

**ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE,
AND RECREATION COMMITTEE**

Council of the County of Maui

MINUTES

Council Chamber

September 30, 2014

CONVENE: 1:38 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Don S. Guzman, Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Michael P. Victorino (left at 2:58 p.m.)
Councilmember Mike White (arrived at 1:42 p.m.)

EXCUSED: Councilmember Robert Carroll, Vice-Chair

STAFF: Sharon Brooks, Legislative Attorney
Jordan Molina, Legislative Analyst
Kit Zulueta, Communication Director
Pauline Martins, Committee Secretary
Ella Alcon, Council Aide, Molokai Council Office (via voice conference)
Denise Fernandez, Council Aide, Lanai Council Office (via voice conference)
Dawn Lono, Council Aide, Hana Council Office (via voice conference)

ADMIN.: Jeffrey Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel
Joseph Alueta, Administrative Planning Officer, Department of Planning
David Goode, Director, Department of Public Works

OTHERS: Rory Frampton
Irene Bowie
Jordan Hart
Dale Bonar
Plus (4) other people

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR GUZMAN: . . . (*gavel*) . . . Good afternoon. I'm Don Guzman. I'm the Chair of the Economic Development, Energy, Agriculture, and Recreation Committee. We will now come to order.

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Before we begin, may I ask anybody in the gallery to please turn off your cellphones or silence them. At this time, I would like to introduce our Committee members. Stacy, Member Stacy Crivello, good afternoon.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good afternoon.

CHAIR GUZMAN: Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR GUZMAN: And Mr. Mike Victorino.

COUNCILMEMBER VICTORINO: Good afternoon.

CHAIR GUZMAN: Good afternoon. And excused for the moment is Vice-Chair Bob Carroll and Mr. Mike White. I would also like to introduce our Committee Staff, my Legislative Attorney, Sharon Brooks, as well as our Legislative Analyst, Jordan Molina, and our Committee Secretary, Pauline Martins. For the Departments, we have the Department of Planning representative as well as the Department of Public Works representative and from the Department of Corporation Counsel, we have Jeff Ueoka.

MR. UEOKA: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. And just for a brief announcement, anyone wishing to testify, please sign up at the entrance area of the lobby. Before we begin, please note that all testimony will be limited to the items listed on the agenda. Pursuant to the Rules of the Council, you will have three minutes to testify and one minute to conclude. When testifying, please state your name and/or any organization in which you represent. We will now, I wanted to go ahead and check in with our District Offices to see if they're online. Hana Office, Ms. Dawn Lono, are you there?

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office.

CHAIR GUZMAN: Also, thank you. Good afternoon. Also, Lanai Office, are you there, Ms. Denise Fernandez?

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

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CHAIR GUZMAN: Good afternoon. And our Molokai Office, Ella Alcon, are you there?

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

... BEGIN PUBLIC TESTIMONY ...

CHAIR GUZMAN: Good afternoon, ladies. Thank you. Right now, I'll go ahead and turn it over to Ms. Sharon Brooks for calling of our testifiers.

MS. BROOKS: The first testifier will be Irene Bowie, followed by Jordan Hart.

MS. BOWIE: Good afternoon, Chair and Committee members. I'm Irene Bowie, Executive Director of Maui Tomorrow Foundation. Maui Tomorrow supports the proposed resolution allowing for the creation of agricultural conservation lots. Cluster Development, also known as Conservation Development is an innovative planning alternative to conventional subdivision development and can certainly be an improvement to Maui's current Ag zoning requirements. It promotes integrated site design that is considerate of the land's natural features and topography. It also protects environmentally sensitive areas of the development site as well as permanently preserving important natural features, prime agricultural land, and open space. This type of development encourages cost savings on infrastructure and maintenance through practices such as decreasing the area that needs to be paved and the decreasing, and decreasing the distance that utilities need to run meaning fewer roads with less sewer, drainage, electric, and gas utility infrastructure to construct. Importantly, clustering residential properties minimizes non-point source pollution as there is less impervious surface and more natural drainage, which reduces storm water flooding and soil erosion. Strategic areas in the extra space can be used to trap nutrients and suspend runoff. Cluster Development makes ecological and economical sense. We support the bill's intent to provide flexibility in site planning and design in order to promote land conservation and preserve agricultural lands. Maui Tomorrow asks this Committee to recommend adoption of the resolution and refer the measure on to the Maui, Molokai, and Lanai Planning Commissions. Thank you.

CHAIR GUZMAN: Thank you, Ms. Bowie. Is there any follow-up questions? Seeing none, thank you very much for your time.

MS. BROOKS: The next testifier is Jordan Hart, followed by Dale Bonar.

MR. HART: Good afternoon, Chair and Members. My name is Jordan Hart. I'm testifying on behalf of myself. I'm also testifying on behalf of the or in support of the bill for an ordinance to allow for the creation of agricultural conservation lots. I do think that this is a positive option for the future. I grew up in Haiku at a time when the smaller plantation farmers were transitioning out and a lot of those lots were turning into subdivisions and I remember, you know, seeing some of

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those subdivisions coming in with full-urban-scale roadways and, including street lights and really feeling like that was kind of an inappropriate urbanization of the ag area. And so I think that allowing to keep density and limit that expansion of infrastructure in these areas is appropriate for the future. And so I'd just like to encourage support of this. Thank you.

CHAIR GUZMAN: Thank you, Mr. Hart. Hold on a second. Any follow-up questions from the Members? Seeing none, thank you. Thanks, Jordan.

MS. BROOKS: The next testifier is Dale Bonar.

MR. BONAR: Aloha, Members. I'm Dale Bonar testifying for myself but is part of a process that's been going on for many years. It comes as no surprise to any of you, I imagine, that I'm in great support of the conservation side of helping protect critical ag lands. The, one of the challenges there's been with our current sliding scale for doing the subdivisions that take place on agricultural lands is that it's been widely viewed by many as just not being effective. It isn't producing a lot of two-acre farms there, which is early on what was hoped for there. The ability to preserve larger areas of farm land, put them into productive farm use makes much more sense, reflects the very popular conservation developments that are happening around the country now. This particular bill, because we've talked to sort of all the different sectors about it, landowners, developers, the environmental community, and uniformly people have said that really makes good sense. You know, reduce the size as far as you can. The reason for the one acre is because that's a State minimum in the State Ag Zoning. So couldn't go less than that but one acre certainly gives people plenty of room to do what they need in terms of their own personal gardening or special types of gardening that goes on and leaves the excess land there. The, you were going to have a presentation on details here that I won't go over again but let me say that what Irene and Jordan presented to you we're in full support of. So thank you.

CHAIR GUZMAN: Thank you, Dale. Is there any follow-up questions? Seeing none, thank you.

MS. BROOKS: There are no more testifiers in the Chamber.

CHAIR GUZMAN: Okay, I'll go ahead and check in with our District Offices. Hana District Office, is there anyone wishing to testify?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR GUZMAN: Lanai District Office, is there anyone wishing to testify?

MS. FERNANDEZ: The Lanai Office has no one waiting to testify.

CHAIR GUZMAN: And on Molokai Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay, thank you very much, ladies. I'm going to ask anyone in the gallery if there's anyone wishing to testify please come forward. Seeing none, without any objections, Members, I'd like to close testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR GUZMAN: Thank you.

... END OF PUBLIC TESTIMONY ...

EAR-13 ROADSIDE STANDS AND FARMER'S MARKETS IN THE AGRICULTURAL DISTRICTS (CC 13-85)

CHAIR GUZMAN: Moving on with our items on the agenda, EAR-13, Roadside Stands and Farmer's Markets in the Agricultural Districts. Members, the Committee is in receipt of the following, County Communication 13-85, from Councilmember Elle Cochran, transmitting a proposed resolution to refer to the planning commissions a proposed bill relating to roadside stands and farmer's markets in the Agricultural Districts. My correspondence dated February 21, 2014, transmitting a revised proposed resolution, which attaches the proposed bill to allow commercial agricultural structures within the Agricultural Districts as accessory uses and special uses, subject to appropriate restrictions and standards and my correspondence dated September 10, 2014, transmitting a proposed bill, entitled, "A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040 AND CHAPTER 19.30A, MAUI COUNTY CODE, PERTAINING TO COMMERCIAL AGRICULTURAL STRUCTURES IN THE AGRICULTURAL DISTRICT". Members, as you'll recall, the Council approved the transmission of the resolution with an attached proposed bill to the Planning Commission last April. The deadline for the return of the Commission's recommendations to the Council was August 2, 2014. At our meeting on September 16th, the Committee heard from the Planning Director, who confirmed that the Commissions had not received the draft legislation to date. In addition, the Director assured the Committee that the Department would fast track the proposed bill to the Commissions for their review sometime in October. While components of this bill are contained in similar form within HRS 205 and Maui County Code, there are newly proposed aspects as well. Because the Committee has not had the opportunity to formally review the legislation, it is clear to the Chair's position to take the Committee through the discussion on key components of the bill concurrently with the Commissions that are going to review it within this month. The intent of the bill is to address inconsistencies between County and State regulations within the Agricultural District. The bill proposes to expand the County zoning regulations to allow for the sale of any Hawaii grown product at agricultural product stands and farmer's markets without the need for a Special Use Permit. The Chair recognizes that no bill is perfect and at the same time what you

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see before you today represents 13 months of back-and-forth vetting between members of the agricultural community via the Ag Working Group, the Department of Planning, the Department of Public Works, and the Legislative Staff here and review of our Council Services. This bill takes into account the needs of both the agricultural community and the Planning Department by effectively balancing regulations of the agricultural-based commercial operations with the farmer's right to operate commercial agricultural structures, such as roadside stands and farmer's markets. This bill fulfills the goals of the Councilmember Cochran's proposal while providing additional opportunities for our local agricultural industry to stay competitive and viable in the marketplace. At this time, I would like to proceed through the bill section by section so that we can become comfortable and familiar with the proposed revisions in the detail. The Chair encourages questions and discussions and potential recommendations by the members of the Committee as we go along. I'm going to ask Staff to go ahead and hand out a simple version, a summary version of the bill itself and as you look at the bill in its entirety, we can go over it via my summary version and you can compare the summary version with the language of the bill itself. And if you have any questions, we can, I'll take those questions as we go along. But, Members, this is just to familiarize yourselves with the intent of the bill and the language so that when the, when it does come back from the Planning Commission, we won't have to, we can do it simultaneously in terms of it coming to us and then reviewing it on a fast track since we did lose some time on the referral. So initially, the intent, if we go through on Page 1 of the bill itself, the intent, the purpose and the intent, the purpose of this bill is to allow commercial agricultural structures within Agricultural Districts as an accessory use and special use subject to appropriate restrictions and standards. It is the intent of the Council to provide for consistency between the County's land use laws and the State's land use laws in order to augment the agricultural industry in the County of Maui. So if we wanted to take the time, Members, if you wanted to read through it but in essence I'm going to go ahead and go through the summary version of it so that way if you have any questions when you're reading through the original language, you can refer to the summary version to say, oh, okay, this is in layman's terms. That's what it means. So at its heart, this bill allows additional structures on Ag lands to help farmers and ranchers supplement their farm income by selling Hawaii products or products related to their farm. People might bring up the issue of abuse but at the time, at the end of the day every law has the potential to be abused and we can't get out of helping people by saying that someone else might abuse the system. So this bill amends Maui County Code to allow four types of commercial agricultural structures on Ag land with a provision that you can only have a maximum of two commercial ag structures per lot. The structures that we're talking about within the bill are agricultural product stands. These are what we would see as farm stands. The second one would be farmer's markets. And the third one would be an agricultural retail structure. These are shops and stores. And the fourth one would be an agricultural retail food establishment. This is what we would call like farm-to-table type structures or somewhat like a hybrid restaurant. These structures would be allowed, these structures are allowed to sell some of or all of the following products depending on the type of the structure. These would be the agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, and when we define value-added in the HRS version of

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this, they don't define value-added so what we did was within our ordinance we define value-added and we indicate it as value-added means any activity that increases by processing or any other means the value of raw agricultural materials. This is what we call like our jams and our jellies. Obviously we have the fruits and the, I guess the fruits and the different types of berries to grow here but the other additive ingredients are not grown here on Maui, so that would be an added value to the fruits or the berries that were grown here on Maui. They would also be allowed to sell logo items. These logo items are for direct sale by the producer and that the producers' business logo be affixed on it permanently. So like clothing, cups, glasses, stationery, postcards, and writing utensils, they would have to be affixed to it permanently not just like a sticker where you can throw it on there and say hey, it's Gucci. But it would be affixed or yeah, affixed or permanently embroidered into it. Other, another item that they would be able to sell is other food items and this is any food item that is not an agricultural product grown in Hawaii. We do have provisions within the ordinance that will limit the type of food, other food items and I'll get to that later on. But instead of only allowing Maui products to be sold, the allowed products other foods, which would be the products would have been expanded to include all Hawaii products and other food items in order to make it easier as possible for farmers to make a profit from their structure. For example, a rancher with a locally raised hamburger steak stand needs to be able to use non-Maui rice because as far as I'm aware, we don't have Maui rice that is cost efficient to buy. In the future we can help Maui agriculture grow to the point where it's more cost efficient or effective to use Maui products, but at this time if the Members decide we can amend this section to require only Maui products. For each type of structure, one must be, the structure, each type of the structure must be owned, operated or used by a producer or producers. And so you may wonder what is a producer? So we define producer within the ordinance and it is defined as an owner, lessee, or licensee of a parcel of land located within the Agricultural District, who is engaged within the State of Hawaii in the growing or production of the sale of any agricultural product or value-added product. So all producers would be subject or are subject to the following requirements relating to the commercial ag structures. So as a lessee or licensee, you must have a lease with a minimum duration of five years for the portion of the land that a commercial agricultural structure is located on or will be located on. Well that section is intended to ensure that a legitimate producers or producer are the ones that are building and using these structures, because your average fly-by-night opportunist who's selling a re-labeled Costco pineapple isn't likely to get a five-year lease on the property. We're currently examining whether a five-year lease is too restrictive, and we're eager to hear whether the Planning Commission has any other input on that provision. The next provision would be in defining the requirements of all producers. It would be an owner must own the portion of the land that an agricultural, that a commercial agricultural structure is located on or will be located on. Well, that kind of sounds redundant but what it means is it's intended to ensure that the owners can only sell items on their land not other people's lands. So it's a bit awkward and redundant not to mention a bit restrictive so we're examining also whether that section of the provision can safely be removed. Now as I said, there are each type of structure is subject to different requirements as follows, and as I said you can only have two types of agricultural commercial structures per lot. That's the maximum. And I'm going to define each of the structures and kind of give a brief

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or recite some of the conditions that would be placed on them. So the first one would be the agricultural product stand. That's your farm stands. And that's going to be defined as a building, structure, or place with a wall area that is at least 25 percent open. Now if it's fully enclosed, it's not a stand and it's a shop or a store and it's, it'll be regulated by the other section. It also has to be owned and operated by a single producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii. So that's what a farm stand is. I mean, sorry, yeah, farm stand. Farmer's market, and so that's going to be a building, structure, or place with a wall area that is at least 25 percent open. Now again, if it's fully enclosed, it's not a market, it's going to be a shop or a store and it'll be regulated by that section. It is also that it's going to be used by two or more producers for the display and direct sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, they can also sell logo items related to producers' agricultural operations and other food items. All farmers' markets shall operate only during daylight hours and shall not operate on parcels less than five acres. Now the intent behind limiting it to five acres or less than five acres was to cut down on neighborhood disturbances and basically try to ensure sufficiency of the land for this kind of operations. The next type of agricultural structure would be what we would call in the ordinance an agricultural retail structure. These are like your shops and stores. This is a fully enclosed building or structure owned and operated by a single producer for the display and sale of agricultural produce, products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producers agricultural operations and other food items. All agricultural retail structures that prepare or serve food shall require a permit as required under Title 11, Chapter 12 of the Rules of the State Department of Health. So what that basically means is yeah, you can operate these types of agriculture retail structures but you still have to comply with State regulations, especially with the Department of Health. The other, finally, we have the last structure, which would be the agricultural retail food establishment. These are what your farm-to-table type structures or hybrid restaurants-type structures. It's a building or structure owned and operated by a producer and permitted under Title 11, Chapter 12 of the Rules of the State Department of Health, that prepares and serves food at retail using agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii and other food items. Now all of these structures, all of the commercial ag structures that I've mentioned are going to be subject to the following requirements. Any producer who owns and operates a commercial agricultural structure shall register the structure with the Department of Planning. So basically all the commercial ag structures have to be registered because only a producer can own and operate and use them. And also all registration forms shall include the following information: the name, address, telephone number of the producer; the tax, TMK number of the lot on which the proposed commercial regulation structure is located; verification that the producer is the owner, lessee, or licensee of the lot on which the proposed commercial agricultural structure is located. Well, this will ensure that the actual producer is linked to the land that the structure is on rather than allowing anybody to set up a shop on Ag land. Now it further states in the ordinance, if the producer is the lessee or the licensee, the authorization of the owner shall also be provided. The type of commercial

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agriculture structures being registered, that's going to be one of the other elements that will be required, the signature of the producer certifying acknowledgement and compliance that the requirements of this Chapter and all other applicable laws and regulations, including those of the State Department of Health and Department of Public Works, have been complied with. And this puts the producer on the hook for making sure everything is in compliance. It further says in the ordinance that the Department of Planning shall maintain a database of all commercial agriculture structures registered pursuant to this chapter. Failure of the producer to register a commercial agriculture structure may be enforced pursuant to Chapter 19.530 of this Title. Enforcement, so what that means in the ordinance is that the enforcement is going to be done by the Planning Department using its standard zoning violations. Also in the ordinance it mentions that each commercial agriculture structure shall require a separate registration. So if you have two, if you have the two maximum allotted structures on your lot, you have to put in for two registrations. Also within the ordinance it says that within a commercial agricultural structure, other food items and logo items shall occupy no more than 49 percent of the total floor area. So what that ensures is that we don't want people out there opening up a store that only sells non-Hawaii products. This will limit the, we needed a way to regulate whether we needed more of the product to be from Hawaii as opposed to other food items or logos. We don't want just like a basket of fruits and then everything else is logo items. So this was a way in which the Planning Department and myself and the Staff were able to come up with a way to regulate and then that would be by floor occupancy of 49 percent of the total floor area would have to be, would be less than other food items and logo items. And last but not least agricultural product stands that are 300 square feet or less in floor area are exempt from the registration requirement of this section. Well, we didn't want to hassle the, you know, the little roadside stands out there that just say drop money in there and they're quite small and we didn't want them to have to go through the humbug procedure of registering them, but we did feel that, with the Planning Department, feel that anything that was more than 300 square feet would then need to be registered. This registration process is not an approval process. This is just a way to track what type of businesses are out there and then eventually be incorporated into our open data policy if ever passed in regards to our open data policies. But and that being said, that is the full-blown summary of the ordinance, and we have it so now that the Members have been able, an opportunity to read the language in its entirety and also my summary of the legal language in plain English language, I'm open to any discussion or any questions at this time, but at least we've gotten this far as we await for the recommendations from the Planning Commission as they review the ordinance. Yes, Mr. Victorino?

COUNCILMEMBER VICTORINO: Chair, and thank you. And this is well prepared and I think that helps all of us better understand the premise that you're moving with this. The only question I would have, well not question, really, I guess statement is that once we get back from the Planning Commissions their versions --

CHAIR GUZMAN: Yes.

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COUNCILMEMBER VICTORINO: --and, you know, they may revise some of this, you will make that and make the comparison for, so that we can totally understand what they're recommending versus what you originally brought out?

CHAIR GUZMAN: Yes.

COUNCILMEMBER VICTORINO: Okay. As long as we get that --

CHAIR GUZMAN: Very good.

COUNCILMEMBER VICTORINO: --then --

CHAIR GUZMAN: Yeah.

COUNCILMEMBER VICTORINO: --I'd be, I'm okay with all of this right now. I mean, I wouldn't want to get into a long discussion until I can see what they want to say --

CHAIR GUZMAN: Right. Right.

COUNCILMEMBER VICTORINO: --if there's any major changes. If not, I'm good to go with this.

CHAIR GUZMAN: Thank you, Members. And as I said earlier, I said the basic introduction of the concept because of the fact that we lost 130 days in terms of it being delayed, I wanted to make sure that you get to review it as the Commission moves forward on it and hopefully we'll have it back with the recommendations by the end of October so that we'll be ready to go and you'll have it in your binders to review as the month continues on. So is there any other questions that you may have? Mr. White?

COUNCILMEMBER WHITE: No questions. I'd just like to say good job on the summary and thanks for putting all the work into this. I'll be interested to hear Ms. Cochran's comments because this I believe this all started with her.

CHAIR GUZMAN: I think sometimes it's better to put it in plain English language and then have the, and compare it to what is actually the legal language so that it's much easier to read. So now you have a very understandable summary of it. So is there any other questions? Anything to the Department?

COUNCILMEMBER COCHRAN: Chair?

CHAIR GUZMAN: So that being...

COUNCILMEMBER COCHRAN: Chair?

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CHAIR GUZMAN: Yeah, yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah, thank you. No questions primarily just comment that thank you very much for pushing this forward, and I think you've done an outstanding job in gathering the working group together to really vet things out and, you know, bounce it around with one another and get a broad base of input and perspectives to create, to grow this into what it is, and looking forward to the responses from the various Planning Commissions. And I just want to thank you for pushing it forward and getting it to this point. Thank you.

CHAIR GUZMAN: Yeah, thank you very much. And thank you for bringing up the issues. Okay, so that being said, Members, I'm going to without objections defer this item?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER.

CHAIR GUZMAN: Thank you. Thank you very much, Mr. Alueta. Oh, are you still, yeah, you're still here. Yeah. For the next item.

EAR-50 TOOLS TO ENCOURAGE AGRICULTURE SUSTAINABILITY (CC 14-215)

CHAIR GUZMAN: Okay, Members, for the next item on the agenda is EAR-50, Tools to Encourage Agriculture Sustainability. Okay, so the Committee is in receipt of the following: County Communication 14-215, from me, relating to the tools to encourage agricultural sustainability. And as we can see, we're going to be showing you our new screen. So the County Communication, my correspondence, dated September 11, 2014, transmitting a proposed resolution, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS", attached as Exhibit "1", as proposed bill, entitled "A BILL FOR AN ORDINANCE TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS". The purpose of the proposed resolution is to refer to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the Agricultural Zoning Ordinance to allow Agricultural subdivisions to utilize one acre minimum lot sizes when creating an Agricultural Conservation lot. The purpose of the proposed bill is to provide flexibility in site planning and design to promote land conservation, preserve agricultural land resources and maintain district character. Before we begin, I would like to take a moment to make a few opening remarks. This resolution would refer the bill to the Planning Commissions for the review required by the Maui County Charter for land use ordinances. The bill would amend the Agricultural Zoning Ordinance to allow one acre lots, deviating from the normal two-acre minimum for the subdivisions that create an Agricultural Conservation lot dedicated to

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agricultural uses in perpetuity. Why is this needed? Number one, for land conservation. For an island community, land is one of the most limited resources available. The current standards offer no opportunity for land conservation. Number two, to reduce fragmentation of Ag lands. Fragmentation affects the agricultural production capacity of the land. Fragmented Agricultural parcels offer less production and make it more difficult to justify the cost of agricultural investment. Number three, to implement the Island Plan. Countywide Policy Plan states that high quality agricultural land is among Maui County's most valuable resources and includes Objective 2, which requires the County to support ordinances, programs, and policies that keep ag land and water available and affordable to farmers. Also, the Maui Island Plan includes a Policy 7.1.1.H, which states that the County should provide incentives for landowners to preserve and protect Ag lands from development. Now who's going, who will be affected by this ordinance? Owners of lands zoned within the County's Ag District. The bill is targeted to help owners of more than 100 acres to realize more profit from their land and also farmers and other ag operators. The intent of the proposal is to provide opportunities for land developers to keep agricultural lands available to farmers. It also will help our future generations. The land would be dedicated in perpetuity. It also would help our visitors who come to Maui for its natural beauty. Now what is affected? The way Ag land can be subdivided. It's a decrease in the minimum of lot size to one acre. A subdivider would not be required to create 15, 25, and 40 acre lots and the density would not be affected. I would like to also mention that this proposal is a win-win situation for landowners, developers, farmers, County resources, and environmental protection initiatives. It encourages better land and infrastructure management, which will help maintain Maui County's pristine agricultural landscape. I know you have many questions, which is why we have invited one of our experts here that I've been in communication with who's helped us draft and been in many, many meetings with us and it's Rory Frampton. And along with our Planning Department, we've come up with a good ordinance, which is an option, it's an option to the original sliding scale. And so with that, I would like to introduce Rory Frampton, Members. He has arranged to present a PowerPoint. And Rory is a land use planning consultant with over 20 years experience in the private sector. He's raised on Maui. He earned a B.A. in Anthropology from Pomona College and a Master's in Urban and Regional Planning from U.H. Manoa. Prior to entering the private sector, he was a planner for the County of Maui and a clerk for the Planning Committee at the Hawaii State Legislature. In the private sector, he served as the lead use planner for Chris Hart & Partners, a local land use planning and landscaping architecture firm in Wailuku where he worked for over 12 years. Since 2005, he has worked for his own company providing land use planning consultation services for various private landowners on Maui. And it is with great thankfulness and regards for him to help my Committee and our Staff with the Planning Department on this newly drafted ordinance. I would like to take a two-minute recess to allow Mr. Frampton to set up on his PowerPoint. Thank you. Recess for two minutes. . . .(gavel) . . .

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RECESS: 2:17 p.m.

RECONVENE: 2:23 p.m.

CHAIR GUZMAN: . . .*(gavel)*. . . The EAR Committee shall now reconvene. Yes, Mr. Frampton, can you proceed with your PowerPoint? Yes.

. . . BEGIN PRESENTATION . . .

MR. FRAMPTON: Thank you very much, Mr. Chair, for the opportunity to share this information with the Committee. I think I've been barking or yapping or complaining about this for a long time and I think this provides me enough opportunity to either put up or shut up so thank you, again for the opportunity and for your collaborative efforts to try to pass this measure. This PowerPoint presentation is an abbreviated presentation of something that we put together a few weeks ago for the Hawaii Congress of Planning Officials and as the Chairman noted, this is one tool for preserving Ag land. And we really think that it's a way to have some meaningful impact on the Ag District. So the, I'll talk a little bit about the purpose of the ordinance and how the sliding scale works or doesn't work and what the ordinance would do. And just in general, just to add some commentary about preserving Ag land and what it means in Hawaii today. As most of us know, back in 1963, the State of Hawaii passed the land, State Land Use Law and about half of the land in Hawaii, or almost 2 million acres was designated Ag. Many areas were either low Ag productivity potential or actually had no Ag productivity potential. But these other areas as we've come to realize do possess some important other characteristics in terms of natural areas, open space, view planes, environmentally or it might be environmentally sensitive or they help, certainly help establish community character, so I think throughout this presentation and when thinking about this ordinance, it's important to think of the other values that some of our Ag lands can, that they hold. This is a picture of some Ag land out in the West Maui. Beautiful pu'u that has much more conservation value than ag value and trying to farm this type of soil doesn't make sense. In this instance, we actually used a conservation easement in the Ag Ordinance, worked around the sliding scale, and tried to preserve the tops of these pu'u to preserve their unique environmental conditions. Preserving Ag land, you know, from the time of the State Constitution in 1978, they recognized that not all lands in Hawaii that are designated Ag lands were actually productive lands. So the State Constitution charged the Legislature with coming up with criteria to protect Ag lands, and I had a number of other slides that talked about this history and basically the State has really failed at trying to come up with standards that could be adopted Statewide. And really they kind of left it up to the County. And I won't go into the Important Ag Lands Ordinance and such, other than to note that really I think the ball's in the County's court to come up with measures to help preserve Ag lands. Prior to 1998, Maui County had actually adopted a two acre minimum lot size and that was fairly meaningful since the State law established one acre standards. It really reduced potential density in the Ag District by 50 percent. And that was up until 1998. In 1998, the County passed Ordinance 2749, which is in

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my mind one of the, probably the most significant Ag ordinances that were passed in the State of Hawaii. It did recognize the other values in the Ag District. It also established the sliding scale and this sliding scale, which I'll get into a little bit, I won't focus too much time on it, but it establishes new allowable densities and minimum lot sizes, and essentially the way it works is the allowable density decreases with every increase in your parcel size. So for the larger parcels, as you get larger and larger, you actually get fewer and fewer lots. So it really impacts the larger lots and not so much the smaller lots. This is the way it looks in the ordinance and if you look on the left-hand column, you figure out what size your parcel is, and you go through this formula where you're allocated a certain number of two acre minimum lots, 15 acre minimum lots, 25 acre minimum lots, and 40 acre minimum lots, and as you go larger and as your parcel gets larger and larger, again, you get fewer and fewer lots per increment and parcel size increase. So just before and after 1998, because I still think this is a very important piece of legislation, pre-1998, you had a 600-acre parcel and you could get about 270 parcels out of that. There were no standards in overall density. After 1998, if you look at the 600-acre parcel, your density reduced by about 88 percent. As I mentioned earlier, for the smaller parcels, it didn't really have a net reduction at all, which is one of the reasons why that ordinance was successful and passed. It really didn't impact the smaller guys as much as it did the big guys. This slide's kind of hard to see. Its settlement patterns in the Paia-Haiku area with Paia on this portion of the slide and the large Ag lands that are still in place and then Haiku's settlement patterns. This highlights the settlement patterns. You can see Haiku above Hana Highway, as Jordan mentioned earlier, was really, many of the parcels were maxed out using the two-acre minimum lot size. So basically as many two acre minimums as you could get on a parcel that's what you'd get irregardless of topography or natural characteristics. With the sliding scale establishing a minimum lot size, the top matrix here talks about a 600-acre parcel and you need, it shows you, like for 15 acres, you need ten 15-acre lots. That chews up 150 acres just for ten lots and similarly with the six lots at 25. You know, between these 32 lots, you're choosing up, you're eating up 408 acres of a 600-acre parcel. If you allow a cluster approach for the same 600-acre parcel, if you took 32 lots and just used two acres, you'd only choose up 64 acres and you'd have 536 acres remaining. So that's what we're trying to do here. We're not talking about changing the overall number of lots. The sliding scale would still determine your overall number of lots but you wouldn't be held to the minimum lot size so you could do a scenario where you only, you cluster the 32 lots in one portion and preserve a large chunk of the remaining lands. So we're just getting rid of the minimum lot size on the sliding scale. This is an example of a 1,000-acre parcel using the sliding scale if you went down and made each of these parcels, the 15 acres, the 40 acres, and the 25 acres, the smallest you could go and tried to preserve one tract of land, you'd get a 267 remnant parcel or your, I guess in this case it would be your 46th lot. Most people would probably just extend all these other lots so that they would eat up a portion of that and you wouldn't even get a larger contiguous lot. You'd basically have 1,000 acres eaten up by all these lots. Conversely, if you were clustering them, and I just used two acres per lot on this example, you could get a 900 acre contiguous tract of land. So if you see the difference between the maximum large lot that you could get on the sliding scale and the minimum lot size if you do the clustering approach you could certainly get a lot more contiguous ag available. This idea has

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been around for a long time. This is a slide that the State of Massachusetts has prepared. You know, the origins of this concept go back to Ian McHarg in the late '60s and he wrote a book, called "Design with Nature", and there was another one, "Rural by Design" that was written by Randall Arendt in the '90s. And these are required readings now for graduate students in planning degrees, and they all talk about, you know, this upper slide on the left being kind of a sprawl concept versus doing a subdivision with more compact nature and preserving larger contiguous areas and open space. So yeah, the State of Hawaii did a workshop in 2006. They recommended this type of approach as a tool to preserve Ag land and maintain rural character. The Maui Island Plan actually has specific recommendations talking about conservation subdivision design, which this is basically a proposal for. And I remember hearing the Council when they were adopting the Plan saying that this was probably one of the most important things that they could follow up on was to adopt this mechanism. And I think I heard three or four of the Council members at the time saying that's one thing we really gotta get to, so I'm happy to be here in this Chambers following up on the promises that were made with the adoption of the Maui Island Plan. So as the Chairman noted, and I've noted, the sliding scale would still be in place to establish the overall density. You would allow for a minimum lot size of one acre to provide flexibility and site planning provided that 70 percent of the original land area would be dedicated to Ag uses. This is for any parcel over 92 acres. If you're under 92 acres, it would be 60 percent. So either 70 or 60 percent of the original land area would be dedicated to Ag uses in perpetuity, either via a unilateral agreement or a perpetual easement. And again, the minimum lot size wouldn't be tied to the sliding scale. We've seen the purpose and I think Don explained it very well and the, in summary, it's another tool that we could have in our toolbox to provide flexibility and planning and again recognize other preservation or conservation interests in the Ag District. Landowners would have an option to achieve preservation and development, and of course it would provide efficient, it would allow for efficient provision of infrastructure and the maintenance of large contiguous tracts of Ag land. And that concludes my presentation.

... END PRESENTATION ...

CHAIR GUZMAN: Thank you, Mr. Frampton. So we'll go ahead and take a two-minute recess to reset the Chambers. Thank you. ...*(gavel)*...

RECESS: 2:34 p.m.

RECONVENE: 2:36 p.m.

CHAIR GUZMAN: ...*(gavel)*... The EAR Committee shall now reconvene. So I'm going to thank Mr. Frampton very much so for the very clear and very plain English, very described PowerPoint. So, Members, now you get kind of a familiarity of what this ordinance is all about. What we have posted on the screen here is somewhat of, is a picture that kind of gives you that picture says a thousand words. So what we have on the left side there is what the current law is,

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the current sliding scale as applied to 750 acres. And so if you see that the larger remnant tract, the larger white piece of parcel there, that would be the remnant area as compared to what our ordinance would do as an option. You can see the clustering of the one acre there and the conservation easement or a unilateral agreement to keep the remnant lot in agriculture for primary use in agriculture. So as the intent and purpose of this ordinance is to amend the Agricultural Zoning Ordinance to allow the creation of Agricultural Conservation lots within a minimum lot size of one acre. The Council's intent is to provide flexibility in site planning and design to number one, promote land conservation, number two, preserve agricultural land resources, and number three, maintain district character consistent with the General Plan. So, Members, at this time I'm going to open up the floor for any questions that you may have. Before that, I'm going to introduce our representative from Public Works, David Goode. Thank you for being here this afternoon.

MR. GOODE: Good afternoon.

CHAIR GUZMAN: And also from our Planning Department, Joe Alueta. Thank you very much. He's worked extensively with us on this ordinance. So do you have any opening comments from either one of you, from the Departments?

MR. GOODE: Thank you, Chair. Good afternoon, Members. Mr. Alueta said I can go first, I guess because I'm sitting to his left. We had a chance to review the bill here the last few days and we had looked at a bill a few months ago, I think which was an earlier draft and so we really appreciate that and we certainly understand the concept that's being put forth here and in that respect I don't have any major comments from our Department, certainly because it's really considered a planning tool but I do have some items that I'd like to throw out there because essentially when it comes to the subdivision process, that's what we do. Alright. So we're in charge of overseeing that process and so of course we would send any application to the Planning Department and other departments but eventually, essentially we're kind of ground zero for subdivisions so if there's any concerns with the law, typically it's our Department that gets all the questions. So if we see things in the law that looks like it's going to lead to a lot of questions, well then that's certainly something we'd want to try to make as clean and readable as possible so that the public knows exactly what they're getting into and can minimize our staff time effectively. So, Chair, I don't know if you want me to kind of briefly go through them now or later, but I've got about half dozen comments that I'd like to at least put out there.

CHAIR GUZMAN: Members, would you like to hear verbally and then we'll follow up with a written?

MR. GOODE: Okay. Okay, so as I mentioned, we have a lot of owners, property owners come in and they basically ask us how many lots can I get? You know, so even in the existing ordinance, those of us that have used it a lot like Rory, you know, it's pretty easy to read the chart, but to the uninitiated for the first time it can be a little daunting. It could also be a little daunting because sometimes, depending on the lot that they own, there might be embedded lots in a lot. It could

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be a kuleana lot, land commission awards. It may not be as simple as it looks. An added complication that's been in the law since 1998 when the Ag Ordinance was redone is we always go back to the TMK. maps of 1998 and that is still really difficult. That means we basically have to have all those maps. Folks don't have them at home. Folks don't have access to them. It's always a big question, well what's the TMK. of 1998? So I think that's something that as they go through the process here and through the Commissions, we can keep that in our mind. How can we make this simpler? Okay because essentially we're adding like, almost like a new sliding scale with an existing sliding scale, and I'm not certain that if each one of us got one of Rory's 600 acre examples and read the law could we all come up with the same number of lots. I'm not yet sure I could do it two days in a row. So I just wanted to make sure we get that as simple as possible. Second thing, we currently process the Agriculture Lot Allocation Agreement. So when one's done under the sliding scale, let's say it allows ten lots, everybody agrees, ten lots, but you only do seven. Okay, that's fine. That means you still got three left. Who gets those three lots? Which of those seven lots gets to be subdivided later? So we process those agreements, not sure how we ended up with it but we do, I'm getting consolation here from Mr. Alueta, but the proposed ordinance also talks about a conservation easement and another agreement, the unilateral agreement regarding future use restrictions. So this is another agreement that needs to be processed. These have got to go to Corp. Counsel. It's gotta go through, we hope, the Planning Department. All these additional steps take time on everyone's part, including the applicant. So I just want to be, everyone cognizant of that. Getting to some of the specifics of the bill, 19.30A.030H2 talks about having a list, I think a list on the website of all the Ag Conservation lots and that to be updated immediately. We could probably all argue what immediately means in government, but I know it won't be the day the Mayor signs the bill, so we probably should take a look at that and I'm not sure why we need to send the annual list to the Council if it's on the website already. So something to take a look at. Number four, 19.30A.030H3a iii rules, so there's a section here that says the rules shall be promulgated talking about BMPs, best management practices for the subdivision design. There's rule making authority in 19.30A. It's actually given to both our Department and Planning. And so I don't know what this is going to look like. It talks about support the purposes and intent of the Ag District, so I'm thinking that's a Planning Department responsibility but we're obviously going to have to talk about it. I think it would be helpful for us, Chair, if you could, you or whoever worked on this could give us some ideas of what the intent is there behind these rules. Fifth comment, 19.30A.030H3b just talks about the maximum number of lots, excuse me, the maximum number of lots you can get under the new one acre Ag Conservation lots, and it goes back to the TMKs in 1998, which is consistent with the existing Code but it also doesn't recognize that the lot we're talking about here may be subject to the Ag Allocation Agreement I mentioned earlier. So it's already subject to an agreement that says you can only get three even though the TMK. from 1998 says you can get 20. I would think the intent is to have only three lots. So we need to take a look at that. And finally, Section 4 of the bill, this is the applicability section, this was a little vague for us and needed to be looked at again. It said if you have a preliminary subdivision approval already for basically the concept now under the sliding scale and you wanted to convert to an Ag Conservation-type subdivision, you may, it says may in the

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bill, may amend the preliminary without having to start over. And so that, to me, needs to be solidified. It's too subjective in the applicability section, and it goes on to say it may be done if it is otherwise complies with the other laws. Well, if you only have a preliminary subdivision, it might comply with the preliminary subdivision law but there's a bunch of comments saying you gotta change it because it's not complying with our laws. So again, I'm kind of looking for the intent here, Chair, if you could or Rory or somebody could help to describe what the intent is here, but clearly you can see by some of these if you come into the preliminary for the subdivision on the left and you want to convert to the subdivision on the right, it's a lot different. A lot different. And so we would typically not allow that to be amended. We would just say start over. Let's send it out to comments for all the agencies because what you're proposing is completely different. So again just looking for some guidance there. And that's it, Chair. That's our comments at this time.

CHAIR GUZMAN: Thank you, Mr. Goode. Mr. Alueta, do you have any comments, opening comments or opening responses to --

MR. ALUETA: Thank you, Mr. Chair.

CHAIR GUZMAN: --the Public Works concerns?

MR. ALUETA: I appreciate you, you've been, we've been working on this with you off and on for this bill. I think it was a good note that on Rory's part about the original Agricultural bill with the sliding scale and that without that first bill, which really protected a lot of the Ag lands, you wouldn't have gotten to a proposal like this that would have been acceptable with regards to being able to protect. I think that was the original intention was trying to preserve with the sliding scale, preserving some large Ag lots that could be used and preserved for large farmers, and then this just takes it the next step, and I think that it's a good progression of the existing, of the intention of protecting large tracts of Agricultural lots for use in, for real agriculture I guess you could say, you know, for large farming operation and commercial operations rather than the continued chop-up into gentlemen estates or, you know, second homes. And I think this makes it a little more viable. I think it's, when we did our agricultural tour at the HCPO, and some of you may have been on, one of the answers, I guess in the tool book, how do you preserve or protect agriculture and get people to farm? And the answer is pretty much same with the U.S. Energy Policy, the answer is all of the above. You have to do many things that you're seeing out there, whether it's through the subdivision ordinance and protecting large lots through either encouraging commercial, some type of commercial venture within, for our small farmers and expanding that and so it's, and, or having agricultural land trusts take over some types of some of these conservation lots and putting real farmers on land that's going to be all of the above. I guess from the Department's side, we do have, I mean, some of the same things that was echoed by Mr. Goode, we also echo. I think we've talked about establishing best practices. We want to see that the Conservation lot is not just a gulch from the top of the, from one bank of the gulch to the other end of the bank and everything else is the flat land. There has to be one, the

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conservation lot has to be farmable, meaningful, in some way farmable, have, not, and that just, that doesn't just mean terrain wise, that also means access to infrastructure, access to water, access to roads, and whatnot that it goes along with it for farming. And then, and I guess from our aspect we have seen some other PAFs or some other bills floating around. What's the next step? You know, what's going to happen with this Agricultural Conservation lot? I mean, the intention of this again has been already stated that it's not going to increase the density of lots, which is great. But is it going to increase the density of houses? And I know there is another bill floating around, which would turn, essentially add maybe potentially additional dwelling units on one of these Conservation lots and that needs to be discussed sort of hand-in-hand protection with this so that we don't end up in some type of slippery slope and you kind of counteract what you're trying to do as far as preserving tracts for Ag. But we do, I know this, it hasn't been transmitted yet and so I'm not sure when it's going to be transmitted to the Commissions and so but we look forward to it and it's been great working with you on this. I mean, it's good to get early feedback so there's not a lot of fumbling around here on the floor. It's easy to just...this works, this doesn't work. So appreciate that.

CHAIR GUZMAN: Thank you, Mr. Alueta. Mr. Frampton, did you have any other responses in terms of their concerns with the Department?

MR. FRAMPTON: I could just provide a couple if you --

CHAIR GUZMAN: Okay. Okay.

MR. FRAMPTON: --if you'd like? I think the, to answer Mr. Goode's comment about the second iteration of the sliding scale, it's really identical to the first sliding scale. Nothing's intended to change in terms of the overall density so how you calculated your potential lots, potential number of lots before this, is going to be exactly the same as it is now and it should not upset, I don't see any language in there that would somehow say you get to count it twice. It's all based on that 1998 snapshot, which is sometimes problematical but we're not touching that. We want to keep it really simple and all this is really doing is saying you don't have to follow the minimum lot size of the sliding scale. That's about as simple as the original ordinance that we talked about, but as you start writing ordinances they get more and more complicated and this is what it turned out to be so it's certainly not the intent to double count or get double allocation. It's basically to keep the same density. You know, the, maintaining the list, I'll let you guys figure out how that, maintaining the list goes. I think the intent with Section 4, Section 4 is the section that allows an owner who's received preliminary approval to change the subdivision without having to go back and re-initiate a new subdivision application is that some of these, it was really to provide an incentive to some owners who have a subdivision on the books, like the one you see up there on the screen, with converting over to this one without being penalized and going back to square one. And there might be things that for depending on what, when the date was that they originally started the application, that things may have changed and other laws and such and they don't want to go back to square one and have to redo all that again. They do, you

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would have to, you know, have it reviewed by the appropriate departments and comply with any existing law, but it really was to provide an incentive so that some people who haven't actually built out their lots could reconfigure it to what would be a much better layout. So that was the intent. In terms of Mr. Alueta comments, you know, the example of an entire gulch being in the Conservation lot, I don't necessarily have a problem with and it's really because of recognizing the values in the Ag District. That's why I spent a lot of time saying that a lot of the lands in the Ag District are more appropriately not farmed if there's steep gulches, if they're sensitive gulches, if they're mountain tops that have sensitive habitats on them. Maybe those should be preserved so that they won't be farmed and the State law allows that now. There's a provision in the State law where you can restrict Ag uses for areas in the Ag District that have conservation value. So one of the purposes is certainly to preserve large tracts of farmable lands, but it might also be to preserve large tracts of important open space, sensitive habitat, or sensitive environments. So we have to look at this as being, you know, there could be many different reasons why you stick something in a large lot. So it's not just simply focusing on prime ag land. Again, that's kind of why I focused on all those other aspects in my presentation. In terms of what's the next step and the slippery slope that you talked about, the other bill I've been somewhat familiar with, that's intended to apply to any lot in the Ag District whether it goes through a subdivision or not so I don't see how it's related to this. I think you have to look at that other proposal as how it would affect the density of any lot in the Agricultural District and I think they're two separate proposals. One is to, which you may or may not hear about in the future, is to try to encourage affordable housing on Ag lands using an Ag land trust but that could be done on any parcel whether or not it goes through this subdivision process. So I see those as two separate, distinct tools, if you will. And that's all. Thank you very much for the opportunity.

CHAIR GUZMAN: Thank you. Thank you. Members, just a reminder. Today's, at least my intention, would be to recommend this to be referred to the Planning Commission for review and then have their comments, and at the same time we'll have written comments from Department of Public Works, and by the time it comes back from the Commissions, we will have all the comments and put it together but that's my intent for today. If there's any other questions that you may have? Ms. Crivello?

COUNCILMEMBER CRIVELLO: I don't expect some sort of explanation or what have you because I think the intent of sending it to the Planning Commission is of value. You know, Mr. Frampton's presentation mentions the IAL, the Important Ag Lands and so State and County, we have that responsibility to ensure that those Ag Lands starts to be identified. But I am trying to understand the full intent of the reasoning for this when we go into small acreage as opposed to actually have that designation of the Important Ag Lands, because sometimes I think landowners, we want to know why if the dedication is for true Ag use/farming or is it to actually build, because beside the actual designation of the lots themselves, don't we also have Ag easement for Conservation? Isn't that something that we have the availability too? Because a couple of years ago when we were working on some of our Master Land Plan on Molokai, that

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was what we were working towards to preserve the Ag lots as well as working with State for IAL with the large landowners. So I would like to have a better understanding and maybe that will come back with your referral to the public Planning Commission as to how does this differ from landowners designating their Important Ag Lands. And that comes with our Planning Department as well as, I guess, with the State land use or getting monies from our Legislature to appropriate or for the County themselves, ourselves to look into that. So I'm, thank you for bringing this up. I still need to understand what the full intent is. Thank you.

CHAIR GUZMAN: Okay, thank you. And Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you for bringing this forward and sending it, referring it out to the respective Planning Commissions. I'm looking forward to discussion and seeing what does come back to us and I think this is a good process how you're going about it. In the last, I guess the, yeah, and I'm on a similar lines as Ms. Crivello wondering what exactly is all this about and the intent in the end. For Mr. Frampton, the last bullet point, eliminate area from active farming requirements. I mean what does that mean? What are you trying to get that?

MR. FRAMPTON: Are you...I think you're looking at a slide presentation that was provided to you that was not on the slides that I presented up here and that relates to Conservation easements in the Ag District. And so I'm, I was talking about a separate tool so a separate tool for protecting lands with conservation values in the Ag District is a Conservation easement. So if you look back a few slides further, that's what I was talking about in there. So it's actually like those first two slides that I showed, the top of that pu'u where it was real bunch of native plants and real unique geology. In that instance, a Conservation easement was applied on Ag land, which allowed for, it basically said that land would not be used for farming. And so there are some lands in the Ag District that the Legislature has acknowledged are not appropriate for farming and they can be protected with Conservation easements. That's a separate tool that we're talking about. It's not what we're talking about here in this ordinance. So I apologize for the confusion. Staff printed out a previous version of my PowerPoint that I had done at the Planning Conference, which was talking about multiple tools and one of those tools was the Conservation easement on Ag Land, which is, it gets confusing because we keep using the word conservation and that type of stuff. But it is, I was talking about a separate mechanism.

COUNCILMEMBER COCHRAN: Okay. Alright. I get that.

MR. FRAMPTON: But again, the concept is not all the lands in the Ag District are suitable for farming nor should they be farmed.

COUNCILMEMBER COCHRAN: Right.

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MR. FRAMPTON: Some of them, I would argue, depending on the land, you gotta check out the land, some of them are not appropriate to be farmed.

COUNCILMEMBER COCHRAN: Right but also, and I know exactly where this area is and I see the huge development that has occurred on top of this pu'u and the areas in these photos that have been designated as Conservation easements and then also in this same area lands that were deemed, you know, labeled as Agriculture are now subdivisions, homes. So when even in DLNR said if back in the day when it was actually labeled Ag it really should have been Conservation back then just to the, you know, area it's located. Yeah, clearly we all know it wasn't suitable for Ag per se but so those kinds of things have occurred unfortunately and we have what we have. You know, thank you for this presentation, Chair, Mr. Frampton and everyone, and looking forward to further discussion.

CHAIR GUZMAN: Thank you.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR GUZMAN: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Thank you for bringing this to where it is today. I also want to thank Mr. Frampton. He's been hanging in for a very long time and he has been bringing his concept to us many, many times I've heard him talk about it. Well, here we are, Mr. Frampton. You know what they say, all things come to those who wait. Chair, I'm in full support of your recommendation to send this to the Planning Commissions.

CHAIR GUZMAN: Thank you. Thank you. And I'll go ahead and ask, tell you my recommendation and but before I do that, just to answer a couple of the Members' questions, do you have this picture that's on the screen? Yeah, so the basic concept here is if you look on the left side, the current law if you're using the sliding scale would create all these different lots right here that's indicated in white and you would be left with, which the larger portion here is what you'd be left with for Agriculture lots. So what the real simple, simple, basic concept is we're going to cluster it into one acres right here, and now you have this whole area for agriculture or Conservation easement. So that's the basic. More space for agriculture and more space for conservation and that's the...in a nutshell, but anyways we're going to, my recommendation is to refer this to the Planning Commission; and the Chair will entertain a motion to recommend adoption of the proposed resolution, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS", attaching as Exhibit "1" a proposed bill, entitled "A BILL FOR AN ORDINANCE TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS".

COUNCILMEMBER WHITE: So moved.

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CHAIR GUZMAN: Moved by Mr. White.

CHAIR BAISA: Second.

CHAIR GUZMAN: Seconded by Chair Baisa. Any discussion? Seeing none, all those in favor, say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no". Five "ayes"; two "excused"; motion carries.

VOTE: **AYES:** **Chair Guzman, Councilmembers Baisa, Cochran,
Crivello and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Vice-Chair Carroll and Councilmember Victorino.**

MOTION CARRIED.

ACTION: ADOPT RESOLUTION.

CHAIR GUZMAN: Members, that includes our items on today's agenda. And with that, I thank the Department for, Departments for their representation, and Mr. Frampton, and as well as the Planning Department for all the hard work. And we look forward to seeing the recommendations from the Planning Commissions. And if, one more last thing, so if I could also get your recommendations and comments from the Public Works Department in writing that would be very helpful, that you've stated on the floor.

MR. GOODE: Okay.

CHAIR GUZMAN: So thank you very much, Members. And we will adjourn the meeting. Thank you.
... (gavel) ...

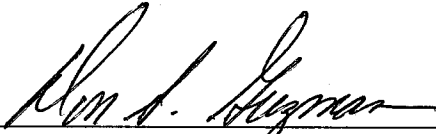
ADJOURN: 3:05 p.m.

**ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE,
AND RECREATION COMMITTEE**

Council of the County of Maui

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APPROVED BY:



DON S. GUZMAN, Chair
Economic Development, Energy, Agriculture,
and Recreation Committee

ear:min:140930:krr

Transcribed by: Kekai R. Robinson

**ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE,
AND RECREATION COMMITTEE**

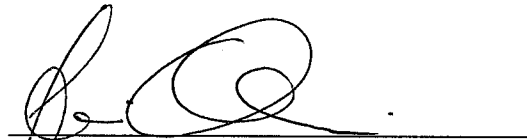
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CERTIFICATE

I, Kekai R. Robinson, hereby certify that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 20th day of October, 2014, Wailuku, Maui, Hawaii.



Kekai R. Robinson