

INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

October 3, 2011

Council Chamber, 8th floor

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Elle Cochran, Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember G. Riki Hokama (in 9:02 a.m.)
Councilmember Danny A. Mateo
Councilmember Joseph Pontanilla (in 9:03 a.m.)

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

ADMIN.: David C. Goode, Director, Department of Public Works
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the audience:

Lance Nakamura, Civil Engineer, Development Services Administration, Department of Public Works

OTHERS: Irene Bowie, Executive Director, Maui Tomorrow Foundation
John Blumer-Buell
Michael Silva, Hawaii Society of Professional Engineers
Gordon C. Cockett
Others (3)

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

CHAIR COCHRAN: ...(*gavel*)... Good morning. The Infrastructure Management Committee meeting will now come to order on Monday, October 3, 2011 and it is about 9:01 a.m. Good morning, Members. Before we begin, please turn off any noise-making devices. Thank you. And I will introduce the Members that are present here today, starting with Committee Vice-Chair Michael Victorino.

VICE-CHAIR VICTORINO: Good morning, Madam Chair.

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CHAIR COCHRAN: Good morning. And we have Councilmember Couch.

COUNCILMEMBER COUCH: Good morning.

CHAIR COCHRAN: Good morning. And Council Chair Danny Mateo.

COUNCILMEMBER MATEO: Good morning.

CHAIR COCHRAN: Good morning. And Councilmember Bob Carroll.

COUNCILMEMBER CARROLL: Good morning.

CHAIR COCHRAN: Good morning. And just arriving with us is Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman..

CHAIR COCHRAN: Good morning. And I'll introduce our Administrative Officials. I have present here Director of Public Works David Goode.

MR. GOODE: Good morning.

CHAIR COCHRAN: Good morning. And Deputy Corporation Counsel Michael Hopper. And also the Committee Staff Members which would be Scott Jensen, Legislative Analyst. Good morning, Scott. And Committee Secretary, Yvette Bouthillier. Good morning.

MS. BOUTHILLIER: Good morning.

CHAIR COCHRAN: Members, public testimonies will be taken in a few moments. Anyone wishing to testify please sign up out in the table at the front lobby, and testimony will be limited to the item we have today on the agenda, and you will be given three minutes to testify with one minute to conclude. And when testifying please state your name, any organization or group you may be representing. So, Members, at this point I will now open the floor for testimonies, without objections.

VICE-CHAIR VICTORINO: No objections.

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

MR. JENSEN: Madam Chair, the first testifier is Irene Bowie. She'll be testifying on IM Item 4.

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...BEGIN PUBLIC TESTIMONY...

MS. BOWIE: Thank you.

CHAIR COCHRAN: Good morning, Ms. Bowie.

MS. BOWIE: Good morning, Chair Cochran and Committee Members. My name is Irene Bowie. I'm the Executive Director for Maui Tomorrow Foundation and I'm here to speak in support of IM-4, the bill relating to Development on Steep Terrain. I want to thank Chair Cochran and Councilmember Victorino for their long work on this and also Public Works on the many discussions that have gone on back and forth to bring this bill to the point that it's at today. While we had hoped for a 25 percent slope measurement in this, we, we are happy with the 35 percent because it will move this bill forward and, and, I think, that's the main objective that we all have.

I, I just would mention that, you know, we are now in a La Niña weather pattern. We could go back to a, a rainy winter for all we know. Rains could increase and, I think, you know, from when, when I began working on this bill in 2007 to where we are today in 2011, there is a lot of more development that's gone on and particularly on the West Side. When this started we were mostly concerned with the, the potential building that could happen above Wailuku Heights, but now there's. . .there is significant development on the West Side. And, and also Upcountry, Kula, may really see some things with Kula Ridge coming in and other, other developments that may happen.

I think it's just so timely that we do this now, that we join Honolulu, and join a lot of communities around the country that have these types of ordinances. And I would just mention also that there was an incident during the last month at Makila Lands where a boulder came loose and came down the mountain and people were below and had to get out of the way. So, it's a real danger and that's happening in, in extremely dry weather, so I just hate to think what would happen if we really had some intense weather events and, and continued to build without being very prudent in this way. So, I ask you to, to support this, to vote in favor of it, and we can move it through the Infrastructure Committee. The Erosion Control Plan is good. Drainage and soil reports are so important, and the Engineering Slope Hazard Report is what we really, really ask for. So, thank you very, very much and for hanging in there for such a long time on this.

CHAIR COCHRAN: Thank you, Ms. Bowie. Members, is there any need for clarification from testifier? Seeing none, thank you, Ms. Bowie.

MS. BOWIE: Thank you.

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CHAIR COCHRAN: Next testifier.

MR. JENSEN: Madam Chair, the next testifier is John Blumer-Buell.

CHAIR COCHRAN: Thank you.

MR. BLUMER-BUELL: Aloha, Chair Cochran and Committee Members. My name is John Blumer-Buell from Hana and I'm testifying as an individual on IM-4. Attached are two photos showing the destruction of the culturally important Olopawa Mountain in Hana. This development on steep slope terrain. .this is development on steep terrain at its worst. Please address Olopawa mining operation as part of your bill.

No Environmental Assessment or Environmental Impact Statement has ever been produced for this destructive mining operation. The mining operation has also used hundreds of thousands of public taxpayers' resources. In fact, the County of Maui, Public Works and Environmental Departments approved a fraudulent Environmental Assessment for the County of Maui Hana Landfill Acquisition that should read 2004, not 1994. This was done in spite of my written requests for inclusion of the mining operation in the EA.

The County of Maui did not even have a right of entry to Olopawa Mountain for over 25 years of the illegal mining operation. The County may face millions of dollars of liability in the future.

Following for your information is my July 10th letter to William Aila and he hasn't responded. I'm gonna go to the last page of his letter. . .my letter to him and read this. One of the roads the County has used cinder and soil for was subject to a lawsuit and opinions from former State Attorney General Mark Bennett and former Maui County Corporation Council Brian Moto. That case involving Ulaino Road was Civil No. 07-1-0281(3). The State and the County agreed the State of Hawaii and the County of Maui did not have the right or obligation to maintain the road. The case was dismissed. However, contrary to the State and County legal opinions, the County of Maui continues to use Olopawa cinder and dirt on Ulaino Road and other roads in Hana today. The County of Maui has ignored its own and State of Hawaii legal opinions.

And finally, Olopawa Mountain is the. . .very close to Howard Cooper's little farm at Helani. It's kind of the epicenter of the Miconia problem. You have had the County spreading Miconia seeds all over East Maui for, ever since this has been going on. And this is another issue that I raised in the Environmental Assessment. They never dealt with it but this is still going on and it needs to be dealt with.

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Finally, thanks to. . .I'm sorry that I'm coming in so --

CHAIR COCHRAN: One more minute.

MR. BLUMER-BUELL: --late on this but I hope you can find a way to make the County do an Environmental Assessment. Kau'i Kanaka'ole of the Maui Advisory Committee of the Planning Commission made a motion, which was passed to have the County do a Cultural Assessment which would be very close to an Environmental Assessment in Hana. The County has never done it. They're continuing to operate today and it's wrong. It's costing the taxpayers. . .it has cost them probably millions of dollars. You never see this in your budget for Public Works for the landfill. And finally thank you for taking care of this bill. If, if you feel that this should be taken up by your Policy Committee or added as a new agenda item, that would be fine with me. It sounds like you're ready to pass this, this grading ordinance out of Committee and I wouldn't want to delay it over this so.

CHAIR COCHRAN: Thank you, Mr. Blumer-Buell.

MR. BLUMER-BUELL: Okay, thank you.

CHAIR COCHRAN: Members, any need for clarification from our testifier? Seeing none, thank you, Mr. Blumer-Buell.

MR. BLUMER-BUELL: You're welcome.

CHAIR COCHRAN: Any further testifiers?

MR. JENSEN: Madam Chair, the, the final testifier who has signed up is Michael Silva.

CHAIR COCHRAN: Good morning, Mr. Silva.

MR. SILVA: Good morning, Chair Cochran and Committee Members. My name is Michael Silva. I'm with the Hawaii Society of Professional Engineers, the local Maui Chapter, and we are here to testify on the only item on the agenda this morning, the steep terrain bill. We don't feel that there is a needs for this bill strictly on erosion hazard alone. Every now and then in the news you do hear about large boulders falling into developed areas on Oahu, but that really isn't the case here on Maui. If the goal is more to protect pristine mountainsides then we feel that it would be better addressed with the zoning restriction. But being at the last meeting and knowing that there is a big push to get this through, we did want to provide our technical feedback. . .our technical input on the language going forth here. We really appreciate the. . .that the majority of our comments from the last meeting were incorporated in the bill so thank you for that. The one that

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didn't get through that we are still here to reiterate is the slope percentage that triggers the hazard report and we would still recommend that being over 50 percent. It is standard engineering practice to, to consider an existing slope of 50 percent as being stable. Being that we do represent the professionals that would be writing this hazard report, we feel that anything less than 50 percent would be unnecessary cost for the project owner. Thank you.

CHAIR COCHRAN: Thank you, Mr. Silva. Members, any need for more clarification from our testifier this morning? Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. And thank you, Mr. Silva. We appreciate your comments but the 35 percent that we're looking on, is that a workable as far as you're concerned and your professional group? You know, can we work with that? I, I understand what you'd like and the optimum is to always be where you want to be, but in this case we're compromised from where we started to where we are now. Do you feel that we could work with that percentage figure?

MR. SILVA: Well I could tell you strictly from a technical standpoint that 50 percent on existing slope is considered stable. So, what, what I said in, in, in my testimony was that if it is less it, it, it really isn't necessary to do a report.

VICE-CHAIR VICTORINO: Okay, all right. All right, so, I understand. Thank you, Mr. Silva. I appreciate it. Thank you, Madam Chair.

CHAIR COCHRAN: Thank you, Mr. Victorino. Members, any further? Yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. What about on Oahu? Is...right now they have. . .is there a trigger of 35 percent or is it 50 percent?

MR. SILVA: I'm not exactly sure. I think that the original language might have been modeled after the Oahu bill, but I, I can say that they do have different conditions over there. I mean, we don't have the same island makeup as Oahu. It is an, an older island so it's. . .has more time to, to break down and, and cause more erosion.

COUNCILMEMBER COUCH: That, that's was going to be my question is that, you know, whatever the trigger is on Oahu, apparently it's not working because boulders are falling and, and killing people and that's what we're trying to avoid here. On the other hand, you're saying that, that when. . .if you were to go out and do the report and if it's less than 50 percent your hazard report is going to say there's no hazard? Or are you still going to. . .would the engineers still go in and, and do the required soil work and what not?

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MR. SILVA: I, I would think that from the engineering's liability standpoint they would have to go out and do a report. And again, that would generate the cost and effort to, to make the report. So, it might not just be a one line thing. And, and, and want to address too the Oahu thing with the, with the boulders falling. That might be in, you know, non-developed areas above that, that are falling. I'm not exactly sure if it's because of development. It's just the older, older island falling.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR COCHRAN: Thank you, Mr. Couch. Members, any further discussion? Yes, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Mr. Silva, for being here this morning. Soil condition, does it make a difference?

MR. SILVA: Sure. Yeah, the, the, the 50 percent is. . .it would be the most conservative.

COUNCILMEMBER PONTANILLA: Okay, it does make a difference though?

MR. SILVA: Sure. Yeah, if it's sand or, or rock or clay. But again, sand would be the, the worst case scenario.

COUNCILMEMBER PONTANILLA: I, I got a question that I don't know if you --

CHAIR COCHRAN: Yes, Mr....

COUNCILMEMBER PONTANILLA: --can answer this though. Because of the makeup of the Hawaiian islands--I, I know Oahu probably is 50, 100 years older than Maui--that because of the longevity, you know, I, I guess, wind, rain factors in regards to the mountainside plays a big part in boulders coming down. Any comments to that?

MR. SILVA: That would. . .there is more time for the weathering effect and you also have the vegetation and the trees, you know, going into the earth and breaking up rocks too, so. Again, I don't know. . .I don't actually know that, the, the age difference of the, the islands. I thought it would be more than that but.

COUNCILMEMBER PONTANILLA: Okay, thank you. Thank you, Chairman.

CHAIR COCHRAN: Okay, thank you, Mr. Pontanilla. Members, any further discussion? Seeing none, thank you, Mr. Silva. Staff, any more...?

MR. JENSEN: Madam Chairman, no one else has submitted but it appears...

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CHAIR COCHRAN: I see someone waving around their, their papers. So, I believe, Mr. Gordon Cockett would like to come down and testify, and you can submit your paper later Mr. Cockett. Good morning.

MR. COCKETT: Good morning, Madam Chair and Members of the Committee. My name is Gordon C. Cockett and I speak for myself. I didn't intend to address you this morning, but the previous speaker mentioned two things that concerned me. First, he mentioned professionalism twice or professionals twice. And when you talk about professionals in this situation, I can think. . .I can only think of monetary gain versus welfare of the community and you know where the professionals stand.

The second thing that concerned me was the percentage. Honolulu is not a role model. I don't have to tell you that. You know that as well as I do. They have made so many mistakes on that island that I trust you will not dare to follow any of their recommendations.

Another thing that the previous speaker mentioned was the pristine mountain slopes. To us locals, born and raised here on Maui, the pristine mountain slopes are very, very important to us. We would like to keep those pristine mountain slopes the way they are. And I beg you don't let any development proceed more than your controls. I thank you very much.

CHAIR COCHRAN: Thank you, Mr. Cockett. Members, any need for clarification from the testifier? Seeing none, thank you, Mr. Cockett, for your time. Any. . .anyone else in the gallery care to testify? Seeing none, Members, without objections, I will close testimony.

COUNCIL MEMBERS: No objections.

CHAIR COCHRAN: Thank you.

...END OF PUBLIC TESTIMONY...

ITEM NO. 4: BILL RELATING TO DEVELOPMENT ON STEEP TERRAIN
(C.C. No. 11-23)

CHAIR COCHRAN: So, today, we have a single item on the agenda and it is IM-4, regarding a proposed Bill Relating to Development on Steep Terrain. Today's item relates to legislation intended to address potential hazards associated with hillside development by requiring an Engineering Slope Hazard Report in specified instances. The revised bill before the Committee today reflects several

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meetings. I have with...representatives of the Department of Public Works and the Department with...of Corporation Counsel. This revised bill preserves the requirement of an Engineering Slope Hazard Report while at the same time avoiding some of the unintended consequences of...of our, of previous versions of this legislation.

So I would like to acknowledge the efforts of...Deputy Corporation as well as Director of Public Works, Director and Deputy Directors, in meeting with me to resolve some our differences on this matter. Thank you.

Before we continue our discussion, I would like the, the Director of Public Works to provide any new comments or updated information from his Department. Mr. Goode?

MR. GOODE: Thank you, Madam Chair. Good morning, Members. The bill before you, I believe, answers the fundamental question that was before this Committee for a few years now. It's what type of a report and mitigative measures are needed and when? And the when question, I think, we've answered in this bill.

So, there's three criteria that need to be met for someone to submit this type of report with mitigation measures. One, is, is the slope over 15 feet high? So, it's high enough that if something came down it'd come down with enough velocity or momentum to potentially cause damage. Number two, is the slope steep enough to actually cause something to come down? And we've heard testimony and, and discussion of that... (clear throat)... that slope number has varied all over the map during the course of this discussion. And it's gone from 20 percent, 25 percent to 50 percent. And what you see before you is, is just a compromise. That 35 percent was basically where the Department was feeling more like the 50, and Member Cochran and Staff was feeling more like the 25. So I said, hey, let's just, just cut in half. And then the third criteria that needs to be met is are there either residents or people doing things down below that could potentially get... suffer damages? And so if you meet those three criteria, 15 feet high, you got a slope of 35 percent or more, and there's people down there, then you need to do this report. And the report then will look at the, the type of things we heard already. It's gonna look at the type of soil, the existing conditions... if it's really steep and they see that there's potential damage down below, it's like well what are you gonna do about it? How are you gonna handle this material or what type of fencing or walls need to be built? And, and to our satisfaction if they can't mitigate it very well we're just not gonna give them a permit.

So, we think it does the job that was originally envisioned was a they're working up here, we're down below, and we don't know. We know there's potential for boulders in this area. And so now we'll have the tool to make sure that it's properly investigated, that any mitigative measures if approved are installed

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correctly, and we've done our absolute best to protect the public. So, we're, we're pleased we've gotten this far and we hope we have, have your support. I'm available for questions.

CHAIR COCHRAN: Thank you, Director Goode.

VICE-CHAIR VICTORINO: Chair?

CHAIR COCHRAN: Members, the floor is now open for discussion. Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. And, Mr. Goode, thank you very much. And thank you and your staff, Lance Nakamura, and, and other staff members who have met with me and crafting this bill, you know, and kinda trying to get what I call a reasonable qualitative bill to protect. As you well know, it started from Wailuku Heights, which is an older mountain and, you know, if you're talking age, that mountain is considered one of the older mountains in this State. And so, the concern was there and now it's gone to West Maui, and now Kula, and other areas, so a bill that's going to help all areas in, in, in, in totality, yeah.

The concern that, that I had had are being met, you know, and the biggest one was, you know, people that are living, things. . .entities that are below any kind of development that could cause irreparable harm at a later date. You know, so, if you're going to build like in Wailuku Heights, where that guy wanted to build above, then, you know, we wanted to ensure that nothing comes down. And not only boulders seem. . .we seem to be missing the point. It ain't only boulders. It's landslides, it's flooding, it's other attributable changes in slope that could contribute to other disasters. So, it seems to all contain around boulders, which obviously gets the big news. But if you look in Oahu, a lot of their flooding is, is been caused by development above other areas. So, you know, Kaiser, a number of years back, had major flooding because of a development right above it, and they had graded very poorly and all that mud and everything came right through the hospital itself. I was a patient. I remember that. So, it's not only boulders. I wanted that made perfectly clear. It's landslides, it's flooding, it's other attributable changes to slope that we wanted this bill for. And, I think, overall it addresses most of it. The compromise to 35 percent is fine. We had talked about that and that's fine.

So, Madam Chair, I can, you know, in retrospect looking at everything and the four years that we've been working on this and the people of Wailuku Heights, the coalition, that's been waiting for something to come down, I think, this is a good day for them to finally see some reality, some fruition for all their hard work and their efforts they've put forward.

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So, I want to thank you, Mr. Goode, but I want to also thank your staff because when Lance and, and others have come to me and we've sat down, they've explained things that the lay person and including myself have no idea the application, the process, what this all means, yeah. So, I want to thank you folks for that and I wish, you know, if the public has questions, they should call you guys to get a better understanding of what this all means. And, I think, like you and I have said, there may be a hundred people on this island that have a real understanding of all of this. The rest of us, us or 154,900-plus people left have no concept on what this all means, so. But it is in totality a bill that will protect most property owners below any kind of development before it starts, not after, and that's what, I think, we wanted. So, Mr. Goode, Madam Chair, thank you very much.

CHAIR COCHRAN: Thank you, Mr. Victorino. Members, any further discussion, comments, or questions of Department?

COUNCILMEMBER PONTANILLA: Got one.

CHAIR COCHRAN: Oh, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I, I would presume that the slope would be driveways that going up as well as driveways that's going down?

MR. GOODE: Yeah, it's on any slope that you'll be working in. So, if it's an existing driveway, unless you're redoing the driveway or redoing the home, it might kick in if it's over 35 percent and 15 feet high.

COUNCILMEMBER PONTANILLA: Okay, so, any new development that probably have, you know, this steep downgrade type gotta consider almost like road level type parking unless they meet the grade criteria?

MR. GOODE: Yeah, I think, in general you're probably never going to see a road that's 35 percent. I mean our steepest roads are in the 20 percent range and you have to use concrete anything over 12. So, when you drive up a concrete road, you know you're going up a steep road, but driveways you could have spots, spots within a driveway that maybe approach that, but you're almost getting into four-wheel drive territory.

COUNCILMEMBER PONTANILLA: Yeah, okay. This new ordinance then will take place for those existing developments that have more than 50 percent grade or up to 50 percent grade. How will this ordinance affect those type of lands? I, I know you. . .we've covered, you know, like six increment, seven increment, the older increments.

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MR. GOODE: Right.

COUNCILMEMBER PONTANILLA: So going forward this ordinance will take effect on any new building that's already, you know, being planned or, or subdivisions that, you know, does not meet the 35 percent grade?

MR. GOODE: Right, so any, any work, grading work that's contemplated that meets that criteria would, would trigger this. So, it could be an existing subdivision or a brand new project. So an existing subdivision example might be Kehalani above the highway. You know, they've sloped and terraced there and a lot of the backyards are probably a 2-to-1 slope, which is 50 percent. So, let's say someone in that neighborhood wanted to increase their backyard and go into the slope, they might be triggering this requirement, especially if they go up 15 feet high. So that, you know, there's an occasional case in existing areas, but any new stuff, yeah, we'll look at the overall map and if they're contemplating doing grading work that meets those three criteria, it'll require a report for that area.

COUNCILMEMBER PONTANILLA: Thank you. Thank you for your comments and, yeah, you know, that subdivision above Kehalani. . .oh, Kehalani actually, you know, when you see the backyards, it's all terraced. And, and the reason why I bring it up is that, you know, my daughter lives there, so, you know, the added costs in regards to proper. . .properly attaining the so-called grade levels. Thank you. Thank you, Chairman.

CHAIR COCHRAN: Thank you, Mr. Pontanilla. Members, any further discussion or comments? Mr. Hokama?

COUNCILMEMBER HOKAMA: Besides Public Works, is there other departments that get involved in approving this type of permit? And I just bringing it up, gentlemen, because we adjusted the height for Maui Lani, and I already can tell you that I've, I've been told Public Works, Planning, and Corp. Counsel all has their own version of the law we passed. So, I would hope we get some consistency in application and that everybody uses the same definition and the same understanding of this proposal, 'cause I don't want to go back into litigation again.

CHAIR COCHRAN: Mr. Goode, any comments?

MR. GOODE: Yeah, Madam Chair and Mr. Hokama, in this particular case the, you know, the grading ordinance is, is almost entirely within our Engineering Section of DSA. And I know earlier Mr. Victorino had mentioned the efforts of Mr. Lance Nakamura, who is here in the audience, and I'd like to also extend my mahalos to Lance and the work that he's done with the Council Members. 'Cause it's true, there's only about a hundred people probably that work with this

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ordinance on a day-to-day basis and understand it. The rest of us, myself included, gotta catch up a little bit. But the grading ordinance is solely within that, that division, that section, and there is an exemption for ag, so if you have an ag NRCS plan. . .so there is for the large ag operators. They'll have a plan with NRCS. Most of them aren't working in slopes like this. They stay away from those kinds of slopes generally. So, I guess, in answer to your question, there's a potential that NRCS could look at it, you know, their regulations differently, but for our regs this will be in one section. Consistency is one of the hallmarks of DSA is to try and be extremely consistent with the interpretation of the law, and when we have a new law there will be questions that will arise. Certainly I'm sure the first couple cases more than likely Mr. Nakamura is going to have to go out and take a look at it and he may drag me up there and say what do you think? Is there people down below or not? We may have to make the call but we're always gonna. . .we're going to error on being conservative in that regard.

COUNCILMEMBER HOKAMA: Okay, thank you very much, Director.

CHAIR COCHRAN: Thank you, Mr. Hokama. Members, any further discussion, comments, questions for Department? Okay, well I just want to say also I too concur with Mr. Victorino and your Department's hard work along with Mr. Lance Nakamura in the audience here today in moving this forward and hopefully this is the day. So, thank you, Director.

MR. GOODE: You're welcome.

CHAIR COCHRAN: And at this point, I just want to mention that this has been many years in the making. We discussed this about three months in a row here, and, you know, I think, in addressing one of the comments about there's no incidences like on Oahu here, I'd like this to move forward so we can address that of not happening basically. Most of our low-lying land areas have been developed or spoken for at this point. Now people are moving more mauka. They're heading up towards the, the higher slopes. It's either that or go into the ocean. And so, there needs to be this, this protection there and, and I'm very happy to see that we, we've come to that type of agreement. And hopefully, this. . .the decisions made by the Department, Director, and future Directors will really, really weigh in on the protection of property, you know, and life, you know, of people, the welfare of, of our community versus overriding any type of, you know, monetary gains, I guess, on another person's behalf. So, for me, that's so important to protect our community. So, thank you, again. And at that. . .this point, Members, I shall call for the question. Well, I will...yes?

VICE-CHAIR VICTORINO: We haven't made a motion yet, Madam Chair.

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CHAIR COCHRAN: Oh, okay, yeah. I mean, I meant to, I will entertain a motion to recommend passage --

VICE-CHAIR VICTORINO: Okay, Madam Chair.

CHAIR COCHRAN: --of the revised proposed bill on first reading and filing of this County communication.

VICE-CHAIR VICTORINO: Madam Chair, I make that motion.

COUNCILMEMBER COUCH: Second.

CHAIR COCHRAN: Thank you. Thank you. It's been moved by Mr. Victorino and seconded by Mr. Couch. Members, any further discussions or comments? Yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Ms. . . Madam Chair. Yeah, I wanted to just thank the staff and the Department and everybody for finally getting this done and, and wanted to just say that one of my reasonings for questioning the engineer about Oahu was Oahu's isn't working. So, we have to do something that's better even if it's different terrain, different soils. We need to be more vigilant and more proactive in preventing some of that. . . those incidents from happening. So, I wholly and full wholeheartedly support this bill and hopefully everybody else will join as well. Thank you.

CHAIR COCHRAN: Thank you, Mr. Couch.

VICE-CHAIR VICTORINO: Madam Chair?

CHAIR COCHRAN: Yeah, Mr. Victorino?

VICE-CHAIR VICTORINO: Yeah, real quickly. I too, like I said earlier, support this because first of all this is the step in the right direction. Secondly, we've had no incidents but I pray we never have an incident. You know, it's too late after somebody's hurt or killed. That has never solved the problem. And the third, and more. . . most importantly, I agree with Mr. Hokama's statement that I hope there's some consistency with the departments using this as a guideline. And one of the biggest challenges we have in this County is the different interpretations by various departments on ordinances we bring forward. And that's biggest problem I see with us is interpretation, whether it's you, Mr. Goode, or Mr. Spence or whomever. You know, they take ordinances and then they interpret it and sometimes it's not the interpretation that we had originally or the rationale we had originally brought forward. So, I hope this is a step for you and your Department to ensure that any future development, any changes in the topography of areas like

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Wailuku Heights and West Maui and Kula and all these other areas, that something is done to protect their future of all of those who've lived below, unscathed through many years and all of sudden may be in harm's way. And again, not just boulders but other issues. And I repeat flooding, landslide, other types of issues that occur whenever soil is disturbed. And, of course, the protection of the *iwis* and any other issues that might be in that particular area, yeah. So, Madam Chair, I'm ready to vote whenever you want to call for it. Thank you.

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

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I'll be supporting this ordinance. Just a fast question for Mr. Goode and this does not involve driveways. When we construct roads, like say alongside, good example, Kaupo, because of the mountainside, do we have any guidelines to, I guess, to guide the County in regards to the safe aspect regarding building a road next to a cliff?

MR. GOODE: That's a good question. If it's a private road, not aware of any guidelines other than hopefully the, the engineered plan takes into, safety into account. But if it's a private road, no. I mean, there's a lot of ranch roads for instance, you know, probably that's why they don't want the public traveling on them.

COUNCILMEMBER PONTANILLA: Thank you. And the reason why I bring up that question the last earthquake we had, you know, we had to do some safety measures, yeah, putting up nets and things like that. So, I can see that more and more coming in regards to making sure boulders don't come tumbling down the side of the mountain onto the roadway. So, thank you for your comments. Thank you.

CHAIR COCHRAN: Thank you, Mr. Pontanilla. Yeah, I think, Mr. Carroll, did you have your hand up?

COUNCILMEMBER CARROLL: I would just like to thank you for bringing this up. The safety matters have been a concern ever since I was on the Council and the Planning Commission. And I'm glad that we finally got to this point and I'm ready to vote.

CHAIR COCHRAN: Thank you, Mr. Carroll. Yes, and Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Mr. Pontanilla brought up a, a great point. I guess this is a question for Corp. Counsel. Is this, this ordinance would go into effect if somebody tried to do a, a road on a slope, on the side of a mountain. Is that correct? It's just talking about construction. It doesn't say what kind of construction.

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MR. HOPPER: That, that's correct if, if a grading permit was required. So, the trigger would be a grading permit with those slope requirements.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR COCHRAN: Thank you, Mr. Couch. Members, any further discussion? I just wanted to point out one added thing that we and Department had done. And we added in the wording about subsurface ground movement, which was not originally there, and I'm, I'm just very happy that we, we came up with that little blurb to, to, yeah, put into this. So, at this point, Members, any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR COCHRAN: Any noes? Seeing none, motion carries with--what is that? . . .3, 6—7 ayes and zero noes. . . *(chuckled)* . . .

AUDIENCE: Applause.

CHAIR COCHRAN: With applause from the audience.

VOTE: AYES: Chair Cochran, Vice-Chair Victorino, and Councilmembers Carroll, Couch, Hokama, Mateo and Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FIRST READING of revised bill; and FILING of communication.

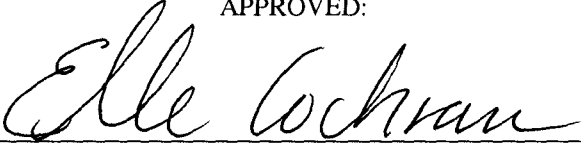
CHAIR COCHRAN: And at this point, Members, that was our one and only agenda item today for Infrastructure Management Committee meeting. And at this point I shall adjourn . . . *(gavel)* . . .

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ADJOURN: 9:39 a.m.

APPROVED:



ELLE COCHRAN, Chair
Infrastructure Management Committee

im:min:111003:df

Transcribed by: Delfey Fernandez

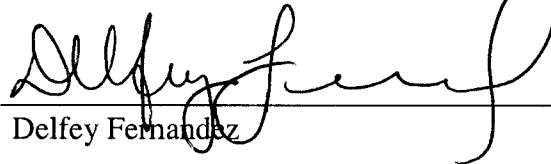
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CERTIFICATE

I, Delfey Fernandez, 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 24th day of October 2011, in Wailuku, Hawaii.


Delfey Fernandez