that have some slope or terrain issues. As we move forward though, for new project, potential new projects that have yet to come under some kind of entitlement or, or ability to construct and develop, what about those parcels? Should we view those new ones slightly differently?

MR. SPENCE: I'm not entirely familiar with the specific projects that Mr. Pontanilla is speaking of.

COUNCILMEMBER HOKAMA: Well let me, let me take you on one conceptual. When you do project districts with large acreage--

MR. SPENCE: Sure.

COUNCILMEMBER HOKAMA: --you set up, you are able to, the Council was able to, to set up through the ordinance its own standards and guidelines regarding what and how to develop within the project district. So in those areas, you know, for something brand new, would you say, you know, for any, any slope over 60 percent, it will be just non-developable, period.

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MR. SPENCE: There may be cases where that, that should be the case. I think, perhaps along those lines, instead of saying, you know, if these certain things were done there shall, you know, the grading permit shall be denied. Maybe that there should be some additional criteria that...I mean a lot of times things can be mitigated—

COUNCILMEMBER HOKAMA: Uh-huh.

MR. SPENCE: --sometimes they just simply cannot. You know, so again...

COUNCILMEMBER HOKAMA: I, I, you know, we got a picture of, you know, how to mitigate a 45 degree slope, but does that assure me that our Fire Department's equipment can traverse up that 45 degree slope in a reasonable amount of response time if an emergency call out? I don't know.

MR. SPENCE: Yeah, I, I'm sure that the Fire Department have a lot to say about...(chuckle)...they already have a lot to say about, you know, steep driveways.

COUNCILMEMBER HOKAMA: You know part, part of my concern is what is expected of the County in response after we do, we, we give all these approvals.

MR. SPENCE: Uh-huh.

COUNCILMEMBER HOKAMA: You know, I mean, we already know that some of our equipment cannot traverse through all the bridges going to Hana at fully, full capacity.

MR. SPENCE: Yeah.

COUNCILMEMBER HOKAMA: They're overweight, they're too long, they're too wide. So it concerns me that the ability also from another point of view, the County's responsibility and again, more than likely we're gonna be blamed for not responding, and maybe it's because our equipment couldn't make that grade that we gave a driveway permit approval for.

MR. SPENCE: Yeah. I think if there's, if there is...well I can think of some really steep driveways too.

COUNCILMEMBER HOKAMA: So can I.

MR. SPENCE: ...(Chuckle)... At least most of the driveways I'm thinking of are pretty old. The, I don't, I'm not familiar with what the Fire Department does and does not review as far as driveways goes, but I would think if it was, if it was...if they

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needed to get a truck up that road, that they're gonna, they're gonna have something to say in review of those plans, I'm guessing.

COUNCILMEMBER HOKAMA: I'm, I'm just trying to see how we can make it better. Okay, I understand what is existing and how we might need to work around existing situations, but I would hope we were smart enough to know to avoid some of these unwanted situations—

MR. SPENCE: Right.

COUNCILMEMBER HOKAMA: --for future development—

MR. SPENCE: Right.

COUNCILMEMBER HOKAMA: --and that's what I'm also looking for.

MR. SPENCE: I agree.

COUNCILMEMBER HOKAMA: Thank you, Chair.

CHAIR COCHRAN: Thank you. Mr. Hokama, you did have another question though yeah, about the 30 percent or more land use question?

COUNCILMEMBER HOKAMA: Yeah, Director, you know, in generally, State classification, is anything over 30 percent or 45 percent automatically considered by State to be Conservation?

MR. SPENCE: I'm...

COUNCILMEMBER HOKAMA: Unless it's classified another category?

MR. SPENCE: I'm not familiar that that is the case, 'cause I can think of a lot of gulches in the Ag district that are still Ag or some even in the Urban district. I think it was that, I think when they first did the district—

COUNCILMEMBER HOKAMA: You know, in the late '60s, I think when the Land Use did, you know—

MR. SPENCE: Yes.

COUNCILMEMBER HOKAMA: --Statewide classification, they had to use some type—

MR. SPENCE: Yes.



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COUNCILMEMBER HOKAMA: --of, you know, parameters or what, and I think that at that time it was okay for land now, let's do anything over 30 percent automatically goes to Conservation unless, until we reclassify. But, you know, and that was part of how, how you would consider applying for CDUAs and go to DLNR, 'cause you had more than a 30 degree slope so you know you had to go get the CDUA permit for certain types of activities in Conservation district.

MR. SPENCE: Well, I, I was headed in the same direction as you're commenting. That when the districts were first created I think that's one of the things they considered is if...but in, perhaps in a larger area, area that has a lot of steep grades. Iao Valley, you know, you know, the hills up above Maalaea, you know, those things were classified Conservation partially because of their grades. As an automatic, I'm, I'm not, I'm not aware of that provision.

COUNCILMEMBER HOKAMA: Okay. Okay, good, good. No again, 'cause eventually, I'm gonna, you know, we're gonna need to work hard in Ms. Baisa's Committee and, you know--

MR. SPENCE: Sure.

COUNCILMEMBER HOKAMA: --some of these things will be kind overlapping or overflowing into her Committee's work. So I'm...

MR. SPENCE: In the meantime, I can ask some questions elsewhere.

COUNCILMEMBER HOKAMA: Thank you. I would appreciate it. Thank you.

CHAIR COCHRAN: Okay, thank you, Mr. Hokama and Mr. Spence. Any further questions for Director Spence, Members?

CHAIR COCHRAN: Yes, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Just a fast question. You know, when developments come in for approvals, it goes through the various departments. I guess you guys do your review looking at slopes, grades, drainage. And if, if there's a question in regards to slopes, what we discussing now, and if we do come out with an ordinance that tell us, you know, the, the slope or grade requirements and if it's bigger than that, does that permit goes forward to the Planning Commission for review or it's held back by the departments?

MR. SPENCE: Thank you, Mr. Pontanilla. The, I think, the, the purpose of this ordinance is for ministerial permits. When people come in for Change in Zoning before this body, or when they go for SMA permits, which do go to the Planning

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Commission, you know, there's, there's going to be some review of those things anyway. The, the applicants will give, you know, an overview, a presentation and, and if they don't initially cover, you know, the slopes, usually one of the members will ask about it and it's addressed in that manner. What this ordinance would affect would be those things that are, that are outside of the SMA or previously have zoning or are, you know, perhaps in the Ag district up in Haiku or Kula somewhere where, where you would have some steep slopes. Things that would never, would not come before the Commission or this body.

COUNCILMEMBER PONTANILLA: Okay, thank you. Because, yeah, sometimes we review plans like that yeah, but what we don't see is probably elevations and, and—

MR. SPENCE: Yeah.

COUNCILMEMBER PONTANILLA: --you know, the like, and all we see is a map that, you know, with lines and that's it so.

MR. SPENCE: Yeah.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR COCHRAN: Thank you, Mr. Pontanilla. Any further questions or comments, Members? Seeing none, I just want to thank everyone for being here, and, you know, sharing their manao on this. I can tell we do have some work to be done with this. Unfortunately, Mr. Victorino, who did do the referral, is not present, so I would, of course, like him to chime in and, you know, put his input when he returns. So at this point...

COUNCILMEMBER HOKAMA: Chair, can I ask one question?

CHAIR COCHRAN: Sure. Mr. Hokama?

COUNCILMEMBER HOKAMA: I don't know if it's for Public Works or Planning or both or even Corporate Counsel or Corporation. How do we reach this, the, the 15 feet number regarding the height? Anything greater than 15 feet in height or grade steeper than 45, I mean, does someone have some background on how we came to use those as the line between permit or deny, maze our magic, magic thing of 15 feet, Mr. Hopper?

MR. HOPPER: Thank you, Madam Chair. I don't, I wasn't involved in the drafting of this ordinance, but I do see, just as a note, it looks like the City and County of Honolulu's ordinance does say that the proposed grading includes modifications to an existing slope with a cut greater than 15 feet in height. So that may have

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been the basis that the Honolulu ordinance does have that 15 foot height built into it. Of course it also says you have to have a slope and a grade steeper than 40 percent in order to even require the report. But I think 15 feet in height is referenced in Honolulu. Now as to whether or not that was the basis for the draft ordinance, I'm not sure, but just to note that it is the same in Honolulu as far as 15 foot height.

COUNCILMEMBER HOKAMA: Uh-huh. So, so conceptually, 10 foot high 40 foot degree slope wouldn't be under this review, neither would a, you know, the reverse, right, 15 foot or 20 foot, but less than 10 percent slope wouldn't come under this?

MR. HOPPER: Yeah. I mean the criteria would state in the, the draft ordinance would be an existing slope, it has to be actually grading affecting drainage patterns within 100 feet of an existing slope, and that slope needs to be greater than 15 feet in height and with a grade steeper than 25 percent or not, or not more than 40 percent. So you, you would need to, it says have a...of an existing slope greater than 15 feet in height, so that, that is part of the draft ordinance as it's stated here unless Public Works can correct me, but that, that's how I'm reading it.

COUNCILMEMBER HOKAMA: No, 'cause I, I am trying to understand if we move this forward 'cause Council already has another consideration before it in our August meeting, so I'm just trying to make sense of all this proposals and, and things that's before the body. So thank you very much, gentlemen. Thank you.

CHAIR COCHRAN: Okay. Thank you, Mr. Hokama. And, you know, as far as I know I was not here from the past sessions with this item, but, it's, we're trying to protect our down slope residents too with this.

COUNCILMEMBER HOKAMA: Uh-huh.

CHAIR COCHRAN: Oahu, as we see in the headline news, some tragedies have occurred and we just don't want to have anything of that nature happen here as development tends to creep further and further up hillside. So I think again, we, we do have a lot of work to be done. It's going to cross over to Mrs. Baisa's Committee, so I guess we'll, we'll put our heads together and figure out the best solution here to protect life and property, and also as Mr. Pontanilla's concern, cost, right, for people who would like to do add-ons and what have you on existing properties. So with no further questions or comments here, I'll just say without objection, the Committee would like to defer this item.

COUNCIL MEMBERS: No objections. (Excused: DC, MV)

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**ACTION: DEFER pending further discussion.**

CHAIR COCHRAN: Thank you. And I guess with no further business scheduled, this meeting is adjourned. . . .(gavel). . .

**ADJOURN:** 9:48 a.m.

APPROVED:



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ELLE COCHRAN, Chair  
Infrastructure Management Committee

im:min:110613:sjr

Transcribed by: Sandra J. Roman

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CERTIFICATE

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

DATED this 5th day of July 2011, in Wailuku, Hawaii.



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SANDRA J. ROMAN