

**INFRASTRUCTURE AND ENVIRONMENTAL  
MANAGEMENT COMMITTEE**

**Council of the County of Maui**

**MINUTES**

**July 11, 2016**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 1:32 p.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Elle Cochran, Chair  
Councilmember Riki Hokama, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Stacy Crivello  
Councilmember Mike White

**EXCUSED:** Councilmember Don S. Guzman

**STAFF:** Shelly Espeleta, Legislative Analyst  
Raynette Yap, Committee Secretary

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)  
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  
Danilo Agsalog, Director, Department of Finance  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

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

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**CHAIR COCHRAN:** ...*(gavel)*... Aloha, will the Infrastructure and Environmental Management Committee please come to order? It is July 11, 2016, around 1:32 in the afternoon. And please before we begin silence all cell phones or any noisemaking devices. And I am Elle Cochran, the Chair of this Committee. And here with us is Vice-Chair of the Committee, Mr. Riki Hokama.

**VICE-CHAIR HOKAMA:** Madam Chairman.

**CHAIR COCHRAN:** Aloha. And Ms. Gladys Baisa.

**COUNCILMEMBER BAISA:** Good afternoon, Chair.

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CHAIR COCHRAN: Good afternoon. Mr. Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR COCHRAN: Aloha. And Chair of the Council, Mike White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR COCHRAN: Aloha. And Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR COCHRAN: Aloha. And from our Administration, we have Director of Public Works, David Goode.

MR. GOODE: Good afternoon.

CHAIR COCHRAN: Good afternoon. And looks like we have from Department of Finance, Mr. Danny Agsalog. Aloha. And Richelle Thomson of Corporation Counsel. Our Legislative Analyst, Shelly Espeleta. Aloha, Shelly, we welcome on board. And Committee Secretary, Rayna Yap. Let us check in with the District Offices at this time. Hana, Ms. Lono, are you there? Hana? Not...aloha, Hana. Hana District Office, Ms. Lono, are you there? No, let us check with Lanai. Lanai Office, Ms. Fernandez, are you there?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

CHAIR COCHRAN: Aloha. Thank you, Denise. And on Molokai, Ms. Alcon.

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR COCHRAN: Thank you, Ms. Alcon. And let's go back to see if Hana. Hana, are you online, Ms. Lono? We shall check in later with Ms. Lono. Members, today two items, IEM-9, Eliminating Building Code Exemptions for Conservation District and Hawaiian Home Lands, and IEM-58, Amending Section 10.60.042, Maui County Code, Crosswalks Established, Wailuku District. At this time, if anyone would like to sign up for testimony please do so at the front lobby desk, and at our outlying districts for remote testimony, please sign up there with District Staff. You please testify on items listed on the agenda and you will have three minutes to testify. It looks like I may not have any testifiers. Are there any testifiers, Ms. Espeleta?

MS. ESPELETA: Madam Chair, there is no one signed up to testify.

CHAIR COCHRAN: Thank you. And let's go back to the District Offices then. Ms. Fernandez, on Lanai, anyone there to testify?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

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CHAIR COCHRAN: Thank you. Ms. Alcon, on Molokai, anyone there to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR COCHRAN: Thank you, Ms. Alcon. And then let me check back with Hana. Hana, are you there? Ms. Lono? And just checking to see if there's anyone there to testify. We have someone calling her on an actual cell phone at this time. I'll give it a few moments and if not we shall close public testimony without objections.

COUNCILMEMBERS: No objections.

CHAIR COCHRAN: Thank you, Members.

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

**ITEM NO. 9: ELIMINATING BUILDING CODE EXEMPTIONS FOR CONSERVATION DISTRICT AND HAWAIIAN HOME LANDS)**

CHAIR COCHRAN: Okay, jumping into IEM-9, Eliminating Building Code Exemptions for Conservation District and Hawaiian Home Lands. And this is County Communication 13-135, from Councilmember Mike White, transmitting a proposed bill to eliminate exemptions in the Building Code of the County of Maui relating to lands within the Conservation District or lands designated as Hawaiian Home Lands. And correspondence dated July 5, 2016, Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Amending Section 16.26B.101, Maui County Code, to Eliminate the Exemption in the Building Code of the County of Maui Relating to Lands Within Conservation District. And the purpose of this revised proposed bill is to eliminate the exemption Building Code of the County of Maui relating to lands within this Conservation District. So, at this time, the Committee met on this item back on March 14, 2016, and additional research and outreach was needed before we could consider exemption for Department of Hawaiian Home Lands, particularly as it relates to whether or not the County has oversight on DHHL property, and the ramifications of exempting these properties. So, based on Committee's prior discussion, the Department of Corporation Counsel felt more comfortable with this portion of the bill dealing with Conservation Districts only. And that is what you see in the revised proposed bill today. Eliminating the Building Code exemptions for lands in Conservation Districts would allow the Real Property Tax Division to update County records. This would be important in the event of a natural disaster to be recognized for any Federal relief funds. It would also allow County to receive our fair share of tax revenue for these lands and to help to apply the standard building permit process to ensure that structures built on these lands meet health and safety requirements. I might also remind the Members that Office of Conservation and Coastal Land Administrator, Samuel Lemmo, in his letter dated March 10, 2015, is in full support of this measure. He believes the change will assist them in implementing

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new rules relating to construction activity in the Conservation District and will assist both the State and County in better managing our natural resources. So with that explanation, I shall open up the floor to Director Goode from Public Works and see if he has any comments at this point. Director Goode?

MR. GOODE: Okay. Thank you, Chair. Members, good afternoon. David Goode here, Department of Public Works. And the Department is in support of the proposed bill. We're glad the Committee worked to, you know, really find out clearly from Hawaiian Homes what their preference was, and, I think, they've made it pretty clear. As it relates to the Conservation lands, as you know, the State Department of Land and Natural Resources administers those lands. And so when folks are doing work on Conservation lands they actually process some kind of plans and approvals through DLNR. They also, of course, have illegal structures. So, we don't know what's currently in their pipeline because we're not part of the process. So as it relates to the bill, there's two items, I think, we at least ought to just touch on. One is an effective date. Since we don't know what's in process with DLNR it might make sense to have an effective date of about 90 days after, if this passes this Committee and the full Council. So, we can transmit it to DLNR and then they can advise their applicants that they're now gonna need a building permit in which case they have time, maybe they have some that are ready to approve, and they feel like they're grandfathered in, which is normally what we would do. But, again, this process is outside of us. And the second item for consideration is something I think I brought up in a previous meeting was currently our Plumbing and Electrical Codes have the same exemption and they're not part of the bill. So, I don't know if that's a posting problem, the way the item is posted. It is something, if this item passes on Building Code, we should immediately look at the Plumbing and Electrical Codes. And that's it, Chair.

CHAIR COCHRAN: Thank you, Director. And, yes, due to the title of what's agendized we won't be going to that topic at this time that you mentioned--the Plumbing and Building, Electrical Codes. But definitely on the next go-around we can address that with your assistance, of course, in, you know, the proper verbiage and what have you --

MR. GOODE: Okay.

CHAIR COCHRAN: --to coincide with this. So, yes, that will be sure to come. So, thank you for your comments, Director. Members, any need for clarification and comments? Yes, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. And thank you for the changes to the bill. The question I have regarding the effective date. My recollection is the main reason for us to do this, and I understand the pipeline issue. But the main reason for us to do this is simply to get notification that there is building activity. Not that we would be requiring you to go through all the drawings and everything like you do in a normal process, but my recollection was that the main reason for this was so that we are getting information that there's going to be a structure built on a property. And it was driven by, I believe, there are a couple of buildings identified by the pictometry to exist

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on parcels that we had no idea had buildings. And so I'm not sure that we really need to have a 90-day delay in the effective date if the main reason is just to know that there's something going on. So, if there's something in the pipeline, I think, it could be, and maybe we may have to say something in the Committee report, but it seems to me that as long as we know that something's happening we don't necessarily have to have the approval of those things that are already in place. It's just notifications. So, I wouldn't want us to miss out on something that because they've already started they don't need to talk to us. So, I'm not sure how you would suggest we deal with that, but.

MR. GOODE: Okay.

CHAIR COCHRAN: Yes, Director?

MR. GOODE: Thank you, Chair. Chair White, I think, number one, this bill says it's not going to be just notification. It's going to be a whole building permit. So, if you're on the Conservation lands, you're gonna need DLNR's approval, and our building permit. So, we will be notified through the building permit, but we'll also be collecting fees and we will be doing inspections so it's like any other structure that we issue a building permit for. A thought I have is that, again, say the bill were to pass, and if it had...if it didn't...if it wasn't effective immediately, we'd write a letter to Sam Lemmo, at DLNR, and say, you know, this is passed. And however the Council would also like, in this interim would like to know what structures have been approved by DLNR. And we could ask for the entire year or up until the effective date so give us notice...

COUNCILMEMBER WHITE: Or for the past two or three years.

MR. GOODE: Yeah, yeah, we could go back a ways. And they can provide us a list of everything that they've approved going backwards up to, I guess, even the effective date, whatever that would be. I'm just a little worried about the pipeline, as you mentioned.

COUNCILMEMBER WHITE: No, no...

MR. GOODE: I think the pipeline is pretty thin.

COUNCILMEMBER WHITE: Yeah.

MR. GOODE: But it seems some folks have some reasonable expectation that they just need DLNR approval.

COUNCILMEMBER WHITE: So, you would be comfortable if we just said effective date 90 days after passage or something of that sort?

MR. GOODE: Correct. And then I can could...I'd correspond with DLNR to get a list.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

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

VICE-CHAIR HOKAMA: As we have, Mr. Agsalog, with another property, Conservation lands, I think, the court allowed us to go and tax previous years. So with this potential bill, is your Department able to then verify through, I guess, the original lease agreement the ability to go back and tax for those uses that were not covered by an earlier assessment or taxation payment?

MR. AGSALOG: Madam Chair --

CHAIR COCHRAN: Yes.

MR. AGSALOG: --and Members of this Committee, I think, our ordinance, it's very specific in how we...if we can establish that they owe us some taxes we can look all into that. And I'm sure that they will go through the process, which is the appeals process. But we will look into that if we discover that there are some structures that need to be assessed and taxed accordingly. And we will do our job as the assessor and taxing agency to collect this back taxes if we can establish through the lease agreement that's recorded through the Bureau of Conveyance.

VICE-CHAIR HOKAMA: Currently, we don't have a financial assessment of what potentially is out there for collection, do we, Director?

MR. AGSALOG: Madam Chair, I do not have that number. But, again, as if this bill will approve, and we get list from DLNR through the Public Works, and we see that there are some that have not been taxed accordingly based on their acquisition of that property or structure. We're going to look at that and I probably will be able to make a report to this body.

VICE-CHAIR HOKAMA: Okay, okay. So, I guess, one of the tools your Department, your Division, can do then is, of course, put a tax lien on those real properties then for nonpayment or nonconformity?

MR. AGSALOG: We do. We do tax lien, but, again, the State portion of it we are restricted of what we can do for the State portion of it, but the lessee that's responsible for the taxes for when they lease property from the State we are able to lien their name as well as any property that they have in that property...the structure for that matter.

VICE-CHAIR HOKAMA: Including any permanent improvements?

MR. AGSALOG: Yes, sir.

VICE-CHAIR HOKAMA: Okay. So, we're clear, is there a requirement prior to us going to court, Corporation Counsel? We have to give 'em ten warnings? Ten letters that you

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in violation...ten whatever before we can actually go to court or we can go straight to court for noncompliance?

MS. THOMSON: Thank you, Chair.

CHAIR COCHRAN: Yes, Corporation Counsel?

MS. THOMSON: I don't know that offhand. I'd have to look into it. You're speaking of prior to lien'ing the property? I believe so.

VICE-CHAIR HOKAMA: You know, for me --

MS. THOMSON: But I'd like to confirm.

VICE-CHAIR HOKAMA: --there's property owners that, I guess, has no respect for the County's jurisdiction. So, I don't have a problem going to court to force payment. I'm tired of just doing the talk and sending written correspondence. I don't have a problem going to court to get a judgment.

MS. THOMSON: I can look into that.

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

CHAIR COCHRAN: Okay, thank you, Mr. Hokama. Members, any further questions? And I just wanna turn the floor to Director Agsalog, if you have any comments from your Department in regards to this item?

MR. AGSALOG: Madam Chair, this going to be a part of our tools in assessing structures that being built that what we don't have jurisdiction at the moment. As the Council Chair mentioned earlier, we do the pictometry and we assess structures that we find that way. But there are some instances where we do not have that capability of getting it. But, again, the pictometry has been very useful for us. Again, in implementing this rules, it will be a part of our tools, Madam Chair.

CHAIR COCHRAN: Thank you very much, Department. And, Corporation Counsel, Ms. Thomson, did you have any opening, some comments that you wanted to add to this item?

MS. THOMSON: No, thank you.

CHAIR COCHRAN: Thank you. Thank you for being here. And...

VICE-CHAIR HOKAMA: Chair?

CHAIR COCHRAN: Oh, yes, Mr. Hokama?

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VICE-CHAIR HOKAMA: You know, one of the things that I wanted to ask the departments for some comment, especially if we talking about the exemptions, even the State recognizes from '78, the State also gave up their participation jurisdiction in real property taxation. It is now the sole jurisdiction of the counties and the State recognizes that. Part of my concern is with the exemptions how does then we get properly notified on the areas that it impacts our taxation collections? So, to me, to place language in this proposed legislation to deal with those exemptions and who takes responsibility of notification? Because people like me then have a less need to ask somebody else to make up for that loss revenues.

CHAIR COCHRAN: Director Agsalog?

MR. AGSALOG: Madam Chair, I had discussion with my Administrator with regarding the exemption on Building Codes for those areas we currently exempt now without this amendment. And, I think, if we can, and I don't know if we have the jurisdiction to allow the County to at least get a positive exemption, meaning that we will be the one telling them that they are exempt from our Code. They will put an application and then we tell, we as the County say, you are exempt, State or XY company, based on our ordinance. But instead of this just taking it for granted that they are exempt. They need to come to us and request that exemption. I call that positive exemption. So, I don't know how can we do that, but that's if we have jurisdiction. And can we cite someone that did not come and get exemption? I don't know. So, that's probably from the enforcement point of view. But this is the discussion I had with my Administrator. And then it informs us that there are activities being done in that particular area. We don't have to make them go through all our whole Codes of the Building Codes, the Electric Codes, and then they will go through the DLNR permitting process. We just need to say you are exempt based on...you are a State or...that's a positive exemption that I've been discussing with my Administrator.

VICE-CHAIR HOKAMA: Chair, is that something you want considered in this legislation or you don't want it be part of this? You just want to focus on Building Code? I know, you mentioned electrical and plumbing already. So, I just wanted to know what would be your preference in direction.

CHAIR COCHRAN: Yeah, I guess, that would fit in under this agenda...agendized title.

VICE-CHAIR HOKAMA: Well your title is broad.

CHAIR COCHRAN: 'Cause the plumbing and building...

VICE-CHAIR HOKAMA: But I know it's not specific in your draft to us.

CHAIR COCHRAN: Yeah, I kinda wanted to move this...I mean, if we can address that in future...a future meeting along with building and all the other adjustments to coincide.

VICE-CHAIR HOKAMA: Okay. And again --



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CHAIR COCHRAN: Yeah. Unless...or...

VICE-CHAIR HOKAMA: --you know, 'cause anybody who comes through a building permit process, the departments get notified because of that building permit process and how it goes to different agencies and whatnot. So, if you exempt the permit then my question is how do we get notified? You know, I mean it may not be your issue, Director Agsalog, but it's a problem for me. So, thank you, Chair.

MR. AGSALOG: Madam Chair?

CHAIR COCHRAN: Yeah. Yes, Director?

MR. AGSALOG: Just in addition because I have seen some people that requesting building permit, and I don't think that when they put their application all the agencies are notified via that single application. Even though they have their own water, they still have to go through the water, being exempted there. Even though they have their own septic, they still go through the sewer, Department of Health in our process. So, I don't know if that will be a double process if you have a DLNR permitting process and then you have our County process. So, that's just I cannot see that DLNR will be penalized in a double process. I just don't know. But, again, my...our request in here or our interest in here is getting that activity recorded for us.

VICE-CHAIR HOKAMA: Understood, understood, Director. Yeah, no, I support your intent, Director Agsalog. My thing is until our employees notify the State of potential violations, the State has no clue what is going on their property. Okay. So, good thing for our assessors and our inspectors. Thank you, Chair.

CHAIR COCHRAN: Okay, thank you, Mr. Hokama. And, Mr. Sam Lemmo, Office of Conservation and Coastal Lands has a correspondence to us. What is the date on this...March 10<sup>th</sup>, I think. And he is, again, very huge support of this, and will help assist them, the State, implementing their new rules related to construction activity in Conservation District, and believes it will help assist both of us, State, County. He's also in support of proposals to amend the Electrical and Plumbing Codes that Director Goode mentioned too. So, that's to become and then we see that we already have their blessings on what we aim to do here too, so, on the State level. And, I guess, my question for Mr. Agsalog is if this proposed legislation is gonna impact assessed property values in our Conservation Districts?

MR. AGSALOG: Madam Chair, any time that we recognize a structure or assess a potential property for us to assess it's always a positive to our ability to fairly tax the community because those that's hidden that we are not able to assess at the moment are enjoying the activities that's being done or paid for by the people that's being assessed. So, this is going to help in fairness of assessing and taxing the properties here in the County of Maui.

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CHAIR COCHRAN: Okay, thank you very much. And so, if this passes now we'll be able to get those revenues for this next coming...upcoming taxation period? This can go into effect in time for that?

MR. AGSALOG: Madam Chair, as soon as we start getting because permitted or not permitted if we see the structure we will assess it accordingly. It's not a function or fully permitted structure if it is, the structure is built and there is assessed value on it, we will assess it and tax it. So, it's not that we have assessed unpermitted structures that we don't tax. We tax them now as soon as we recognize that's there. So, if this particular vehicle will bring us more potential structures that we will tax then it will add up to the current assessment that we have. So, I don't want to confuse the issue that if you have a structure that's not permitted, if we seen it, and we already know that's it's there it's being assessed, and we will tax it. So, it's not that because you didn't get a permit, you're not being taxed. If we recognize it, we find it through pictometry, or our staff going around and looking for this structure that needs to be assessed, we will assess it, and send it to the lessee or the owner, Madam Chair.

CHAIR COCHRAN: Okay. Thank you very much, Director. Members, any further questions? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: I'm excited to see this, but I have a...I'm kinda confused. Isn't this Hawaiian Home Lands the issue where we have a whole bunch of taxes that have never been paid or never been collected? So, we can assess but can we collect? Does this just add to the problem?

MR. AGSALOG: I don't think it adds to the problem, Madam Chair. It's just, again, this one it's a part of our challenge to collect the delinquency. Hawaiian Home Lands are taxed based on our ordinance that they are exempt for the first seven years of the building of the structure. They get used to that and they don't think that they need to pay after the seven years of exemption, so they continue not paying. A lot of the newer homes that's been built that are paying though, it's the older one that's are so used to not paying that we couldn't collect, if we discussing the Hawaiian Home Lands delinquencies that we have currently.

COUNCILMEMBER BAISA: That's what I'm discussing --

MR. AGSALOG: Yes.

COUNCILMEMBER BAISA: --because it concerns me. You know, I've been here ten years and I've been hearing this now for ten years. And it's disconcerting to me that, you know, it continues.

MR. AGSALOG: And, Madam Chair, the assessment for the Hawaiian Home Lands is ongoing. They pay their delinquency or not, they are assessed every year on the structure. The land they are exempt because it's State property, but the structure we assess them and we tax them accordingly. And, again, the newer structure that been

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built, a lot of them they pay their fair share, but the older ones, the ones that we have much challenging time collecting from them.

CHAIR COCHRAN: Thank you, Director. Members? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Yeah, I don't beat dead horses, no sense. But, you know, it does bother me that this goes on and on and on. Is there some way that we could resolve this? I mean, I don't know what collection efforts are made or promises that have been made. But, you know, we've really never looked into the nitty-gritty of it. We've mentioned it, but then we don't dig into it. So, I really don't know.

CHAIR COCHRAN: Right. And I guess, that could be for another day, another subject --

COUNCILMEMBER BAISA: Absolutely.

CHAIR COCHRAN: --and because...right and I don't disagree that this needs to be looked into. That portion was taken out of this particular legislation for today due to the fact that there's a whole lot more to be discussed in reference to Department of Hawaiian Home Lands, and just hopefully wanted to focus on the Conservation aspect at this point, and see if we can move something out so our Real Property Tax Division can start generating some revenue for us. But, at this time...so, Members, any further questions? Yes, Mr. Hokama?

VICE-CHAIR HOKAMA: Hearing Director Goode's comment, does it make sense for us to wait one meeting and post so that we can consider the electrical and plumbing components also, Chair? I would ask for your guidance on this.

CHAIR COCHRAN: We can. And...

VICE-CHAIR HOKAMA: And, again, I just bring it up 'cause I don't know if it's difficult to just then do one-third of the Code, which is the building part and yet two-thirds of the Code is still the way it is. So, I don't know if it creates further confusion on what got exempted, what is exempted, what is not exempted anymore. I mean, Director, you brought it up. So, you know, from an operational standpoint, can you maybe give us some insight?

CHAIR COCHRAN: Sure, Director.

VICE-CHAIR HOKAMA: Make sense to wait; or, no, not a problem, we can go with just one-third of the triumvirate to go forward.

MR. GOODE: Madam Chair, in talking to our Administrator there is a potential for confusion. And when you...usually when there is a potential for confusion that means we get involved. So, if it's something that could be easily fixed with posting for a subsequent meeting, I guess, I would prefer that. But, you know, we can administer it as is. But if it's something that can be done relatively quickly, it's probably worth the wait.

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VICE-CHAIR HOKAMA: Well, Chair, I wait for your guidance.

CHAIR COCHRAN: Okay.

VICE-CHAIR HOKAMA: Thank you.

CHAIR COCHRAN: Yeah, and, I mean, it can be done that way also. I know, it was brought up last discussion. And so, I was hoping Department would have had it, you know, coincide with this. But my intent and, again, you know, we can and possibly add in the comments that you had earlier with, you know, who presents the list and how do we get notified, and where does that come from, and who makes sure that that gets handed to us that we know what's happening on our Conservation lands. So perhaps that can get incorporated into the new version too. I just wanna make sure we don't lose that opportunity in generating this revenue for this upcoming, you know, budget cycle. So, I believe, that we can probably fit it in to accommodate all the changes needed with Director Goode's comments too. And so, yeah, I don't think it has to, has to be pushed out today. And, I think, with this discussion we've decided, you know, looking at adjustments, but I really, really wanna make sure all those points are covered in the next meeting so we can fully get this done. And that way, again, getting appropriations, you know, generated off these Conservation lands. So, I guess, with that any further need for discussions, questions, comments in regards to this item at this point then? Okay, so without objections then, Members, we shall defer and do a little bit more work on this, and I shall bring it up as soon as I have another meeting.

COUNCILMEMBERS VOICED NO OBJECTIONS. (RH, GB, RC, SC, MW)

**ACTION: DEFER pending further discussion.**

CHAIR COCHRAN: Okay, thank you very much.

**ITEM NO. 58: AMENDING SECTION 10.60.042, MAUI COUNTY CODE, CROSSWALKS ESTABLISHED, WAILUKU DISTRICT**

CHAIR COCHRAN: So now let's move to the second item. The last item on our agenda. And that would be...thank you, Director Agsalog, for being here. And the next item is IEM-58, and this is amending Section 10.60.042, Maui County Code, Crosswalks Established, Wailuku District. And this is County Communication 16-115, from Director of Public Works, transmitting a proposed bill entitled A Bill for an Ordinance Amending Section 10.60.042, Maui County Code, Relating to Crosswalks. And the purpose is to establish a crosswalk on Lower Main Street approximately 400 feet north of its intersection with Mill Street. And you can notice up on the screen, we have a visual to show you folks where this is. And this is...the Public Works Commission reviewed this matter at its meeting of March 23, 2016, and voted in favor of the proposal. Please refer to a copy of Public Works Commission's recommendation letter

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dated April 4, 2016, that was transmitted to Committee by correspondence dated on July 7, 2016, from Director Goode. I'm also distributing today, at today's meeting, a copy of Commission's minutes from its March 23<sup>rd</sup>. Ms. Yap is handing it out right now. And color copies showing different views of the site of the proposed crosswalk. And it's also scrolling up on the screen there. At this point, I'll turn the floor back over to Director Goode, and if you can provide us with some comments.

MR. GOODE: Okay. Thank you, Madam Chair. And thank you for the great visuals.

CHAIR COCHRAN: Yeah, it helps.

MR. GOODE: It certainly helps. This request actually came from Tiffany's. As you can see Tiffany's Restaurant is on the Waiehu side of Lower Main, and across the street is a gravel lot, parking lot, that they use for overflow parking. And there is some back and forth traffic there. There was actually a pedestrian incident in this area that, I think, ended up in a lawsuit of which our staff was, provided testimony on. I don't believe the County was named in that suit although I could be wrong. But anyhow, Tiffany's would like to have a crosswalk installed and so we did send it. Well first of all, we looked at the request and we wrote back to them and said that, you know, it's certainly fine with us. We did list some conditions and I'll talk about one of the conditions in a moment. And then we sent it to Public Works Commission and they concurred that it made sense to have one here. When we wrote to Tiffany's in October, we basically said, hey it's gotta meet our standards. It's gotta have ADA on both sides of it. And they need to submit construction plans, which they have done. And from what I understand they're ready to be approved. There's one item which we have not received back from them and that's we asked them for an agreement to be executed with us for the maintenance of the crossing and related improvements. Our feeling was that this crosswalk was really specific for one business, and one entity. It wasn't otherwise something we felt we would've been doing. We have not received a response as it relates to the agreement, but they have proceeded with the construction plans, and everything else. So, Chair, while we did send it up for the Committee to entertain, and there's a bill accompanying mentioning this crosswalk, we would still like to pursue the maintenance agreement. We feel that if the business is changed, or something else is built over there, or things change in the future, or things start to degrade, that the applicant in this case, Tiffany's, be responsible for that long-term maintenance. And that's where we're at.

CHAIR COCHRAN: Okay, thank you, Director. So this was one of the conditions asked of Public Works Commission of the entity? Was that discussed there?

MR. GOODE: No, I don't think it was discussed. I'd have to look through the minutes myself. They were more interested in the technical aspects of it, how it would meet, you know, the existing shoulder on one side. And they had some questions about lighting, if I recall correctly. But I don't recall us discussing the agreement with the Commission.

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CHAIR COCHRAN: Okay, so your Department is currently waiting for some type of response still, if any?

MR. GOODE: Right. And we haven't actually had any response since our October letter on that item. They've responded on everything else and, you know, made the construction plans and got it this far along. But, and again, we sent the letter and I did mention it in my letter to the Council so I'm bringing it up here, you know, the eleventh hour, but, I think, it's important. And if the body feels that it's something we should maintain, we can move forward. But otherwise if you feel as we do that a maintenance agreement, in this case, is the responsible thing to do then we'd probably ask to defer the item until the maintenance agreement is ready.

CHAIR COCHRAN: Okay. I guess, my one question, Members, if you don't mind, this is installed by the restaurant, Tiffany's, and so the Department will still have oversight on their, you know, laying it out, striping, or whatever needs to be done. Is that...

MR. GOODE: That's correct. In fact, we've already basically approved the plans, ready to go. And like anybody else that does work on our right-of-way, normally it's they're hooking up a water lateral, or sewer lateral, or doing some electrical work, adding a driveway, we inspect that work. So, we would inspect it. This is the first case that I'm aware of we're adding a crosswalk in the Maui County Code that someone else is doing. Normally, we would do this work, right? We'd get your approval. We would do a work order. We'd either, depending on how much work is involved, we'd either do it in-house or we'd contract it out. In this case, they're doing the work. They did the plans and they'll do the work. And our concern is the maintenance thereof, thereafter.

CHAIR COCHRAN: Right, understandable. Okay. Yes, Mr. Hokama?

VICE-CHAIR HOKAMA: Thank you. Director, maybe you can help us. Is there plans down the road for sidewalks to be constructed and installed on this area of Lower Main?

MR. GOODE: Madam Chair, Mr. Hokama, there's been ever since we did the first phase of Lower Main from the Beach Road up to Waena. That was always called Phase I. This would have been Phase II. And Phase II has a lot of land issues as you can see looking down the road there. There's...it's pretty tight. And so that never really got much traction. But, I think, long-term it's something that we should have in that area. I mean, there's a fair amount of commercial activity.

VICE-CHAIR HOKAMA: If I can ask, all this colored orange area, that is private property?

MR. GOODE: I don't know if that goes exactly to the property lines, but it generally describes the private property, not sure within the asphalt right-of-way, if that's the exact property lines.

VICE-CHAIR HOKAMA: So, I can appreciate the comment about lighting from the parking lot side, not the business side, 'cause I've parked there before so I can appreciate. Is that

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lot part owned by the business, the Tiffany business, or is that a lease lot that they're using for accessory parking?

MR. GOODE: You know, I don't know, if they own it or lease it.

VICE-CHAIR HOKAMA: 'Cause I'm just wondering if they are not owning it, and now the current owner chooses another tenant and use, potentially you don't need that crosswalk, right?

MR. GOODE: It's possible, yes, if there's still a lot of pedestrian movement.

VICE-CHAIR HOKAMA: I think, it's a good idea, the crosswalk, myself. I mean, we got bad drivers in this island. And part of my concern is the two lanes, the two short, the second short lane by the intersection of Mill and Lower Main.

MR. GOODE: Oh, right.

VICE-CHAIR HOKAMA: You know you have that short right-hand lane for about 150 feet.

MR. GOODE: Right, into the gas station and then it ends.

VICE-CHAIR HOKAMA: Right, and it's amazing how fast people go on a stupid little strip to make that cut back to the left lane. And so, I get low tolerance for bad driving myself. So, is that something you can eliminate that right lane? 'Cause, I think, we would get better control of the road speed and everything by eliminating that if we're gonna do this kind of projects and put pedestrians on this road.

MR. GOODE: Yeah, Madam Chair, it's something I would like my Engineering Division would look at, see what all the dynamics are. I thought it was a requirement when they did the gas station, to add that. And, I guess, maybe in anticipation of a Phase II, which may have four lanes. So, it's definitely something I would agree it needs to be looked at.

VICE-CHAIR HOKAMA: But I would say, I would hope you would consider lighting 'cause at night, even with the crosswalk, it's dark on the accessory parking side. So, I would just say that would be one of my safety concerns. But, I think, it's a good idea to have a crosswalk there. Thank you, Chair.

CHAIR COCHRAN: Thank you, Mr. Hokama. Members, any other questions or comments needed? So, Director, you said they've submitted building plans or permits in order to do the crosswalk currently?

MR. GOODE: Yeah, we call them construction plans.

CHAIR COCHRAN: Construction plans. In order...and they've been approved? Or it's just in the process?

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MR. GOODE: They're either ready to be approved or have been approved.

CHAIR COCHRAN: And so, in my notes it says the Commission recommended that prior to installation that, you know, certain things are done such as the lighting Mr. Hokama's mentioning. Adequate lighting be implemented, warning traffic control devices, of course, the required markings on the road. So, has...do you know if they are going, I mean, it will not be approved unless they do this? So, this isn't a question or a recommendation or suggestion that they put in lighting, it's something they gotta do. Is that a true statement do you think?

MR. GOODE: Well remember the Commission is a recommending body.

CHAIR COCHRAN: Right.

MR. GOODE: And so, you know, our staff takes their recommendations, you know, strongly. And they've...all the markings are there, that's part of the plan. And there's lighting, what was the other thing?

CHAIR COCHRAN: Warning traffic control devices. Would that be the flashing lights? That's kind of a lot to install.

MR. GOODE: Yeah, we wouldn't put that in this case, but we're gonna have the warning signs. And usually we use the bright yellow neon signs for crosswalks now. As for lighting, my understanding was that they were gonna process a separate request through our...including the street light request; and that should also eventually go to the Public Works Commission. And we've looked at it, the lighting is a little different there. If you look up and down the road, every other electrical pole, every other has a light. And if you look, okay, there's a light, no light, and then the one that's right at the crosswalk --

CHAIR COCHRAN: No light.

MR. GOODE: --you kinda see it on one of these pictures, it doesn't have a light. And then so it's almost it should've had a light a long time ago judging by every other light, every other pole having a light, but it's missing there. That's the pole just to the right of Tiffany's and there's no light. If you look two down, I think, it is...anyway. So, be interesting, we'd have to dig back in the archives, maybe there was a light there at one time. I have no idea. But the plan, my understanding was their plan was to submit a request through the normal street lighting request process. Our staff notes, you know, they've been there in the evening too that they have parking lot lights, temporary lights, in the temporary lot or gravel lot. And there's some spill over from those lights in that area so it does help to illuminate the area. So they felt that even if that street lighting request was delayed a little bit, it'd still be okay, maybe not perfect but okay given their temporary lights that they have.

CHAIR COCHRAN: Okay, I mean, I think, of course, I think, the lighting 'cause it is dark there, is very important. But no sidewalk versus a sidewalk just in itself, I think, is



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very helpful too. That as you say, Mr. Hokama, people speed down that road. So, it's already quite hazardous. Are there other examples, Director, that you know of that a business or private entity has constructed a crosswalk like this, in mid-intersection too? Do you have any other examples that you can think of? 'Cause I'm trying to think on the maintenance aspect of it if...is it already others have taken that responsibility and doing it that way already? Or...I was just curious?

MR. GOODE: We don't have any maintenance agreements that I'm aware of mid-block.

CHAIR COCHRAN: Is there any other places we've done this? As an example.

MR. GOODE: No.

CHAIR COCHRAN: No.

MR. GOODE: Normally we would maintain --

CHAIR COCHRAN: Okay.

MR. GOODE: --any crosswalk. I think, there's a project that's coming up in Kihei on Piikea, I guess, they call it the Krausz project. Was that before Council at one point? They're developing both sides of that road so they're gonna have traffic back and forth. They're probably going to be adding crosswalks as part of that, but I'm not aware of any maintenance agreements there. We feel that this particular case was a request specifically by a business for their business use given that they have use on both sides of the road. And so they've done everything. They did the plans and we've asked for the maintenance agreement. We just haven't got a response. So, you know, we can go either way with it. If you feel that it's something that we should be doing as part of our maintenance, you know, we'll do it. If you, again, if you agree with the Department then maybe we wait till we get that agreement ready.

CHAIR COCHRAN: And maintenance would entail what? Restriping?

MR. GOODE: Restriping.

CHAIR COCHRAN: Lighting is installed then you would...Public Works would be in charge of lighting issues?

MR. GOODE: Maui Electric would. Yeah, Maui Electric would replace the bulb. I mean we would be paying for the light. I guess, primarily be restriping, you know, the maintenance agreement might touch on it. If there's specific signage that gets knocked down, and they may be responsible for that. We would have to work that out in the agreement.

CHAIR COCHRAN: Okay. And so in your opening comments you would prefer to have that agreement signed or at least acknowledge it somehow first before passing this through? That would be your preference?

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MR. GOODE: Yeah, I think, that would be appropriate.

CHAIR COCHRAN: Okay. Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, I appreciate the Director's perspective, but with the crosswalk I also see the abutting business or what we commonly call the Archie's restaurant. Again, they have a difficult and unique parking situation. A lot of people have to reverse onto the road to exit the restaurant. I consider this potential crosswalk to further lower speeds to make ingress, egress out of this adjacent business even safer now because of reduced, what I would consider reduced speeds by people being cognizant of pedestrian use. So, I can see others having some type of benefit, not maybe as directly as your primary business, Director. But I see it as a good traffic calming or traffic slowing down device that, I think, is needed on that road. So, I'm a little bit more open to us taking care of the greater responsibility. Especially right now with the temporary lights are they required to comply with shooting requirements as temporary lighting devices?

MR. GOODE: I'm not sure. Probably not because it probably didn't need an electrical permit for that. I think those are gas powered lights.

VICE-CHAIR HOKAMA: Yeah, it's part of the like your service rental, you know.

MR. GOODE: Yeah, they're probably not.

VICE-CHAIR HOKAMA: Just generators on wheels. And so again, I don't know if we need to have those issues aired out, at least made aware that it needs to stay within the shielding parameters of the County ordinances, Chair. I think, we should just be up front with the property owners what is their potential responsibilities.

CHAIR COCHRAN: Okay.

VICE-CHAIR HOKAMA: Thank you.

CHAIR COCHRAN: You're welcome. And so this road is too much of, I guess, a thoroughfare in a sense where you wouldn't do like a raised crosswalk or, you know, more of a traffic calming type amenity there? Is that?

MR. GOODE: Yeah, that's correct.

CHAIR COCHRAN: That wouldn't apply?

MR. GOODE: We probably consider it a major collector.

CHAIR COCHRAN: Right, major collector.

MR. GOODE: So as such, yeah, we wouldn't put speed tables or speed humps on it.

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CHAIR COCHRAN: Okay, all right. So, Mr. Hokama, your comments is you're leaning towards the private business ought to be the maintainer --

VICE-CHAIR HOKAMA: No.

CHAIR COCHRAN: --of the crosswalk? But you feel like County, it's beneficial to the community as a whole...

VICE-CHAIR HOKAMA: To the general business community --

CHAIR COCHRAN: Right.

VICE-CHAIR HOKAMA: --in the general area.

CHAIR COCHRAN: That we can...

VICE-CHAIR HOKAMA: I can see others like, I mentioned, in my example the adjacent or the abutting property having some potential benefits from the crosswalk being there regarding that ingress, egress from their own parking area. So, it's just my own perspective, Chair. Thank you.

CHAIR COCHRAN: Okay. Thank you, Mr. Hokama. Members, any other comments? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: I wanna express my support for the crosswalk. You know, I happen to love the two restaurants that are in this area. One is Tiffany's and the other is Archie's. And it can get very, very busy and we are always running across that road and hoping that, you know, nobody's speeding. Fortunately, it's easy to see because it's wide open. But with the speeding it becomes very dangerous. So, I think, it's a good idea. And, you know, again, here we at the private-public partnership thing. They're gonna put in the crosswalk and if we take over the maintenance well, I think, we've got a good partnership there. Also, then we'd have to be chasing them to make sure they did the maintenance. So, the other way this is in your schedule of what you do. So, I like this. I think, it's really, really important. Who knows one of these nights, you know, it is a bar. Tiffany's is a bar and people come out of there late and who knows what kind of shape they're in at the moment. So, I think, it's really, really important. Thank you.

CHAIR COCHRAN: Thank you for your comments, Ms. Baisa. Members, any further need for questions or comments? So, Mr. Goode, I guess, I have the kind of same feel that it looks like a public-private type partnership going on here and it's not a huge, you know, I don't think a big undertaking. I guess, you could pursue seeing if they want to respond to your maintenance agreement. But, I think, overall it's one of those keeping a watch out and who's going to make sure it's being maintained. Are they in compliance with their maintaining and things of that nature, which truly isn't their job. Their business is a restaurant, and cooking food, and having a bar, and of sorts

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versus our Public Works has that expertise in that field. So, Members, I'm gonna make my recommendation.

COUNCILMEMBERS: Recommendation.

CHAIR COCHRAN: Thank you. I'll entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance Amending Section 10.60.042, Maui County Code, Relating to Crosswalks; incorporating any nonsubstantive revisions; and filing of County Communication 16-115.

VICE-CHAIR HOKAMA: I make the motion for you, Chair.

COUNCILMEMBER CRIVELLO: Second.

CHAIR COCHRAN: Thank you. It's been moved by Mr. Hokama, seconded by Ms. Crivello. And, Members, is there any need for discussion on the matter? Seeing none, all those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR COCHRAN: Any opposed, say "no." And it looks like motion passes with six "ayes," one excused, zero "noes."

**VOTE: AYES: Chair Cochran, Vice-Chair Hokama, Councilmembers Baisa, Carroll, Crivello, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Guzman.**

**MOTION CARRIED.**

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

CHAIR COCHRAN: And, yes, Mr. Goode?

MR. GOODE: Okay. We won't pursue the maintenance agreement based on discussion.

CHAIR COCHRAN: Okay, all right. Well very good. Well thank you for your input.

MR. GOODE: Thanks.

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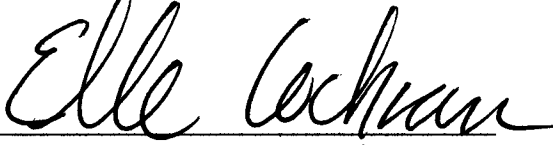
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CHAIR COCHRAN: And, Members, thank you for your input today. And it looks like we have completed the agenda and we are adjourned. . . .(gavel). . .

**ADJOURN:** 2:29 p.m.

APPROVED:



ELLE COCHRAN, Chair  
Infrastructure and Environmental  
Management Committee

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Transcribed by: Delfey Fernandez

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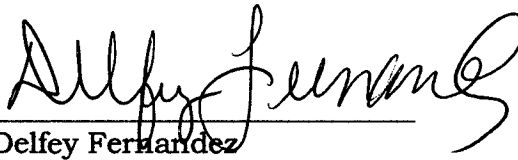
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CERTIFICATE

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 the 1<sup>st</sup> day of August 2016, in Wailuku, Hawaii.

  
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Delfey Fernandez