

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MINUTES
BUDGET AND FINANCE COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
COUNCIL CHAMBER, EIGHTH FLOOR
WAILUKU, MAUI, HAWAII
SEPTEMBER 29, 2009

REPORTED BY: JEANNETTE W. IWADO, CSR #135
REGISTERED PROFESSIONAL REPORTER
CERTIFIED SHORTHAND REPORTER

APPROVED:

Committee Chair

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

2 **PRESENT:** Councilmember Joseph Pontanilla, Chair
3 Councilmember Danny A. Mateo, Vice-Chair
4 Councilmember Gladys C. Baisa, Member
 (In 1:34 p.m.)
5 Councilmember Jo Anne Johnson, Member
 Councilmember Sol P. Kaho`ohalahala, Member
 (In 1:33 p.m.)
6 Councilmember Bill Kauakea Medeiros, Member
7 Councilmember Michael J. Molina, Member
 Councilmember Wayne K. Nishiki, Member
 Councilmember Michael P. Victorino, Member

8 **STAFF:** Gayle Revels, Legislative Analyst
9 Scott Kaneshina, Legislative Analyst
 Yvette Bouthillier, Committee Secretary

10 **ADMIN:** Frederick Pablo, Budget Director, Office of the
 Mayor
11 Kalbert L. Young, Director, Department of Finance
12 Scott Teruya, Acting County Real Property Tax
 Administrator, Real Property Tax Division,
 Department of Finance (BF-40)
13 Tamara Horcajo, Director, Department of Parks and
 Recreation (BF-48)
14 Kathleen Aoki, Deputy Director, Department of
 Planning (BF-44)
15 Traci Fujita Villarosa, First Deputy Corporation
 Counsel, Department of the Corporation
16 Counsel

17 **Seated in the gallery:**
18 Clayton Yoshida, Planning Program Administrator,
 Current Planning Division, Department of Planning
 (BF-44)
19 Allan DeLima, Administrative Officer, Department
 of Planning (BF-44)
20 Jeffrey Ueoka, Deputy Corporation Counsel,
 Department of the Corporation Counsel (BF-48)

21 **OTHERS:** Item 48: Stacy Crivello, Board of Directors, The
22 Molokai Land Trust
 Butch Haase, Executive Director, The Molokai Land
23 Trust

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

25

1 CHAIR PONTANILLA. ...(gavel)... Good afternoon,
2 members. The Budget and Finance Committee meeting for
3 September the 29th, 2009 is now in session. Time is 1:32.
4 At this time the Chair would like to recognize the members
5 that are here this afternoon. We do have Member Molina.

6 COUNCILMEMBER MOLINA: Good afternoon, Chair.

7 CHAIR PONTANILLA: Good afternoon. Member
8 Johnson.

9 COUNCILMEMBER JOHNSON: Aloha.

10 CHAIR PONTANILLA: Aloha. Member Medeiros.

11 COUNCILMEMBER MEDEIROS: Aloha, Chair.

12 CHAIR PONTANILLA: Aloha. Member Nishiki.

13 COUNCILMEMBER NISHIKI: Good afternoon.

14 CHAIR PONTANILLA: Good afternoon. Member and
15 Chairman Mateo.

16 VICE-CHAIR MATEO: Good afternoon.

17 CHAIR PONTANILLA: Good afternoon. And Member
18 Victorino.

19 COUNCILMEMBER VICTORINO: Good afternoon, Chair.

20 CHAIR PONTANILLA: Good afternoon. Excused at
21 this time are members Baisa and Member Kaho`ohalahala.

22 Again, supporting the members, committee members
23 this afternoon we do have Yvette Bouthillier, our committee
24 secretary, Scott Kaneshina, legislative analyst, and Gayle
25 Revels, also the lead legislative analyst for this

1 committee.

2 Up front supporting the administration we do have
3 the First Deputy Corporation Counsel, Traci Fujita
4 Villarosa, the Budget Director, Mr. Pablo, and joining us
5 from the Planning Department is Ms. Aoki.

6 Members, we do have three items on the agenda this
7 afternoon, but before Chairman takes public testimony, the
8 Chair would like to welcome both Member Kaho`ohalahala and
9 Member Baisa to the meeting.

10 For those of you that are providing public
11 testimony this afternoon, you do have three minutes to
12 provide testimony. Chair will give you an additional minute
13 to conclude. But before we go into public testimony, if all
14 of us in this chambers, chamber could put our cell phones to
15 the silent mode or turn it off.

16 Okay, for those of you, again, providing
17 testimony, if you can provide us your name, organization
18 that you represent, the committee would appreciate that.

19 Members, we do have two people that signed up for
20 public testimony. At this time the Chair would like to call
21 on Ms. Stacy Crivello. Stacy. Welcome to Maui.

22

23 ...BEGIN PUBLIC TESTIMONY...

24

25 MS. CRIVELLO: Aloha, Committee Chair Joe

1 Pontanilla and Council, and Council Chair Danny Mateo. I'm
2 here on behalf of the Moloka'i Land Trust for the
3 application of open space money for grant for the completion
4 or to come in full circle with the purchase of Kawaikapu on
5 Moloka'i. It's a precious perennial watershed, and I'm sure
6 many of you are familiar with the area. We've done our
7 presentation prior, and we're trying to come back and
8 complete this application so that we can complete the sales.

9 We've received monies from the State Legacy Lands,
10 and the budgeted monies that I think was approved prior, oh,
11 I don't know if it's been about a year and a half or two
12 years now, and then we're coming back in full circle to ask
13 again for your kokua.

14 So I, on behalf of the Moloka'i Land Trust and for
15 the many voices that talk about preserving our environment
16 and our open space, I'd like to echo that, and that's all
17 made possible through your support. Thank you.

18 CHAIR PONTANILLA: Thank you. Members, any
19 questions for Ms. Crivello at this time? Seeing none,
20 thanks. Thank you again, Stacy.

21 MS. CRIVELLO: Thank you.

22 CHAIR PONTANILLA: The next testifier also
23 testifying on BF-48 is Butch Haase. I hope I pronounced
24 that right.

25 MR. HAASE: Haase.

1 CHAIR PONTANILLA: Haase, okay.

2 MR. HAASE: Aloha, Councilmember Pontanilla and
3 Council, and Council Chair Mateo. I'm executive -- my name
4 is Butch Haase, I'm Director for Moloka'i Land Trust, and
5 we're here to, like Stacy Crivello said, follow up on the
6 completion of the Open Space grant for 480,000 as a match to
7 our \$767,976 grant with the Department of Natural Resources
8 Legacy Lands Conservation Program grant. Currently, we're
9 scheduled for closing on this project on November 25th.
10 We've got a signed purchase and sale agreement with the
11 seller, with the seller. And we believe that we've gotten
12 all the documentation in as required by the Open Space
13 grant, and Parks and Rec has been handling this.

14 So we will be available for any other additional
15 comment, questions, or information that the Council needs to
16 request. So thank you so much for taking the time to take a
17 look at conserving some very important lands on the island
18 of Moloka'i.

19 CHAIR PONTANILLA: Thank you. Members, any
20 questions for the testifier? Seeing none, thank you again,
21 Butch.

22 MR. HAASE: Mahalo.

23 CHAIR PONTANILLA: Is there anyone out in the
24 gallery that want to provide testimony at this time?

25 Seeing none, if there's no objections, the Chair

1 would like to close public testimony.

2 COUNCILMEMBERS: No objections.

3

4 ...END OF PUBLIC TESTIMONY...

5

6 ITEM NO. 44: FY 2010 BUDGET AMENDMENT
7 (DEPARTMENT OF PLANNING AND GRANT
8 FOR COASTAL ZONE MANAGEMENT
9 PROGRAM) (C.C.No. 09-241)

10

11 CHAIR PONTANILLA: Thank you. Members, our first
12 item this afternoon is BF-44, Fiscal Year 2010 amendment,
13 Department of Planning and Grant for Coastal Zone Management
14 Program.

15 As stated in the transmittal letter, the Planning
16 Department anticipates either a significant decrease or
17 elimination of the CZM grant from the State of Hawaii. The
18 committee received a revised proposed bill to amend the
19 Fiscal Year 2010 Budget by: 1) increase carryover savings
20 general fund by \$371,504, 2) increase the appropriation for
21 Fringe Benefits, Department of Finance, Countywide Cost, 3)
22 increase Departmental Planning by 4.0 EP and \$222,248 for
23 salaries and wages, 4) delete Coastal Zone Management
24 program from Appendix A.

25 Members, also we had requested from the Department

1 documentation regarding the funding, and I think you do have
2 it with you, dated September 29, 2009 from the Department on
3 the questions that were asked regarding the copy of a
4 correspondence from the State notifying your department of a
5 reduction in the Coastal Zone Management grant. Two, the
6 duties and responsibilities of the four Coastal Zone
7 Management program positions being requested in the general
8 fund. And three, a response from the State Department of
9 Planning on whether County funds may be used to replace
10 State matching funds for the Coastal Zone Management
11 program.

12 And also in your handout you do have a
13 correspondence that was passed on to you at this meeting
14 from the Chair, the State and Federal funded positions in
15 the County. This is PAF 09-152 dated August 12, 2009. And
16 in there you see all of the positions that are either State
17 and Federally funded here in Maui County.

18 So at this time the Chair would like to call upon
19 Ms. Aoki for some opening comments.

20 COUNCILMEMBER VICTORINO: Mr. Chair?

21 CHAIR PONTANILLA: Member Victorino.

22 COUNCILMEMBER VICTORINO: Before, and again, allow
23 me this and then you tell me whether you want me to ask this
24 question. I understand what we're going to discuss, and you
25 also gave us this, and I thank you very much. I did have a

1 question, and the question was specific to how many of these
2 positions are civil service positions. Now, where would you
3 like me to ask that question, later? I'll -- I'll wait for
4 your guidance, sir.

5 CHAIR PONTANILLA: Okay. As far as the agenda,
6 it's not noted in the agenda that we will be discussing
7 this.

8 COUNCILMEMBER VICTORINO: Okay.

9 CHAIR PONTANILLA: The Chair just passed out, that
10 out for your information in regards to the number of
11 positions in the County of Maui that are either State or
12 Federally-funded or both State and Federally funded.

13 COUNCILMEMBER VICTORINO: Okay. So if I had -- at
14 a later meeting I can request that, that information.

15 CHAIR PONTANILLA: Yeah. There is a PAF on that
16 one right now.

17 COUNCILMEMBER VICTORINO: Okay. So long as I know
18 it's coming forward. Thank you, Mr. Chair. I apologize for
19 interrupting.

20 CHAIR PONTANILLA: Okay, fine. Ms. Aoki.

21 MS. AOKI: Good afternoon, Chair, good afternoon
22 Council Members. I apologize for not being here at the last
23 meeting, I was off island. But I'm glad to be here today to
24 hopefully clarify any questions that you folks may have. So
25 if I'm repeating anything that happened in the previous

1 meeting, I apologize.

2 But essentially what's happening is, is that we
3 were notified by the State that they may not be able --
4 first it was they may not be able to fund their portion of
5 the '09 part of the grant. And then they questioned the FY
6 '10. We have since learned that they said that they will
7 fund the '09, so we're okay for that, but it's the Fiscal
8 Year '10 that we're really concerned about.

9 So they, it became questionable about whether or
10 not they were even going to be able to have federal funds
11 for the part, for that grant for Fiscal Year '10. So it
12 wasn't just the \$88,000 that the State kicks in, it was the
13 entire amount. It was the 200 some-odd thousand dollars
14 from the feds which gets passed through the State, plus the
15 State's portion of it.

16 So being that, which I can answer for
17 Councilmember Victorino, my four positions are civil service
18 positions. When that happened, I can't tell you. All I can
19 tell you is that they are civil service positions. So that
20 became very nerve racking for me, because I'm wondering how
21 I'm going to pay these people. So we talked to the Director
22 of Finance and the Budget Director, and what I did was I
23 went through and looked at monies that we could disencumber,
24 monies that had been appropriated for projects or what have
25 you years ago -- not years and years, but years ago, that we

1 knew, you know, either the project was completed or it was
2 funding saved for an attorney in a contested case back in
3 2005 that had been settled. So we came up with the 300-odd
4 thousand dollars in savings, and the idea was to use those
5 monies to pay for these people. Since then we then got a
6 letter saying or notification saying we will probably get
7 you the Federal part of it, but the State is still in
8 question.

9 Now, when we went to the Hawai'i Congress of
10 Planning Officials last week, I personally spoke to the
11 Director of the Office of Planning, who is in charge of
12 giving us these monies. And to be frank, I could not get a
13 straight answer out of him. And when I asked him, you know,
14 he's like, "No, I'm pretty sure we can use, we can get you
15 those monies. We have other Federal monies." Because I
16 guess when they're allotted the Federal monies it's just not
17 in yearly increments, it's a two year increment. So he's
18 looking at savings from '09 that he may be able to use to
19 cover for fiscal year '10 to cover the State portion, that
20 88,000.

21 So when I said to him, "Can I get that from you in
22 writing?" I did not get a response. The response was,
23 "Well, it's Federal and it has to be shifted and paperwork
24 has to be done," et cetera, et cetera.

25 So that's why I'm here before you today. We are,

1 what we are seeking though, for your information, is that we
2 want to try to get more of a straight answer from NOAA
3 directly, NOAA, from the Feds, who are the ones that
4 administer this money. So in our correspondence to you
5 today we're advising you that we are trying another avenue
6 to try to get an answer before actually moving forward with
7 this budget amendment.

8 And I apologize, because it -- I mean I was
9 reacting to what I was told was going to happen, and then
10 things changed. Like on, with the way the State fiscal
11 situation is going on, it seems to be changing on a week to
12 week basis, and it's very difficult to operate that way.
13 But it is what it is. So perhaps this would be better
14 reviewed once I get more information directly from NOAA.
15 Thank you.

16 CHAIR PONTANILLA: Thank you, Ms. Aoki. And
17 Members, just to let you know, the Chair's intent is to
18 defer this item. But the Chair would like to have you ask
19 questions so that you can clear your minds regarding this
20 particular item. This will provide the Department the
21 ability to contact and work with NOAA in regards to how we
22 can receive some of those federal funds.

23 So Members, any more questions for the Department?
24 Member Mateo.

25 VICE-CHAIR MATEO: Chairman, thank you very much.

1 And maybe if the Department can tell us if all four of the
2 positions are currently filled.

3 MS. AOKI: No. We do have one vacancy, which is
4 the Planner III position, which is PC0047, I believe. It's
5 actually showing as a Planner V in our budget, but it's,
6 we've re-allocated it down to a III. We've gotten a list
7 and we're in the process. The list became I believe like
8 maybe only one. It was very, yeah, there was only one
9 person on the list. So we asked personnel to re-advertise
10 it.

11 VICE-CHAIR MATEO: So you've got a total of four
12 positions. Three positions are planner positions, and one
13 position is a, is that a clerk?

14 MS. AOKI: Yes.

15 VICE-CHAIR MATEO: And at this particular point
16 in time, because the Department or the County now has to
17 fund, you know, these positions, unfortunately...

18 MS. AOKI: Yeah.

19 VICE-CHAIR MATEO: ...is the Department looking at
20 filling all four positions or can you do with limitations at
21 this point?

22 MS. AOKI: I, I mean my immediate response would
23 be no, only because we have so many SMA applications and so
24 many projects that deal with the shoreline. The other thing
25 that I should let you know is that we're actually

1 short-handed in the respect that the person, Zoe Norcross-Zuu [sic],
2 as you know -- Nuu, I'm sorry, left, and so we haven't
3 been able -- UH, you know, that position hasn't been filled.
4 So we're even one more coastal zone planner short. So as
5 much as possible, we would want to fill. And we're actively
6 looking at it. I mean they've gotten a list, it's just a
7 matter of interviewing.

8 VICE-CHAIR MATEO: Okay. Yeah, I guess for
9 myself, Ms. Aoki, I don't really have a problem in funding
10 these positions if the County can pick up that 25 percent
11 from the State. That, to me, is a fair proposition. And of
12 course I am just ecstatic that the Planning Department can
13 find \$371,000 in what the Department referred to as a very
14 difficult going when we approved the budget at the last
15 fiscal year. So I have very little sympathy for your
16 difficulty when you can find these monies.

17 MS. AOKI: Right.

18 VICE-CHAIR MATEO: That just tells me that, you
19 know, your department has the kind of fat to absorb
20 additional needs. But it worries me that these are, these
21 positions are critical positions to the County. So I'm glad
22 that the item is going to be deferred. I do think you need
23 to go back and try to confirm the status of the Federal
24 funds, because this is really their responsibility as well.
25 And if the County is expected to pick up everybody's slack,

1 Mr. Chairman, we are in dire trouble and we haven't even
2 addressed fiscal year '11.

3 So, you know, balls in your court, and I'm hoping
4 that when you come back you will be able to tell us that
5 what you will be asking for is that 25 percent funding that
6 the State kicks in to pick up these four positions. Thank
7 you very much. Thank you, Mr. Chair.

8 CHAIR PONTANILLA: Thank you. Before I ask any
9 other member for questions, Chair would like to ask
10 Corporation Counsel in regards to our letter to you folks
11 regarding, you know, grant, grant provides funds to
12 administer policies and guidelines in Chapter 2.05(a) Hawaii
13 Revised Statutes, and public law 92-583 to guide and
14 regulate public and private uses in Coastal Zone Management
15 area.

16 And the question to Corporation Counsel at the
17 time, according to the memo, is that can the County demand
18 payment from the State of, State or Federal government for
19 Coastal Zone Management activities?

20 MS. FUJITA VILLAROSA: Mr. Chair, our office did
21 do some research on that issue, and as I stated in the
22 previous meeting, the law, that constitutional law with
23 regards to unfunded mandates is very vague. There's not
24 really any State law on the matter. There is some Federal
25 law because the Federal constitution has that same language

1 in it. But when our office did the research, it found that
2 it would be a very difficult argument to make to say that
3 the State is giving the County an unfunded mandate.

4 One of the -- you have to take a look at the
5 original Federal law that the CZMA law comes from, and that
6 law is a voluntary law, so it's not a mandate. The State
7 opted to adopt a CZMA law, and the Federal Government said
8 that, "If you adopt such a law, then we will provide you
9 funding." So that funding is what we're talking about. And
10 the fact that the State is passing through all that funding
11 to the Counties shows that they are providing funds for the
12 program.

13 So it, our office's opinion is that it would be a
14 very difficult argument to the -- to make to the State to
15 say that they are not or they're, they're mandating a
16 program without providing any funds. And our office is
17 following up with the written memo to summarize the research
18 that was done.

19 CHAIR PONTANILLA: Thank you. Member Nishiki.

20 COUNCILMEMBER NISHIKI: Thank you. Un, unlike the
21 Council Chair, who seems to be full of compassion today, I'm
22 not. And I only can say just because I've heard of a Maui
23 incident where someone just took their life because they
24 were bumped.

25 When I see a position that's unfilled, Mr. Chair,

1 and I know what the private sector is going through, I know
2 just people that I am closely friends with, if I see a
3 vacant position I'll start today and say that I am not in
4 favor of funding that vacant position, number one. And
5 that's just a start, start.

6 So just so that I guess, you know, someone that's
7 kind of passionate and, and, and swims in that ocean, yet I
8 realize that we've got to do a job, and not a pleasant one.
9 So from today, Wayne Nishiki is not in favor of at least
10 funding that one vacant position. That way we don't affect
11 anyone. Thank you.

12 CHAIR PONTANILLA: Thank you, Mr. Nishiki. And,
13 you know, this Chairman understand the process really well.
14 I've gone through several of this pro -- process in private
15 business, and it's not pleasant. It's not pleasant. Member
16 Victorino followed by Member Medeiros.

17 COUNCILMEMBER VICTORINO: Thank you, Chair. I
18 guess the question I have for you, Ms. Aoki, is, you know,
19 the, the ability and I also too share the same sentiment
20 with Council Chair when you guys come in and beg and tell us
21 that this is the absolute final and we have no fat, and then
22 you come up with 371,000. And you mentioned about monies
23 that were encumbered from past and this and that. And then
24 the public out there sees this and they say, "Huh, you guys
25 get money."

1 Mr. Chair, we get -- we catch it out there, you
2 know and I know, we all catch it. It makes us look foolish.
3 And, and again, that's what bothers me more than anything
4 else. I've been in the private sector many years, like Mr.
5 Pontanilla. We got, no got, you gone. And it's not a
6 matter of political, it's really the reality we live in.
7 And, and it frustrates me to see this.

8 So my question to you is, how do you manage to
9 encumber all this money and all of a sudden, like mana from
10 heaven, here's the money. I got it, don't worry, Council,
11 we can fund those positions.

12 MS. AOKI: Okay. I -- I mean I can offer my
13 explanation.

14 COUNCILMEMBER VICTORINO: Okay. I'm open to
15 listen to your explanation. I should be open. And I
16 apologize if I'm --

17 MS. AOKI: No, no, no.

18 COUNCILMEMBER VICTORINO: -- sounding frustrated.

19 MS. AOKI: I -- I am -- no, I don't blame you for
20 being frustrated. The only thing I can offer to you is I've
21 been Deputy now for about a year, and when I took this, I'm
22 a numbers person, I'm a money cruncher, and I started
23 looking at things and wondered why we had these POs that
24 were dated back in 2005, 2006 and wanted ans -- you know, I
25 didn't understand, why did we have these things, and started

1 going through them.

2 And not to any discredit of any other prior Deputy
3 or Director, what have you, that was one of my things, my
4 kuleana, I wanted to look at it, so I went through it and
5 that's what I did. And it was because of that that I found
6 and had to interview all my administrators and say, "Okay,
7 is this case closed? Do we need this attorney any more? Do
8 I need this PO open?" And there things that needed to
9 stay open, because the contracts aren't completed yet, or
10 the case had, you know, a legal case has not been settled
11 yet.

12 So that's all, I mean that's my answer, is just
13 that I personally took it upon myself to go through old
14 PO's and old contracts and say, okay, we don't need. So
15 that's why the money that was encumbered back in 2006, it's
16 not like, I mean I honestly didn't know that that money was
17 there when I became and was in front of you a few months
18 ago. So --

19 COUNCILMEMBER VICTORINO: Well, Ms. Aoki, I thank you, and,
20 and, and Chair, maybe on, on behalf, I would, I'll request
21 that to you, but I would like maybe every department to take
22 a good look at the same situation, because if you could find
23 it in planning, I'm going to bet a nickel on a quarter you
24 can find it in other departments. And at this austere times
25 maybe it's time to really look at all this. So that's,

1 that's another issue.

2 Ms. Aoki, I'm not personally blaming you, I mean
3 you've been there a year. And like you said, you found
4 things that were two, three, four, five years, you know.
5 But I think if you found it, maybe it's the time for us to
6 ask the administration to ask all the departments to look at
7 it, Mr. Chair. I mean that's something I would request we
8 do as a, as a committee. Because I mean we are going into
9 some very dire straights, and now's the time to find the
10 money if it's there.

11 And, and, and, and on top of that, when they come
12 and ask us for money, best you guys be put on notice that
13 we're going to scrutinize every move. And not only your
14 department, I put it out publicly. I'm going to ask some
15 really tough questions that I maybe let slide the last
16 couple of years. I think this whole Council is going to
17 start asking for accountability.

18 So anyhow, thank you, Ms. Aoki. And thank you for
19 your diligence, I mean we appreciate that. And hopefully
20 the word gets around, other departments will do the same.
21 Thank you, Mr. Chair.

22 CHAIR PONTANILLA: Thank you. Member Medeiros.

23 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

24 Ms. Aoki, good afternoon.

25 MS. AOKI: Good afternoon.

1 COUNCILMEMBER MEDEIROS: And welcome to our
2 committee meeting. I, I wanted to know, now that you're
3 aware of the economic forecast for the future, and the
4 projections for lower revenues to the County in tax
5 revenues, what would be the administration's plan for
6 Planning Department to have a plan regarding these civil
7 service positions that were previously funded by Federal and
8 State monies, and what becomes of those positions if those
9 monies dry up? I mean you're struggling to get it now.

10 MS. AOKI: Right.

11 COUNCILMEMBER MEDEIROS: So -- and the forecast isn't
12 any better for subsequent years --

13 MS. AOKI: Right.

14 COUNCILMEMBER MEDEIROS: -- as far as budgets. So
15 does the Planning Department have a plan about these
16 positions? Because as I asked in the other meetings about
17 civil service positions, it, it seems unfair to recruit
18 people to a position, say it's civil service, but not let
19 them know that that civil service position is incumbent or,
20 or dependent on funding other than secured funding from the
21 County.

22 MS. AOKI: I understand.

23 COUNCILMEMBER MEDEIROS: So does the Planning
24 Department have a plan for these and other civil service
25 positions that are funded by other sources besides secured

1 County funding?

2 MS. AOKI: Well, the only positions we have are
3 those four.

4 COUNCILMEMBER MEDEIROS: Okay.

5 MS. AOKI: That we rely on outside funding. And
6 as I stated earlier, and what we're going to try to do is,
7 you know, talk to NOAA directly. Try to get a, a straight
8 answer from NOAA and see, you know, what their forecast is
9 for Fiscal Year '10. They're supposed to be starting to
10 talk about Fiscal Year '11 also. So that's the first step.
11 Because if we can get assurance from them that they can
12 cover the entire amount, then we'll be okay.

13 If not, it is a grave concern. And when I was on
14 vacation I thought about this. I mean I essentially have to
15 come up with \$370,000 out of my budget from somewhere to pay
16 for these people. And like I managed to do it for this
17 year --

18 COUNCILMEMBER MEDEIROS: Right.

19 MS. AOKI: -- because I went through the books. It,
20 it means looking at -- I mean I don't, I don't, our budget
21 from what I've researched has gotten less and less cushy, if
22 you will. We've got done less and less programs. It, it
23 means affecting programs like the MRA. It means affecting
24 programs like the Wailuku Main Street Association. It
25 means, you know, not doing the shoreline update on the maps.

1 To try to use those funds instead.

2 I'm still right now we're kind of looking at
3 Fiscal Year '11, and we, we look like we're already short,
4 not even counting those. So just operations and salaries
5 alone. So, you know, it's, it's talking to my Long Range
6 Administrator and saying how many, you know, community plan
7 meetings are you going to have on Lana'i that I'm going to
8 need an Iwado Court Reporter, because this kind of stuff is
9 going to cost money. Do we do, you know, just action
10 minutes versus verbatim minutes. I mean that's the kind of
11 stuff we all have to look at. And, you know, I mean it's a
12 reality with the State.

13 Mr. Nishiki, just so you know, I knew that person
14 that took his life, I worked with him at the State. And
15 it's, it's not a good feeling to know that people are doing
16 that. I don't want to do that. But if it's a reality, it's
17 a reality, and we'll do the best that we can to try to avoid
18 furloughs. I mean I'd rather do furloughs than layoffs, but
19 that's something that, you know, I can look at my
20 department, but it's a whole global County thing. So I
21 don't know how the other department's budgets are gonna
22 affect mine or what we can do.

23 But to answer your question, it's trying to talk
24 to NOAA, getting a straight answer if we can from them. And
25 if we can't, comprehensively looking at our budget and

1 cutting line items.

2 COUNCILMEMBER MEDEIROS: Okay, thank you. And I
3 know your, your first priority right now is to immediately
4 find money for those positions. But what I'm saying is
5 somehow the Department needs to develop a contingency plan
6 should, should you not be able to get any more monies beyond
7 this current fiscal years, so that it's -- you're not at a
8 point where you have to all of a sudden decide what you're
9 going to do.

10 MS. AOKI: Right.

11 COUNCILMEMBER MEDEIROS: That you have something
12 in place. So I, I just wanted to bring that up for your
13 attention. And not you personally, but for your department
14 administration.

15 MS. AOKI: I appreciate that.

16 COUNCILMEMBER MEDEIROS: Thank you.

17 MS. AOKI: Thank you, Councilman.

18 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

19 CHAIR PONTANILLA: Thank you, Mr. Medeiros. And
20 I'm hoping that the administration is looking through
21 attritions and retirements or people just leaving the
22 County, and not fill those positions. Member Johnson
23 followed by Member Baisa.

24 COUNCILMEMBER JOHNSON: Yes, Kathleen. And you,
25 you know, this may be not even, you know, money that came

1 out of the budget. But I know last year when we had put in
2 money for the restoration for the Pioneer Mill building and
3 it was in the form of a grant, I know that that money was
4 actually held back, it was not released. Is that a portion
5 of the money that you are --

6 MS. AOKI: Oh, no, no.

7 COUNCILMEMBER JOHNSON: -- looking at? Okay.

8 MS. AOKI: No, ma'am.

9 COUNCILMEMBER JOHNSON: Okay, I just wanted to
10 make sure. And --

11 MS. AOKI: Right. That was never -- that was
12 money that was put in the budget, but we actually never made
13 a contract, never did anything. It just never, that project
14 just never got funded. So that's not part of this 300
15 some-odd thousand dollars that --

16 COUNCILMEMBER JOHNSON: Okay. Because I know when
17 you have your ABC accounts --

18 MS. AOKI: Right.

19 COUNCILMEMBER JOHNSON: There's flexibility. So I
20 just wondered. Because I'm sure I'll get asked the question
21 why that project --

22 MS. AOKI: And that's a fair question.

23 COUNCILMEMBER JOHNSON: -- is not going anywhere.

24 MS. AOKI: Yeah.

25 COUNCILMEMBER JOHNSON: The other thing too and,

1 and you weren't here at the last meeting, but I did pose a
2 question about the money as far as unfunded mandates went.
3 You know, when we many times have a legislative duty to
4 enforce Coastal Zone Management Act, I know that Miss Fujita
5 Villarosa was able to do some research in the interim and I
6 should be getting some -- and, and Traci, you can correct
7 me, you're going to be sending me a response on that.

8 MS. FUJITA VILLAROSA: It will be going to the
9 committee.

10 COUNCILMEMBER JOHNSON: Right, right. But last
11 time, Ms. Aoki, I did pose that question. Because if the
12 unintended consequence was that we were, as a result of
13 State's inability to find that money to do matching, and yet
14 it was our responsibility under the law to do certain things
15 under Coastal Zone Management Act, my concern was that there
16 was no money there to do it, therefore under the law was
17 there a legal obligation to do so. And was the State
18 obligated in any way to do that.

19 So Mr. Chair, they will be formulating a response.
20 I was satisfied with the investigation that was done on part
21 of Corporation Counsel, so I thank them, and the committee
22 should be receiving that also shortly.

23 CHAIR PONTANILLA: Thank you. And Ms. Fujita
24 Villarosa had stated that earlier.

25 COUNCILMEMBER JOHNSON: Okay.

1 CHAIR PONTANILLA: Thank you. Member Baisa.

2 COUNCILMEMBER BAISA: Thank you very much, Chair.

3 Actually, I'd like to wait and see what Ms. Aoki can
4 eventually tell us is, you know, the facts, rather than sup
5 -- supposing a lot of things here, because then when we know
6 we'll be able to make a decision. However, I do want to say
7 that I, like several others here have already mentioned,
8 would really prefer that we look at attrition, because
9 that's a much less painful way of cutting expenses than in
10 laying people off or furloughing people.

11 So you remember when we discussed this last, my
12 first question was about are the positions filled. Because
13 I thought if we had one that wasn't filled, it would be
14 better not to fill it then to fill it and then have to lay
15 somebody off. However, if we can find the money to pay,
16 that's wonderful. And I do totally understand the
17 importance of the work that is done by the CZM workers.

18 You know, we just returned from the planning
19 conference, and after all that information about climate
20 change and what is going to go on here, it seems that it's
21 going to be a priority for us, because we have some major,
22 major decisions to make in how we're going to deal with
23 moving our coastlines back and, you know, how we're going to
24 deal with all the things that we have that are eventually
25 going to be covered with water. So, and we have all these

1 SMA's and required documents.

2 And it may look like, Ms. Aoki, a bad job, but
3 you're going to have to figure out what your core services
4 are and focus on core services. And you may have to, you
5 know, divest some of the things that are nice to do --

6 MS. AOKI: Right.

7 COUNCILMEMBER BAISA: -- but are not essential. And,
8 you know, we all get into that. We start little pet
9 projects and we do something, we like it, it's well received
10 and then we all want to do it, but we can't do it any more when
11 it comes down to making the tough decisions. So I will wait
12 until, you know, we have a definitive answer from you. But
13 thank you for looking into it for us. Thank you.

14 MS. AOKI: You're welcome, thank you.

15 CHAIR PONTANILLA: Thank you. Members, any more
16 questions? Member Kaho`ohalahala.

17 COUNCILMEMBER KAHO`OHALAHALA: Yeah, thank you,
18 Chair. And Kathleen, I think it's clear to me where the
19 funding is coming from. I mean we approved that in the last
20 budget, and then this was an anticipated grant. But from my
21 purposes as a Councilmember, knowing that the appropriations
22 are really being one of the privileges of being on the
23 Council that we make, that when you come forward with an
24 item that is considered to be a, extra money, you know, it
25 is incumbent upon us to decide how to appropriate that

1 money.

2 And for me, that vacancy is not something that I
3 would be willing to appropriate toward. That's why I tried
4 to make a proposal to suggest where that money might be
5 placed, and keep the ones that are currently filled intact,
6 if that's the will of the Council. But I am also looking
7 for other places that need to be a, a, appropriated. And in
8 particular, I'm talking about the Lana'i pool positions and
9 the facility that this Council, even though we passed
10 positions for funding in the budget, the administration is coming
11 out with a need for more money.

12 So in a way I'm trying to help the administration
13 to find more money, and if they didn't see it, then I'm
14 hopefully I'm -- I'm helping to be their eyes as well as
15 their ears. And perhaps with the Council's will we might
16 make some of those appropriations where they're needed. So
17 in that case we would be employing three people on Lana'i,
18 and we would be opening up a facility to help the community
19 to have a recreational facility that is sitting vacant
20 currently.

21 So I just want to express that that's where I see
22 in this particular case an opportunity for appropriating to
23 where I think some of the needs are in our community. So
24 that's just my comments. Thank you, Chair.

25 CHAIR PONTANILLA: Thank you, Member

1 Kaho`ohalahala, for those comments. I, I would tell you
2 that you should be working really hard with the Parks
3 Department.

4 COUNCILMEMBER KAHO`OHALAHALA: I am.

5 CHAIR PONTANILLA: Thank you. Member Nishiki.

6 COUNCILMEMBER NISHIKI: Yeah, I, I, I, I just -- I
7 just want to end with this.

8 MS. AOKI: Okay.

9 COUNCILMEMBER NISHIKI: Because I don't know, I
10 just I was telling Danny today, today is my day of
11 frustration, and yet it is a day for me to realize my
12 position also. And I'm glad to see all of us squaming and
13 squirming and feeling uncomfortable in this seat, really.
14 I'm glad you guys all feel that way, because it only tells
15 me that you care. And, and this is good. And you know
16 what, it also is telling me that we're going to have to
17 start giving leadership to this County.

18 And, and so don't feel uncomfortable, take it as a
19 challenge and, and, and, and, and step forward, and let's
20 give some leadership. Because we already know and, and we
21 cannot be in this consciousness of being unconscious. We
22 already know what the private sector is going through. We
23 already know people that are not working. We're lucky we're
24 working. And so, you know, maybe this is a Godsend for us.
25 And, and so, you know, maybe we ought to be thankful. And,

1 and, and let's, let's really do our public service. Thank
2 you.

3 CHAIR PONTANILLA: Thank you, Mr. Nishiki. Ms.
4 Aoki.

5 MS. AOKI: I just wanted to respond to
6 Councilmember Kaho`ohalahala. I think what we have to
7 remember is that if this position doesn't get filled, that
8 means our grant goes down. It doesn't mean that I give them
9 -- I mean we submit paperwork to get reimbursed so we --
10 they fund the grant, but we actually don't get the money
11 until after the fact.

12 So depending if, if the Council doesn't approp --
13 if we're not using any County funds, then we can't spend
14 money from the Feds to pay for some other program because
15 it's through this grant. Does that make sense? So as much
16 as I can appreciate, you know, if it's not, if it's vacant
17 leave it and, and don't fill it, right now that, this isn't
18 costing the County anything.

19 Granted, I'm asking we may have to, you know,
20 cover the State share but I, I, I don't know if that's
21 making sense. But we have to be careful because just
22 because I don't fill a position doesn't mean that I'm going
23 to get that, that money back from the Feds. If I don't fill
24 it I don't ask for reimbursement for it. It, it's not
25 County funded at this point.

1 CHAIR PONTANILLA: Thank you.

2 MS. AOKI: So it's going to get kind of
3 convoluted.

4 VICE-CHAIR MATEO: It is.

5 MS. AOKI: It is convoluted. (Laughter)

6 CHAIR PONTANILLA: No, I think we all understand
7 what you're trying to say.

8 MS. AOKI: Okay.

9 CHAIR PONTANILLA: Because those positions, you do
10 have money that come from the Feds --

11 MS. AOKI: And it's --

12 CHAIR PONTANILLA: -- to cover that.

13 MS. AOKI: Right.

14 COUNCILMEMBER KAHO`OHALAHALA: Chair.

15 CHAIR PONTANILLA: Member Kaho`ohalahala.

16 COUNCILMEMBER KAHO`OHALAHALA: Thank you. And
17 Kathy, I appreciate your comments. However, this amount
18 that's before us is \$371,000.

19 MS. AOKI: Right, right.

20 COUNCILMEMBER KAHO`OHALAHALA: And we're not
21 talking about a cost share here.

22 MS. AOKI: Right.

23 COUNCILMEMBER KAHO`OHALAHALA: We're talking about
24 funding an entire amount.

25 MS. AOKI: Right, and I agree. That's why I'm

1 saying I agree. If we get all the money from the County,
2 then I could see, you know, us not -- if, if you didn't want
3 to fund the whole amount and take out this position and only
4 fund three. At this point what we're trying to do is find
5 out whether or not the Feds will at least cover their
6 three-quarters, or whatever amount it is, and the County
7 kick in that 88,000. Because again, everything keeps
8 changing week by week by week. So when I came in here
9 originally I did think I needed the whole amount, because it
10 was like we're not getting Federal money, we're not getting
11 State money, we're not getting anything.

12 COUNCILMEMBER KAHO`OHALAHALA: But my, my
13 responsibility comes in only this one opportunity. I get to
14 make only one decision about where to appropriate this
15 monies. I don't get to come back again and go, "Oh, by the
16 way, I don't need all of that," you know. So my, my
17 opportunity is right here before me. And I think you're
18 bringing information that would be very, very helpful to us.
19 But not having all of that information at the same time that
20 the appropriation is before us makes it real difficult. So
21 I'm trying to understand how much you actually do need.

22 MS. AOKI: Right.

23 COUNCILMEMBER KAHO`OHALAHALA: And then I want to
24 understand if it's possible as a Councilmember to re-direct
25 some of that money where it is needed. And I will take that

1 one opportunity to do so, because it may be the only
2 opportunity I have. So thank you.

3 MS. AOKI: And hopefully I will have clearer
4 answers for you in a couple of -- I mean I'm doing all that
5 I can to try to get an answer from the Feds.

6 CHAIR PONTANILLA: Thank you,

7 COUNCILMEMBER VICTORINO: Mr. Chair.

8 CHAIR PONTANILLA: Again, we will give that
9 opportunity to the Planning Department to work with NOAA in
10 regards to the funding. And, and who knows, we may get
11 less, I don't know.

12 MS. AOKI: Sure.

13 COUNCILMEMBER VICTORINO: And thank you, Chair.

14 And not to beat a dead horse, I think it's all been said and
15 done, Ms. Aoki. And again, my tirade in a sense is all
16 across the board, because if you could find savings I
17 believe there would be other savings someplace, and this is
18 the time to go digging it up.

19 In other words, it's like going into your back
20 yard and start digging up for those little containers you
21 hid -- you hid away years ago for the rainy day. Well, the
22 rainy day, it's a tsun -- it's a typhoon right now.

23 But Mr. Chair, what I wanted to, to clarify with
24 the Department is, and I think for the general public at
25 large, she is absolutely correct, we are in very, very great

1 changing times in our government structure and how funding
2 will come down. Sometime money will be in abundance, like
3 the A -- the ARRA monies, and (inaudible) and literally billions
4 of dollars was thrown all over the place, and now we're
5 trying to find out where it went to, right? And it's not
6 all your fault because it's just the way it is.

7 And then the second part is, now even the Obama
8 administration is telling their departments start looking to
9 cut back and save here and save there. I just was reading
10 they're looking at all across the board cutbacks in the
11 Federal Government now.

12 So, you know, the changing times you are
13 absolutely right. And despite some of my colleagues wanting
14 to know answers now, I know you can not give us answers.
15 However, let the word go out, accountability will be a part
16 of this. And we will be asking the tough questions, and
17 best you guys come up with the best answers which are
18 factual -- I think that's the key now, factual -- and not
19 telling that you need money and then turn around and then
20 six months later you say, "Oh, I get this unfunded position
21 and I get, and I found this savings."

22 That's all I'm saying. Put the notice out. I
23 will be writing the letter to the Chair requesting all the,
24 the administration to send that down to us. We need to know
25 now what we have, where we can save. And bottom line is

1 let's get the facts on the table, because in business when
2 you don't get the facts, that's when you get in trouble.
3 Thank you, Mr. Chair.

4 CHAIR PONTANILLA: Thank you. The Chair would
5 just like to make a last comment. You know, I'm sure, like
6 all of us, we're kind of concerned regarding the economic
7 downturn and the implication to this County. I'm surely,
8 you know, confident that the administration is also doing
9 that in regards to looking at all avenues to save money.
10 Because one of the things that they look at, as far as
11 bonding, is carry-over savings. And, you know, if we can
12 show that we do have carry-over savings because we didn't do
13 certain things, you know, that would help us in regards to
14 maintaining our bond rating.

15 So with that, the Chair's recommendation at this
16 time is to defer this item until we get more information
17 from Planning Department regarding NOAA, your conversation
18 with NOAA.

19 COUNCILMEMBERS: No objection.

20 CHAIR PONTANILLA: Thank you. So this item BF-44
21 is deferred.

22

23 ACTION: DEFER pending further discussion.

24

25

1 committee may have. But if Mr. Teruya would like to offer
2 any technical aspects of this particular ordinance he's here
3 as well, thanks.

4 CHAIR PONTANILLA: Thank you. Members, questions
5 for the Department at this time? Mr. Nishiki.

6 COUNCILMEMBER NISHIKI: Thank you. This kind of,
7 again, sends me back 10, 15 years when we were concerned
8 about what we were calling gentlemen estates, Mr. Chairman.
9 And in it, in effect people that were sitting on ag lots
10 were not doing agriculture and, and therefore that land
11 should be taxed at a perhaps urban rate.

12 Now, here we go again where this new area that
13 we're looking at, which is a B&B sitting on a -- or TVR
14 sitting on a -- but we don't have a TVR bill yet -- but
15 sitting on a agriculture lot will not now be taxed for that
16 urban use. So again, giving them this use, not seeing a
17 proper tax put on it will now mean, will now mean that the
18 rest of us will be having to compensate whatever they do not
19 pay for their proper use.

20 And I know that Title 19, Mr. Chairman, and I'll
21 read from Title 19 in which it states that, Except on
22 Moloka'i -- Title 19.64, "Except on Moloka'i, bed and
23 breakfast homes permitted under Chapter 19.64 of this code
24 that are A. Operated in conjunction with a bona fide
25 agricultural operation that produce 30 point -- 35,000 of

1 gross sales of agriculture products for each of the
2 preceding two years as shown by State General Excise Tax
3 forms and Federal Form 1040 Schedule F filings;

4 Or B. In compliance with all of the following
5 criteria provided that the bed and breakfast home is not
6 subject to a Condominium Property Regime pursuant to Chapter
7 514A, Hawaii Revised Statutes.

8 A. the lot was created prior to November 1st,
9 2008. The, the lot was comprised of five acres or less.
10 And approved farm plan has been fully implemented and is
11 consistent with Chapter 205, Hawaii Revised Statutes.

12 Or C. located in sites listed in the Hawai'i State
13 Historic Register or National Register of Historic Places."

14 Now, in it it talks about where these bed and
15 breakfast homes are permitted under the code. Then we go
16 back to what we call under 19.30A.050(B) accessory uses
17 in the ag district, Mr. Chairman. And it says, "Uses that
18 are incidental or subordinate to or customarily used in
19 conjunction with a permitted principal use as follows." And
20 then it talks about two farm dwellings per lot, one of which
21 should not exceed 1,000 square feet. One farm dwelling per
22 five acres of lot on the island of Maui, the owner or lessee
23 of the lot shall meet two of the three criteria.

24 A., again, proof of at least 35,000 of gross sales
25 per year; B. provide certification by the Department of

1 Water Supply that agriculture water rates are being paid if
2 the subject lot is served by the County water system; or C.
3 provide a farm plan that demonstrates the feasibility of
4 commercial agriculture production.

5 So what, so what is going to occur now if we pass
6 this the way it is submitted to us per the property tax
7 division? What, what is going to occur now is that all
8 these ag lots that have B&B's on them, again, are going to
9 be charged ag, the ag rate.

10 My question, sir, Mr. Chairman, is how and who is
11 going to make sure that these three definitions or three
12 conditions are what is being done? And if they're not done,
13 then what are the consequences, is my question to
14 administration.

15 CHAIR PONTANILLA: Mr. Young or Mr. Teruya. I
16 want to offer this comment, though.

17 MR. YOUNG: Yeah.

18 CHAIR PONTANILLA: In regards to those criteria's
19 that you mentioned, you know, producing the farm plan as
20 well as, you know, getting ag, ag water rates, is the
21 department's responsibility, the Planning Department, to
22 ensure that agriculture is really being done on a piece of
23 property. And also, you know, for the Water Department,
24 they need to ensure that that farm is truly doing
25 agriculture on that piece of property to get the water rate.

1 So again, you know, who does ensure that, you
2 know, these people receive those type of real property tax?
3 The Department that are, or departments that are responsible
4 to ensure that the County is, the County ordinance are, are
5 enforced and abide with. So I offer the comment. Mr. Young
6 or Mr. Teruya.

7 MR. YOUNG: Yes, Mr. Chair, that would have been
8 my comment also, that we don't actually effectuate Title 19,
9 but we expect whoever department is administratively
10 responsible for Title 19, and that provision would do the
11 enforcement. Also, I would add that I'll give credit where
12 credit is due. The administration didn't bring forth this
13 ordinance, your committee Chair did, although in discussion
14 with the committee Chair on the concept of this ordinance
15 we, Mr. Teruya and I, were aware, and did have an
16 opportunity to speak with Chairman Pontanilla.

17 In regards to how this particular ordinance will
18 mar -- will marry up to Title 19, because I think that's
19 Mr. Nishiki's --

20 COUNCILMEMBER NISHIKI: Yeah.

21 MR. YOUNG: -- the crux of his question. This
22 particular ordinance only relates to the classification for
23 real property tax purposes. And so only in that area where
24 we have that new property classification, Commercialized
25 Residential, and all the different types of properties that

1 can go into commercial residential, which at the present
2 time is those bed and breakfast properties.

3 We are purely making clear that if there is a
4 Commercialized Residential classed property that happens to
5 exist within an agricultural or has agricultural use on it,
6 that we're making available to them the assessed valuation
7 portion for agricultural, not the agricultural rate per se.
8 The rate will be -- the rate is defined as the
9 classification that's in question. The Commercialized
10 Residential will be a different rate from the ag,
11 agricultural rate. But what is in question, what this
12 ordinance makes more clear is the actual valuation portion,
13 the assessed valuation.

14 So if I may provide an example, for instance. You
15 have these large as you referenced gentlemen estate or
16 agricultural lots, let's call them two acres. But if they
17 exist, if that two acres is used for agricultural production
18 of some agricultural plant, let's say bananas, that two
19 acres will receive a valuation assessment that's comparable
20 to two acres of banana production. It could be very low.
21 Let's, for the sake of this discussion, call it \$5,000, and
22 realistically it could be \$5,000. So that two acres could
23 be \$5,000 assessed valuation if it's in agricultural
24 production.

25 But if you take that exact same lot in the exact

1 same district, but suddenly it's not in agricultural
2 production and instead it has a estate or a residential
3 estate on it and landscaping purely for residential living,
4 that same two acre lot is no longer \$5,000, it's valued at
5 what is considered a residential assessment, and it could
6 realistically be let's say a million dollars. But the rate
7 would still be applied to what is the, the rate specified in
8 Chapter 3.48, and that's Commercialized Residential,
9 whatever the rate is that Council decides in that fiscal
10 year. I hope that's clear, Mr. Nishiki.

11 COUNCILMEMBER NISHIKI: Okay. Let me get this clear.
12 I'm on an ag lot, I've got a B&B, I will pay on the land an
13 ag rate. My B&B structure will be assessed at what property
14 tax classification?

15 MR. TERUYA: Okay, Member Nishiki, in your example
16 where you state that there's a residence on a property --

17 COUNCILMEMBER NISHIKI: Right.

18 MR. TERUYA: -- the home and the underlying area
19 that's used as a home site is valued according to the going
20 value. The rate is a classification on the entire property,
21 yeah. So the entire property is classified as Agriculture,
22 taxed as agriculture rate, which is currently at \$4.50. The
23 home site and the residence is valued using the cost
24 approach and the underlying land area. The portion that is
25 used for agriculture, designated as the agriculture portion,

1 gets valued at a separate valuation per thousand or per acre
2 rate.

3 COUNCILMEMBER NISHIKI: Okay.

4 MR. TERUYA: The tax rate, and that tax rate will
5 be based on the existing classification, yeah, yeah.

6 COUNCILMEMBER NISHIKI: Yeah, but if this person
7 on that ag lot is using it for a B&B --

8 MR. TERUYA: The entire --

9 COUNCILMEMBER NISHIKI: -- and I'm on a residential
10 lot, I'm using it for my residence, okay. Does my
11 residential rate, is that equal to the rate that that person
12 is paying on a B&B?

13 MR. TERUYA: Okay, I think we need to clarify one
14 thing.

15 COUNCILMEMBER NISHIKI: Okay.

16 MR. TERUYA: First of all, if currently this, the,
17 this ordinance passes where if you have a B&B you're being
18 classified as Commercialized Residential, that rate applies
19 to the entire parcel okay. The valuation portion may be
20 done separately, yeah. The portion that's designated as
21 agriculture will have a valuation of some nominal dollar,
22 like Mr. Young stated as \$5,000. This other portion would
23 be the underlying land area of the home site would be not at
24 \$5,000, it would be somewhere at about maybe a quarter
25 million dollars, yeah. But the entire parcel is, is taxed

1 at one rate, which is Commercialized Residential.

2 COUNCILMEMBER NISHIKI: Okay, okay. Now, now,
3 that's out of my way. The, the, the final concern is -- and
4 I know this is kind of off Mr. Chairman, and maybe it needs
5 to be sent to another committee, but if I put in language,
6 yeah, that says I want to amend it that, The value of lands
7 which are classified as commercial residential and used for
8 agriculture shall be assessed agriculture rates only if the
9 owner and lessee of the lot meets the following criteria:

10 A. provide proof of at least \$35,000, and then
11 provide certification by the Department of Water Supply of
12 ag water rates. How does that change if we add that kind
13 of amendment?

14 MR. YOUNG: For, Mr. Nishiki, for clarity sake,
15 when you read that amendment again you make reference to,
16 "Shall only be entitled -- entitled to the agricultural
17 rates." Yeah, that particular language, to be clear, rate
18 does not ref -- does not refer to the tax rate, because in
19 this particular section the tax rate is actually the
20 Commercialized Residential rate. What that section that you
21 read is referring to is actually the agricultural valuation
22 or agricultural assessment valuation rate.

23 So we wouldn't have a problem with that language,
24 because it mirrors I guess Title 19, as you already read.
25 And as long as the Real Property Tax Division has the

1 resources to be able to ascertain and evaluate those
2 criteria or those qualifications we wouldn't have a problem.

3 But I would ask that for this particular section
4 we are talking about, all the parcel, the entire parcel,
5 even though they may have agricultural valuation on there,
6 the tax rate is not agricultural tax rate, it's a -- they
7 will get the Commercialized Residential tax rate, which may
8 be more or less than the ag rate at that particular year,
9 but it's related only to the agricultural assessment.

10 COUNCILMEMBER NISHIKI: Yeah.

11 MR. YOUNG: Okay.

12 COUNCILMEMBER NISHIKI: Okay, I've got it. I, I,
13 I'm going to have to re -- rethink this one, Mr. Chairman.
14 But in, in, in, in, in the last statement that I want to
15 make, why I am concerned about this is, is also and maybe
16 another committee, it is not fair for those of us that are
17 subsidizing these particular parcels on ag lots which are
18 not doing agriculture. They may be doing B&B and who knows
19 what else. Just living the life on an ag lot, but not doing
20 anything at all. And yet a lot of 'em are receiving ag
21 water rates also.

22 And, and so, you know, I guess my concern is in,
23 in a year where we need to look at how to generate
24 additional revenues, I think this could be a big situation
25 if we would be doing some work in, in really assessing these

1 lots by inspectors or whatever, you know. Like the last
2 time Kalbert came up with a suggestion on how we could get
3 more revenues in the -- what area was that? -- Apartment area.
4 And yet he said, oh, we won't need to hire more people, but
5 we, we, we were going to find, you know, \$1 or \$2 million --
6 or maybe it was you. I can't remember who it was, but I'll
7 give credit to whoever that credit is due.

8 In this situation also it could be a revenue
9 generator and also eliminate the fact that those of us that
10 or those of them that are not paying and getting credit for
11 agriculture water rates are only causing those of us to have
12 to compensate them. So I, I, I would hope we would look at
13 that. But I will need to look at the education that I was
14 just given by the administration. Thank you.

15 CHAIR PONTANILLA: Thank you, Mr. Nishiki. And,
16 and I, I just want to add that I think the, the Department
17 is proactively moving forward in, in trying to have people,
18 you know, tell us that they're really doing ag on ag lot.
19 And they've been doing that, they've been sending letters to
20 confirm that. Member Johnson, Member Baisa next.

21 COUNCILMEMBER JOHNSON: Yes. And this is just a
22 question so that I understand what the process is that
23 you're using to I guess make these determinations. When you
24 have a bed and breakfast that is on agricultural land, is
25 there any situation that you're aware of where they would

1 not be required to do agriculture in compliance with HRS
2 205?

3 You know, like in other words, if they're doing
4 business as a B&B and they're on ag land, isn't there in our
5 ordinances a requirement or State requirement basically that
6 if they're doing agriculture and a B&B, that that's, that's
7 the only way that they can exist on that land, is that
8 correct?

9 CHAIR PONTANILLA: Department?

10 MR. YOUNG: Miss Johnson, I'm, I'm not aware of
11 any requirement, whether in the County Code or in Hawaii
12 Revised Statutes that anybody who owns property in -- owns
13 ag property, that they are required to do ag, regardless of
14 the type of use they eventually use. I, I'm not aware of
15 any requirement. I do know that there's -- that there, we
16 do have bed and breakfasts or TVR's, or whatever you want to
17 call them, in the ag district. They were either permitted
18 or they're currently in operation, or they're on property
19 that was zoned ag, and there's -- as far as I'm aware,
20 there's no requirement that they have to do a bed and
21 breakfast on ag property, or that they even have to do ag on
22 ag property.

23 COUNCILMEMBER JOHNSON: Oh, no, I know there's no
24 requirement that they have to do a bed and breakfast on ag
25 property, but I believe there is a requirement that if

1 you're on ag land, in order to get an ag rate 51 percent --
2 and I don't know what section of the, of the code -- but 51
3 percent of the land must be in active agricultural
4 production of some sort. And that is, I can't site the law,
5 I mean Traci could probably do it for me, but there are laws
6 that require, you know, even when we do subdivisions I know
7 there's laws, because that basically is a requirement. But
8 if, if somebody could answer that for me.

9 MR. YOUNG: Okay. Miss Johnson, sorry, for the
10 ag rate. To get the ag rate there are requirements in the
11 348 of the County Code in terms of how to get the ag rate,
12 and there's are, there are other sections in terms of how to
13 define, such as Title 19 as Mr. Nishiki read, that, that the
14 administration or the County can look to in terms of do you
15 receive the benefits. Because they are, they are in fact
16 benefits. If you are receiving agricultural benefits that
17 you prove why you are entitled to those benefits.

18 And that's really what the challenge is for the
19 Real Property Tax Division because, as Mr. Chair Pontanilla
20 pointed out, what we are currently going through with the ag
21 letters or correspondences that I think every single one of
22 your offices probably receive calls on is just that, how to
23 verify, validate that people who are receiving either
24 preferential agricultural assessment or the agricultural
25 rate, are they in fact entitled to those, and that's what we

1 have to do for the Real Property Tax section.

2 Similarly I'm sure Title 19, whatever department
3 is administering that title is under the similar challenges
4 to verify whether whatever benefits are enured to
5 agricultural properties, that they are in fact qualified for
6 that benefit.

7 COUNCILMEMBER JOHNSON: I have a question for Corp
8 Counsel. Traci, is that a requirement under State law, is
9 under HRS 205, is there a requirement if you're on ag land
10 if you're part of an agricultural subdivision, you know,
11 when that is filed? Because I know we require a farm plan.

12 MS. FUJITA VILLAROSA: I can look it -- under,
13 under 205 you're saying?

14 COUNCILMEMBER JOHNSON: Yeah, HRS 205.

15 MS. FUJITA VILLAROSA: I know in Title 19 there's
16 permitted uses, but that's not what you're talking about.

17 COUNCILMEMBER JOHNSON: No, it's not what I'm
18 talking about. This is a State Hawai'i Revised Statutes.
19 Well, anyway, Mr. Chair, I'm, you know, I'll let Traci take
20 time to do that. But it was always my understanding that
21 when you're on agricultural land, granted, you can leave
22 your land fallow if it's undeveloped, but if you're going to
23 put up a dwelling or anything else, there's certain criteria
24 that have to be met in order for you to, you know, your
25 principal dwelling, your ancillary dwelling, your farm

1 worker dwelling, all those things.

2 MS. FUJITA VILLAROSA: Right. I'm looking at
3 Chapter 205. This is the Land Use Commission chapter. And
4 it looks similar in that it specifies permissible uses
5 within the ag district, similar to like our, our zoning
6 ordinance, whether it's permissible listed. So you, you
7 have to fall within those certain uses in order to be in
8 compliance.

9 COUNCILMEMBER JOHNSON: Right. And, and my
10 understanding, Mr. Chair, is that in order to be, to put up
11 a principal dwelling it must be in support of agricultural
12 activity on the land, which requires 51 percent. A
13 secondary dwelling may be built, but that -- any other
14 structures on that property must be in support of active
15 agriculture. So --

16 MS. FUJITA VILLAROSA: These are the accessory --

17 COUNCILMEMBER JOHNSON: Yeah, yeah.

18 MS. FUJITA VILLAROSA: -- the farm dwellings that
19 you're referring to, right.

20 COUNCILMEMBER JOHNSON: Yeah. And so what, what
21 response I'm getting, you know, from Finance Department is
22 not, it's not consistent with my understanding, because we
23 can't basically allow people to ignore the law. I mean we
24 can't -- the State law is still the State law, and if it
25 says X, Y, Z then that's what we have to do. So I want to

1 make sure that what we're doing is consistent.

2 So if it's my interpretation that you cannot have
3 a principal dwelling that is not in support of agriculture,
4 I need to know that before I vote on anything, because that
5 is not my understanding of the law. And as long as I've
6 been on this Council we've always been told there's a
7 hierarchy of law. We can be more restrictive than State
8 law, but we cannot be less restrictive. So that's what I
9 need to understand. Thank you.

10 CHAIR PONTANILLA: Thank you. Member Baisa
11 followed by Member Molina.

12 COUNCILMEMBER BAISA: First, first of all, I
13 wanted to mention that what we haven't mentioned during this
14 discussion is the fact those folks who get a B&B permit lose
15 their homeowners exemption, and that in itself is a
16 significant trade-off for the benefit of having a B&B, and
17 a significant penalty that they have to pay in real property
18 tax that they wouldn't normally pay if they weren't doing a
19 B&B. So they're already paying more.

20 The other issue that I've been trying to, to, you
21 know, work out in my mind is this how we tax land or how we
22 compute the land if it's an agricultural lot. Say you have
23 10 acres and the homeowner says, "Well, I use one acre for
24 my house and the other nine acres are for farming." And the
25 whole thing is worth a million dollars. How does that work

1 out?

2 Now, if you didn't have that ag nine acres, your
3 tax would be significantly a lot more, because a home is
4 generally -- because they would say 10 percent goes to, you
5 know, the regular rate and the rest is ag. Now, if that was
6 a regular home on a, on a regular place without ag, that
7 home would be worth a lot more than a hundred thousand.
8 It's probably worth at least 350, 400,000. So there's a
9 significant break that's given in how we compute that, if
10 I'm understanding how we do that. Maybe somebody can
11 explain.

12 CHAIR PONTANILLA: Department?

13 MR. TERUYA: Well, Miss Baisa, in answering your
14 question your, your assumption is correct. In a 10 acre
15 parcel it's worth a million dollars of let's say that's just
16 the land value, our current process is if one-tenth is being
17 used as a home site, one-tenth of the value is what your
18 land area, your value for your home site. So in that
19 example it would be a hundred thousand dollars for the home
20 site. Then the remaining nine acres would be at the
21 production rate, like maybe 5,000 an acre or a thousand
22 dollars per acre if it was in banana or whatever. So that's
23 how we compute it.

24 In your -- another way of thinking of how to do it is
25 you take that one acre home site and you're comparable to

1 another residential lot that's one acre. We can do that.
2 And Big Island did that, and did this whole tax revolt,
3 because if you do it that way all of the value is really in
4 that home site.

5 COUNCILMEMBER BAISA: Right.

6 MR. TERUYA: Really. The comparable of another
7 one acre parcel of residential is, could be close to that
8 million dollars. So by farming the rest of the nine acres
9 if there's no density in it it's really worthless, it's just
10 overage.

11 COUNCILMEMBER BAISA: So there's a significant
12 loss of property tax revenue in the way we do this then.

13 MR. TERUYA: Yeah. The way we're doing it is
14 consistent with how we ac -- we accepted it from the State.
15 When the State first started it what -- we just inherited
16 how they did things. And the ordinance very, very barely
17 changed at all. Now, if the application was to change,
18 that's why I said I couldn't just snap my finger and say
19 let's change it tomorrow. But it could be looked at that
20 way, it could be. But, but to change it midstream I don't
21 think would be a good idea.

22 COUNCILMEMBER BAISA: Well, you know, as we're
23 just sitting here figuring out how are we going to get
24 revenues to pay our bills, I think we have to look at all
25 the options. And, you know, we can do nickel, dime stuff

1 and worry about whether you get an ag rate or you don't get
2 an ag rate, but there's bigger, bigger gold in them that are
3 hills that we'd better look for.

4 CHAIR PONTANILLA: Thank you. And like I stated
5 earlier, the Department is already looking into the
6 agricultural sector. And, you know, based on information
7 from the Department, it's a significant amount. Member
8 Molina.

9 COUNCILMEMBER MOLINA: Thank you very much, Mr.
10 Chairman. First of all, you know, I've got a number of
11 questions to ask, but I'll minimize my comments because I
12 know you've got an important item next, the Moloka'i Land
13 Trust. And our friends from Moloka'i made the trip here,
14 and I know they've got a 5:00 flight to catch. And I know
15 Mr. Mateo would certainly like to, you know, deal with this
16 item. So I have got a group of questions, and we'll just go
17 forth from there.

18 First of all, Mr. Director, and Mr. Teruya, thank
19 you for being here. And I know this bill is quite sensitive
20 to some. Let me ask you this directly Mr., Mr. Young. Any
21 concerns? And also, what kind of financial impact are we
22 looking at with this reclassification in terms of revenue?

23 MR. YOUNG: Well, Mr. Molina, actually even
24 without this ordinance we in the Real Property Tax Division
25 of the Department of Finance, we kind of always envisioned

1 that we would effectuate the code for this classification
2 in concert with what this proposed ordinance is explicitly
3 stating. So unless I hear otherwise or some concept to the
4 contrary, we would do it this way. We would do it this way
5 even if we didn't have this ordinance, because this is
6 consistent with how we treat other property classifications.

7 Our support for this ordinance offered by the
8 Chair though is that it makes it even more clear, explicitly
9 clear on how to handle these types of classifications. So
10 to that degree we are very supportive of it.

11 I don't believe that it will result in any more or
12 less revenue for the part of the County specifically,
13 because we treat other properties in other classifications
14 similarly. And we also don't know how many properties are
15 actually going to be in the Commercialized Residential
16 classification.

17 If we're looking at the number of bed and
18 breakfasts as being the estimated count, there's really,
19 you're not really talking about a lot of parcels. So, so
20 the, the overall revenue affect I would say would be nominal
21 at best. Mr. Teruya?

22 MR. TERUYA: Currently there are two properties
23 that are an existing B&B or TVR, I'm not sure what they are,
24 that receive agriculture rates. And what this would do
25 would assist them in continuing that benefit going forward.

1 So there's only to two B&B's and TVR's that I know of that
2 are receiving agriculture use, and these, this ordinance
3 just allows them to continue that use.

4 COUNCILMEMBER MOLINA: Okay, thank you. That was
5 a good lead into my next question, I was going to ask you
6 how many properties are out there. So given that there may
7 be the perception that these folks are getting special
8 treatment, in your professional opinion there is no
9 so-called special treatment then because, you know, they're
10 operating their business on ag lands and then getting a, a
11 rate of agriculture like, like an agriculture rate, even
12 though they're operating a business.

13 Now, have they -- these guys have no homeowners
14 exemption as well, they've lost that in terms of bed and
15 breakfast, so they've lost that benefit, am I correct?

16 MR. YOUNG: That's a trick question, Mr. Molina.
17 I'm not going to say that --

18 COUNCILMEMBER MOLINA: All right, I just thought
19 I'd ask.

20 MR. YOUNG: I'm not going to say they get any
21 special benefits because after hearing the comments made by
22 the other Council Members I would say that this -- the
23 language in this ordinance, it is offered as a housekeeping
24 measure. It would have taken care of to -- when we created
25 the classification to have that language to begin with,

1 because it would have articulated what we currently have in
2 practice. I don't, I wouldn't hel -- I wouldn't classify it
3 as a special treatment, because we do effectuate that
4 treatment to other classifications. So I would say it just
5 basically maintains the status quo or makes consistent how
6 we treat it across other classifications.

7 Now, with that being said, I understand the
8 comments of all the members who mentioned that there are the
9 perception or the potential for misuse of properties in the
10 agricultural zoned or agricultural districts comparable to
11 what they are actually using. And, you know, Ms. Johnson's
12 points are the most poignant there. So in that regard, I
13 would say overall there is some benefit to be either in the
14 ag district, classified as agricultural use, or receiving
15 the agricultural assessment. There is clearly a benefit
16 beyond what the other classifications or determinations of
17 classifications are. So to that extent, it does exist. But
18 this particular language doesn't enure any special benefit
19 different from any of the other classifications.

20 COUNCILMEMBER MOLINA: And you mentioned in your
21 response about abuses, potential abuses. Now, would that be
22 your department to spot, to provide the oversight of any
23 abuses, and especially in terms of establishing the criteria
24 for agriculture usage, or does that come under your
25 department or would that be the Planning Department, the

1 enforcement and so forth?

2 MR. YOUNG: I, I would say it would, it would be
3 under the Planning Department. Specifically whoever is
4 responsible for that Title 19 that Mr. Nishiki mentioned.
5 The, the part for agricultural taxing, as far as real
6 property tax is concerned, that is the responsibility of the
7 Department of Finance. In terms of enforcing real property
8 taxes on agricultural classifications, that is Real Property
9 Tax's responsibility, and we do that. But in terms of
10 defining what is agriculture, defining or proving if it's a
11 legitimate use in that district or ensure or enforcing
12 district zoning, that is not Real Property Tax's
13 responsibility.

14 COUNCILMEMBER MOLINA: Okay, thank you. And
15 finally, Mr. Chair. Mr. Director, is this time sensitive,
16 you need to get this, I mean you need for us to make a
17 decision on this today, or how, how long before you need
18 something?

19 MR. YOUNG: Mr. Molina, I would prefer that if the
20 Council is going to decide on this ordinance that it do so
21 before December 31st so that the full extent of the
22 Commercialized Residential classification can be codified in
23 times, in time for Real Property Tax certification.

24 COUNCILMEMBER MOLINA: Okay. Thank you,
25 Mr. Young. So I guess we have a, some time, very little

1 time. And I guess in times, in terms of some of the
2 questions brought up, Mr. Chair, I mean, you know, I can
3 wait, but that's just my, my opinion. And just so we can
4 make, make sure all the i's are dotted, t's are crossed.
5 And whatever concerns that, that, you know, some of us may
6 have can be cleared up, and so we can move on and assist the
7 Department if this is, you know, like I've said, we've heard
8 their endorsement of, of your proposal, Mr. Chair.

9 And thank you for bringing this to light to the
10 committee. I mean, you know, appreciate you trying to take
11 the initiative and get something moving on this towards as
12 it relates to this particular item, Mr. Chairman. So that's
13 all I have for now. Thank you, Mr. Chair.

14 CHAIR PONTANILLA: Thank you. Member Medeiros.

15 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.
16 In, in, in looking at this bill, the title of that section
17 being Land Classified as Agriculture or Commercialized
18 Residential and used for agriculture, Department, I know in
19 discussing land classifications and tax classifications you
20 have always mentioned the phrase "highest and best use."
21 How does that apply for land like this that's classified
22 Commercial Residential but used for agriculture?

23 MR. TERUYA: Well, I, I believe this section of
24 the code basically says that if they're used for agriculture
25 and that gives you that option to be assessed something

1 other than highest and best use, yeah. Properties that are
2 classified as Agriculture or -- and used for agriculture
3 shall be this. If not, then your highest and best use.

4 COUNCILMEMBER MEDEIROS: I see. So when it's
5 classified Commercial Residential but used for agriculture, how
6 does that apply?

7 MR. TERUYA: Because the, the existing code states
8 only properties that are classified as Agriculture can get
9 agriculture use, we're just adding commercial, this
10 classification that if you use it for agriculture that you
11 can use it for and get the assessed value of agriculture.
12 Without that language it only states that properties in
13 agriculture.

14 COUNCILMEMBER MEDEIROS: Okay.

15 MR. TERUYA: Classified as Agriculture.

16 COUNCILMEMBER MEDEIROS: Um-hmm. So when you
17 brought up the point about a B&B operation and structure on
18 the property, that that would be assessed differently, is
19 that correct?

20 MR. TERUYA: Well, the, the portion of the home
21 and its underlying land area is valued separately, yeah.

22 COUNCILMEMBER MEDEIROS: I see.

23 MR. TERUYA: The portion that's used for
24 agriculture and is a bona fide operation gets valued
25 separately. The entire parcel is still classified as

1 Commercialized Residential, yeah. But rate and valuation
2 are very different.

3 COUNCILMEMBER MEDEIROS: Um-hmm. And so bona fide
4 agriculture would be determined by what Mr. Nishiki brought
5 up?

6 MR. TERUYA: Well, Mr. Nishiki brings up Title 19.
7 Real Property Tax is, is different from Title 19 in that
8 when we look at agriculture it is what is, what we consider
9 to be clearly evident in the code as to what is, is being
10 used, whether it's farming of either ranching or some type
11 of crop.

12 COUNCILMEMBER MEDEIROS: Okay, okay, yeah.

13 MR. TERUYA: So I'm -- I don't think our ordinance
14 states what is bona fide other than what is our guidelines
15 that we've used that was passed down from the State level.
16 But there is nothing in the code that states what is
17 considered a bona fide other than being clearly evident.
18 That's all the code refers to.

19 COUNCILMEMBER MEDEIROS: And, and then finally
20 and, and this is just for my information and clarification,
21 and if the other members, you know, find it useful. But our
22 B&B ordinance, right, that would be allowed, a B&B would be
23 allowed in this classification states that all the vehicles
24 that utilize that operation have to be parked on the
25 property. So how do you include that area if you only

1 include the --

2 MR. TERUYA: Well, the portions that they would
3 park on the property obviously would not be used, could be
4 granted a agriculture exemption, because unless it's
5 directly related to the farming activity. But in this case
6 it would appear that the cars that's used for the B&B
7 operation is clearly for the home site. So those portions
8 that are being used or parked on shouldn't be receiving a
9 agricultural designation, yeah. That would be considered
10 all part of the home site.

11 COUNCILMEMBER MEDEIROS: I see. Okay, thank you
12 for that clarification, Department. Mahalo, Mr. Chair.

13 CHAIR PONTANILLA: Thank you. I, I, I just want
14 to take this last three, Member Baisa, followed by Member
15 Kaho`ohalahala, followed by Member Nishiki.

16 COUNCILMEMBER BAISA: This --

17 CHAIR PONTANILLA: We've still got one more item
18 to go.

19 COUNCILMEMBER BAISA: Thank --

20 CHAIR PONTANILLA: And we have people from
21 Moloka'i here.

22 COUNCILMEMBER BAISA: Thank you, Chair. Just a
23 quick comment. One is that in our new B&B law it says that
24 if you're going to use -- if you're going to do this on ag
25 land you have to file a farm plan, and the farm plan has to

1 be verified by the Planning Department so that you can be
2 getting your, your B&B on, operating on ag land.

3 The other thing is, just because you get your B&B
4 permit and you get -- you're doing it on ag land, it doesn't
5 mean that your land is exempt. The owner, after he gets
6 that permit, then has to file an assessment request with the
7 Real Property Tax Department for an -- and declare how much
8 of that property is used exclusively for ag. So it's not
9 automatic, and there's many processes to go through before
10 anybody gets this. So I think we have a lot of laws
11 covering this. Thank you.

12 CHAIR PONTANILLA: Member Kaho`ohalahala.

13 COUNCILMEMBER KAHO`OHALAHALA: Yeah, Thank you,
14 Chair. I was just wanting to follow up on Member Medeiros'
15 questions about highest and best use and stuff. And what if
16 the land is not being used for agriculture?

17 MR. TERUYA: Then it is valued in its highest and
18 best use.

19 COUNCILMEMBER KAHO`OHALAHALA: And then how do you
20 make that assessment?

21 MR. TERUYA: Based on comparable properties and
22 what is the value of comparable properties.

23 COUNCILMEMBER KAHO`OHALAHALA: How do you
24 determine whether or not that particular parcel that's ag is
25 not being used for ag, do you go out --

1 MR. TERUYA: Well, it is incumbent on the taxpayer
2 to identify if they're using it for agriculture and what
3 portions are used for agriculture. Then a site inspection
4 is made to determine, or at least clarify, or at least
5 identify that yeah, that area is more or less true and
6 farmed, yeah. I, I don't think we're going to go to the
7 inch, but when you do tracks of land or you do planting you
8 normally do it in rows and then, you know, in columns and
9 grids and it's irrigated, et cetera. So the area is easily
10 identified.

11 COUNCILMEMBER KAHO`OHALAHALA: And then if you
12 don't see those rows that are easily identified?

13 MR. TERUYA: Then it wouldn't be granted.

14 COUNCILMEMBER KAHO`OHALAHALA: Okay, rest my case.
15 Thank you.

16 CHAIR PONTANILLA: Member Nishiki.

17 COUNCILMEMBER NISHIKI: Yeah, you know, Mr. Chair,
18 what Gladys brings up today and, and, and it, it could
19 happen on this particular parcel also with a B&B on it. And
20 I only bring it up because if that same house is a B&B and
21 then there's an adjacent property that may be separated by a
22 wall or whatever, and, and this I bring up to you because
23 you talk about oh, this is how we've been doing it for
24 years. And, and, and Mr. Chairman, you know, Gladys talks
25 about I might have been chasing nickles and pennies, and

1 Gladys may be chasing quarters and half a dollars, and, and
2 I don't care because kongpong ah, we still going collect
3 more, okay.

4 And, and this is it. But this is it but, Scott.
5 And you guys really need to look at this, okay. Because and
6 this may not be a good description, but that same house,
7 yeah, on 10 acres, I build the same house in Kahului on one
8 acre, okay. I think what you mentioned to Gladys is that
9 that house, the same house on 10 acres, is going to be
10 paying less than the house in Kahului on one acre. Same
11 house, same footprint. Nothing changes, okay. Nothing
12 changes, okay.

13 I point this out only because Mateo and me, we get
14 same kind car, okay. Jakalaka Ford van that I drive. He's
15 on Moloka'i, okay. I'm on -- I'm in Kihei, okay. That same
16 van we pay the same price when we pay our registration on
17 our automobile tax, yeah, by weight, by make, and everything
18 else.

19 And so, Scott, I'm really, really, really I mean,
20 you know, I think all of us are going to tell you you need
21 to look at this. Because those of us that may be living in
22 urban areas with the same kind of house, same kind of house,
23 Mr. Chairman, same kind of house are paying more than
24 somebody that lives on 10 acres or whatever. And, and, and
25 is that fair? You know, highest and best use. Highest and

1 best use. Scott, highest and best use. Highest and best
2 use. That's what we follow. I might, I might give back the
3 one position today.

4 CHAIR PONTANILLA: Thank you.

5 COUNCILMEMBER NISHIKI: But, but, you know, I mean
6 this, you know, Mr. Chairman, I think is something that --
7 and thank you. See, look at my fellow committee members
8 today, we squirming but at least we coming up with some
9 really good concerns.

10 CHAIR PONTANILLA: Thank you.

11 COUNCILMEMBER NISHIKI: Thank you so much.

12 CHAIR PONTANILLA: Mr. Young?

13 MR. YOUNG: Mr. Nishiki, Mr. Teruya and I, we
14 hear you and we hear all the comments from the Council
15 Members --

16 COUNCILMEMBER NISHIKI: Yeah.

17 MR. YOUNG: -- that you brought up today. I think
18 you folks have all articulated what a very difficult
19 situation it is to effectuate the, the code fairly and
20 consistently in the best interest of the taxpayers,
21 residents, and the County of Maui. We actually could do
22 everything that you just mentioned. We could do it
23 tomorrow. Literally I could tell Scott right at the break
24 and he could go make a phone call and tomorrow we will, we
25 will change the entire Real Property Tax system to

1 effectuate that. And I, I have no doubt that it would be
2 consistent with the existing County Code without any change
3 in the ordinance.

4 However, as you -- as your offices are probably
5 aware, we are just right now going through the efforts to
6 validate current properties and parcels that are in the ag
7 district, receiving ag classifications. And I don't even
8 want to guess how many correspondence and phone calls each
9 of your offices have received, because I've received
10 probably about as much as you, as you have, and I'm sure Mr.
11 Teruya has twice as much as both of us. And that's the
12 problem, is trying to evolve and move the County into the
13 direction where it's supposed to be in the, in the County
14 Code.

15 So we're going through what's -- it could be called
16 growing pains, but it's large overdue because the County has
17 had the existing system for decades and generations of
18 Directors, and generations of Real Property Tax employees
19 have merely continued the existing practice of their former
20 co-workers and ances -- you know, ancestral co-workers that
21 have worked there before, and now we're trying to put a
22 little bit more enforcement in there into what, how it's
23 supposed to be.

24 And that is part of the challenge in accepting
25 that change from the taxpayers, and the residents, and the

1 County Council comments, and where we are going with, you
2 know, in terms of the division and the Department.

3 So I understand and hear every single comment that
4 you folks have made, and I can't say that I disagree with
5 any of them. I believe that that is the way it should be
6 done. It's just that it is a very painful process to go
7 through to effectuate that, that change. And now is the
8 time when we are looking at revenue and what is the impact
9 on the overall revenue picture for Real Property Tax. And
10 that's the premise from which we are trying to get a better
11 enforcement, but it's still, it's no less painful even
12 regardless of the reason.

13 CHAIR PONTANILLA: Thank you. So with that, the
14 Chair would like to make his recommendation at this time.

15 COUNCILMEMBER VICTORINO: Recommendation.

16 COUNCILMEMBER BAISA: Recommendation.

17 CHAIR PONTANILLA: Thank you very much. The
18 Chair's recommendation is for passage of the proposed bill,
19 "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.320, MAUI
20 COUNTY CODE, PERTAINING TO LAND CLASSIFIED AS AGRICULTURE OR
21 COMMERCIALIZED RESIDENTIAL AND USED FOR AGRICULTURE".

22 COUNCILMEMBER VICTORINO: So moved.

23 COUNCILMEMBER MATEO: Second.

24 CHAIR PONTANILLA: Okay, moved by Member
25 Victorino, second by Member Mateo.

1 Members, any more discussion? Member Johnson.

2 COUNCILMEMBER JOHNSON: I just have one question
3 that I haven't been able to kind of wrap my mind around.
4 When you describe the separation of land, you know, the
5 valuation of home, my -- what sticks in my mind is in past
6 presentations or in other discussions that I've had is it's
7 all one thing, you know. You don't really separate the land
8 and the, the dwelling and all this other stuff. There's,
9 there's no separation basically done on, on those particular
10 items. Can you just clarify where I'm not understanding?

11 MR. YOUNG: I think I understand what you're
12 asking.

13 COUNCILMEMBER JOHNSON: Yeah.

14 MR. YOUNG: First of all, in the -- there's only
15 one classification, there's only one tax rate assigned to a
16 parcel.

17 COUNCILMEMBER JOHNSON: Right.

18 MR. YOUNG: Okay, so the division does look at,
19 you know, as Mr. Teruya explained, we do separate in terms
20 of the assessed valuation the home site versus say ag, but
21 there's only one tax rate, yeah.

22 And similarly on the tax bill, for instance, I
23 believe the tax bill does show a value for the land versus
24 improvements. But really how it, how it actually all works
25 out is the, is the bottom line. The cumulative value for

1 both is the actual market value, or what, what we assess as
2 the market value for that property.

3 COUNCILMEMBER JOHNSON: Yeah. And, and that's
4 where I was trying to understand, because I know in the past
5 when I've asked that question it's just sort of like, well,
6 you can't really. You per se do not really separate those.
7 It's a, it's a whole value that's assessed both taking into
8 consideration the improvements on the land as well as the
9 land. So that's where I'm -- I kind of -- there's a little
10 bit of a disconnect in the discussion that we're having
11 today, because that's not my understanding of where we're,
12 where you're usually looking at this. It's just that's the
13 whole value.

14 So I, I just wanted to put that on the record,
15 Mr. Chair, because I think that some people when they look
16 at and they question well, the value of my house versus the
17 value of my land, and they file an appeal on that basis,
18 with what Mr. Young just explained, that's really not the
19 way that they're doing it. And when we look at this,
20 they're probably going to be just doing exactly what they
21 said, which is taking a look at the whole property.

22 CHAIR PONTANILLA: Thank you. Members, any more
23 questions? Member Molina.

24 COUNCILMEMBER MOLINA: Yeah, thank you, Chair. My
25 preference would be, would have been to have maybe taken

1 another meeting. But I do respect and realize the
2 Department is facing a clock so to speak. We have until the
3 end of December. But if this is what it will take to sort
4 of change the mind set as to taxation, how these properties
5 will be taxed and then so be it, I'll support it, although
6 with some reluctance, some reservations. But, you know. So
7 at that point, Mr. Chairman, I'll go ahead and support your
8 recommendation. Thank you.

9 CHAIR PONTANILLA: Thank you. Member Medeiros.

10 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.
11 Yeah, I too will support your recommendation with, with some
12 reservations, but my reservations have been satisfied with
13 the Director Young's assurances. So hopefully with that,
14 you know, we can see it applied in the way the questions
15 have been asked. Mahalo, Mr. Chairman.

16 CHAIR PONTANILLA: Thank you. Members, any more
17 questions? Seeing none, all in favor of the motion signify
18 by saying "aye."

19 COUNCIL MEMBERS: Aye.

20 CHAIR PONTANILLA: Any opposed? Seeing none, motion
23 is carried, nine ayes, zero noes. Thank you.

24

25

1 COUNCILMEMBER VICTORINO: They've gotta go back.

2 CHAIR PONTANILLA: They've got to catch a plane.

3 So if there's no objections.

4 COUNCIL MEMBERS: No objections.

5 CHAIR PONTANILLA: Okay, good.

6 COUNCILMEMBER VICTORINO: Thank you, Mr. Teruya.

7

8 ITEM NO. 48: GRANT TO THE MOLOKA'I LAND TRUST
9 (C.C. No. 09-257).

10

11 CHAIR PONTANILLA: The final item again this
12 afternoon is BF 48, grant to Moloka'i Land Trust. The
13 purpose of the proposed resolution is to authorize a grant
14 of \$480,000 from the Open Space, Natural Resources, Cultural
15 Resources and Scenic Views Preservation Fund to the Moloka'i
16 Land Trust to purchase a portion of Kawaikapu Ranch,
17 Moloka'i, comprised of approximately 196.4 acres to assure
18 the protection of the conservation land.

19 So at this time the Chair would like to call on
20 Ms. Tamara Horcajo from the Parks Department for comments.

21 MS. HORCAJO: Thank you very much for allowing me
22 to comment on the proposed resolution authorizing a grant to
23 the Moloka'i Land Trust pursuant to Section 3.88 of the Maui
24 County Code, pertaining to the Open Space, Natural Resources,
25 Cultural Resources and Scenic Views Preservation Fund.

1 The purpose of this resolution is to authorize the
2 Moloka'i Land Trust to purchase a portion of the Kawaikapu
3 Ranch located on Moloka'i, Hawai'i, comprised of
4 approximately 196.4 acres. And this is to assure the
5 protection of the conservation lands. The County of Maui's
6 fund, the funds that we're requesting, the grant, in the
7 amount of \$480,000 from the Open Space, Natural Resources,
8 Cultural Resources and Scenic Views Preservation Fund will
9 be used as a match against the State, State of Hawaii,
10 Department of Land and Natural Resources funds in the amount
11 of 707 -- \$767,976 from their Legacy Conservation Program
12 to purchase the Kawaikapu Ranch property. The County of
13 Maui will hold a perpetual conservation easement on this
14 property.

15 The Department of Parks and Recreation has been
16 designated to act on behalf of the Mayor to process these
17 applications and this grant request. Our department held a
18 meeting, a public meeting on August 25th, 2009 at the
19 Kilohana Community Center on Moloka'i to accept public
20 comment for the Moloka'i Land Trust grant application. A
21 transcript of this meeting's minutes was transmitted to you
22 for your review and information. And the meeting provided
23 broad support for this grant application.

24 So I'd like to thank the Moloka'i Land Trust for
25 their patience as Parks was establishing a procedure for

1 this Chapter 3.88 in the Maui County Code. And we are here
2 to answer any questions. We have representatives from the
3 Moloka'i Land Trust, Stacy Crivello and Butch Haase, who are
4 here to answer any questions that you may have regarding
5 this program on Moloka'i. Mahalo.

6 CHAIR PONTANILLA: Thank you. Members, questions
7 for the Director? Member Mateo.

8 VICE-CHAIR MATEO: Thank you. My question is for
9 Corporation Counsel.

10 CHAIR PONTANILLA: Go ahead.

11 VICE-CHAIR MATEO: If Corporation Counsel can tell
12 us why we need to approve this resolution when this body had
13 approved not once, but twice the funding for this particular
14 purchase. And Corporation Counsel needs to also know that
15 this initial request was not Council generated, it was not
16 my generation, it was from the administration, and it took
17 two years to get to this point. I do not understand why we
18 need a resolution at this point to approve something that
19 this body also already approved twice.

20 CHAIR PONTANILLA: Corporation Counsel?

21 MS. FUJITA VILLAROSA: Mr. Chair, yeah, we
22 recognize that there was a glitch in the process. I think
23 what happened in this case is that the budget ordinance that
24 was submitted for Council's approval already contained the
25 appropriation for this grant. Normally if you look at

1 Chapter 3.88 it doesn't contemplate that. It contemplates
2 that there is no appropriation in the budget and that the
3 actual approval that's done by Council is the budget
4 amendment.

5 But it does require other documents be submitted,
6 the grant proposal, the agency comments, the appraisal, you
7 know, so it goes through a list of things that are supposed
8 to be submitted to Council with the budget amendment. That
9 was not done.

10 So if you look at the Charter, Section 4-1,
11 "Actions of Council: Every legislative act of the Council
12 shall be by ordinance unless provided herein. Other acts of
13 the Council may be by resolution." So it's basically a
14 default method for Council to approve this, because the
15 documents that are required under the ordinance were never
16 submitted to Council.

17 So this is, this is a way to submit the
18 documentation to be in compliance with the code. And
19 because there is no budget amendment needed, you know,
20 because that was already in the budget ordinance, it would
21 just be by resolution under the Charter.

22 VICE-CHAIR MATEO: Okay, I'll accept that, that
23 explanation. But Mr. Chairman, this is a hell of a way to
24 do business. When you put an organization in jeopardy of
25 losing their, their properties because of a technical glitch

1 in the process, it's not acceptable. This particular
2 organization almost lost over \$700,000 from the Legacy
3 Funds. They also had to renegotiate with the owners of the
4 property in order for them to consummate the sale, so to
5 speak.

6 So I, I myself am not happy with this process.
7 Waiting two years for the final outcome of the process is
8 absolutely not acceptable. And I urge the Members to
9 support the resolution as it's been submitted, regardless of
10 how it was submitted, because we need this to move forward.
11 We've waited two years. We've almost lost this property
12 thanks to process. And I think in the future, because
13 there's another Moloka'i property coming about, I hope we
14 don't play the same game, and just get that property moving.
15 Thank you very much, Mr. Chairman.

16 CHAIR PONTANILLA: Thank you, Chair. Member
17 Medeiros, followed by Member Johnson.

18 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I,
19 I, you know, I'm, I'm a strong supporter of preserving
20 conservation lands, especially when they apply to watershed
21 properties. I wanted to ask either the Department or the
22 representatives of this project what percent of the 196.4
23 acres is watershed?

24 CHAIR PONTANILLA: Maybe the representative,
25 Mr. Haase.

1 MR. HAASE: One hundred percent of that area is watershed.

2 COUNCILMEMBER MEDEIROS: Okay, so it's all in the
3 watershed area?

4 MR. HAASE: Yes, it is.

5 COUNCILMEMBER MEDEIROS: Okay. And is it already,
6 is the watershed being maintained and protected by any
7 particular group?

8 MR. HAASE: Not currently formally protected by
9 the groups. There's lo -- a few local hunters that have
10 been allowed in there by the previous property owner.

11 COUNCILMEMBER MEDEIROS: Okay.

12 MR. HAASE: To help control some of the animal
13 damage.

14 COUNCILMEMBER MEDEIROS: Okay. Then my second
15 question, Mr. Chairman, would be, will Moloka'i Land Trust
16 be the fee owner of this property?

17 MR. HAASE: That's correct.

18 COUNCILMEMBER MEDEIROS: Okay. Thank you for your
19 response. Mahalo, Mr. Chair.

20 CHAIR PONTANILLA: Thank you. Member Johnson.

21 COUNCILMEMBER JOHNSON: Yes, I, I don't have a
22 question for him, but I just wanted to offer --

23 CHAIR PONTANILLA: Before you -- Members, any more
24 questions for Mr. Haase?

25 COUNCILMEMBER MOLINA: Chair, just one question.

1 CHAIR PONTANILLA: Okay fine. Member Johnson, if
2 you would.

3 COUNCILMEMBER JOHNSON: I'll wait.

4 CHAIR PONTANILLA: Thank you. Member Molina.

5 COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Good
6 afternoon, Mr. Haase. Just one quick question. So should
7 this be approved and so forth, then Moloka'i Land Trust, you
8 will ask someone to oversee. Any particular groups you're
9 looking at to oversee the watershed? Because currently, as you
12 stated, prior to this purchase there's only been, you know, a group
13 of local hunters. Are, are you looking at any particular
14 entity on Moloka'i?

15 MR. HAASE: We're looking at, at partnering with
16 the East Moloka'i Watershed Partnership Association on this.

17 COUNCILMEMBER MOLINA: Okay, very good. Thank
18 you, Mr. Chair.

19 CHAIR PONTANILLA: Thank you. Members, any more
20 questions for Mr. Haase? Seeing none, thank you.

21 MR. HAASE: Thank you, Council.

22 CHAIR PONTANILLA: Member Johnson, go ahead.

23 COUNCILMEMBER JOHNSON: Yes, I just wanted to, and
24 I don't know if Ms. Horcajo, she probably would not know
25 this, maybe Traci could look it up. I believe in my

1 committee before, this property as well as another property,
2 we had passed out of, and this was years ago, we had made
3 recommendations and we passed out a resolution and we sent
4 it on to the administration, basically looking at properties
5 that needed to be acquired. And I believe it was in the
6 form of a resolution that got passed out of my, when it was
7 Parks and Recreation Committee.

8 So I think you should look for those resolutions
9 and see if, what format they were in. Because if that
10 satisfies the requirement, then that may be another
11 alternative. Okay, thank you.

12 CHAIR PONTANILLA: Thank you. Members, any more
13 questions for the Department? Seeing none, the Chair would
14 like to offer his recommendation.

15 COUNCIL MEMBERS: Recommendations.

16 CHAIR PONTANILLA: Thank you. The Chair's
17 recommendation is to approve the proposed resolution
18 "AUTHORIZING A GRANT TO THE MOLOKA`I LAND TRUST PURSUANT TO
19 SECTION 3.88, MAUI COUNTY CODE, PERTAINING TO THE OPEN SPACE,
20 NATURAL RESOURCES, CULTURAL RESOURCES AND SCENIC VIEWS
21 PRESERVATION FUND".

22 COUNCILMEMBER MEDEIROS: Chairman, I move for
23 adoption of the resolution as you have so recognized.

24 COUNCILMEMBER VICTORINO: Second, Mr. Chair.

25 CHAIR PONTANILLA: Thank you. And Members, this

1 includes the filing.

2 COUNCILMEMBER MEDEIROS: Correct.

3 CHAIR PONTANILLA: Members, any more discussion?

4 Seeing none, all in favor of the motion please say "aye."

5 COUNCIL MEMBERS: Aye.

6 CHAIR PONTANILLA: Any noes?

7 Seeing none, motion is carried, nine ayes, zero
8 noes.

9

10 VOTE: AYES: Councilmembers Baisa, Johnson,
11 Kaho`ohalahala, Medeiros, Molina,
12 Nishiki, Victorino, Vice-Chair
13 Mateo, and Chair Pontanilla.

14 NOES: None.

15 ABSTAIN: None.

16 ABSENT: None.

17 EXC: None.

18

19 MOTION CARRIED.

20

21 ACTION: ADOPTION of resolution; and
22 FILING of communication C.R.

23

24 CHAIR PONTANILLA: Members, that's all the items
25 on our agenda this afternoon. Is there any announcements

1 that you guys want to make? If not, thank you.

2 I'd like to thank Stacy and Butch for being here
3 representing the Moloka'i Land Trust. Thank you very much.

4 Members, without no further action, this meeting
5 of September 29th, Budget and Finance Committee meeting, is
6 now adjourned. ... (gavel) ...

7

8 ADJOURN: 3:27 p.m.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, JEANNETTE W. IWADO, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

Dated the day of October, 2009



Iwado

NOTARY PUBLIC, State of Hawaii

My commission expires 2/5/12