

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

June 27, 2011

Council Chamber

CONVENE: 1:33 p.m.

PRESENT: Councilmember Donald G. Couch, Jr., Chair
Councilmember Elle Cochran
Councilmember Danny A. Mateo
Councilmember Michael P. Victorino
Councilmember Mike White

EXCUSED: Councilmember Gladys C. Baisa, Vice-Chair
Councilmember Joseph Pontanilla

STAFF: Kimberley Willenbrink, Legislative Analyst
Clarita Balala, Committee Secretary

ADMIN.: William Spence, Director, Department of Planning
Kathleen Kern, Planner, Department of Planning (Item No. 47)
Danilo F. Agsalog, Director, Department of Finance (Item No. 47)
Michael J. Hopper, Deputy Corporation Counsel, Department of the
Corporation Counsel

Seated in the gallery:

David C. Goode, Director, Department of Public Works (Item No. 47)
Michael King, Geographic Information System Analyst, Department
of Planning (Item No. 47)

OTHERS: (2) additional attendees

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

CHAIR COUCH: . . .(*gavel*). . . Good afternoon, it is June 22nd...27th, 2011 and it is a little after 1:30 p.m. This is the Maui County Council Planning Committee meeting. It's come to order. I'd...before we get going I want to remind everybody to turn their cell phones on stun and other noisemaking devices, turn them off please. And I would like to welcome the Members of this Committee, starting from my left, Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR COUCH: Council Chair Danny Mateo.

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COUNCILMEMBER MATEO: Good afternoon, Chair.

CHAIR COUCH: Councilmember Michael Victorino.

COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

CHAIR COUCH: And Councilmember Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COUCH: Excused are Councilmember Gladys Baisa, except for the fact she is watching on TV, she's hanging out, trying to recover and she will be watching on TV, and probably giving us feedback via text, I'm sure. And Councilmember Pontanilla is excused as well. We have non-voting Members who are not here so we will pass on that. From the Administration I want to welcome Will Spence, the Planning Director.

MR. SPENCE: Good afternoon, Mr. Chairman.

CHAIR COUCH: And Michael Hopper, Deputy Corporation Counsel.

MR. HOPPER: Good afternoon, Chair.

CHAIR COUCH: And, you know, I didn't know your last name and I was just introduced, I was introduced by your first name. From Planning Department is...

MS. KERN: Kathleen Kern, Senior Planner.

CHAIR COUCH: Kathleen Kern, she's one of the Planning Planners. And the Committee Staff Legislative Analyst Kim Willenbrink.

MS. WILLENBRINK: Good afternoon.

CHAIR COUCH: And Committee Secretary Clarita Balala. Alright, we are about ready to start public testimony. Staff, is anybody signed up for testimony? Anybody willing to testify? Without objection, I'd like to close testimony at this meeting.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay, no public testimony. Let's get right to it.

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ITEM NO. 15: SOLAR ENERGY FACILITIES AS PERMITTED USES IN THE AGRICULTURAL ZONING DISTRICT (MISC./C.C. No. 09-247)

CHAIR COUCH: Our agenda item number one is Planning Committee Item No. 15, Solar Energy Facilities as Permitted Uses in the Agricultural Zoning District. On April 15th, 2011 the Council passed Bill No. 17 entitled “A Bill for an Ordinance to Establish Solar Energy Facilities as Permitted Uses in the Agricultural Zoning District”. The bill was enacted by this Council as Ordinance No. 3824 (2011). We did not file this communication to put this thing to bed yet because there are some pending State legislation that is happening as we speak. The Senate Bill No. 631, Senate Draft 1, House Draft 1, Conference Draft 1 was passed into law, was a bill that was passed, it has not been signed into law, and today is the last day the Governor can veto it and he has not indicated it, that it would be vetoed. And that law essentially spans our ordinance. We were, we discussed for a while with the help of Staff and, and the Committee, to allow our ordinance to be a little bit more flexible should the State open up their, their lands for solar energy facilities on ag land, and they did. They said that this bill...should become law today, permit solar energy facilities on land with soil productivity rating class of B and C as well, provided, that they occupy no more than 10 percent of the acreage or 20 acres, whichever is less. So that’s a little bit more restrictive than ours, which we said that 35 percent of the lot, less than 15 acres. So our restrictions are that the, the compatible uses must remain the same. The, the use must be the same, the agricultural use must be the same as what it was before, so therefore, what that means is you can’t take a cabbage, a big cabbage patch and turn it into a pasture and then put solar facilities on top of that. So the, the idea today is just a quick discussion on that. I’m going to open the floor for discussion and then I would like to file County Communication No. 09-247.

COUNCILMEMBER VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. So with that in mind and since ours, specifically, kept the rating at classified D and E, right, our bill?

CHAIR COUCH: Our bill said anything that the State, any ag land...

COUNCILMEMBER VICTORINO: Except, and we added, we could then, would be productive in classes D and E may not be compatible for existing agriculture.

CHAIR COUCH: Correct.

COUNCILMEMBER VICTORINO: Right?

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CHAIR COUCH: Correct.

COUNCILMEMBER VICTORINO: Okay, no, no, I just wanna...and ours said 35 percent of or not less than 15 acres, right?

CHAIR COUCH: No, or not more than 15 acres.

COUNCILMEMBER VICTORINO: No, it says over here not less than 15 acres occupied no more than 35 percent of the lot.

CHAIR COUCH: Correct, correct.

COUNCILMEMBER VICTORINO: I am reading right off this, Mr. Chair.

CHAIR COUCH: Correct, correct.

COUNCILMEMBER VICTORINO: So if you're telling me no, I'm like, I'm, I'm in trouble already. Okay, so I just want to make sure because to concur with the State.

MS. WILLENBRINK: Excuse me, Chair?

CHAIR COUCH: Oh, pardon?

MS. WILLENBRINK: Actually, Councilmember Victorino, if you want to look back at that it says that are less than 15 acres.

COUNCILMEMBER VICTORINO: That are less than 15 acres, that's what I said.

MS. WILLENBRINK: Right, okay.

COUNCILMEMBER VICTORINO: Yeah.

MS. WILLENBRINK: Just clarify that.

COUNCILMEMBER VICTORINO: Yeah. And occupying no more than 35 percent of that lot.

CHAIR COUCH: Correct.

COUNCILMEMBER VICTORINO: Of the lot, yeah?

MS. WILLENBRINK: Yes.

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COUNCILMEMBER VICTORINO: I'm reading right off of here. You know so, again I apologize if it, if it didn't come out the way it is supposed to have come out, and then the State has on...going up to B, right, and not more than 10 percent.

CHAIR COUCH: Correct.

COUNCILMEMBER VICTORINO: So my question to Corporation Counsel because we have two differing percentages --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER VICTORINO: --and they're widely difference, which would be applicable? Because now people are gonna have this conflict right away, 10 percent, 35 percent, so which is applicable? Which is the standard that we need to make sure that people understand they've got to follow?

CHAIR COUCH: Mr. Hopper?

MR. HOPPER: Yeah, I was just thinking, Mr. Chair, as is the case with situations where you have both a State District and a County zoning district, assuming a given parcel is both State Agriculture and County Agriculture, the, the landowner would have to comply with the most restrictive of the two. So if the State would limit to 10 percent for 20 acres and that was less than what the County would allow which obviously the County says that...and again this is for B and C on the State level only as well. So if you're B or C on State, you cannot occupy more than 10 percent of the acreage of the parcel or 20 acres, which is lesser. The County says that the facility has to be on an area that's, let's see, so the facility itself has to be less than 15 acres, so I mean, it would depend on what the size of the parcel is. You're talking about 15 acres, 10 percent or 20 acres in a given case, whichever is the, the, the most restrictive, the landowner would have to comply for. The logic, comply with, the logic being that, you know, there's a State and County law that applies, the landowner would have to comply with both of those laws; otherwise, if they violate one or the other, they would, they could be subject to a violation at the State or the County level. The County is allowed to be more restrictive than the State in certain cases, but if it's less restrictive, still the, the, the State law would apply in that case. So whichever is the most restrictive would be the answer.

COUNCILMEMBER VICTORINO: So if you have D and E lands, ours be...our ordinance then would be able to be applied?

MR. HOPPER: Yes, the, the 15 acre limit would be more restrictive than the State because the State wouldn't have any limit in that case.

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COUNCILMEMBER VICTORINO: Yeah, and that 35 percent, right?

MR. HOPPER: Yes.

COUNCILMEMBER VICTORINO: Okay. So, so just as the public understands, because I have had calls already on that, so I just wanted the public to understand what the two differences mean and how they are applied. And so thank you, Corporation Counsel, for that explanation.

CHAIR COUCH: Thank you, Mr. Victorino. Anybody else? Mr. Mateo, Chair Mateo?

COUNCILMEMBER MATEO: Thank, thank you, Mr. Chairman. Mr. Hopper, which would supersede which? County, County law or the bill that we're looking at or an existing State ordinance?

MR. HOPPER: Given that the most restrictive would apply, they...neither one supersedes the other, they both apply. So in the County district if you have certain areas where it says adds additional restrictions to the State law, then you would need to apply...you would need to comply with both of them, the landowner would. So, I don't think it would be proper or accurate to say that one would supersede the other, the landowner actually has to comply with both of them, and I think they can be read consistently because, you know, if, if one...you can meet both of them basically. So you would have to be less than 15 acres but also less than 10 percent of the land, you would have to comply with both. So it's obviously possible for a landowner to have a facility that's both less than 15 acres, no more than 35 percent of the lot and then obviously less than 10 percent of the acreage of the parcel. So if you're less than 10 percent, you would obviously be less than 35 percent of the lot, so that person would be in compliance. So, if, if a landowner was in the B, B and C category, they would have to occupy no more than 10 percent of the acreage or 20 acres, whichever is lesser, and also follow the County requirements as well. In addition, if that person was not using D or E land, if they were on B or C for example, under the County law, that person would also need to make sure that they were compatible with existing agriculture uses, which is again not a direct requirement of this new State law that I'm seeing but is a County law. This issue comes up fairly often in...because we have a County zoning ordinance this 19.330A that deals with County Agricultural zoning and in some cases it can be more restrictive than the State agricultural law. I've been in discussions with Corporation Counsel on the Big Island and others about the issue, can the County be more restrictive than the State, and we've concluded, concluded that yes they can. There's actually some State Administrative Rules on that subject, and I do believe that the County is, is okay with being more restrictive than the State standards in this case.

COUNCILMEMBER MATEO: Thank you. Thank you, Mr. Chairman.

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CHAIR COUCH: Thank you, Mr. Mateo. Members, any other questions? If not, I have one, a couple actually. A comment to remind the public and the Members that Classification A still is not allowable without a Special Use Permit at this point, so for everybody out there, Classification A...Soil Classification A is still a special case, which brings the question to Mr. Hopper or to Mr. Spence. I know the Planning Department is the keeper of the book of this land classifications, although it's a State classification. What if things happen to this ag land because of the way, you know, the changes in climate or the changes in use of the lands or, or what not? Can a person, a, a landowner change the classification, get a petition for a change of the classification and if so, how?

MR. SPENCE: Thank you, Mr. Chairman. The short answer is I don't know how somebody would change their classification, and I am not familiar with any set-up process to do so. The soil classifications were established in the '60s when the State went around the, the...went around the State and looked at different agricultural conditions including the depth of the soil, how rocky it is, machinability, you know, in other words, can you get a tractor over it and without busting up the tractor, availability of water, all of those different kind of things. And then, accordingly they rated the land, according to how easy it is to farm and, and how productive that soil should be. The...they came up with this, with this book, it's...the book, it's very rare anymore, we happen to have, I think, one in the office, and it has a lot of maps and it rates all over the islands, our islands on what the productivity rating is, rated A through E, E being the lowest, A being just absolutely the best. And to my knowledge, those have not been updated since they were first established. It...perhaps it is a time for the, the State to reevaluate since we have had some changing conditions. I am completely unaware of any effort or initiative by the State to do so. I can find out and report back to the Committee if the Committee wishes.

CHAIR COUCH: I would, would appreciate that, and would you require an official letter from us?

MR. SPENCE: That would be great.

CHAIR COUCH: Okay, Staff.

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes?

COUNCILMEMBER COCHRAN: I wanted to follow up --

CHAIR COUCH: Member Cochran?

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COUNCIL MEMBER COCHRAN: --with a question to Director Spence about that soil classification.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: Will, will we not be addressing that in the General Plan update, is there a soil layer or whatever there?

MR. SPENCE: Perhaps indirectly, I mean because this is a State book. It's a State, you know, effort to classify the value of different soils within this, you know, on each one of the islands. We won't be addressing that directly with, in the Maui Island Plan. We may be addressing IAL which is Important Ag Lands but not the particular ratings, per se.

COUNCILMEMBER COCHRAN: Okay, thank you, Director. Thank you, Chair.

CHAIR COUCH: Thank you, Member Cochran. Any other comments from the Members? If there's no further discussion, I'll entertain a motion to recommend the filing of County Communication No. 09-247.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: It's been moved by Member Victorino and a second from Councilmember White to file County Communication No. 09-247. Is there any discussion? All in favor say "aye".

COUNCIL MEMBERS: "Aye".

CHAIR COUCH: Opposed? Let the record show there's five "ayes" and zero "noes", and two excused.

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VOTE: AYES: Chair Couch, and Councilmembers Cochran, Mateo, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Baisa and Councilmember Pontanilla.

MOTION CARRIED.

ACTION: Recommending FILING of communication.

CHAIR COUCH: Thank you, Members.

ITEM NO. 47: TRAFFIC IMPACT FEES (MISC./C.C. No. 06-276)

CHAIR COUCH: On to Item No. 47. I'll give you a second to change your binders if you need to. I know I do. Okay, agenda item No. 2 is PC-47, Traffic Impact Fees. Note that there are ten bills on today's agenda, three of which passed first reading in 2006. Today's intention is to begin discussion on the matter of traffic impact fees and possibly file some of these proposed bills. Instead of me giving a brief history of the traffic impact fees, I would like to see if the Planning Director or Staff can give us a history and see where we are today.

MR. SPENCE: Okay. Thank you, Mr. Direct...or, Mr. Chairman. I have with me today a Senior Staff Planner Kathleen Kern. She has been involved with the traffic impact fee studies and ordinance since its inception. I think she is the most qualified person on my staff to, you know, inform the Committee on, on the history and the current status and what issues are before us. So, Kathleen?

CHAIR COUCH: Okay, before I do that--sorry for interrupting--I'd like to recognize the presence of the Finance Director, Danny Agsalog, and the Director of Public Works, David Goode, who's in the audience and ready for questions as well. Okay, Kathleen, thanks.

MS. KERN: Thank you, Mr. Chairman. We are currently doing a second Traffic Impact Fee Study with consultants Wilbur Smith and Associates along with Belt Collins. There was an earlier Traffic Impact Fee Study done in 2005-2007 by KAKU Associates along with HNTB, and that report was brought to County Council in 2007. My...I was not with the County at that point in time, but my understanding

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is that report was essentially tabled, as there was some issues with report according to Council and according to some directors of some of the other departments. The major issue being that the study did not include an analysis of transit as part of the travel demand model, and as well as part of the traffic...of the future improvement projects that would help alleviate some of the travel demand issues. So the current study that is underway is about three-quarters of the way done. It's...we've been working on it since September 2009. We are hoping that the study can be completed by September or October of this year and that we can bring the new study to Council later in the fall.

CHAIR COUCH: Okay.

MS. KERN: If you have any direct questions, I'd be happy to answer them.

CHAIR COUCH: Thank you.

MS. KERN: Sure.

CHAIR COUCH: And, and, Corp. Counsel Hopper?

MR. HOPPER: And I would also--thank you, Mr. Chair--just update along with that. The Department's requested kind of a revamping of the traffic impact fee ordinances that will involve the repeal of all of the existing sections on the traffic impact fee ordinances and basically consolidation into one ordinance. Right now, we have several ordinances for different aspects of the proposed impact fees that deal with each community plan areas. The request that I have, that I am working on now is to basically consolidate into a new ordinance. I've done a fair amount of drafting on that and we would be able to bring that. I think that would come before you as a matter of when the study is completed and the Department's ready to actually adopt something. So just as an update, I am working on that at the request of the Department. We are progressing along those lines and that's another aspect of the drafting, just as an update to you.

CHAIR COUCH: Okay, thank you, Mr. Hopper. Members, Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. I guess the question I have because this has been around as long as I have been around and if I'm not mistaken, this traffic impact studies started back somewhere back in 1988 or something like that, way back when and that's continually progressed with another study and another study and another study. And we got to get to a point where we stop studying and really do something, and I think we said that six years ago when...or five years ago when I first came on this Council. That was what we, we wanted to get actually get our fingers and get our teeth into it and let's move on it, but again as we see we're back to almost square one again because

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you got to do another study. My question, how long will this study take or how long before we can be reasonably assured that we'll get some kind of factual numbers that we can really, like I said earlier, get our teeth into it and do some real work in it? You're the expert, that's what they told me.

MS. KERN: Thank you, Councilmember Victorino. The study that we have Wilbur Smith and Associates along with Belt Collins working on should be ready for your review later in the fall. It will include not only an analysis of other jurisdictions and what other jurisdictions do, but more importantly, a travel demand study based on current data and future projections going to 2020 and 2035 as to what will be necessary traffic improvements based on new growth which is based on land use forecast information that Belt Collins has worked on. And the study will also include proposals for potential ways to organize it or structure the traffic impact fee, rather than the consultants or the Planning Department on providing you with one option, we would like to provide you with two or three different options as to how the fee can be structured, and it will also have recommendations for what that fee will be for those different options. So...

COUNCILMEMBER VICTORINO: And I heard Mr. Hopper say that you want to consolidate this under one, not have all these variables that presently exist. Is that correct?

MR. HOPPER: Mr. Chair, just, in one ordinance basically, not saying that they wouldn't have...a part of this requires that the study include benefit zones, for example, and in the original draft, they were organized by community plan area. The State law requires that the impact fees establish something called benefit zones which is to create an area where if impact fees are collected, they have to be spent in that same area and it can be any geographic area. It can be, you could divide the island along whatever lines, but whatever the money is collected in that area, it's got to be used in that area. And I think that can be dealt within one ordinance. Right now there are several different ordinances for each different community plan area on Maui island. Now it could be consolidated. In those separate community plan areas, it could still be mentioned or different benefit zones established, but you wouldn't need to look at one, two, three, four, five, six, seven different ordinances, just what we would have right now.

COUNCILMEMBER VICTORINO: That would be great news, Mr. Chair. I mean if we can have all in one, whether we divide them up by districts or however we come up with, but get it done. And I think that's the key. We've let a lot of development, we've let a lot of things happen over the years and really never got our fair share, and today we're paying the price and we're out there trying to catch up for things that should have been done if we had done something many years ago. But it is what it is, you know, we're at this point, so let's correct it and make sure that we get. And when you said fall, you mean this fall? Okay, no, I've

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heard that too, you know, I've heard the word fall and they meant 2012 fall. No, I'm being facetious right now and I apologize but really you mean this Fall 2011, right?

MS. KERN: Correct.

COUNCILMEMBER VICTORINO: Okay, so long as I am assured of that, I think me and Mr. Mateo gonna be very happy. Thank you.

CHAIR COUCH: Thank you, Mr. Victorino.

COUNCILMEMBER VICTORINO: I know you're next.

CHAIR COUCH: Members, any other comments? Mr., Chair Mateo?

COUNCILMEMBER MATEO: Thank you Mr. Couch. Just for I think my own clarification at this point, Molokai and Lanai, are we exempt from traffic impact fees?

MS. KERN: That's correct. The study only covers the island of Maui.

COUNCILMEMBER MATEO: And I'm gonna go back to Mr. Victorino's original question regarding the need for a new study. The need for the new study, other than what you had indicated before, there was issues of clarification in the ordinance itself. Is there anything specific that you think we need to take a closer look at that was not looked at in prior studies, or is there a general area or a general focus that you thought we need another study on?

MS. KERN: Thank you, Mr. Chairman. In this, the new study we're working as closely as we can with the State Department of Transportation to make sure that the State is happy or pleased with the fact that the travel demand model accounts for all their projects and does not include projects which are not part of their long range transportation plan. So we've had numerous meetings with the State. We in fact had a teleconference last week with members from HDOT, Highways Division, to clarify some of the projects that are on the improvements list. I'm not too sure that the previous study worked so closely with the State as we are right now.

COUNCILMEMBER MATEO: Okay. Does your plan in any way provide any input in terms of this County having a capacity study in conjunction with capacity for our roadways?

MS. KERN: Capacity for County and State roadways, both?

COUNCILMEMBER MATEO: Yeah, yeah.

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MS. KERN: The, the study does do an analysis of existing roadways and tries to analyze which existing roadways are over capacity and what levels of service the different roadways have. So in that sense, yes, it does provide some analysis of capacity.

COUNCILMEMBER MATEO: Okay, so part of that analysis is going to tell us specifically the roadways that needs either expansions or increase in capacity of use of the various roadways based on projected growth?

MS. KERN: Correct.

COUNCILMEMBER MATEO: Okay and this is something that we'll again be taking into consideration the current General Plan that's being, moving forward.

MS. KERN: Yes.

COUNCILMEMBER MATEO: Okay, thank you. Thank you, Mr. Chair.

CHAIR COUCH: Thank you, Chair Mateo. Mr. Spence?

MR. SPENCE: If I could add, Chairman Mateo's comments about the, you know, the currently...General Plan that's being revised and updated. We just had census data come out, so the study is going to include that updated census data and any...our own planners are working on any changes to the land use needs, so what we're going to be presenting to this Committee and to the Council will be the most current.

COUNCILMEMBER MATEO: Thank you. Thank you.

CHAIR COUCH: Thank you, Members. Member Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair, and I'm looking at in our binder the traffic impact fee issues. It was presented to the Council Planning Committee, January 22, 2008. Not sure if you're aware of this study and I was just looking at the concerns at that time during this particular study and hoping or ask, wondering if they are being addressed on this new current study, such as the, you know, the divvying up of the monies between State and County. I know you said you're working closely so that's a good sign. One of the areas, few of the areas of concern was stated, 73 percent of the fees collected would be turned over to the State for State projects. But then Maui County could not be guaranteed, you know, use of that, those funds. So, hopefully we can have like a fair, equitable, you know, disbursement of the funds that are collected, and then that it's going back again, I guess where it's collected, it's supposed to be spent back where it was collected from. So I, hopefully that's being addressed 'cause I think that was

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a big concern during this one study that I can kind of look back on. So just if you folks are aware of these concerns and if they're being addressed in this new study?

MS. KERN: Yes, thank you. We are aware of those concerns and those are some of the things we are trying to address in this new study. The advantage of the new study in including transit as part of the improvement projects that can be money collected for, is that there will be additional monies available to the County to spend, and it can spend it directly on capital improvements for transit which would include not only buses but also bus shelters or possibly a transit center for all of the bus system.

COUNCILMEMBER COCHRAN: Okay, great and also--one more--I guess at the time Mr. Spence had his own company and sent in testimony, it was in regards to maybe exempting churches, non-profits, people of that nature. Is that also being addressed? Are you aware?

MS. KERN: Yes, that will be some of the options we're gonna bring to Council as to whether there are, whether there's types of projects you would like to exempt, for example, whether you would want to exempt churches and affordable housing and non-profit groups.

COUNCILMEMBER COCHRAN: Okay. And one last follow-up, Chair, thank you.

CHAIR COUCH: Sure.

COUNCILMEMBER COCHRAN: Another testifier, Mr. Shibuya, Warren Shibuya--I think a lot of us are, know--had mentioned that he wanted some inputs and rationales from our Finance Department and we do have Mr. Agsalog. So just curious if other entities besides State DOT such as, you know, Mr. Agsalog and other department heads are being brought into the fold of, you know, having comments and I guess input into this study.

MS. KERN: Yes, we've been working with the Department of Public Works and the Department of Transportation as well.

COUNCILMEMBER COCHRAN: Oh, okay, wonderful. Looking forward to it, so...again I'd like to reiterate Mr. Victorino and Mateo's, they've been through this before many times and now that, I'm new but would love to see this move forward so thank you so much. Thank you, Chair.

CHAIR COUCH: Thank you. Members, I do have a couple of questions. Mr. Hopper, you said that there are some old traffic impact fee laws on the books right now, is that correct?

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MR. HOPPER: That's correct, there are existing laws. These ordinances I think are to adopt specific fees in already existing ordinance sections.

CHAIR COUCH: Okay.

MR. HOPPER: So these amend or add to existing ordinances. I think there's seven of them currently. They're in Chapter 14 of the Code.

CHAIR COUCH: Okay. Now in our, on our agenda, there's multiple communications that are basically bills ready to go. Those would be rendered useless at this point with the new ordinance, is that correct?

MR. HOPPER: Mr. Chair, I believe all these bills are to adopt fees that were based on this study that's being questioned now, so yes, I think the plan and I have, I mean these haven't been adopted yet, and the plan, as far as our drafting this new ordinance, was to repeal the existing ordinances and adopt this as one traffic impact fee ordinance. So yes, these would, if the Council goes that way as the Department's recommending, then yes, these ordinances, I wouldn't see any use for the ordinances.

CHAIR COUCH: Now, Members, Bills Nos. 66, 67 and 77 requiring traffic impact fees for South and West Maui were recommitted at the December 19, 2006 meeting in order to pass legislation on all chapters simultaneously. So now, Mr. Hopper, if the other chapter, you know, the other pieces of legislation are rendered moot and your new legislation comes in, would 66, 67 and 77 be necessary?

MR. HOPPER: Mr. Chair, there's a variety of ways you can do this. There may be a way to amend the existing ordinances or to somehow use those, amend them in a way that incorporates the new study. But if the preference is to go with a new ordinance, then yes, I think those would be along the lines of the others, just things that could be filed after the new ordinance was adopted or filed now or at some point. But yes, I mean they're purporting to adopt impact fees based on again this older study that the Department is not satisfied with, so I wouldn't see why someone would, why the Council would pass that if there's a question as to the study that brought the fees to their amounts right now.

CHAIR COUCH: Okay. So, Members, is there any further discussion?

COUNCILMEMBER VICTORINO: No. Recommendation.

CHAIR COUCH: Okay. I would like to recommend that we essentially keep Bill 66 and 67 on the table and the initial Communication No. 06-276 on the agenda, in case we need to compare 66 and 67 with the new ordinance. Sixty-six and 67 are the

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West Maui and South Maui traffic impact fees. Seventy-seven was just a budget amendment for the Fiscal Year 2007 budget so I think it's a moot point.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR COUCH: Yep.

COUNCILMEMBER VICTORINO: I have a question. If we were to file all but those two, would that be easier than say pass these two and then file, I'd like some clarification on that matter?

CHAIR COUCH: Understood. My recommendation would be to file everything but 66 and 67 and the initial communication.

COUNCILMEMBER VICTORINO: Okay, that, it didn't sound that way when you said it so...okay

CHAIR COUCH: So the recommendation would be to file Communication Nos. 07-116, 07-117, 07-185, 07-186, 07-187 and 07-188 and Bill No. 77.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: It's been moved and seconded and might I add there is a correspondence dated June 28, 2007 from the Budget Director that I don't think we need either.

COUNCILMEMBER VICTORINO: Okay.

CHAIR COUCH: You mind if we add that to there?

COUNCILMEMBER WHITE: No objection.

CHAIR COUCH: Okay. It's been moved and seconded that we file those communications and Bill No. 77. Is there any further discussion? All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Okay, "ayes" carry five to zero with two excused.

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VOTE: **AYES:** **Chair Couch, and Councilmembers Cochran, Mateo, Victorino, and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Vice-Chair Baisa and Councilmember Pontanilla.**

MOTION CARRIED.

ACTION: **Recommending FILING of communications No. 07-116, 07-117, 07-185, 07-186, 07-187, and 07-188; and Bill No. 77 (2006).**

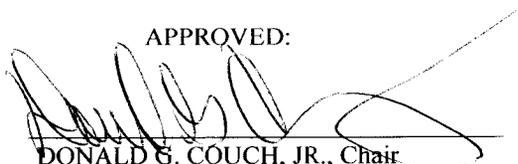
CHAIR COUCH: Members, thank you very much for a pretty good discussion and good status, Staff, from the...on the status of the traffic impact fees. It's important that we know where we are and where we're going. So thank you very much, Members. At this time, without any objections, I'll adjourn the meeting.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Alright. Meeting is adjourned. . . .(*gavel*). . .

ADJOURN: 2:10 p.m.

APPROVED:



DONALD G. COUCH, JR., Chair
Planning Committee

pc:min:110627

Transcribed by: Tursun Bier

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CERTIFICATE

I, Tursun Bier, 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 18th day of July, 2011, in Wailuku, Hawaii



Tursun Bier