

**INFRASTRUCTURE AND ENVIRONMENTAL
MANAGEMENT COMMITTEE**

Council of the County of Maui

MINUTES

October 12, 2015

Council Chamber, 8th Floor

CONVENE: 1:33 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Elle Cochran, Chair
Councilmember Riki Hokama, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Stacy Crivello
Councilmember Don S. Guzman
Councilmember Mike White (in 1:39 p.m.)

NON-VOTING MEMBERS:

Councilmember Don Couch (out 2:55 p.m.)

EXCUSED: VOTING MEMBERS:

Councilmember Robert Carroll

STAFF:

Jordan Molina, Legislative Analyst
Raynette Yap, Committee Secretary
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference
bridge)
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference
bridge)

ADMIN.:

David Goode, Director, Department of Public Works
John Smith, Civil Engineer IV, Department of Public Works
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation
Counsel

In the gallery:

Ty Takeno, Civil Engineer VI, Department of Public Works
Lesli Otani, Civil Engineer V, Department of Public Works
Kristilee Ono, Civil Engineer IV, Department of Public Works
David Taylor, Director, Department of Water Supply

OTHERS: Plus (2) Others

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

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

CHAIR COCHRAN: . . .(*gavel*). . . Will the meeting of the Infrastructure and Environmental Management Committee now come to order? Today is October 12, 2015 and it's 1:30 in the afternoon. Members and community members, please silence all cell phones or any other noise-making devices before we begin. Thank you very much. And attending the meeting here is obviously myself, Elle Cochran the Chair; Vice-Chair of this Committee is Mr. Riki Hokama.

VICE-CHAIR HOKAMA: ...Chair.

CHAIR COCHRAN: Aloha. Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. Mr. Don Guzman.

COUNCILMEMBER GUZMAN: Welcome back, Chair.

CHAIR COCHRAN: Aloha, thank you very much. And joining us shortly will be Chair of the Council, Mr. Mike White. And Mr. Bob Carroll is excused as he's making his way to Hana. And joining us today, we have the honor of having non-voting Member Mr. Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. From Administration, looks like we have Director of Public Works David Goode.

MR. GOODE: Good afternoon.

CHAIR COCHRAN: Aloha. And Mr. Jim Smith also of Public Works. Hi, welcome. Corporation Counsel [*sic*] Mike Hopper and we have Legislative Analyst Jordan Molina and Rayna Yap. No, is it Jim or John.

MR. SMITH: John.

CHAIR COCHRAN: John, John Smith. I knew it was quite generic-y. Okay, thank you. Agenda items today on our agenda is IEM-11(2), which is the Orientation Workshop by Department of Public Works and also IEM-35 Amendment to Contract for MS4 Permitting and Storm Water Management Plan (C5470-2). Now I shall give the parameters for our testimony and if you would like to, please sign up at the front desk in our lobby and please testify only on agenda items listed here today. You're given three minutes to testify and also when testifying, please state your name and any

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

organization you may be representing. And, Mr. Molina, do we have anyone signed up for testimony?

MR. MOLINA: We have no one in the Chambers signed up for testimony.

CHAIR COCHRAN: Alright-y. Let's go to our District Offices. On Lanai, Ms. Fernandez, are you there with any testifiers?

MS. FERNANDEZ: Good afternoon, Chair, this is Denise Fernandez on Lanai, and there is no testifiers.

CHAIR COCHRAN: Thank you. And on Molokai, Ms. Alcon, anyone there with you for testifying?

MS. ALCON: Good afternoon, Chair, this is Ella Alcon on Molokai, and there is no one here waiting to testify.

CHAIR COCHRAN: Ladies, thank you for being there. Members, I guess seeing there's no one wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COCHRAN: Thank you very much.

**ITEM NO. 11(2): COMMITTEE'S PRIORITIES AND PROCEDURES;
PRESENTATIONS FROM COUNTY ADMINISTRATIVE
AGENCIES (ORIENTATION WORKSHOP BY THE
DEPARTMENT OF PUBLIC WORKS)**

CHAIR COCHRAN: Okay. Getting to our first item then that would be IEM-11(2) and this is pursuant to Rule 7B of the Rules of the Council. The Committee intends to have an orientation workshop to be conducted by Department of Public Works, and the workshop may cover such topics as Department of Public Works MS4 permitting and Storm Water Management Plan. And today, we shall be having the presentation it looks like with Mr. Goode or Mr. Smith I guess tag teaming us. So at this point, I shall now turn the floor over to you folks. The floor is now open for Department. Thank you.

(PowerPoint Presentation)

MR. GOODE: Okay. Thank you, Madam Chair, and good afternoon, Members of the Committee. David Goode here the Director of the Department of Public Works and with me is John Smith, CE IV in the Engineering Division. And I also see in the audience some other folks who work on our MS4 Program; John's boss Ty Takeno, also Kristi Ono with the Engineering Division, and Lesli Otani, DSA Engineering staff. So, I'm pleased to see that Public Works has filled the Chambers as best as we can for

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

this program. But these are the individuals that are working primarily on the new Storm Water Management Program that we have in the MS4 Permit which we've talked about previously with the Council. So we do have handouts. So, I hope everybody has a copy of the handout to make notes as they see fit. And, Chair, you're correct we will be jointly presenting. I've got the first handful of slides and then John will be presenting and I'll wrap up.

CHAIR COCHRAN: Okay.

MR. GOODE: So, storm water is actually covered in the Charter under the Department of Public Works and for years storm water has almost primarily been about volume and velocity of water and as it relates to our rules, ordinances, and practices. But now we need to do more, a lot more with the transport of pollutants in water, understanding better the assets that we have in our storm water system and maintaining that, and reporting now through our MS4 Permit to Department of Health on those activities. And this is all relatively new for the Department and does put additional strain on our resources. And that little thing that bounced in, reminds us that when it rains significant liabilities do exist and we need to deal with that. So the MS4 again is the Municipal Separate Storm Sewer System. We talked about this previously when we were with you. Most recently I think it was January 12th of this year where we had a meeting with this Committee and we brought along the Department of Health. Mr. Matt Kurano who helps oversee this program. We learned that we are part of an urbanized area as defined by the Census that automatically kicks that area in Maui County to becoming an MS4-regulated entity. It also made regulated entities out of the Department of Transportation, Highways here in Maui County, Department of Education, and the college, all of which have assets within this urbanized area. As we mentioned previously in our last time we met, we have six different categories that we need to perform in so that we control these pollutants that are borne by storm water to the maximum extent practicable which is the key language in the Federal statute. So as an overview the EPA is in charge of the Clean Water Act and they've delegated those responsibilities to the State Department of Health here in the State of Hawaii. They promulgated rules on how to do...how they manage that program then we become a regulated entity which we now are. And then we have to change our practices, rules, ordinances eventually, you know, through this Committee or other committees potentially and we are going to be entering into various agreements. The types of agreements that are certainly possible are Memorandum of Agreements with the various entities I mentioned previously like DOT, the college, harbors; actually I see hospital on here too. Do they have an MS4? Okay. Hospital as well. Because our drainage systems intertwine with each other so for instance we have drainage facilities in Kahului that then go to Kaahumanu Avenue which is Department of Transportation and then could come out through the harbor, could go through the college, et cetera. So, we're all kind of tied together. And also we'll need...excuse me, those are generally MOUs. Then we'd have a Memorandum of Agreement that were drafted that would work between our Department, the Public Works Department which is overseeing the program and other County departments like Police we have a facility in the urbanized area. Parks who has a lot of facilities in the urbanized area; Fire and others in terms of how the program requires them to make certain changes for which we don't have

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

direct oversight with but have the ability through agreements to manage what they do to the extent practicable. So yours truly does sign on the MS4 Permit which is one reason and maybe the key reason certainly in my mind why the other departments need to sign on to the agreement to make sure that they do what they're supposed to do. Currently, the permit is managed by the Engineering Division and also Development Services Administration which is why I introduced the other folks that are here today because we are trying to do the most that we can with their existing staff. We have produced a Storm Water Management Plan, that was one of the first tasks that was required under the permit and now we're in the process of managing that plan and producing the variety of things that are required under that plan. So in taking the first step the first thing we needed to do was to really understand the permit and was the Department of Public Works the right entity to handle that. And the more we looked at it the more we realized that probably 80 percent of the requirements does fall under our Department and again storm water is mentioned as a responsibility of the Department in the Charter. So with that I met with the Mayor's Office and said, you know, it's probably us, we need help with the other departments. And which is why we'll need the Memorandum of Agreement but it also meant that it's a whole new task with a lot of responsibilities that we haven't been doing on existing staff and resources. And so how do we best manage that? And so we started with just developing kind of an internal working group that's primarily the folks that are here today and others to see, you know, how can we make this work? How do we get going on this thing and how do we identify other folks that can assist us? And we've been working with some of the groups mentioned here along with others. But ultimately what we're realizing is that, you know, the path we're on is essentially is going to mean that certainly at least in the Engineering Division is that we're going to lose our ability to produce other projects, you know, our hard infrastructure projects. There's only so much time in the day. There's only so much we can do. So for instance if half of John's time all of a sudden becomes MS4 whereas before he was doing a lot of small and medium sized drainage projects something's got to give. And so we started looking around well how do we get the resources to do this. And so what we're looking at is developing what we call a Storm Water Management Division. A small division that's solely focused on this activity in a variety of manner if you will and it's something that we also as we go through the presentation today we're going to look at how we envision staffing that and paying for it in a variety of ways. And so I'll be talking about that at the end of the presentation. I'll turn it over to John.

MR. SMITH: Thank you, Director Goode. Thank you, Chair. Let me get situated. So, as Dave mentioned we...as a committee, an internal committee with representatives from Highways Division, Engineering, and Development Services Administration think that it's best to have an entity that's separate from those three divisions. A small Storm Water Management Division that's focus is water quality. And as we started going through what does that division look like we started to figure out what are some of the liabilities that the County has in relation to storm water. So the next three slides before I get into the nuts and bolts of what the division looks like is what are some of those liabilities that we have today. In particular we started with infrastructure. We know that in the urbanized area, and the urbanized area again is Wailuku/Kahului that was defined by the Census, we have aging infrastructure. This is a picture in

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

Kahului of a sink hole. And by and large the cost to replace that existing system that's in the ground is unknown. In addition, because we have these new water quality requirements, we see a real need for expertise in this area of water quality when it comes to low-impact development. That's kind of buzz word term that you've probably all heard before but it's something that tries to mimic natural conditions and tries to reduce pervious or impervious areas in new development. We also see some liabilities associated with maintenance. Currently, our Highways Division its focus is on pavement preservation which you all know, not necessarily focused on storm drainage and in particular not focused on water quality and storm drainage. So there's a number of practices that the MS4 Permit Program requires us to look at that will increase responsibilities when it comes to maintenance of storm water. And in addition, this is sort of the one that it's a no-brainer, there's some liabilities associated with environmental aesthetics for Maui County. We know that poor water quality can negatively impact tourism, water sports, fishing, culture practices, et cetera. So that's just in a nutshell some of the things that we started to think about when it comes to the liabilities associated with storm water. So what's next? This new division that we're talking about we see it as sort of a three-pronged division. I do want to emphasize we're not talking about a division that's equal in size to any of our existing divisions. In fact very small but separate entity that can focus on storm water quality. We see these three specific areas storm water resource planning and asset management in the little box with the check marks, permitting and compliance, and communications and accounting. The next eight slides and I'm going to go through 'em quickly but deal with those three specific areas. The first is resource planning, and this falls closely in line with what we do in Engineering, we're talking about here a focus on water quality when it comes to resource planning. So, currently, and you'll see in the next slides we'll have a currently understaffed section and then the blue bullet is it's a new task or there's actually no permanent staff available to do these new tasks that are required. So an example is for resource planning in Engineering is developing standalone water quality projects that we don't currently do. So any new development in the County now has a requirement to develop a storm water quality component to that project. Meaning we're not just trying to get the storm water as fast as we can out to the stream; we're trying to have some form of treatment before it actually gets to the stream. And next would be asset management. This group would or section, if you will, would be focused on, and I've got a couple different slides for asset management, mapping and GIS. We have maps that are over 100 years old in our Engineering Division of our existing system and we're going through those and we're pulling, we're aggregating them, we're pulling them all together and we're putting them into a GIS system so we can understand not only where all of our assets are located but how they're interconnected especially when it comes to interconnection with other regulated entities, and primarily we're talking about DOT. And Dave already mentioned we're developing a Memorandum of Understanding with those entities. And each point where our system enters their system or vice-versa is a point of compliance and a point of agreement. The next section in asset management again goes to maintenance. So not just our Highways maintenance, Parks maintenance too but like Dave said probably 80 percent of this falls under DPW. We currently do things like street sweeping but that program will need to be greatly enhanced as part of this permit program. It will be looked at closely because it's identified as a BMP or a

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

Best Management Practice that's highly effective in removing pollutants from storm water. So DOH will come in and look at our program and say okay you're doing a good job here, you're not doing a good job here, and that's something that this group could help Highways Division manage. In addition to changes in practices when it comes to maintenance there's also a number of new housekeeping items that will have to be done at each County baseyard and that's another thing that we're currently working on with our Highways Division. Finally, last two slides or not the last two slides but the next two slides are with permitting and compliance. This program requires the County to develop a connection permit or a license and what this does is every time there's a new development or a redevelopment in the County and they want to connect to the County system there needs to be a mechanism to track that and to monitor. That's another point of compliance. So connecting to the County system will need a license and that has...that falls under the illicit discharge and detection and elimination portion of the permit. So that's something we're actually currently working on as well. There's a big part of enforcement when it comes to that new regulation. Currently, we don't have staff to go out and enforce, you know, a new regulation when it comes to discharging into the MS4. Finally, communications and accounting then I'll turn it back to Dave but from a communication standpoint there are two major points that we need to follow. Public education is a huge part of the MS4 Program, things like preparing education articles, working with schools, et cetera, developing and maintaining a website on the County website or webpage just dedicated to storm water, coordinating with other MS4s, working with the community groups that we have. We have a number of community groups, nonprofits that are very interested in keeping our storm water clean and are actually looking for ways to partner with the County. So this is an area where we need some additional resources to work with those groups. And then finally, as part of that same section we would get into accounting and how we pay for all of this, and with that I'll turn it back to Dave.

MR. GOODE: Alright. Thanks, John. As you can see he's outlined in general some of the program areas and highlighted just a handful of the multitude of steps that are required to fulfill this program need. And actually, you know, realistically have a really good opportunity here to make our storm water cleaner and I think that's a very laudable goal that we all support. And as highlighted here in this box is something I'd like to discuss as it relates to, you know, how we pay, and how do we staff up for something like this. And there's a lot of options out there and what I challenge probably myself but also the staff with is how do we...let's overturn every stone, if you will, within our Department first and see where we have opportunities. You know how can we do this without just coming over here and saying I need X positions and X millions of dollars. And so we came up with some ideas which I want share with you. As you may know in the last legislative session, the Legislature passed and the Governor signed a bill it looks like Act 42 of 2015 that gives the counties the authorization to come up with storm water based fees if they so desire. So we're not required to do that but it is something that's an opportunity for the counties. Quite frankly I'm not sure where the other counties are with this and who's seriously looking at it but there are plenty of storm water type fees and jurisdictions throughout the country that have the opportunity is out there. We're not currently proposing anything along those lines but I think it's just important that we highlight the fact that

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

it does exist and it was just recently passed. So for the first two years of the program, the last couple fiscal years we utilized consultants, in fact, that's actually the second item on your agenda today and we can talk about those contracts. Along with our existing staff to develop the program. We're also starting to develop partnerships with a variety of community organizations. Looking for other funding opportunities. We've been approached by the State for what they call these 319 funds that are available primarily for projects not necessarily for the program aspect of it. We've had training classes within our Department, Parks and other departments, and we're starting to adopt various practices within those baseyards in particular on meeting the maximum extent practical provisions within again our existing resources and personnel, et cetera. And someone once called, you know, the first two years of a program like this the honeymoon. So from a regulator standpoint, you know, I actually do applaud DOH in this regard they're trying to help us. They've brought in experts. They've actually brought in the EPA and the EPA's consultant to see what we have, see where we need to go; made a lot of recommendations. And I think you saw that spirit of cooperation when they were here in January. They want us to succeed. We'd like to succeed because the alternative of course is things like consent decrees which none of us what to do. For FY '16, this is not currently in the budget so it's an amendment that we would be looking at and this is an example of, you know, looking internally to see what we can do. What we've identified and again this is with the assistance of our new Fiscal Analyst that we now have in the Department that we never had before, you know, someone that can really scour the books and look at options. And also let's give credit to Cary Yamashita and Ty. But we're looking at either taking one of our existing positions or creating a new position that will actually be Federally funded. Currently, we do a lot of Fed-Aid Program construction, design, et cetera, construction management; I mean you see all our projects, and we get reimbursement for some of our design staff time. And that just falls in the general Federal reimbursements but if you look at our track record over the last number of years it's substantial. It's substantial enough to justify one of our positions should be Federally funded. To me that opens up a General Fund position. Okay. So while it's a new body it's funded not by General Fund. So it's an opportunity that we see that we can internally help to do this. The needs of the Engineering Division are such that the position would stay in Engineering Division but in the interim they could help manage this program and then be the link between Engineering Division and the Storm Water Management Division. So, it's not in the agenda today I understand but it's just...it's worth highlighting because it's something that I think speaks to the manner in which we're trying to fund the program. In FY '17, we'll be looking to propose for the Mayor to sign onto of course and put in his budget, additional staff of Program Manager/Coordinator and an Engineer for starters. We obviously need office space, et cetera. And then in FY '18 complement that with the Compliance Officers. So as the new ordinances get promulgated or rules get promulgated then we need the compliance people. So we don't need 'em upfront but they can come in ensuing years. A clerical position to help make sure everything stays together and then we start to look at Highways Division maintenance staff. So as we develop the programs and we understand what the needs are and as we run to the next permit cycle with DOH... 'cause it's a three year permit, right, John? It's a three year permit with DOH. Each permit cycle tends to get tighter not looser and as we understand what those parameters are we can look at what

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

Highways Division may need. The new Highways Division could for instance have a separate storm water section. Kind of like how we have a separate pavement preservation section. So those personnel and equipment are geared towards handling these types of operations. It could be housed here in the Wailuku Baseyard since most of activities are probably going to be within the Wailuku/Kahului urban area, and we quite frankly don't know what we need yet so it's something we'll be evaluating over the next couple years in terms of equipment and personnel. Beyond FY '18 into '19 and beyond, we need to see what the new permit conditions look like and we'll just continue to find where we can but also realizing that this is generally a General Fund type activity. The Highway Fund is for the, you know, the maintenance and support of the roads. Some of that, you know, can be towards I guess the water that comes off the roads towards storm water but in general storm water quality type things are a General Fund expense. So again getting back to the question on how we pay for this; as I mentioned it has been General Fund so far. I continue to see there being General Fund needs. We are running numbers right now on looking at our grading, construction, and connection fees when we establish a connection fee. So our proposed budget for '17 will hopefully include some adjustments to these fees, a lot of these fees are pretty old therefore stale and don't really reflect the amount of effort that goes into those fees. And since water quality will be a new aspect that's reviewed under all these permits, it makes sense that some of these costs get covered by appropriate fees. The Building Plan Revolving Fund, actually, it's a much longer name but I'm going to condense it, I think that was discussed recently in committee, that comes from Building Permit fees. Those...some of those projects do have water quality issues but more importantly looking at the health of the fund, the type of monies that it generates, and the positions that are currently covered by that fund which is 14. We think we can safely increase that to 16 and hence free up two General Fund positions. So the idea would be that two General Fund positions currently in DSA would move to the Building Permit Revolving Fund; freeing up two General Fund positions that could then go towards the Solid Waste Management Division. So it's another example where we found an opportunity within our Department to cover the needs of the Storm Water Management Division but this time creatively using...by putting more positions into the Building Permit Revolving Fund. So, again, by having our Fiscal Analyst running the numbers and taking a good look at it and discussing it internally, we felt comfortable that we could shift two folks over from General to the Building Permit Revolving Fund and not jeopardize the fund. And again I mentioned already about the FHWA Funds with the Engineering Division. General storm water fees or districts, again, it's not something we're proposing now. I imagine it might be a discussion item for the Council at some point or maybe for HSAC, you know, what other counties might be doing with that. DOH 319 funds are generally for studies or projects and they also have some loans that are more like the Revolving Fund, right? Yeah, so like the Revolving Fund you see for Wastewater. So oftentimes if we have an opportunity there maybe we can get a really great rate. There's our dollar sign. So again, you know, I don't mean to beat this drum but we just need to be reminded that there's a large cost to not doing anything. I haven't found anybody that's against making our water cleaner. And, you know, it has to be realistic, we'd want to spend our monies very wisely. We want to use them towards, you know, projects and programs, and policies that will make it better. We don't want to be in the position

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

that we're under a consent decree. We will be negotiating I'm sure with DOH as best we can future permit cycles. But it is a new reality for us and as you can see through this presentation we've spent a lot of time really trying to understand it and how best we can manage it on behalf of the entire County. And we look forward to any questions you may have and again thanks for the opportunity to speak to it.

CHAIR COCHRAN: Thank you, Director, and thank you, Mr. Smith, and your Department's work in all this. Members, at this time, and before we proceed I'd like to acknowledge Chair White has joined us. Aloha.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COCHRAN: Thank you. Okay. So, now I will open the floor for discussion with our Department. Mr. Hokama, you want to start?

VICE-CHAIR HOKAMA: Thank you, happy to. So just so we understand clearly the basis, this is a part of a Federal regulation to the EPA?

MR. GOODE: Correct.

VICE-CHAIR HOKAMA: And the role of the State Department of Health I'm trying to understand, they're requiring us to do additional new things that we currently don't do?

MR. GOODE: That's correct.

VICE-CHAIR HOKAMA: And these new things that they're requiring us to do are they providing the funding?

MR. GOODE: No, no funding, other than the opportunity to have these 319 funds or various, you know, project related funding which is not covering program costs.

VICE-CHAIR HOKAMA: So why wouldn't our constitutional requirement of the State paying for new additional responsibilities to the County that comes with funding not part of this consideration? Why are we going to pay what the State should be paying us to do?

MR. GOODE: Right. That's a good question. I might defer to Mr. Hopper to my left but I think because they're essentially the pass-through agency of a Federal statute. They might hang their hat on that.

VICE-CHAIR HOKAMA: Well, I don't mind, they can go into court and I mean having a ruling on this. That's why we have the --

CHAIR COCHRAN: Mr. Hopper?

VICE-CHAIR HOKAMA: --constitutional requirement to protect the counties.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. HOPPER: Madam Chair?

CHAIR COCHRAN: Mr. Hopper?

MR. HOPPER: I believe the...this is part of the County becoming basically a district with a population over 50,000, yeah, and so that's going to basically trigger a couple of things from the Federal side. I think one is the EPA's regulations and the other also the Department of Transportation regulations. And I think since they tie the Federal funding, Federal highway funding, and those types of funds to classifying areas as urban areas and the other regulations related to those as has happened with City and County of Honolulu. I think it's not necessarily a Federal mandate. I think the Federal government saying as a condition for these Federal funds there are additional compliance requirements of the counties. I think that's where a lot of the authority comes from and when we originally took a look at this, now, that's obviously begs the question would the County be better off if it, you know, looked at the...didn't take the Federal funds, you know, net. And that's, you know, I guess a consideration that can be looked at but my understanding is that that's the background in this. But again this is things that were considered years ago. This isn't the first we've heard of the actual requirements coming upon the County. We're a couple of years I think into the compliance process at this point. But in general, the Federal government would have the authority by basically attaching it to its purse strings which is where I think most of these requirements would come from 'cause in general the Federal government wouldn't necessarily have the requirement to make the County do these things. It would tie it to Federal money through highway funds and other funds, you know, of that nature. So I think that's where the background comes from as far as their authority to not only have the County of Maui have to deal with not only this issue but the formation of planning organizations and others in order to ask for the Federal money. And so, I think that's a bit more of the background where we're looking at right here.

VICE-CHAIR HOKAMA: So is that verified? We don't move this forward, we don't get Federal dollars, we lose X amount of Federal dollars for projects? Is that where we're at?

MR. GOODE: Madam Chair? Mr. Hokama, I think that's definitely where we're at on the highway side. In this particular side, I don't think there's any funding that I'm aware of. I think the alternative is to get fined.

MR. HOPPER: And there is in fact Clean Water Act issues as well that the Federal government would be imposing in addition to the transportation requirements. Again they kick in with the counties becoming an urban area under the Federal government but I mean that's part of the Federal ability to regulate not only private but also public, owners of public property that deal with Clean Water Act issues.

VICE-CHAIR HOKAMA: No, I understand that. You know but again because there's been changes, the new water of the U.S. rule has just been overturned by Federal Court last week so the new rule is not going to be into effect or implemented at all. Okay. So it

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

depends on the environment and who goes to court and what the courts rule. My thing is, you know, I mean I understand this verbiage, Chair, but I think for us to make smarter decisions, I would ask the Department to give us the pro formas. I want to see those projections. I want to see those numbers on expenses and potential revenue streams before I think we make decisions on how we want to approach this requirements. Because I'm not going to make a commitment without knowing what is our financial impact and responsibilities and I think a pro forma is a necessary thing for us to make better informed decisions. So that would be my request to you, Chair. Thank you.

CHAIR COCHRAN: Very good. Thank you, Mr. Hokama. Members, any...yes, Mr. Couch then Mr. White. Oh, sorry, Mr. White since you're part of the voting Member and then Mr. Couch.

COUNCILMEMBER WHITE: I don't mind letting him go first but.

CHAIR COCHRAN: No, don't spoil it.

COUNCILMEMBER WHITE: The question that comes to mind is the MS4 because it's triggered by the population of Kahului, Wailuku, and Paia, is it correct to say that the regulations that come with that are going to be applied only within that district or is this now Countywide? My recollection is it's within this district.

MR. GOODE: Yeah. Madam Chair, Mr. White, it's actually both. For instance we have an ordinance that says you can't discharge certain substances into the storm drains. We can't have that ordinance just for Wailuku-Kahului. Right. Or if we have a public education piece, we can't just educate that one geographical region; we've got to apply it Countywide. But certain activities for instance related to the GIS we're going to focus, we have enough work to do in Wailuku-Kahului. If we have...I think our MOAs and MOUs would be mostly in that area but DOH has already indicated to us that they see the whole County actually the entire State and the other counties of which only Honolulu right now is MS4, they see the whole, all of it being MS4. So we're having some, you know, push and pull if you will but we see that the program will be both Countywide in certain areas and geographically specific to the urban area.

COUNCILMEMBER WHITE: I can see the need for controlling pollutants but does this also mean that we've got to control sediment, just pure sediment? Because, you know, all of Lahaina, Olowalu, it's all stuff that didn't used to be there.

MR. SMITH: Right. I think what the program does is it give us a venue to work with the larger landowners for issues like that. So sediment in particular outside of the urbanized area, that's not part of this program but public education about how we use the land is. I guess that's how I would start to answer that question. It's primarily meant for urbanized areas though, that's what the original MS4 is. That's separate storm sewer system meaning you've got infrastructure in the ground already and I think what you're talking about is ag areas from above coming down. If I'm not correct, correct me if I'm wrong but.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

COUNCILMEMBER WHITE: No, it is.

MR. SMITH: Yeah.

COUNCILMEMBER WHITE: Well it's sediment everywhere but I...

MR. SMITH: Right.

COUNCILMEMBER WHITE: But yeah it is generally, mostly generated by ag. Then the next question I had was you mentioned treatment before it goes into the stream. What treatment is that and...

MR. SMITH: There's a variety of what are called Low Impact Development BMPs, Best Management Practices. They can be things like changing the way you design your development so rather than putting storm water directly into a pipe and out to the stream adjacent to you; you run that storm water through a swale, a vegetated swale or they call 'em bio-retention facilities where they design the plants to take up a good portion of the storm water in an underdrain system before it discharges. So the idea being not that you would collect all of the storm water that comes in a flood event say but they know that most of the pollutants are washed off in say the first 10 percent of the storm. So that's when you get all the dirty water coming down in the urbanized area. So from a treatment standpoint there's just a number of ways to treat storm water that way. There are also proprietary inserts that you would put in a catch basin or a manhole that are designed to remove sediments, oils, trash, et cetera; where they would have to be maintained on a regular basis but that's what we're talking about when we're saying treat the storm water before it goes into the stream or the ocean.

COUNCILMEMBER WHITE: I'm assuming all these things are pretty well documented and well tested?

MR. SMITH: Storm water Low Impact Development is an emerging field I would say. It's not...every year there are new technologies that come out that can do this smarter or better if you want to say. But it's been around in most jurisdictions for the past 20 years or so; this is just new to us. Yeah.

MR. GOODE: If I could add, Chair? Mr. White, we added, you know, the post-construction BMPs to our Building Permit a couple of years ago, so we're starting to see the first projects come through that use some of these technologies. And for instance Target was designed so that the runoff from the parking lot went through those grassed areas first and then into their storm drain system which then went to the retention basin they built as part of that business park. So that's just an example along the lines that John's mentioned that has been implemented here in Maui County.

COUNCILMEMBER WHITE: And how will we deal with the areas in Kahului that are already built up and have no area for grass and retention basins and so forth?

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. GOODE: Yeah. Well, it would primarily be new projects but also projects that we do. Say if we redo an existing drain system in Alamaha or something like that; we would perhaps look to opportunities within that system itself perhaps through the manhole design or perforated pipe or a variety of other techniques to see where we could have an opportunity to make the quality better, the water quality better,

COUNCILMEMBER WHITE: Have you done any rough estimates of what this is likely to cost us in just the Kahului area? For not the new projects because I'm assuming that you're going to be asking developers to fund that, but have you looked at the cost for us to retrofit our drainage systems in Kahului and Wailuku?

MR. GOODE: That's actually one of the biggest part of this program is to get a better handle on our existing infrastructure in terms of its, you know, where it's in its useful life. In a lot of ways it's like going what we went through with the roads, you know, over the last ten years is understanding where each road is, what technique is going to be best suited for it 'cause certainly you don't want to, we don't want to tear out and replace every single pipe, that would be really expensive. It's probably going to be needed in some areas, I mean you saw the picture of the sinkhole. We've had more than one, but we have other areas where maybe the pipe is just starting to age and needs some type of treatment to it. Maybe it's the type of treatment that can be done in house or we sub out a variety, lengths of pipe. But until we go through that process of understanding every single pipe and manhole similar to what Wastewater had to do under its consent decree for all its pipes and force mains, and pump stations then we'll put together that number.

COUNCILMEMBER WHITE: Okay. Thank you, Chair.

CHAIR COCHRAN: You're welcome, Mr. White. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Chair. Going back to some of your things that you mentioned in your presentation, you talked about we're dealing with the hospitals and the...the hospital, the schools, and the State DOT. Are we responsible for curtailing their runoffs and they just have to help pay for that or how does that work?

MR. GOODE: Yeah, I can answer in general that they all have MS4 Permits. So because they're in the Wailuku-Kahului urban area and they're a government entity, they came under the MS4. Now, their MS4 might be slightly different than ours. They don't have the ability to promulgate ordinances for instance. What we'll have to do is understand better exactly what their permit conditions are. Actually we're already meeting with DOT 'cause they're the biggest player in this.

COUNCILMEMBER COUCH: Right.

MR. GOODE: And their staff and consultants to understand how we tie things together. And my understanding is there's something like 70 MS4s permitted Statewide.

COUNCILMEMBER COUCH: Already.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. GOODE: Yeah, mostly on Oahu 'cause Oahu is an urban area. It's actually considered a large urban area under the Clean Water Act. They've been at it for 20-plus years. So the City and County is heavily invested into this. I mean they have...it's like an \$8 million a year program, 24 people just on the compliance side. I'm not even talking about...I don't even know what their costs are on the highways side or CIP. But they have a lot of entities. I think military bases, DOE's, obviously the same hospitals, DOT, harbors, and highways, airports.

COUNCILMEMBER COUCH: So that's what the ...

MR. GOODE: So the MS4 is pretty...we're the not the first --

COUNCILMEMBER COUCH: Right.

MR. GOODE: --rodeo for DOH.

COUNCILMEMBER COUCH: But that's what the MOUs are 'cause they could potentially say oh well sorry this...we can't fix this runoff but we would be responsible, we the County would be responsible for that?

MR. GOODE: I think like John mentioned it's the point of discharge and so if you're DOT and I'm bringing water to you, I'm discharging to you so you're receiving it, right?

COUNCILMEMBER COUCH: Right.

MR. GOODE: So you would probably have a concern with what you're getting. So it's, I think that's the way it works.

MR. SMITH: That's right. Yeah.

COUNCILMEMBER COUCH: Okay. So it's not into the ocean. It's the point of discharge from one system to another?

MR. GOODE: Well, eventually it all goes to --

COUNCILMEMBER COUCH: Right.

MR. GOODE: --a receiving body so those are the outfalls.

COUNCILMEMBER COUCH: Right.

MR. GOODE: And we have outfalls in certain areas.

COUNCILMEMBER COUCH: Sure.

MR. GOODE: In other areas like Kahului is a little more complex --

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

COUNCILMEMBER COUCH: Yeah.

MR. GOODE: --water goes through a variety of people.

COUNCILMEMBER COUCH: Okay. To kind of follow up on Chair White's question where he talked about is this only for Wailuku-Kahului-Paia or the whole County. What about things like you said you're going to need to increase street sweeping, is that for the whole County or is that just for the urban area?

MR. SMITH: We would focus on the urbanized areas because that's the areas we'll need to report to DOH our increased street sweeping.

COUNCILMEMBER COUCH: Okay. And the same with the low impact design, that probably I'm hoping you're pushing that out Countywide on all these new projects.

MR. SMITH: Right. We already have on the books a water quality section in our ordinances and that applies Countywide currently, yeah, so.

COUNCILMEMBER COUCH: So you mentioned the catchment or the catch basin or whatever. We had talked about this a while back that there's a group in West Maui that wanted to do 39 or however many at the storm inputs.

CHAIR COCHRAN: Curb inlet baskets.

COUNCILMEMBER COUCH: Curb inlet baskets. Is that...but does that bring that back up on the radar now but over here in Wailuku and Kahului?

MR. SMITH: Yeah, while that is outside of the urbanized area, that is one of the type of treatment mechanisms that you can do in the existing system in the urbanized area.

COUNCILMEMBER COUCH: Okay.

MR. SMITH: Yeah.

COUNCILMEMBER COUCH: And lastly, at least for now I still have a few more but again Mr. White was talking about, you know, we have the agricultural Upcountry people throw stuff into the gulches including cars and dead animals and whatnot and that comes down through into the urban side; some of it, some of it of course comes down in my district and Ms. Cochran's district. How do we...how can we mitigate that I guess? Because we're talking about this is just going to happen in the urban areas but most of that stuff is coming from Upcountry in certain instances, especially that one drainage area that goes through by the airport out at Kanaha.

MR. SMITH: Yeah, I mean you're bringing up a really big issue for Maui County. I mean that's going to be one of the major things that we look at because when they drew that urbanized area boundary when you think about it where the water comes into that

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

boundary from Upcountry that's one of our points of compliance. And so yeah, having mechanisms for enforcement when we see something coming in to go up and stop it I think that's a big part of the program. Yeah.

COUNCILMEMBER COUCH: Okay. Thank you, Chair. I have more --

CHAIR COCHRAN: Okay.

COUNCILMEMBER COUCH: --but I don't want to hog the mic.

CHAIR COCHRAN: Okay. Mr. Couch, sure. And, Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. Thank you for being here, Department. I guess in line with Mr. Couch's questions is I think if you can explain a little bit more as to how the Department now provides for the adequate storm water controls as you try to mitigate the I guess adverse downstream impacts? So what are you doing today that will differ from actually with the MS4? Because it's really what the four S's, yeah. And are the storm drain and sewer separated today?

MR. GOODE: Okay.

CHAIR COCHRAN: Director?

MR. GOODE: Chair and Ms. Crivello, I'll start by answering the last question first, that one's easy. Yes, our storm drains and our sewer system or wastewater system are separate. They do have combined systems on the mainland. It's a big issue for the mainland, they call them combined sewers, fortunately we don't have that. So we have our own pipes, they have their pipes. As far as I know there's no cross connection. But, you know, our current activities we deal a lot with, you know, construction BMPs, so for construction activities no matter where they're located we have Best Management Practices that we first review and then enforce and modify as we go based on site conditions. Since that's an ongoing activity that DSA Subdivision Office regulates so that's one of those things that we're currently doing. As we mentioned earlier, we have these post construction BMPs so after it's built, this is all relatively new, how do we take the water off of that site and send it through something like I mentioned the Target example that helps clean it up as we go. That's relatively new. We're just implementing it and it currently doesn't require any enforcement. Because basically it's enforced by design. If you have a good enough design and it works well that's fine. But the new regulations as I understand it we're going to now have to enforce that so we're going to need people that will have to go out and maybe annually got to places like Target and say well how's it going? You know or is that grassy swale that the water is designed to go through, is it (a) getting to the swale, the grassy swale, and is there still grass in it? 'Cause one could envision all kinds of things happening over the years. So that's an example of here's something we're doing and now we're going to have to do differently. The maintenance of the system and our streets is something that we do but now we may have to do differently, right, the street sweeping may have to be on a more regular basis and document what we pick up which is not something

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

we currently do. Our maintenance of our system instead of being looked at primarily for volume like is it plugged or is about to get plugged? We got a storm coming let's go deal with it. Now may have to be on a more regular maintenance schedule and looking for water quality issues rather than just is it getting to a position where it might cause a backup? So those, that's a handful of activities that we currently do and don't do but will need to do under the permit.

COUNCILMEMBER CRIVELLO: Okay, thank you.

CHAIR COCHRAN: Thank you, Ms. Crivello. Mr. Guzman and then Ms. Baisa.

COUNCILMEMBER GUZMAN: Thank you, Chair. I wanted to follow up on Member Crivello's line of questioning on the enforcement side. So it's my understanding that what you've just presented we're going to self-enforce to comply and then at some point report such compliance to the State or the Federal. Are we subject to civil complaints to...or at least civil claims that basically say we're not in compliance with these so-called new water quality standards or standards that we are supposed to be complying with? I mean try to walk me through that. Who does the enforcement? It sounds as though we as the County goes and reports or self-reports and there's no one really from the Department of Health or from the Federal side that comes in and verifies that we are complying with such standards. Is that correct?

MR. GOODE: Let's see...

CHAIR COCHRAN: Director?

MR. GOODE: Thank you, Chair. And, Mr. Guzman, I am not sure if this is correct or not but let me explain as best I can my understanding. And so we would need ordinances that say you can't illicitly discharge to our system, right, ranging from if I wanted to clean out my radiator and just open up the radiator and dump it out into a storm drain I don't have anything on the books now. Okay. I'd like to have something on the books that says we can regulate that. So if we see it we can enforce it. So that would be an enforcement action just with the County.

COUNCILMEMBER GUZMAN: Okay.

MR. GOODE: Right. Meanwhile, the State Department of Health has a permit with us which they audit from time to time to see are you doing these things? Right. Okay, you have an illicit discharge ordinance congratulations, what have you been doing? Do you have staff? Okay. What kind of complaints have you been receiving or what kind of investigations have you been performing to find these illicit discharge points? So at that point I think, yeah, we potentially could be exposed to not complying with the permit, right, and the penalties that could ensue from not complying with that permit. So there's I guess different compliance levels here, us is more towards, you know, here in Maui County, you know, the State is with us as complying with the overall permit conditions.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

COUNCILMEMBER GUZMAN: Okay. So if there's a nexus for the EPA does that also...are we subject to citizen suits for noncompliance?

MR. GOODE: That's my understanding.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COCHRAN: Thank you, Mr. Guzman. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I listened earlier and heard you mention partnering with existing organizations and I also heard nonprofits. Can you elaborate?

MR. GOODE: I'm sorry you're going to have to repeat that for me.

COUNCILMEMBER BAISA: I'm sorry?

MR. GOODE: Can you repeat that for me?

COUNCILMEMBER BAISA: Oh, I'm sorry. You mentioned earlier something about working with existing organizations and even nonprofits. Can you elaborate on who those are?

MR. SMITH: So, there are a number of nonprofits on the island that are very interested in storm water pollutants getting to the ocean, in particular protecting coral reefs, et cetera, that want to work with this...within this program and assist the County in public education, in outreach, in cleanup days at the beach or in the gulch, things like that. We're also working with entities like Malama Maui Nui and the Soil and Water Conservation District folks that work within the urbanized area or above the urbanized area. So we are searching out and looking for all of the above, nonprofit organizations to team with the County in a public-private partnership in certain components of this program.

COUNCILMEMBER BAISA: Okay. Well, I'm looking at the concern about how we're going to pay for all this. And what I'm worried about is, you know, as a staunch nonprofit person with a lot of experience, nonprofits generally can bring manpower but are also looking for funding to do what it is that they do. So I get a little worried when we start looking at them as partners. We need people that going bring money as well as people that will bring manpower. So it's complicated. This is a major, major expense. A major effort. I'm beginning to understand what a big deal it is. I get worried as we go through. I don't know what it is, I keep losing my voice. Everything says understaffed, that means we're going to have to put in a lot of money to hire people and that's scary but I do want. . .*(inaudible)*. . .to see that, you know, this is something we're going to have to do. And my last question is what is the timeline associated with compliance here? How much time do we have to get all of this in place before we start looking at fines which we don't want? That's even more expensive.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. GOODE: Yeah, well, we have, Ms. Baisa, we have an existing permit and one of the main things we had to do was develop a Storm Water Management Plan. So actually what I'd like to do at this time is hand out a copy of the plan to all the Members. And you can see what we have currently, and feel free to read this at your leisure.

COUNCILMEMBER BAISA: Okay.

MR. GOODE: And have your Staff read it. And that was the first thing we had to do and actually we had, I think by the time we got the permit to beginning of the plan we had about eight months which necessitated the need to get a consultant on board really quickly to help us do that. And so generally, as I mentioned earlier, these permits are three-year deals and so at each new permit we have new timelines, new deliverables, new conditions.

COUNCILMEMBER BAISA: So right now there is no mark in the sand that says you better have this done by 2020 or 2019 or whatever it is?

MR. SMITH: The way that DOH is looking at us is...they're looking at us that we're in sort of a grace period with the first three years which is the first permit term. And what we expect...well, there is no line in the sand, what we expect is after this first permit term is over and the new one kicks in, we expect additional regulation and audits from them. So what they've done is rather than coming in and audit us right away, they came in and did a sort of an audit but a noncompliance audit where they sat down, they looked at what we do, and then they gave us some recommendations for how to get the program up and running in the first three years.

COUNCILMEMBER BAISA: And that three years ends when?

MR. SMITH: Two thousand seventeen.

COUNCILMEMBER BAISA: Which comes very quickly. Okay. Thank you very much.

CHAIR COCHRAN: Thank you, Ms. Baisa. Yes, Mr. Hokama?

VICE-CHAIR HOKAMA: I'd be curious from the Director upon...did we submit the permit application or the Feds just assumed and gave us a permit for MS4? Did we do an application for a permit --

MR. GOODE: Yeah, I think we did. Yes.

VICE-CHAIR HOKAMA: --for the NPDES?

MR. GOODE: Yeah, we did. I think we were notified first that we, you know, had met the criteria under the 50,000 population --

VICE-CHAIR HOKAMA: Uh-huh.

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. GOODE: --and then there was questions as to whether we file a general permit, file under their general permit or a specific permit. So that went kind of back and forth for a while before we settled on coming under their general permit.

VICE-CHAIR HOKAMA: Okay. And then how long did it take to get the permit approved, Director?

MR. GOODE: It was actually relatively fast for DOH.

VICE-CHAIR HOKAMA: Three months, six months?

MR. GOODE: Something like that. Yeah, two, three months.

VICE-CHAIR HOKAMA: Two, three months?

MR. GOODE: Right.

VICE-CHAIR HOKAMA: Interesting. I've been...we've been waiting for decades for another permit but that's another day and another story. Interesting, yeah, people --

COUNCILMEMBER COUCH: Yeah. Yeah.

VICE-CHAIR HOKAMA: --for certain things how they can rush their permit approval for their own needs. Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Hokama, in bringing that up but thankfully they've given us this one so we don't start incurring fines or anything of that nature. Yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair. To elaborate on what Ms. Baisa was saying, once we start...you need new ordinances on certain things as you were talking about the illicit dumping. Those you can do at any time, I'm assuming that would be in this Committee and as soon as you get the language we would work on it. Are you working on those right away or?

MR. GOODE: Yes, we are, that's part of the responsibilities of our consultant is to come up with the language, to look at sample language used in a lot of other jurisdictions.

COUNCILMEMBER COUCH: Gotcha. Okay. What about projects that we are in the process of okaying or have just okayed? For instance the 600 homes A&B in North Kihei, would they be...can we get those, since they haven't started working on 'em, can we get those in on that or the one that, the affordable homes, the 201H that just is going to Council now, would those be incorporated in this?

MR. GOODE: Well, all those projects are actually under our current ordinances for construction BMPs and post-construction BMPs. So to the degree that those ordinances get tightened up over the years as we learn more, we can only have them

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

comply under the existing ordinances. But I will add that, you know, with this program is that we have changed our review processes on both those construction BMPs and post-construction BMPs. And we've been engaging for projects that are I say fairly complicated, large, and near the ocean or near receiving water, we're engaging like a third-party consultant to help us review that, you know, in light of the existing ordinances that we have and I guess any potential changes. So that change in practice I think is going to yield a lot of great benefits in the future.

COUNCILMEMBER COUCH: I guess my concern too is are the developers aware that this is going to come down or is this something that's going to be sprung on them?

MR. GOODE: Well, that's hard say. I would say in general you have developers that follow these things closely and prepare for it and then you have others that don't.

COUNCILMEMBER COUCH: Okay. 'Cause I'd hate to have, I mean I want to have this, the storm water cleaning or the runoff cleaning done sooner rather than later. I'd just hate to see what it would do to these affordable projects that we're putting in right now. I think they just need to be aware that they're going to have to throw that...add that extra level of cleanliness to their water coming out.

MR. GOODE: You know if I could add, it really comes down to the design. There's sometimes simple measures that can be done. Typically, they have retention basins so how that retention basin fills up and how it overflows are opportunities to implement rather straightforward post-construction BMPs at least under our current ordinance.

COUNCILMEMBER COUCH: And you will be working with them on that as they come through the process, right?

MR. GOODE: They're required to do it currently.

COUNCILMEMBER COUCH: Okay.

MR. GOODE: So, we review for that.

COUNCILMEMBER COUCH: Okay. Thank you. Thank you, Chair.

CHAIR COCHRAN: You're welcome, Mr. Couch. Mr. Hokama?

VICE-CHAIR HOKAMA: I just was wondering if the Department has an assessment or a level of what is currently existing that if, will be required to connect 'cause this is anybody who wants to go on our system, right? So is there any existing areas or projects that would want to go on our system that would be impacted by these things?

MR. GOODE: I think let's say if we have an existing storm drain system in Kahului and there's a vacant lot or industrial lot in particular, they typically want to hook up to our

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

system so that would definitely be an opportunity to have some kind of hookup, well an analysis of their hookup and a fee associated with it.

VICE-CHAIR HOKAMA: 'Cause let's take the current city Lanai, above Queen Street that is still private landowners road and drainage system. It comes downhill, enters the County system that what we're just going to let go in the future or we're going to have them address that since it enters our system? But it's all gravity flow --

MR. GOODE: Right.

VICE-CHAIR HOKAMA: --from makai.

MR. GOODE: Right. That's an interesting question. We'll definitely have to take a close look at that 'cause those kind of examples happen all over. And we talked about earlier about Kahului how we can go from our system to DOT to harbors, and that happens all over including obviously in Lanai City. So, we're going to need to look at that 'cause some of them are certainly grandfathered in to some degree but if they make modifications or expansions to their system it would probably have to be looked at.

VICE-CHAIR HOKAMA: And then on this MOUs do you have some kind of...I mean if you having hard time having other party agree to a new MOU or adjustments, is there a legal mechanism for you to force them into an agreement?

MR. GOODE: For...my guess is probably but...is it a requirement?

MR. SMITH: Yeah. It's part of their permit. . .*(inaudible)*. . .

MR. GOODE: Okay. It's evidently a requirement of their permit that they have to work with us so I guess DOH can help us when we ____ that.

VICE-CHAIR HOKAMA: Like National Parks I mean, you know, they at the top of the mountain so, you know, siltation flows from the top down to the ocean. So if, you know, you need an agreement with Parks then, you know, I'm assuming you have some way to get them to participate, National Parks.

MR. GOODE: Yeah. Well, from what I just heard from John is that sounds like their permit requires them to work with us, which is great.

VICE-CHAIR HOKAMA: Okay. Thank you very much.

CHAIR COCHRAN: Thank you, Mr. Hokama. Members, any need for further discussion? I have a question, Mr. Hokama's opening comments in regards to the, you know, the urbanized area. And I know it first came up with our Department of Transportation, Ms. Johnson Winer was in here and in order to agree with that they would continue to get these funding and if...so and now this kicked this into action because we went and agreed that we wanted to be considered urbanized so we can get these Federal highway funding for Transportation Department. So I don't know if the time, if it was

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

an opt in or out thing but I know 'cause we were discussing is this going to be beneficial or not but in the Department of Transportation aspect it seemed to have a good fit and that we...it's good, you know, it was a benefit. Now, it's fallen upon your Department because we've determined this to be this urbanized area to kick this MS4 Program into action. Yet that decision for DOT was because funding was to be gotten but this doesn't come with funding here and so now we're slapped...which is all a good thing. Don't get me wrong of course I want to see these great BMPs in place and implemented but that big dollar amount cost that's going to come with it is sort of something we need to deal with and is going to be a challenge. So just trying to, you know, recall the discussion in that area which now trickles down to why we're here discussing this. If you, do you have any comment, Director?

MR. GOODE: Yeah, thanks, Chair. Yeah, it's interesting that both the Department of Transportation and the Metropolitan Planning Organization rule and this clean water one both used the same Census Bureau formula or they used that urbanized area. And so they're two totally different statues in Federal law and yet they both reached towards the Census Bureau and say well these urbanized areas. And exactly how the Census comes up with that urbanized area I still don't quite understand 'cause it's the wildest looking district. You can hardly even gerrymander that big a district. So but they're two totally different ones. So while DOT does come with some funding opportunities, you know, particularly for transportation, this one doesn't. This one basically comes with you shall do it.

CHAIR COCHRAN: Right.

MR. GOODE: And in both cases there isn't an opt in or opt out. At one point we thought with the MPO it was an opt in/opt out. It actually is opt in or opt in; you're in. So the same with this one.

CHAIR COCHRAN: Okay.

VICE-CHAIR HOKAMA: The current.

CHAIR COCHRAN: Alright. Well, yeah, thank you. I was just...it reminded me that we were discussing that it came with funding but this is no funding attached. But I was noticing also in your plan and is this generated with the consultants too with your Department and consultants? Which is kind of a little bit of what the next item is on the agenda the contract for the consultants. And there is looks like timelines forecasted, proposed timelines year one, two, and three. So are we already in year one and two? 'Cause I think for the...is this for the whole...this permitting, the permit that we have existing or is this like where, when does this ...

MR. SMITH: That's for the permit we have existing. Yeah, we have an annual report due in January of 2016 which will be our second annual report.

CHAIR COCHRAN: Okay. So, in these schedules one, two are already in process, year one and two?

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. SMITH: We're mostly done with year one work. We're getting into year two work right now.

CHAIR COCHRAN: Okay.

MR. SMITH: Yeah. . .*(inaudible)*. . .

CHAIR COCHRAN: Alright. It will be...

MR. SMITH: Yeah.

CHAIR COCHRAN: Okay. Great. Well, this will be some nice light reading at bedtime. Thank you very much. And...

VICE-CHAIR HOKAMA: So, Chair?

CHAIR COCHRAN: Yes, Mr. Hokama?

VICE-CHAIR HOKAMA: Yeah before you consider I guess, you know, more than likely you're going to consider a deferment.

CHAIR COCHRAN: Yes. Yeah, no action taken here.

VICE-CHAIR HOKAMA: On this one.

CHAIR COCHRAN: We need further. . .*(inaudible)*. . .

VICE-CHAIR HOKAMA: I'd just like to say that because they've punted on the reauthorizing of transportation including aviation and the current ruling of the court last week on Waters of the U.S., we still have opportunities and we're pushing our national language where we may not necessarily have to disagree with a designation of an MPO but the counties can choose the circle. Because part of our argument is the Federal government and the White House with the agency is trying to now interfere with local government's land use authority. Okay. Planning is under the counties, we should be able to draw the circle of the 50,000 which makes sense according to our general plans and our community plans. We shouldn't be dictated by the Feds on how development and code is going to go by their arbitrary circle. I think that is another case of why we're getting much more victories in the district against the agency currently than in the past. So I would say we should not give up on our ability to continue to control our land use future which is rightfully the local government's authority. Thank you, Chair.

CHAIR COCHRAN: Yeah, thank you. Thank you for that comment. And but the thing about this one is there is a sort of line drawn in a certain area on the landmass but the practices that are being proposed will go no matter where because they're good things for us to be implementing. Whether it's just 'cause West Maui is not in this urbanized

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

area projects continue on and there's these type of practices need to be adhered to. So that's I think the beauty in the sense where we don't need to just focus on the Paia to Waiehu area in implementing this but it will go Countywide which I'm very happy to hear but again more cost to it too. So, Members, any further need for discussion on this item? It's not going to be...it's not over. We're just starting really the discussion. And so my recommendation is to defer this.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (excused: RC)

ACTION: DEFER pending further discussion.

CHAIR COCHRAN: Thank you very much.

**ITEM NO. 35: AMENDMENT TO CONTRACT FOR MS4 PERMITTING
AND STORM WATER MANAGEMENT PLAN (C5470-2)**
(MISC)

CHAIR COCHRAN: The next item is IEM-35 and it is an amendment to the contract for MS4 Permitting and Storm Water Management Plan, and that is Contract 5470-2. And this is...we have the contract which is sort of kind of generic in a way in our binder. But it's stated an amendment is made to it so I brought it up to get from the Department any comments in regards to that title heading of this item.

MR. GOODE: Okay. Thank you, Chair. I'll start and then John can add some specifics, but --

CHAIR COCHRAN: Okay.

MR. GOODE: --as I mentioned earlier when we first got under the MS4 Permit we had a need to come up with this Storm Water Management Plan by a certain date and there was just no way that we could do that in house. And so we ended up hiring Kennedy Jenks, is a fairly large engineering consulting firm I think primarily working in Hawaii and the West Coast. And they have a lot of experience with MS4s throughout the region that they operate. We went through the QBS or Quality Based Selection process for the consultants and, you know, based on their experience and their ability to commit to getting the plan done in time we selected them. Subsequently as we rolled into the next round of program compliance, again, we knew we had limited staff. We could do some of the work ourselves but the majority of it we needed to have some consultant work. So the Division was pleased with the product and delivery and responsiveness of Kennedy Jenks and entered into a contract amendment to expand the scope and go towards the next year's worth of compliance. So that's currently where we are at. I think we had, have one other amendment

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

coming up because they have been doing some of the third-party reviews I mentioned earlier, but that's my overview.

CHAIR COCHRAN: Thank you, Director. So is there a budgetary consideration here in this amendment?

MR. GOODE: No. We did receive funds from the Budget Committee and the full Council in FY '15 and '16 I think. What was it three hundred, four hundred thousand? Three hundred thousand in FY '16, right, and I think, I can't remember the exact number I think it's around three or four hundred thousand in FY '15. So we were able to procure the services with those funds.

CHAIR COCHRAN: Okay. You're just expanding the scope of their work and the funds distributed will cover that?

MR. GOODE: Yeah, we're taking the...we're pleased with the work that they did initially and then moved that into the following year which was a lot more work.

CHAIR COCHRAN: Okay. Alright. Thank you very much. And floor is open. Mr. Hokama?

VICE-CHAIR HOKAMA: So what is the actual expansion of scope?

MR. SMITH: If you look at the Storm Water Management Program Plan...

VICE-CHAIR HOKAMA: This handout?

MR. SMITH: Yes, that handout. At the end of each section, you'll see a number of proposed activities. I think there's six or seven sections within this particular document and that scope takes us through about midway through year two. So I mean we can go through 'em line by line as...yeah.

VICE-CHAIR HOKAMA: Give us a reference.

MR. SMITH: As an example would be adding a storm water page to the County of Maui's website, that's on Page 2-4. So it's a small part of what we're doing but what the consultant's doing is developing that page for us in year one and then in somewhere in year two we'll have that page go live. That's the first line on 2-4. So...

VICE-CHAIR HOKAMA: So they have measurements that they need to achieve for the Department then?

MR. SMITH: Yes.

VICE-CHAIR HOKAMA: Agreed upon. And any issues they responsible for by contract, they answer to Department of Health, they answer to the EPA on the County's behalf for any failures or discrepancies?

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

MR. SMITH: I don't...yes, we haven't gotten there, but I think the County would still be responsible. I don't think that Kennedy Jenks would be responsible.

VICE-CHAIR HOKAMA: Well, they negotiated a good contract then 'cause I would hold their feet to the fire if I'm paying them. Okay, I'm good.

CHAIR COCHRAN: Thank you, Mr. Hokama. Members, any further...yes, Mr. White?

COUNCILMEMBER WHITE: Thank you. I don't know that you'll have the answer to this question but I just looked up Kennedy Jenks in the DCCA website and it lists them under business type as a foreign profit corporation. Do you know why they would be listed as a foreign profit corporation?

MR. HOPPER: Mr. Chair? Or I'm sorry, Madam Chair?

CHAIR COCHRAN: Yes.

MR. HOPPER: Madam Chair, answering Mr. Chair's question.

CHAIR COCHRAN: Got it.

MR. HOPPER: Generally, and I don't know the exact details of Kennedy Jenks but my understanding is a foreign corporation is generally one that's not incorporated in the State of Hawaii so it may be incorporated in California or even Delaware. But I think when they say foreign profit corporation I think they mean that its place of incorporation is outside of the State of Hawaii.

COUNCILMEMBER WHITE: So everything outside of Hawaii is foreign.

MR. HOPPER: I think that's what they. . .*(inaudible)*. . .

COUNCILMEMBER WHITE: Well, that does, your explanation makes sense because it says that they're incorporated in California so I just find it strange that we would call them a foreign profit corporation but I can understand now. Anything outside Hawaii is just foreign. So thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. White. Any further discussion needed here, Members? Okay, so my recommendation for this is also to defer and I'm sure we'll have more discussion to come.

COUNCILMEMBERS VOICED NO OBJECTIONS. (excused: RC)

ACTION: DEFER pending further discussion.

CHAIR COCHRAN: And it looks like we have completed all of our agenda items on today's docket. So with that this meeting is adjourned. . .*(gavel)*. . .

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

ADJOURN: 3:02 p.m.

APPROVED:



ELLE COCHRAN, Chair
Infrastructure and Environmental
Management Committee

iem:min:151012:cs

Transcribed by: Cathy Simmons

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE
Council of the County of Maui

October 12, 2015

CERTIFICATE

I, Cathy Simmons, 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 2nd day of November 2015, in Wailuku, Hawaii.



Cathy Simmons