

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

July 18, 2018

Council Chamber, 8th Floor

CONVENE: 1:31 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Riki Hokama, Vice-Chair (in 1:43 p.m.)
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Don S. Guzman (in 1:40 p.m.)
Councilmember Kelly T. King
Councilmember Yuki Lei K. Sugimura
Councilmember Mike White (in 1:45 p.m., out 3:20 p.m.)

EXCUSED: Councilmember Alika Atay

STAFF: Alec Wagner, Legislative Analyst
Raynette Yap, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Michele Chouteau McLean, Planning Director, Department of the Corporation Counsel
Joseph Alueta, Deputy Planning Director, Department of the Corporation Counsel
David Goode, Director, Department of Public Works
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel (LU-5)
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel (LU-58)

OTHERS: Robin Shishido, District Engineer, State Department of Transportation (LU-58)
Alana Kay, Sustainable Aloha (LU-5)
Hugh Starr (LU-5)
Mike Atherton, Waikapu Country Town (LU-58)
Warren Watanabe, Hawaii Farm Bureau (LU-5)
Rory Frampton (LU-5)
Brendan Balthazar, Maui Cattlemen's Association, Hawaii Farm Bureau, Ag Working Group (LU-5)

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Shane Sinenci, Hana Council Office (via telephone conference
bridge) (LU-5)
(7) additional attendees

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

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting of July 18, 2018 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First, may I request if anybody has anything that makes noise, please silence it or turn it off. With us this afternoon we have Kelly King --

COUNCILMEMBER KING: Good afternoon, Chair.

CHAIR CARROLL: --Elle Cochran--

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR CARROLL: --Yuki Lei Sugimura --

COUNCILMEMBER SUGIMURA: Good afternoon, Chair.

CHAIR CARROLL: --and Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: The other Members are excused at this time. Department of Corporation Counsel representatives, we have David Galazin, Deputy Corporation Counsel for LU-5, and Michael Hopper, Deputy Corporation Counsel, for LU-58. Administration representatives, we have Michele McLean, Planning Director; David Goode, Director of Public Works; and Joe Alueta, Planning; and Robert Nobles, oh no. Others, we have Robin Shishido, District Engineer, State Department of Transportation; Committee Secretary we have Rayna Yap; Legislative Analyst, Alec Wagner; Hana District Office, we have Dawn Lono; Lanai District Office, we have Denise Fernandez; and Molokai District Office, we have Ella Alcon. Item LU-5, Amending the Comprehensive Zoning Ordinance to Allow Agricultural Conservation Lots in Agricultural District, and LU-58, Waiale Road Extension Project, Wailuku. For individuals testifying, you have three minutes. When you come to the podium please identify yourself and any organization that you might be representing. Mr. Wagner?

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. . .BEGIN PUBLIC TESTIMONY. . .

MR. WAGNER: Chair, our first testifier is Alana Kay, testifying on agenda item LU-5, followed by Hugh Starr, testifying on agenda item LU-5.

MS. KAY: Hi, I'm Alana Kay with *Sustainable Aloha Magazine*, and I'll just be short and sweet. I'm here in support of LU-5 because given that our economy could use some serious diversification and I think that agriculture would be a great way to diversify our economy in a much bigger way in the coming years. Anything that we do to make farming easier, keeping things in perpetuity, and making it easier to deliver the infrastructure and also enhance hub farming. If we ever do that I think this would work very well to those ends. So, thanks, that's it.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you. Mr. Wagner?

MR. WAGNER: Chair, our next testifier is Hugh Starr, testifying on agenda item LU-5, followed by Mike Atherton, testifying on agenda item LU-58.

MR. STARR: Good afternoon, Chair Carroll, Committee Members. My name is Hugh Starr, Upcountry. I wanted to just firstly say that I support the amended version of LU-5, and I also support the Public Works Department's proposed revisions as well. I, you know, I want to thank you very much for advancing this. I'm in support of the concept and have been for a long time. So, I'm looking forward to seeing this eventually make its way out and I really appreciate all your dedication, you know, really being attentive to this. The one probably issue that I wanted to just sort of get a last comment in on if I could was the, you know, I've been reflecting on, you know, it's quite likely that those landowners who utilize this cluster option in the ag subdivision ordinance are going to be large lots. And I don't know exactly how big they'll be. But I would just venture to guess that probably if a lot is any smaller than 200 acres, it could be 150, then one isn't going to offer the cluster option. This is really designed to really accommodate the larger parcels of land. And in my own opinion, it's about 200 acres and over. And so, I was just reflecting on, you know, what, who are the large lots and large landowners and what are they doing with their lands? And I was just thinking about Kualoa Ranch in, at Kaneohe. Most of us are familiar with them where they have a cattle ranch, it's about 4,000 acres and they do other diversified uses, ATVs, jeep tours, horseback riding. Of course, they cater to the movie industry. Parker Ranch on the Big Island has hunting, of course they're a huge cattle ranch and they do other things. Kaupo Ranch here on Maui, which is probably the size of Kualoa Ranch, besides cattle and goats, they do have a hunting and fishing operations, as well as, I mean, some of the old cowboys they would, you know, kind of take provisions up the gap to the park boundary, you know, carry provisions, those kinds of activities that really aren't agriculture but they blend well with agriculture. Haleakala Ranch which has a lavender farm...

MR. WAGNER: Two-and-a-half minutes.

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MR. STARR: Thank you. So, I would just ask that you seriously consider including the open land recreation use in its entirety. And if that is not acceptable to you, that you at least consider adding in, or including in, the special use permit provision. This is going to be really important for the utilization of the ag cluster lot, or the ag conservation lot. Thank you very much.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you. Mr. Wagner?

MR. WAGNER: Chair, our next testifier is Mike Atherton, testifying on agenda item LU-58, followed by Warren Watanabe, testifying on agenda item LU-5.

MR. ATHERTON: Chair, Council, Mike Atherton from Waikapu Country Town. I'm here today to thank you for bringing the Waiale Road discussion item to the Council. I'll be going to the Planning Commission on the 28th of August and come back before this group sometime in September and we need to discuss what we're going to do on Waiale Road. There's 1,000 affordable units on that side, the makai side of Waikapu Town. So, I want to thank you again for bringing this to the table and we can discuss it. Any questions, I'll be here all day.

CHAIR CARROLL: Any clarification needed from the testifier? Ms. King?

COUNCILMEMBER KING: Chair, no, I just wanted to, I was going to ask --

MR. ATHERTON: Thank you.

COUNCILMEMBER KING: --Mr. Atherton if he can, if he can remain, if we can use him as a resource if there are no objections.

CHAIR CARROLL: Is there any objection to having him be considered as a consulting...

COUNCILMEMBER COCHRAN: No objections.

CHAIR CARROLL: Okay, so be it. If you...okay. Mr. Wagner?

MR. WAGNER: Chair, our next testifier is Warren Watanabe, testifying on agenda item LU-5, followed by Rory Frampton, testifying on agenda item LU-5.

MR. WATANABE: Good afternoon, Chair Carroll, Members of the Committee. My name is Warren Watanabe. I'm the Executive Director of the Maui County Farm Bureau and we'll be commenting on LU-5. The Maui County Farm Bureau strongly supports the concept of ag clustering to preserve large contiguous areas of lands for agricultural production. However, continues to have serious concerns about the details of this measure as proposed. The Maui County Farm Bureau's mission is to preserve farm viability, not only for today but for future generations. Our policy states that we support one, promoting and retention of agriculture lands in blocks of contiguous,

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intact, and functional land units large enough to allow flexibility in agricultural production and management, and two, discouraging the fragmentation of agricultural lands where the likely effect is a conversion of these lands to non-ag uses. We support the conservation of large, contiguous areas for agricultural production, and clustering of residential units. However, we question provisions for residential structures as proposed in this measure. We feel there needs to be further dialogue to accomplish the original intent of this measure with developers and agriculture, working together to meet our mutual needs. Maui is in a housing crisis with multi-family homes. Our farmers struggle to find workers, and opportunities are limited, due to a lack of housing. We envision this measure to help with these issues. We also believe that enforcement is important. Agriculture is frustrated with the lack of enforcement in various areas ranging from land use to ag crime. All of these issues need to be addressed to prevent unintended consequences. We therefore, respectfully request the measures to be deferred. It is critical that the intent of clustering to provide agricultural production areas for future generations be fulfilled. We must not continue to enable misuse of ag lands. Farm Bureau is willing to discuss any of the suggested amendments and we thank you for this opportunity.

CHAIR CARROLL: Any clarification needed from the testifier? Ms. King followed by Mr. Guzman.

COUNCILMEMBER KING: Thank you. Thanks for being here, Warren. Can you just give us a little more, be a little more specific when you say you question provisions for residential structures as proposed in this measure? Is that like the changes that we made last time?

MR. WATANABE: Yeah, I mean, yeah it does refer, and we do still have concerns because again, I think, you know, where Farm Bureau is coming from is we want to preserve agricultural lands. But you, I think it, you need to stay on top of the topic at hand and that is clustering and keeping the larger portion of the lot in production ag. We only foresee, you know, a decline in ag if these underlying support of production ag is not resolved.

COUNCILMEMBER KING: Okay. But are you, so are you opposing the provisions for building any residential structures in the remaining large lot? Is that what you, is that what that statement means?

MR. WATANABE: We don't totally oppose it. I think, you know, there are circumstances where it is needed. But I think, you know, we need to look at what, why are we doing, developing cluster. As I brought up, you know, employee housing, I mean, that is the major, one of the major reasons why we cannot have employees for farmers. You need to provide them housing. And without that component...and the housing needs to be affordable. I mean, we all know that farmers and ranchers is not a highly profitable business. And so, you know, every, what we're looking for is support from the counties and all levels of government for production agriculture because I think that is one area that is getting lost, you know, when we talk about agriculture as a whole.

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COUNCILMEMBER KING: So, but specifically for your statement about the bill. Is there like a specific piece of that bill that you're objecting to or that you want expanded on?

MR. WATANABE: Well, the problem, again the problem I think what we're looking at is in a family subdivision we understand, you know, landowners want to, or property owners want to have land available for their family. But again, where I think it's, I think where, what is more critical, having the land set aside for agriculture, production agriculture versus providing for the family a place to live. I mean, it, both of it is important. But I think you need to segregate it and well, our concern is that the focus is not on the primary purpose of this bill, in our opinion or what we believe the bill should address. I don't know if that, you know that's clear. But we also have, I mean, that's one of the areas of concern, again the dwellings, accessory uses. I think, you know, we understand, like you know, I think ag tourism will it be permitted and all, you know, whatever. But it kind of takes away the focus because Farm Bureau represents production agriculture and that's where we're coming from, to support our members. That is where we need more focus, we feel more focus needs to be placed because every day they face new regulations and it makes it more difficult for them to be viable. And if they are not viable, that ag land will be lost. I mean, there's no going, there will be no one to farm it anyway.

COUNCILMEMBER KING: Okay. No, I'm just trying to figure out what your objections were to. We made some changes last --

MR. WATANABE: Correct.

COUNCILMEMBER KING: --yeah, last meeting. And so, we, I think we took out some of the non-agricultural uses --

MR. WATANABE: Right.

COUNCILMEMBER KING: --but we did add back in some of those residential. So, is that what you're objecting to? Those residential units that we added back in?

MR. WATANABE: Well, I think, again, you know, it depends where the placement, you know, 'cause I believe the farm dwellings are allowed back into the large lot. I think the placement of it is critical. You have an area set aside for the cluster. But the home, I mean the farmer's residence I think is also critical in where you locate it. Because again, you want it so that you get the maximum use for production, of the land for production. So, I think, you know, that is our concern where all these things will be placed. We don't object to, say you need a packing facility, you know, those are all accessory to the actual farm.

COUNCILMEMBER KING: Right. Okay.

MR. WATANABE: Yeah.

COUNCILMEMBER KING: I think I understand that. Thank you for being here.

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MR. WATANABE: Thank you.

CHAIR CARROLL: Let the record show the Council Chair White, Vice-Chair of the Council, Mr. Hokama, and Mr. Guzman are now present. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Mr. Watanabe, for being here. You're very well aware of how we actually utilize the division of ag lands by using the sliding scale?

MR. WATANABE: Correct.

COUNCILMEMBER GUZMAN: And by the sliding scale, it's a set formula where the entire parcel, may it be 100 acres or 400 acres, gets divided up into different sizes and shapes. And basically, it's all under agriculture and there is no real open space provided, one large contiguous lot wherein you as a Farm Bureau representative had just mentioned that that's what you guys are looking for. Well, this bill provides that large contiguous lot. So, my question to you is, since the last meeting that we had, we actually took out all the accessory uses that do not relate to farming. So, all that is allowed on that large lot is farming operations. We took out a lot of the other accessories like the hiking and, what was the other...there were many other accessory uses that would ordinarily be under agriculture. But we streamlined it and took those out. And the only thing that's allowed in that large remnant lot is the operations. You have your labor dwelling, you've got an ability to build a barn, and also a, like what we would call an operational facility which would be like a food hub, commercial agricultural structure in terms of the cluster. So, I'm trying to understand where your position is? In terms of the cluster, it's allowing smaller lots so that local folks can afford to farm instead of these big remnant different sizes that we currently have in the sliding scale. So, under the cluster, under the cluster housing, I mean, cluster agricultural housing area, those are all under agriculture. So, they, they're zoned Agriculture, they're supposed to be doing agriculture. I'm sure that each one of them will probably have a farm plan or not. But we, I think we've made provisions in here to make sure that the open space area is really in production. So, my question to you, specifically what is your objection in this bill?

MR. WATANABE: I, you know, like I said in my testimony, I said previously, we supported ag clustering, we support, Farm Bureau has always supported ag clustering in the Ag District. It's just how you implement it that we're concerned. Because again, for Farm Bureau, our main focus is on the production area. We want to make sure that, you know, for production of whatever ag product you're producing that it gives them the most opportunity to be successful. And we recognize that, you know, like I said, farming is, and ranching is difficult. And you may need other ways to generate revenue to keep the business in place. But, you know, we're, we come across that again, by adding all these, adding other, and like you said, you took, you know it was taken out. But the concern is, again, we need to focus on how to make the production area as productive as possible. That's all we're concerned with.

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COUNCILMEMBER GUZMAN: I understand your concern. But the implementation of how it will be productive is up to the farmer or the rancher that is on the land.

MR. WATANABE: Yeah, we understand.

COUNCILMEMBER GUZMAN: We, as legislators, cannot dictate how they make their lands productive.

MR. WATANABE: Right.

COUNCILMEMBER GUZMAN: And so, I understand your concern. On the other point is that you do realize, this is a question, you do realize that the sliding scale formula is still intact, and that's how, that is the base formula that we use?

MR. WATANABE: Right.

COUNCILMEMBER GUZMAN: This is just an option, an alternative to be used, wherein some cases we don't want to use up the entire parcel of land. We don't want to use up 400 acres and split it up, slice and dice it up. We want to be able to keep open space a large tract of land. So, you're aware that this is, that's my question, you're aware that this is...

MR. WATANABE: Yes, we are aware of that.

COUNCILMEMBER GUZMAN: Okay. Thank you.

COUNCILMEMBER COCHRAN: Chair? Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, and thank you, Mr. Watanabe, for being here. So, I'm hearing your concern. I'm feeling the same. So, let me, I'm ask...in the, in Section 1 on Page 1 starting just with the purpose of this ordinance, the last...is that just one sentence...so, at the very end, the second sentence towards the end, remaining land can be preserved in perpetuity for the protection of agricultural, comma, environmental, comma, cultural, comma, and open spaces resources. I personally would like to just see protection of agricultural production, period. Those other...so, I don't know. Do you agree with that? I mean, I'm hearing you want the purpose to be for that, and I agree.

MR. WATANABE: Yeah.

COUNCILMEMBER COCHRAN: Would that help alleviate your concern?

MR. WATANABE: It would, I mean, again, for Farm Bureau, again, we feel the purpose of the, or the intent is again to promote agricultural production. You know, we understand, you know, the concerns about environmental, cultural, and open space.

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But is it properly addressed in this bill? Is this the right vehicle to address those concerns?

COUNCILMEMBER COCHRAN: Right, okay, yeah, and that's my same sentiment also. So, when we get into deeper discussion, I'll bring that point up. Thank you for your time today.

MR. WATANABE: Thank you.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. You do realize in this bill that there's a unilateral agreement that the owner of the property must enter into with the County? And those terms in what you're saying, implementation and operations can be placed into those unilateral agreements. So, I think there's enough safety nets buffered into the bill itself. So, if we don't catch it in the ordinance, which when we start getting too far deep into details in an ordinance it becomes very difficult to implement. So, a unilateral agreement is more effectuated and more efficient. So, thank you. Oh, no question.

CHAIR CARROLL: Any further clarification needed from the testifier? Seeing none, thank you.

MR. WATANABE: Alright, thank you.

CHAIR CARROLL: Mr. Wagner?

MR. WAGNER: Chair, our next testifier is Rory Frampton, testifying on agenda item LU-5, followed by Brendan Balthazar, testifying on agenda item LU-5.

MR. FRAMPTON: Thank you, Mr. Chair and Members. I want to echo Hugh Starr's statements of appreciation for pushing this ordinance forward. I think it's an important alternative to provide...

CHAIR CARROLL: Please identify yourself and any organization you might be representing.

MR. FRAMPTON: I'm sorry...sorry about that, Rory Frampton, speaking as an individual. I'm a land use planning consultant. I just wanted to thank you, number one. Number two, the amendments that were made last time that would allow for lots that have already gone through a sliding scale subdivision to be allowed to do a cluster I think are very much appreciated. I had some concerns that there were conflicts in the language at a minimum. And I could even go so far as to say there could've been big loopholes in there that would have added more lots to a cluster subdivision. I brought that, those concerns up with David Goode, the Director of Public Works. And he has proposed amendments that are on your website, posted on your website. And I strongly support adopting that language to make it very clear and explicit that the number of lots stay the same as established via the sliding scale, period, no matter

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what type of subdivision you're doing. So, I think his amendments make that very clear. My second point is, you know, over the years, and we talked about this last time, and this was part of the discussion was this going on, that accessory uses, or special uses have been added to the State and County laws as a way to make agriculture more feasible. Other non-ag uses such as solar farms or utilities have been deemed appropriate as well, either as accessory or special uses. And I strongly consider, urge the Committee to look at some of these other uses, especially for special uses. Solar energy facilities that are greater than 15 acres right now require a special permit. And they're not allowed on prime ag lands identified as A, the LSB rankings. On B and C there's State law limits the size of the facilities. But if you're on D or E lands, low productive lands, solar facilities are allowed. So, please don't restrict that by not allowing for special uses. And I just wanted to comment on the discussion that was just occurring. You know, this bill provides an option for subdivision design. It's not tackling the much bigger issues of how do we preserve our prime ag lands. And that's a big issue. It goes beyond this bill. You know, I really think the County needs to do subdistricts within the ag zone so that you separate and identify your prime ag lands from your ag residential areas, and some of your open space areas --

MR. WAGNER: Two-and-a-half minutes.

MR. FRAMPTON: --because these ag lands do contain, many of the ag lands contain special open space resources, conservation resources, or environmental resources. And that's, they're not, our Ag District is huge and it's not just prime ag land. And to ignore the protection of environmental or open space resources is really doing a disservice to the community and forcing --

MR. WAGNER: Three minutes.

MR. FRAMPTON: --people, the only, leaving people with the only option of the sliding scale, which is to chop up the land and fragment it into, as we discussed last time. So, I'll leave it at that.

CHAIR CARROLL: Any clarification needed from the testifier?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. Thank you, Mr. Frampton, for being here. So, my thought with environmental, culture, and open space aspect of this is that, that big open swath of land technically doesn't need to be agricultural. I mean, a lot of it could be gullies or heiau stone building, you know, structures. It could be this cultural-type areas, open space that are not productive. But this is creation of agricultural cluster subdivision, but with the intent to have agriculture production. So, that's why I'm looking at it as period after agricultural. And of course, environmental, culture and open spaces are important. But I can see huge landowners taking a bunch of land that technically are not productive and claiming it

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as their big portion, and then having all this clustering, you know, that they can do in accordance with this ordinance. So, do you have any, is, what are your thoughts on that?

MR. FRAMPTON: Yeah, well I think if you put a period after agriculture, you're ignoring the fact --

COUNCILMEMBER COCHRAN: Production.

MR. FRAMPTON: --that these lands have these values that under the cluster subdivision, could be protected. Under the sliding scale subdivision, if you're saying no, you can only do the cluster subdivision when you're preserving prime ag land then that means for the lands that are not prime ag land, you're going to be forcing them, well you're going to be saying your only option if you want to subdivide, is a sliding scale. And you're going to compromise the open space, you're going to compromise your environmental resources. I think it needs to be broad. And the reason I'm saying it needs to be broad is because our Ag District is broad. It was kind of the catchall district that contains all these lands, not only prime ag lands, but the gulches. And if you look at the Maui Island Plan, and the provisions that support clustering, they're talking about clustering for the purposes of preserving community character and open space and our rural quality of life, rather than letting development just be scattered everywhere. So, there's more to this bill than just productive ag land. If you want to focus on preserving productive ag land, then I think there's other things that the County can do. And that's a much bigger issue than just allowing an alternative subdivision design.

COUNCILMEMBER COCHRAN: Thank you.

MR. FRAMPTON: Thank you.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR CARROLL: Any further...Ms. Crivello?

COUNCILMEMBER CRIVELLO: Yeah, aloha, thank you for being here. You mentioned ag residential. It's like comparing that to prime ag lands.

MR. FRAMPTON: Right.

COUNCILMEMBER CRIVELLO: Can you give me a brief, you know, in my mind I'm thinking ag is ag, you have production.

MR. FRAMPTON: Okay.

COUNCILMEMBER CRIVELLO: And --

MR. FRAMPTON: I was...

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COUNCILMEMBER CRIVELLO: --but I'm hearing you say, ag residential lots versus prime ag lands.

MR. FRAMPTON: Yeah, so I was referring to the fact again, that Maui's Ag District has all types of unique characteristics. The areas of Haiku right now are all ag. But as we know, it's almost all two-acre lots and they're almost all residential. I call that area kind of an ag residential area. That's the character of it. The central fields of Maui where HC&S farms and where they've designated their IALs, that's prime ag land. The lower fields of Pulehu and the fields in Kula, those are prime ag lands. They're all in the Ag District. So, I'm saying there's, in reality there's subcategories within the Ag District. There's lands that are, you know, the lands that are out in Kaupo or some of the A`a lava fields below, or above Kihei, those aren't prime ag lands that, you know, are tillable soils and all that stuff. So, what I was referring to, again, is all the unique characteristics of our ag lands and a lot of the lands are not characterized as being prime. Some of them have rural residential communities. And so, I think when we, if we were to do a comprehensive zoning in the Ag District like the Big Island has ag residential areas. They have ag areas, they have large minimum lot size 80 acres for pasture-type uses. They make subdistricts, and even Oahu does that. They have subdistricts within their ag zones. So, that's what I was referring to, is recognizing the fact that our Ag District has different zones, if you will, subzones. And I think we should recognize that.

COUNCILMEMBER CRIVELLO: Thank you.

MR. FRAMPTON: Yeah.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: Any further clarification needed from the testifier? Ms. King?

COUNCILMEMBER KING: Thank you. Thank you, for being here, Mr. Frampton. I guess there's a, there seems to be a differing opinion among testifiers as to what the purpose of this bill is. So, we probably have to go back and figure that out before we work out the details because my first understanding of it, when I spoke to you was that this is a way of preserving ag land. So, if it's not just preserving ag land for production, then, you know, you're right. Then it would be entailing different uses. But I think there's a differing of opinion of why we should let clustering happen. If it's for broader purposes, then we have to explore what that might...but my question to you is how would we, if we were going to try to get the most production as we could out of a large lot, how would we assure that when the clustering happens that that's not going to take all the prime ag land or most of the prime ag land on that large lot and leave subprime ag lands in the larger lot that, you know, we would like to see in production?

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MR. FRAMPTON: We discussed that in earlier versions of the bill and there was some proposals that we had generated that said, if your property involves prime ag land, say A and B rated ag land, then you have to, you can't use up more than those percentages, the 60 percent and the 70 percent that's included under the definition of the ag lot, that you can't take up more than 60 percent or 70 percent of those prime ag lands. The concerns that arose with that proposal was the general concerns that the rankings that we have, the soil rankings by the LSB, the Land Study Bureau, or the ALISH maps that those maps don't really reflect reality and that they can be, they don't necessarily reflect what our prime ag lands, I remember the response being. So, they kind of just not, or didn't, that proposal didn't stay in, in the ordinance. But just to the point that you first said, all along this bill is, it's been about an alternative subdivision design. It's not been about specifically about protecting prime ag land, it's about protecting lands in the Ag District. And those are two different, one's a subset of the other.

COUNCILMEMBER KING: Yeah, I guess that's kind of where the basic problem of this bill lies is we first have to decide what is the intent of this 'cause, you know, my original, I wasn't, it wasn't put to me like it was a way of creating a different subdivision. I thought it was a way of preserving productive agricultural lands. So, I just, now I'm not sure what to do with all that. But thank you.

CHAIR CARROLL: Any further clarification needed from the testifier? Seeing none, thank you.

MR. FRAMPTON: Thank you.

CHAIR CARROLL: Mr. Wagner?

MR. WAGNER: Chair, our next testifier is Brendan Balthazar, testifying on agenda item LU-5.

MR. BALTHAZAR: You know these lights yeah? Brendan Balthazar, I am on the Board of the Farm Bureau, Cattlemen's Association, and the Ag, I'm in that Ag Working Group. Unlike Warren, I can answer your question. I know why I'm opposed. Riki was opposed because he didn't want any buildings on that big property. My understanding, the last meeting you guys had, only Stacy and Elle was opposed to it. Look, if the sliding scale, like Don said, gives you 20 lots, make 21. That 21st one can be if you have an ag, a farm dwelling. Now, everybody in this room gotta understand, we gotta cut the BS. A horse is not a jackass, one cow is not a mule. How much of these ag subdivisions are actually, these big ag subdivisions that was created and passed by the County, they actually doing ag? You know, Don, I asked at the Farm Bureau meeting yesterday and the answer I got, 5 percent somebody said, maybe seven, let's call it ten. That means 90 percent of all the ag subdivisions that is taking prime ag land out of production is now never going be recovered. And all these people, and the problem is, and I know Yuki working on that one farm plan, that farm plan should be burned because the problem with the farm plan is nobody is coming back and checking if they implementing that farm plan. And that is the biggest problem.

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The bring in the ten goats, they have the farm plan approved, they build their house, Joe picks up his goats, nobody comes back and check. They should sign the way you was saying, Don, sign one damn thing where ten years they can come back and check. If you not doing it, charge them market value for the darn thing. The other thing to address about housing, yeah, we get one freaking big housing shortage, and what is the lands available, ag lands. You know, I'm all for saying, the sliding scale gives this guy 40 acres out of the whatever the hell it is. If he gets 40 acres, let 'em make half acre lots 'cause none of those guys on those lots going farm, none of 'em going farm. So, now you support the housing crisis, you also give the incentive to the developer. Now, that developer now he going be into clustering 'cause I can get 40 acres out of that sliding scale and I can make half acre lots. So, I can make a lot more money.

MR. WAGNER: Two-and-a-half minutes.

MR. BALTHAZAR: Solves your housing and gives them a lot more chance to preserve that land. And I agree with you, Kelly, the, when I was told about these cluster build and I got behind it is because it was to preserve ag land, not to create, find one way to put all the houses for the developer in one place so it's cheaper for him, to preserve ag land forever. The problem we getting is all of you guys know --

MR. WAGNER: Three minutes.

MR. BALTHAZAR: --I lease 9,000 acres. I live in Makawao. I don't live on the land. But remember something, these ag lands will be gone forever. And my problem I get is I lease this land and five, six years into the lease you paying your infrastructure down. When you finally going start getting profit, oh I got all my building permits, I got everything, sorry you gotta get out. Oh, by the way, we amortized your cost, here's \$2,000.

CHAIR CARROLL: Please conclude.

MR. BALTHAZAR: I'm done unless they get one question.

CHAIR CARROLL: Any clarification needed from the testifier? Ms. Cochran followed by Ms. Sugimura.

COUNCILMEMBER COCHRAN: Thank you, Chair. Thank you, Mr. Balthazar. So, do you see this heading towards kind of like incentivizing more of these gentleman-type estates?

MR. BALTHAZAR: Exactly, my thing is this should be, and this is how I feel we should do it, this Committee, these things should be deferred, and we should sit down with the main ag people and with some developers. The developers should say, okay, I'm into this clustering thing and I'm willing to preserve the prime portion of this land. And to answer your question as far as what portion is the prime portion, somebody who is the Chair of our ag should say, come to the people who know about the ag and say, no ways, no put their houses there, that's the main farm place. But without any control,

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and then, Don, was also saying something about they gotta sign one agreement. Okay. Now, if you, the way it is now, if you have that cluster, now all of those people gotta make one farm plan when we all know they not going farm. The farm would be the bigger portion. So, that portion should be there, and I can see this thing is just another way of taking more ag land out. I agree with you, Elle.

COUNCILMEMBER COCHRAN: Thank you, Mr. Balthazar.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you very much, Chair.

MR. BALTHAZAR: Yes, Yuki.

COUNCILMEMBER SUGIMURA: Nice to see you here. I knew it would be a very interesting testimony. So, in this bill, you know, just taking what you said.

MR. BALTHAZAR: Yeah.

COUNCILMEMBER SUGIMURA: And I think that Member Cochran also talked about it, it talks about in the purpose as well as, you know, different sections in the bill, it talks about production of agriculture, comma, environmental, cultural, and open space resources. So, do you think all of environmental, cultural, and open space resources should be taken out of this and we should just talk about agriculture production and management for what this bill is about?

MR. BALTHAZAR: The only thing that I would agree to, and because I have one respect for different cultures, if there was some heiaus found on the property, that should be excluded from it. Other than that, to me, the purpose of this clustering is to preserve ag land --

COUNCILMEMBER SUGIMURA: Ag land.

MR. BALTHAZAR: --and to get some of these younger farmers, younger ranchers, give 'em someplace that they not going be uprooted. That's what I want to see. As far as building a farm dwelling, if the farmer is the person that's going to farm on the place and he, that's why I said, make that part of the cluster, you make your farm here, you can farm there. But other things that I think maybe is addressed, but Don was saying, and I don't know 'cause I never read 'em, my concern is, you create this farm area and now you have all these outsiders coming and saying, oh, I get dust here, like one guy, oh I get flies. Well, horses have flies, pigs have flies. This is ag, they need to be, sign some kind of deal where they know this is ag and they're not going to be looking out the window and say hey, what you spraying over there? See, this is my concerns about creating this kind of environment. But I think it's the only way to preserve whatever prime ag we have left. One thing I was going bring up, Yuki, was right up where you live, that Kula Nui or whatever that place is, I was looking at 'em, I said, my God, 900 to 1.5 million for one 5, 6-acre lot. What rancher can afford that

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and come there and raise what, two cows in Kula? And if they going farm, how can they pay that? It's not the farmers who they're looking at. And I think we need to incentivize the developers. And that's why I say, let's call a spade a spade. If we can, give 'em the 40 acres, say you can make half acre lots. You guys get the power to change it like what you're saying. Change 'em to rural. You have that power. This section here going have 100 houses, rural, this is all farm. I mean, to me, I look at things differently. It's kind of one non-bureaucratic but more common sense. I mean, you're right, it was a stretch for me to make it here. I get one water problem by the mountain and I gotta go back. But I felt this is important because if not for me, but I have young guys that work for me and I can see them really wanting to farm and not have any place to go. So, that to me is something that you guys gotta do to preserve this ag land.

CHAIR CARROLL: Any further clarification needed from the testifier? Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you very much. Since you did mention that you didn't have an opportunity to read the bill, but the bill indicates that there will be a large conservation lot, agriculture lot that is the remnant, like for example, if I take 100 acres and you cluster 1 acre, 1.5 acres into let's say 19, and that's under the sliding scale --

UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER GUZMAN: --that's the amount that you'd be limited to. If you cluster those smaller lots, you will then end up with a large remnant lot, which is --

MR. BALTHAZAR: Right.

COUNCILMEMBER GUZMAN: --more than 70 to 80 percent --

MR. BALTHAZAR: I understand.

COUNCILMEMBER GUZMAN: --of the entirety. So, that space right there is really conducive to ranching and to, I mean, it's open space, you know, and so...

MR. BALTHAZAR: Right, but you mentioned the word conservation. I no like that word.

COUNCILMEMBER GUZMAN: Well, the reason why I use conservation is because under the technical terms, how you get into conservation is through unilateral agreements, and you know that. You gotta do it on the deeds and formulate a unilateral agreement.

MR. BALTHAZAR: But what I'm saying is, what you basically trying to tell me is that bigger portion going be, has to be used in active ag?

COUNCILMEMBER GUZMAN: I believe so, because of the fact that if it's...

MR. BALTHAZAR: That's, you see a lot of our subdivisions...

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COUNCILMEMBER GUZMAN: 'Cause it has to be, it has to be in the unilateral agreement.

MR. BALTHAZAR: Yeah, as you know, a lot of our subdivisions --

COUNCILMEMBER GUZMAN: Or conservation.

MR. BALTHAZAR: --Don, right now that is the so-called gentlemen estates kind of deal that Mike been fighting for all the years he been here, is created by these kind of things because you stick these people on there, they get their permit, and they will never farm. And you cannot get the money from 'em. So, that particular big portion, I need to be reassured that it's going to be in, and I like to use the word active ag, not zoned Ag. That person who going develop gotta make sure that they have one farmer, one rancher. Who is going to be the responsible party? Is it the people that buying those lots?

COUNCILMEMBER GUZMAN: In the last meeting we took out all the unnecessary accessory uses and only narrowed it to farm operation-type accessory uses.

MR. BALTHAZAR: But the accessory uses, Don, can they go and get a special use permit? It's still an option, right?

COUNCILMEMBER GUZMAN: Yeah...

MR. BALTHAZAR: Which is fine, I get no problem with special use permits.

COUNCILMEMBER GUZMAN: I believe so, yeah. They do have an option to go in to get a special use permit.

MR. BALTHAZAR: Okay. Well, I get no problem with the special use permits. But have one problem when somebody calling this property ag, but it's not in active ag. I like to see that the developer or whoever it is be held accountable to see that they come to this body and say, yes, I have Joe Blow and he's going to farm onions. You see what I mean? One bona fide deal, not somebody with two papaya trees and one ti leaf and say that I'm a farmer. And that's what we've been fighting.

CHAIR CARROLL: I think we're very clear on that already. I'd like to continue discussion --

COUNCILMEMBER GUZMAN: I'm done, yeah, thank you, Chair.

CHAIR CARROLL: --when we get into discussion on the floor. Thank you.

MR. BALTHAZAR: Thanks, Bob.

CHAIR CARROLL: Mr. Wagner?

MR. WAGNER: Chair, there are no other testifiers signed up at this time in the Chamber.

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CHAIR CARROLL: We'll now check with the District Offices. Hana, do you have anybody waiting to give testimony?

MS. LONO: Yes, Chair, this is Dawn Lono at the Hana Office and I have one testifier, Shane Sinenci, testifying on LU-5.

MR. SINENCI: Aloha, Chairman Carroll and Councilmembers. And we've been listening to the discussions and the testimonies going on. We're here because our community had some questions about the LU-5. Of course, our East Maui community farmers, we support the creation of these cluster lots for agriculture. And like it said at the first section of the bill is to preserve in perpetuity for protection of agriculture, environmental, culture, and open space resources. And we want to support that. However, listening, I'm glad, that said I'm glad you guys did take out some of the accessory items like recreation and bed and breakfasts. For us in Hana, we have only a few places that have large tracts of ag lands that can be subdivided. And so, I believe the Hana Advisory Committee, Commission, had sent a letter to you on May 14, 2018 asking that any changes or prior to making any decisions on this bill be brought back to the Advisory Committee in Hana. Mahalo.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you. Molokai, do you have anybody waiting to give testimony?

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

CHAIR CARROLL: Thank you. Lanai, do you have anybody waiting to give testimony?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR CARROLL: Thank you. Mr. Wagner, has anybody else signed up?

MR. WAGNER: Chair, it doesn't appear that there are any other testifiers signed up in the Chamber.

CHAIR CARROLL: Is there anybody in the Chamber that hasn't given testimony that wishes to, please come forward. Seeing none, if there is no objection, we will close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

. . .END OF PUBLIC TESTIMONY. . .

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ITEM LU-5: AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO ALLOW AGRICULTURAL CONSERVATION LOTS IN THE AGRICULTURAL DISTRICT (CC 15-152)

CHAIR CARROLL: Our first item on the agenda, LU-5 Amending the Comprehensive Zoning Ordinance to Allow Agricultural Conservation Lots in the Agricultural District. Members, the purpose of the proposed legislation is to allow for the creation of agricultural cluster subdivisions on the island of Maui, as an alternative to traditional agricultural subdivisions, to promote agricultural, cultural, environment, and open space preservation. As proposed, an agricultural cluster subdivision consists of one large agricultural conservation lot occupying at least 70 percent of the total area of the parcel to be subdivided, or subject lot area, if it is under 92 acres, or 60 percent of the subject lot area if it is 92 acres or more; and an increasing number of smaller agricultural cluster lots depending on the size of the subject lot area. In our last meeting, we expanded the accessory uses allowed on agricultural conservation lot and made revisions to clarify the agricultural cluster subdivision can occur on land that has already been subdivided, so long as the maximum number of lots allocated by the subdivision sliding scale of Section 19.30A.030(G), Maui County Code, has not been reached. By correspondence dated July 12, 2018, the Chair transmitted a further revised proposed bill to the Department of Corporation Counsel for review and approval as to form and legality. The further revised proposed bill incorporates revisions made at the last meeting, as well as revisions to section 19.30A.040, Maui County Code, and a non-substantive revision to section 19.30A.120. Revisions to section 19.30A.040 are recommended to accommodate the entitlement proposed Section 19.30A.35. Please also note your Chair is proposing, through Section 19.30A.040(A), that the Director of Public Works will be responsible for administration of both the agricultural subdivision and proposed agricultural cluster subdivision lot allocations. However, I plan on entertaining a discussion on that matter at today's meeting. At that time, the Committee can decide one of two department, which of two departments will be responsible for this. The Department of Corporation Counsel transmitted the approved further revised proposed bill by correspondence dated July 18, 2018. Planning, do you have any comment at this time?

MS. CHOUTEAU McLEAN: Thank you, Chair. It might be helpful to give just a minute or two of broader background. When the ag bill was adopted in 1998, what led to its adoption and the comprehensive zoning that came along with it was that agricultural lands were being subdivided into two-acre gentlemen's estates without any restriction or limit. The sliding scale sought to restrict that, to restrict the number of two-acre lots that could be allowed, and then also to create a variety of larger lot sizes, the 15, 25, and 40-acre lot sizes. That's because at that time the agricultural community told us that there were not many lots available in those sizes for lease or for purchase for farming or for ranching. And so, the idea at the time again, was to allow some two-acre subdivisions but also to try to end up with lot sizes in those ranges, which is what the ag community had said was needed.

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CHAIR CARROLL: I'm going to allow questions to Planning now because we only have two departments over here that we're actually going to be entertaining today. So, I'll open the floor if there's any questions for Planning before we go to Public Works.

MS. CHOUTEAU McLEAN: I'm not quite finished, Chair, if I can continue.

CHAIR CARROLL: Oh, I thought you were finished. Alright, after you finish, then we will open the floor for questions to Planning.

MS. CHOUTEAU McLEAN: Thank you.

CHAIR CARROLL: Proceed.

MS. CHOUTEAU McLEAN: What we've seen though, is that there still seems to be a desire for those 15, 25, and 40-acre lots to be purchased for even larger gentlemen's estates, that those lots haven't been made available or they're too expensive. They haven't resulted in those varying lot sizes being used for agricultural purposes. And so, the apparent intent of this bill is to say well, if that is going to happen, rather than having those larger pieces cut up, why don't we allow that same subdivision potential to happen in smaller lots clustered together, which is a more desirable pattern, leaving that remaining large piece open. In some ways, that is a more desirable outcome as you've heard some of the testifiers say. But it also only leaves one-acre lots, and then however large that remaining piece is. It doesn't leave that variety of lot sizes like the original scale intended. I myself am not aware that we've heard from the agricultural community what lot sizes today might still be desirable. That was the intent at that time. That hasn't been realized. And so, it may be worth finding out maybe another way to accomplish all the goals that have been talked about here. I don't know if what we have in front of us could take care of all that. But that's what the intent of the original scale was, and this is an effort to say, well, it's not quite working as it was envisioned 20 years ago. So, maybe we should take another look at it. Thank you, Chair.

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: The floor --

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: --is now open for discussion. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for that background. And in your explanation, it seems like everything was focused on ag production. So, and that's why I'm having a hard time with this bill is it's changing the intent for the purposes of this clustering. I don't think we can really move forward until we agree on the intent. But just gleaning what I've gleaned from your explanation, it sounds like the original intent of the sliding scale was to create agricultural production and that this is a, kind of a response to the fact that that wasn't. So, which tells me that we're still looking for

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ways to promote that agricultural production. So, is that an accurate description of where we're at with this bill? Is it...

CHAIR CARROLL: Ms. McLean?

MS. CHOUTEAU McLEAN: I think that's a fair description.

COUNCILMEMBER KING: Okay.

MS. CHOUTEAU McLEAN: It's looking at what has resulted from the scale and seeing if we could make that better. It is conceding some degree of development of ag land.

COUNCILMEMBER KING: Right.

MS. CHOUTEAU McLEAN: And that was true 20 years ago as well. Not unlimited subdivision into two-acre lots, but limited subdivision into two-acre lots, and...

COUNCILMEMBER KING: Right, so, I understand, yeah, I understand that, you know, ceding that, the subdivision for those cluster lots. But I guess my issue that I'm, you know, kind of wanting to know what you think about it is that we're hearing from the agricultural community that these other uses that are inherent in the way this bill is written are not going to promote, you know, have the, I mean, it's almost a more blatant way of saying other things could happen with this land, you know, instead of agricultural production. So, that's kind of where I'm getting stuck.

CHAIR CARROLL: Planning, do you have any comment?

MS. CHOUTEAU McLEAN: That's a reasonable concern.

COUNCILMEMBER KING: Okay. Thank you, Chair.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. Thank you, Ms. McLean, for bringing us back to the history. And so, my question is that the intent was to give variety of sizes for home and ag production, productive lands, and so, it looks like none of that has been enforced until today. And that is why we ended up with these gentleman estates, and weddings, and short-term rentals, and you name it, on a lot of that, I'm speaking directly to the Launiupoko area I pass by every single day and I see this occurring. So, definitely would like to avoid that. But the other flipside is that 20 years in the making, those things have not been enforced and just down the line special use permits are happening, conditional use, on and on it goes. So, I think the original intent was very much lost. And now, we're here with this in front of us to try and correct that or somehow bring us back to that. And I don't see this as an answer for that because I'm really, really afraid. There's a lot of ag lands that Maui Land and Pine has currently. And I can look directly in my own backyard, one 7,000-acre parcel on one TMK. They can divide that up and give us gulches, gullies, cliffs, rocks, you

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name it, old roads, in this Ag zoned, and say, that's the large swath. And then, we're going to cluster over here, hundreds of homes. That's the kind of picture I'm envisioning this can happen. And so, it scares me, and I don't think that is the intent here. So, I'd like, I think the bottom line is enforcement on current, you know, zoning and subdivisions and what have you that's in place already. And so, hopefully, you know, or do you agree that picture I just painted with that 7,000 acres in Honolua, something like that can occur?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: Yes, if you have a 7,000-acre parcel.

COUNCILMEMBER COCHRAN: There is one.

MS. CHOUTEAU McLEAN: We can go through how many lots and what sizes would be allowed under the existing scale and what would be allowed under the proposed clustering. Joe's chiming in that it would be 244. And in earlier discussions, I don't think this has been brought up yet although the Chair may be intending to bring this up, is for the clustering to establish some cap that you can have these one-acre lots, but you cap it at a certain number. That would be one approach. I would like to say if I could, Chair, that for enforcement, if special permits or conditional permits have been granted, those were granted by the Planning Commission or by this Council. Short-term rental homes are allowed on ag land because the Council allowed that. Certainly, there's a lot of illegal activity, unpermitted activity that we do our best to enforce. But we can only be so many places. In terms of other lands not being used for farming, we wouldn't consider it a violation if land was simply vacant and unused and undeveloped. And I think that is part of, what has resulted from this scale is that some of these larger lots have been created, but they're, either they're not desirable because of topography and quality or they're simply too expensive for true farmers or ranchers to afford to purchase or to lease. And we can't, we wouldn't take enforcement action against that if they're vacant and undeveloped.

COUNCILMEMBER COCHRAN: Yeah, understood. Thank you for your comments. Thank you, Chair.

CHAIR CARROLL: Any further questions? Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you. You know, I find it so odd that the Planning Department comes in here and says, oh you know what, they don't seem to have, to be on the same page as other personnel in the Department, because for the last three years, your Department has been working with my office on this bill. And we presented this bill to the Planning Conference in Kaanapali and it was actually, it was acknowledged as being a compromise between development and conservation. But yet, now you're telling me here that it needs to be, like there's something wrong with it? I find that very odd that three years later that there's issues that still need to be resolved with it. And if there is, I mean, we can go back and look at it. But to bring that forth now after how many years that we've been pushing through with this vetting

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this through back and forth with the Department. And I never put anything on the floor until I get it through the department. So, it's very odd that now all of a sudden, you know, it has issues with it. So, my question to you is that, you failed to mention that this is an option to the sliding scale in your explanation. The sliding scale is the formula that we use to subdivide the entire lot of agriculture. And as so, like I said, you're going to get into slice and dicing into all these different sizes and yet, we still have gentlemen's estates. And it's not being utilized, the agriculture's not, or the conservation areas are not being utilized. Well, here was an option. You can still use the sliding scale, but here was an option to say, some lands don't need to be split up entirely, in its entirety. Some lands can be clustered and agriculture lots clustered, and the remaining portion left open, whether it be for agriculture or conservation, cultural conservation or not. So, specifically where in this bill does it need to be worked on again? Because this is like the 11th or 12th version and back and forth with your Department. And it may not have been with you, but I totally remember Mr. Alueta years ago, working on this and then switching over to Will, and then back to you, and then back to Will. And Will is no longer here, 'cause Will had it for the last six, seven months. So, specifically, tell this Committee, tell Mr. Chair, give us what you believe needs to be corrected in this bill, because I've pretty much had it with this whole back and forth with Planning Department, you know. Whether a bill's going to be ready or not, you know, get off the pot, make a decision, give us exactly what your recommendations are, and we'll fix it in accordance to what you believe is correct. Because this bill has been back and forth with your Department how many years? And I'm just disappointed. Thank you.

CHAIR CARROLL: Planning, any comment?

MS. CHOUTEAU McLEAN: Thank you, Chair. First, you are correct that the conservation, or the clustering concept is an option along with the existing scale, or it can be a combination of the two. Certainly, if there are parcels that have been partly subdivided not to their maximum potential under the current scale, they could still benefit from the remaining subdivision potential and use the clustering concept. So, yes, it is an option to use by itself or in conjunction with the existing scale. And yes, you are absolutely correct that you have spent a lot of time working on this bill with the Planning Department and, you know, a lot of time on other efforts with agricultural tourism, the commercial agricultural structures, working with the ag community on trying to make agriculture more viable by giving that community more options. So, that should be recognized. And yes, the Department has worked with you on this for quite some time. And I don't have a revised proposed bill. I don't have specific amendments that we would recommend at this time. And I concede the comments that you made about the Department and I apologize for that. That isn't fair to the work that you've put into this and isn't fair to the time that this Committee has spent on it. But I don't feel that we would be doing our jobs if we didn't raise concerns, even if it is at the 11th hour because some of those concerns have really only been brought to our attention recently by some in the ag community and also just spending more time with staff who hadn't previously been involved with it. I don't think it's a complete rework. The kinds of things that could be considered to help bring this to a conclusion would be establishing the cap like was just discussed so

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that it's not, you know, hundreds of one-acre lots coming out of this, that there's some sort of cap, some sort of control on that. And also, as discussed with some of the testifiers of ensuring that the conservation lands are really the best lands from that parcel, not the gulches and the topography so that, you know, the intent can really, really be achieved, you know, to the extent that we are able to do that in language, you know. The Public Works Director is here. He's involved with the subdivision process. So, we'd want to get his input on how that would be, how that might be administered and ensuring that the best lands are contained in the conservation lot. But those two ideas I think would improve it. And I believe Joe Alueta wanted to add something, if that's okay with you, Chair.

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: Thank you, Mr. Chair. I just wanted to comment on, yes, we have been working on it. I haven't been with the Department for 15 months, but this is my second go-around at it. And I've kind of looked through it and I do appreciate the opportunity to comment on this bill at this time. It does have a lot of good planning principles, the clustering of the agricultural lots that are allowed as far as the developing goes. The ultimate decision of whether it gets approved and what the conditions, fall with the County Council. So, it's ultimately going to be your bill. We just want to make sure that it's eyes wide open, that you understand the benefits and the potential drawbacks, and our job is just to provide it, so you can ferret out all that information. Yes, as the Director said, some of these concerns have come to us at the 11th hour. So, therefore, we have some of those concerns and we'll bring them forward. Some of the other concern, again, good planning principles. But you also gotta understand, with the original intent of the agricultural bill, good intentions to not only create a variety of ag lots, but also to preserve ag as in a rural atmosphere. Okay. One of the, one of our fears is, and it was to stop the continued chop-up of ag land into two-acre lots. You kind of see that now, 20 years later. The sliding scale has worked, meaning you have large ag lots, developers have for the most part sort of grind to a halt because the marketability of larger and larger ag lots, and the development and putting in that infrastructure become almost uneconomical. Okay. So, this is, and again, the bad side is that this does open up the potential for a large amount of agricultural land to be subdivided for rural lots. Okay. So, you will have that sliding scale because what was no longer economically viable, now becomes economically viable. Now, from planning principle, that's good. Consolidation of, and protection, and you will protect hopefully an active ag lot. And as you saw, a lot of discussion on trying to ensure that that remaining lot stays, and is really agriculturally farmed, or ranched, or whatever with it, and not become a large transient vacation rental or gentleman estate. Okay. You also need to consider is that this bill would also allow for consolidation re-subdivision because it just deals with the thing. So, if somebody had done the sliding scale, they would be able to either consolidate some of those larger lots, and to do it and have whatever lots or allocation they still had to redo the, to go under the sliding scale. You also have existing lots, or large lot subdivisions out there where they did the 15 2-acre lots and maintained the bulk of their lot allocation in large lots. Those larger lots that maintain some form of allocation could also take advantage of this. So, a lot that was no...again, eyes wide

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open, just be aware that good planning principle; however, you are going to get a proliferation of agricultural subdivisions as a result of this. Okay. And the preservation of your, what will theoretically be preserved as your ag production lot, that the language has to be there to protect that production lot. So, again, we think it's good planning principle, the consolidate, the development, you know, it lowers the cost and everything. However, just be aware that there will be subdivisions as a result of this. Thank you.

CHAIR CARROLL: Thank you. Anything further --

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: --for Planning?

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: Ms. King?

COUNCILMEMBER KING: Thank you. Thank you for that, your response. But I have, so, you know, I keep on going back to I guess what I think is the basic of this bill, which is what is the intent in the first paragraph. And everybody keeps talking about ag production. But that's not what's in this first paragraph. It's got four things in it as the intent of this bill. But another question I wanted to ask you is on Page 3 of this bill, under I, it talks about the unilateral agreement running in favor of the County shall be executed to state the lot shall be dedicated for agricultural use in perpetuity and the landowner shall comply with the requirements of this chapter. But there's no, I mean, just kind of reading through that and the next couple of paragraphs, there's no specific designation of who will approve that unilateral agreement. It says the, I think somewhere in here it says a County agency. But it doesn't specifically say the County Council. So, where would that approval sit? Is it the Planning Commission, and then it's kind of out of our hands?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: The responsibility, well, first the unilateral agreement would notify any future purchaser of that land that it was to be dedicated for agricultural purposes. So, that would be an important reason for that unilateral agreement to be required so that anyone who purchases it wouldn't be under the impression that the land could be used for anything else. Then, enforceable by the County, that would be the Planning Department if there were nonagricultural activities being conducted on it. That would be the Planning Department.

COUNCILMEMBER KING: Okay. So, the Council would not see that proposal for additional activities?

MS. CHOUTEAU McLEAN: As the bill is written now it doesn't appear --

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COUNCILMEMBER KING: Okay.

MS. CHOUTEAU McLEAN: --that this would go to the Council.

COUNCILMEMBER KING: Okay. I think that's one of the concerns I've been hearing from constituents is if we go forward with this, how do we assure if we're going to allow these, you know, this bill to go forward, how do we assure that that main lot stays in agricultural production, or if it goes into other uses, how do we assure that they're appropriate uses? We don't have any, once this bill is passed, we don't really have any authority I think, according to what I'm reading. Is that correct?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: That's correct. The Council wouldn't have a role in administering this after it gets passed.

COUNCILMEMBER KING: Okay.

MS. CHOUTEAU McLEAN: But I would want to point out, the agricultural conservation lot is not required to be in agricultural production. It's dedicated for ag uses, meaning that other uses cannot be conducted on it. But if it's vacant and undeveloped, then it would still be in compliance.

COUNCILMEMBER KING: Right, the way we have it with the sliding scale, I understand that.

MS. CHOUTEAU McLEAN: Yeah, okay.

COUNCILMEMBER KING: But, you know, in my mind, this was giving this opportunity to do this clustering so that we would have more agricultural production. I mean, that's how I first approached, I mean, was told about this bill --

MS. CHOUTEAU McLEAN: Right.

COUNCILMEMBER KING: --you know, the benefits of this bill is to get more agricultural production. So, the way it's written, it doesn't necessarily require that. And then, we have no way, if it's not like a special conditional use permit or special use permit, we have no way of assuring that that happens at the Council level. Yeah, okay. Thank you.

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you. Just clarification, so, when my Committee sent this bill, which is basically the 11th version of it, to the Planning Commission, February 18, 2015, the proposed, the intent was placed in the resolution to transfer it

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to the Commissions. And as it reads, under Resolution 14-114, the proposed amendments is intended 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 characteristic, character consistent with the General Plan. The amendment proposes provisions for the creation of agriculture conservation lots that will be dedicated for agricultural use in perpetuity through a conservation easement, or unilateral agreement. So, that's what it was transmitted as attached to the bill to the Commission in 2015. The intent has to remain the same. If it does deviate from the intent, it's gotta go back to the Commissions. So, if you're saying that the intent is deviated, then this thing has to go back to the Commission. I'm still saying that the intent has not deviated. So, therefore, it doesn't have to go back to the Commissions. So, get it straight. In terms of, if you're going to get questioned as what is the intent, you guys send this over the Commission. And if there's, if the intent has changed, then it's your job as a Department to say yeah, it needs to go back to the Commission. So, obviously, the intent hasn't changed.

MS. CHOUTEAU McLEAN: Okay.

COUNCILMEMBER GUZMAN: So, put it on the record if you're aware of it. Because obviously you're, the right hand is not speaking to the left hand because I've heard time and time, question after question come to you that basically says, what is the intent from Ms. King. And you haven't been able to relay that intent while in fact you should because you're the Department that sent it over to the Commission to have it reviewed and vetted through.

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: Thank you, Chair. I never said that the intent changed, and the bill came from the Council. We took it to the Commissions as a result of a resolution from the Council. I don't believe the intent has changed. And I don't believe I've said that the intent has changed. The only point I'm trying to make is that if there's a belief that the bill will result in more agricultural production, I can't say that the bill would proactively accomplish that because it's not requiring that the land be in agricultural production. It's preserving it for ag production. And that certainly could happen, and no other uses could happen on that land. But...

COUNCILMEMBER GUZMAN: But that's what the unilateral agreement does. It requires them to follow through with it being in conservation in agriculture. And that's why I...

MS. CHOUTEAU McLEAN: Conservation, yes, it doesn't require that it be actively farmed or ranched. You can't use it for any other purpose. But if it just remains fallow and vacant, then it's not in violation.

COUNCILMEMBER GUZMAN: Yeah, but isn't that what we want at some point, is like, to make sure that we have open spaces?

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MS. CHOUTEAU McLEAN: Yes, and that's why I'm saying the intent has not changed. I just don't want there to be a misunderstanding that the bill will result in these lots having to be actively farmed, because it doesn't require that. That's all I'm trying to clarify.

CHAIR CARROLL: I'd like to ask Corporation Counsel to comment.

MR. GALAZIN: Yes, thank you, Chair. And just to clarify for everybody, you know, as well as people who may be in the audience, you know, our ability to control what happens or does not happen on a parcel of land through zoning or be it through a unilateral agreement, it means that we can restrict the number of options to which a person may use property. But we cannot tell someone that they must affirmatively use it in some way, shape, or form. So, we can cut down the number of things that they are permitted to do, even through a unilateral agreement, or through, you know, conditions of zoning. But through this bill, as the Planning Director said, it does not guarantee that they would be putting it into productive agriculture. And there is no vehicle through which we could do that either through a change in this ag subdivision or in the unilateral agreement. What you have right now, the current sliding scale in ag subdivisions, there is nothing about that. And these subdivisions can go on. If you were to adopt a bill something along these lines, you have tighter control over what uses that are there. You have a unilateral agreement that can be enforced by Planning, or in addition, it's by the County, which means that Corporation Counsel could certainly go in and, you know, file an injunction to stop any activity that was not in accordance with that either. So, those are just my comments. Thank you.

CHAIR CARROLL: Mr. Guzman, you have anything further? Ms. King?

COUNCILMEMBER KING: Thank you, Chair. So, I guess for Corp. Counsel, if we wanted to, I mean, if you buy a piece of ag land that's one of these two to five acres, before you can get your permit, you have to have an ag plan, right? It has to be like 51 percent of your property has to be in ag, you have to have a farm plan, what they call a farm plan. So, if we wanted to ensure that we're allowing the clustering in order to encourage more active production, it, would we want to do something like that? Like require an ag plan for a certain percentage of the remaining lot so that we know what they're going to do with it before we grant this clustering?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: Farm plans are used now when we review building permits for farm dwellings. A farm plan is required, showing a plan of what's intended to occur on the property is required before we will sign off on the building permit for the first farm dwelling on the property. We have to go out and do an inspection and see that that farm plan has been implemented before we will sign off on the second, on the building permit for the second farm dwelling on that property.

COUNCILMEMBER KING: Right.

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MS. CHOUTEAU McLEAN: And so, for, you know, that would remain true for this conservation lot as things currently stand. That's our current practice. And so, for the farm dwelling or farm labor dwelling on the conservation lot, before we would sign off on a building permit for that, we would need to see what the farm plan is.

COUNCILMEMBER KING: Okay. So, and is it the same percentage? 'Cause if you get a really large lot leftover, I mean, right now I think it's 51 percent isn't it, where the land has to be...

MS. CHOUTEAU McLEAN: It's the...because the County Code says the majority of the parcel, we take that to mean at least 51 percent of the usable area of the land. If there are gulches and other areas that we would agree are unusable, then that gets deducted and then it's 51 percent of the remaining usable land.

COUNCILMEMBER KING: Okay. Okay. So, that's, that part is kind of inherent, and if we see the intent of this is promoting active agriculture --

MS. CHOUTEAU McLEAN: Correct.

COUNCILMEMBER KING: --that we would --

MS. CHOUTEAU McLEAN: We would --

COUNCILMEMBER KING: --want a farm plan.

MS. CHOUTEAU McLEAN: --need to see what the plan is before we sign off on the first building permit for the farm dwelling.

COUNCILMEMBER KING: Okay. Alright, thank you.

CHAIR CARROLL: Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, thank you. I remember voting on the sliding scale ordinance. So, I would agree, we've had some positive outcomes. We've had some shortcomings also. But that was at that point in time also, where the County was, where agriculture was. So, again, I'm open to this concept, Chairman. And I keep hearing it how this is a great planning concept and moving forward. So, then, I think one of the key things we need to answer is this then key for enforcement is Planning enforcement. And can Planning enforce? We have yet to come to terms as a Council, whether that Department is, can handle enforcement or not. Should we make Mr. Goode, since he's here with Public Works as enforcement? I don't know if they want to do the enforcement of Planning things. Okay. But one thing I will say though, Chairman, is I think we need to think . . .*(inaudible)*. . . I know we've worked on this for many years, five years maybe before us more or less, but I brought it up last May. I still don't know why it's not in our binders 'cause I expected a written comment from either the Deputy Director of Finance about our RPT questions and taxation and assessments. Okay. And how are we going to deal with this 70 percent blob of

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productivity parcel? Is that a property regime attached to each independent housing component of the clustering? Who comes the responsible one to pay for that parcel, a giant parcel? And only does that parcel get the Ag consideration? Everybody else comes under what, Homeowner? So, what is now my net, or ____ or loss from my current taxation program? And if we want to give those residential units, then why should they still have Ag zoning? And why keep conservation under Ag? Re-zone it to Conservation then, or Open Space. So, what's my impact on my taxation base? You know, we talked about redoing comprehensive zoning review. We told you that that needs to be part of the taxation review and structure. I don't need this piece by piece approaches and then we're not even thinking about how it impacts the comprehensive approach to how we want to look at land use zoning permitted, non-permitted uses, Chairman, and how taxation plays to pay for the services of this County. Okay. I don't know about others, but these things keep me up at night. I think about it, Chairman. What will be the financial health of this County making primary major district land use changes? I hope we have a plan. It needs to be coordinated. It needs to somehow fit together. It needs to make sense for our current times and needs too, Chairman. So, for me, Chairman, I would like to hear and see what Finance is going to tell us about it.

CHAIR CARROLL: We shall make the inquiry, Mr. Hokama.

VICE-CHAIR HOKAMA: Thank you.

CHAIR CARROLL: You know, we'll have Planning over here for further questions if we need them as go on. I'd like to go to Public Works now though. Public Works, do you have any opening comments?

MR. GOODE: Thank you, Chair, Members. David Goode, here, Department of Public Works. Our role in this is primarily focused on administering, you know, the number of lots that are created out of the subdivision. And I provided testimony along those lines last time. And in the interim between your meetings, Chair, I did work with staff and others to see if we could streamline the way in which the lots are determined. And so, the amendment that we are offering is, is really an attempt to streamline that and to take on any ambiguity, any future interpretation by us, or Planning, or Corp. Counsel, or all three of us. 'Cause all that does is just adds time and uncertainty to the process. So, our proposal is really to do exactly that. We certainly understand we may end up administering this section like we do currently. So, therefore, we wanted this as clean as possible. So, I'm happy to answer questions along those lines, Chair.

CHAIR CARROLL: Thank you. Mr. Wagner, do you have the verbiage for the proposed amendment from Public Works?

MR. WAGNER: Chair, the verbiage for the proposed, or the recommended amendment from the Director of Public Works was transmitted to your Committee via correspondence from the Director of Public Works, dated July 17, 2018. That can be found in Granicus. The revisions are extensive, so I would suggest that we refer to the pdf.

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CHAIR CARROLL: Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Thank you for being here, Director. On Page 5 of the bill, not on your adjustment, but it's not part of the bill that's being, or part of the law that's being changed. But it's portion F, on Page 4 that relates to family subdivisions. In your mind, the remaining lot, the large lot, when I read this F, it sounds to me that once we assign the clusters, that that remaining original lot could be further divided as a family subdivision. Is that the way...and it's proper to read this? Or is that not going to happen, or can't happen?

CHAIR CARROLL: Mr. Goode?

MR. GOODE: Chair, Mr. White, if you give me a few minutes to read through this I can give you an opinion or I may have to look at it further, so.

COUNCILMEMBER WHITE: Okay. I don't know when we're going to take a break. But maybe you can look at it during the break. The other question I had was on the original wording of the bill that you've crossed out regarding the maximum number of permitted clusters, I have a question on the section where it says at least 92. And it says, so, you get 15 cluster lots, plus 1 additional cluster lot for each 40 acres above 92 acres, not to exceed 17. So, I understand that that limits you to 17 lots. But then, the next one says, 1 cluster lot for each 60 acres above 92. And the number of acres above 92 is 60. I'm using Ms. Cochran's example of 7,000 acres and that gets an additional 115 lots, or is there a limitation of the not to exceed 17 on that portion as well?

CHAIR CARROLL: Mr. Goode?

COUNCILMEMBER WHITE: I see the first section based on 40 acres has a limitation of 17 lots. But there's no limitation on the cluster, number of cluster lots for the, for each 60 above 92, or for each 100 above 92, or each cluster lot for each 160 acres above 92.

CHAIR CARROLL: Mr. Goode?

MR. GOODE: Chair and Mr. White, our intent in taking out this entire table was to just substitute the existing table that's been in existence for 20 years in the sliding scale, or 19.30A.030. So, that way...we just didn't want to have two tables. And I think from what we understand, the intent of the Committee was keep it the same as, same number of total lots as what's currently in the existing ordinance.

MS. CHOUTEAU McLEAN: Chair?

COUNCILMEMBER WHITE: Okay. So, is that...oh I'm sorry.

MS. CHOUTEAU McLEAN: Chair, can I jump in on this?

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CHAIR CARROLL: Planning Department, you have a comment?

MS. CHOUTEAU McLEAN: That language was taken from the existing scale. So, it mirrors the existing scale and you are correct that it doesn't establish a limit for those subsequent categories. You know, the first one has a limit of 17 lots, and then there is no limit on the additional ones. And that could be a way to accomplish a limit or just somewhere in the ordinance you could establish an overall cap on the number of cluster lots that could be created.

COUNCILMEMBER WHITE: Okay. But I guess my question is, is the number of cluster lots limited to the prior number of lots that would've been allowed by the sliding scale? And...

MS. CHOUTEAU McLEAN: Yes, yes.

COUNCILMEMBER WHITE: Okay. Because...and so that is, that, if we make the changes as requested by the Department of Public Works where we're saying that you can have one, the lot sizes no less than one acre, no more than an acre and a half. So, that, the number of lots will still be limited by the sliding scale number? Okay. Because with Ms. Cochran's example, that's a heck of a lot of lots. Okay. And then, I'll ask you the same question I asked Mr. Goode, in your view, would the large lot still be able to divide based on a family subdivision?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: My reading of Section F, and it would be good to hear Corp. Counsel's reading, is that a family subdivision could be allowed with the approval of the Council.

COUNCILMEMBER WHITE: The subdivision of the original lot, or the, I guess it's the, it would be the remainder of the original lot.

MS. CHOUTEAU McLEAN: If you subdivide to the extent that the scale allows you to, then additional subdivision could be allowed for family subdivisions with the approval of the Council.

COUNCILMEMBER WHITE: Would that be just the agricultural conservation lot? It would not apply to all the other lots, would it?

MS. CHOUTEAU McLEAN: Well, the, under State law, the lots couldn't be any smaller than one acre. So, for cluster lots, they would not be able to be subdivided further for family subdivision. That would be a State law restriction if the property is still in the State Agricultural District.

COUNCILMEMBER WHITE: Okay. And from your perspective, is there a difference in the way you would be able to enforce agricultural production versus agricultural conservation?

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CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: I don't think that there would be a difference.

COUNCILMEMBER WHITE: Okay. What about the other, when you look at the purpose, including environmental, cultural, and open space resources, does that provide you challenges in enforcement?

CHAIR CARROLL: Planning?

COUNCILMEMBER WHITE: If the title of the bill says agricultural cluster subdivisions, are you going to be requiring a farm plan on the agricultural conservation portion or not?

MS. CHOUTEAU McLEAN: That would be required, under our current practice that would be required with the building permit for the first farm dwelling on the property.

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

CHAIR CARROLL: Members, we're going to take our afternoon recess. Please be back at 3:20. We now stand in recess. . . .*(gavel)*. . .

RECESS: 3:09 p.m.

RECONVENE: 3:19 p.m.

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting is called back to order. Alright, Members, I'd like to...Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, just for some clarification, since we have the Director of Planning Department with us, I just wanted to make sure I heard that, you know, previous response, I believe she mentioned that at this point in time ag production and ag conservation, and there's no difference in how your Department looks at it from a Planning perspective?

CHAIR CARROLL: Planning Department?

MS. CHOUTEAU McLEAN: Thank you, Chair. In terms of compliance with the County's Agricultural District --

VICE-CHAIR HOKAMA: Okay.

MS. CHOUTEAU McLEAN: --if an Agriculturally-zoned parcel is in active agricultural production, it's in compliance. And if it's vacant and has no other uses on it, it's also in compliance.

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VICE-CHAIR HOKAMA: Okay. If I asked you, is there any difference between ag conservation and conservation, you would say there is also no difference?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: Agricultural land conservation is defined in the County Code. I don't know that conservation has a definition. Conservation, you know, there's State Conservation and that's pretty well defined and regulated by the State. Agricultural land conservation is the use of soil nourishing plants to retain the soil quality.

VICE-CHAIR HOKAMA: Right.

MS. CHOUTEAU McLEAN: So, basically, if you're not going to be farming it, you're supposed to keep it planted with something and potentially irrigated so that in the future it could be farmed, and the soil would be maintained in good condition.

VICE-CHAIR HOKAMA: Okay. 'Cause, you know, I mean, we have Conservation category, right? We have a tax category. We use it in a lot of our documents, including a required pot of money for open space and conservation use purposes. So, we use the word a lot. I just was trying to see if there was differences between ag conservation and just conservation. And if it is, should we make it clearer? 'Cause I understand what some of the Members are saying, Chairman, and, you know, for me, maybe some of the ways we have it in the ordinance through the Code, or how we've structured certain rules may be holding us back. But I think one way in listening to this 'cause I think we're not too far away in capabilities, is we can make adjustments in taxation to have a special rate for active agriculture and non-active agriculture. So, there could be a financial factor in how we would wish to implement and enforce certain policy decisions through taxation. You know, you actively ag producer, you might get the preferred agricultural rate. You ag land and you don't want to do it, you'll pay a higher rate. You know, I think some of the things that the Council should be looking at is use it or lose it. You want the benefits of certain programs from real property tax, you have to use it. If not, you're going to lose it and be adjusted in your payments on your land regarding taxation. As another way we might want to approach this also, Chairman, to help and do the enforcement because we keep hearing that is our weakness on policy. How do we enforce it? How do we keep ag lands in ag lands with no enforcement? Well, maybe it's gotta be done through taxation, then, okay, with a smart system that can be fair, accurate, and verifiable. And that is what we're working for under Department of Finance, Chairman. And that is why I think there should be a participation with Planning and Public Works, 'cause I'm looking at them as the potential enforcing arm through taxation. Thank you, Chairman.

CHAIR CARROLL: Members, at the last meeting we began the discussion about which department should be responsible for processing agricultural cluster subdivision. As a recap on the discussion from the last meeting, Planning said Public Works should be responsible for administering this section, since Public Works already processes agricultural subdivision. While Public Works said Planning should be responsible for administering this proposed section since Planning is responsible for the

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administration of Title 19. As I mentioned in my opening remarks, I incorporated revisions to Section 19.30A.040(A), that required the Director of Public Works to process both the agricultural subdivision and agricultural cluster subdivision. But I hope that we can have a discussion that leads us to an agreement about which department is responsible for processing these subdivisions. Please note that the proposed Section 19.30A.035(H) says that the Planning Director shall be responsible for maintaining an inventory of agricultural conservation lots. I believe that whichever department we decide should be responsible for administering this section, should also be responsible for maintaining that inventory. The floor is now open for discussion. Since everybody wants to speak at one time...alright, Planning, do you have comment? I mean, excuse me, Public Works. Let's go to Public Works first since I just put them on...

MR. GOODE: Yeah, Michelle, can go second, she gets the last say. I...a couple things, Chair, come to mind. I did speak to this last time. Again, it's awkward that, you know, in Title 19 it's one place, in Title 19 where we administer something like this. I did ask my staff, I said how many have we done in the last year? So, since your last meeting I found out we did 12 last year. So, it's not a significant burden. Actually, I think Corp. Counsel does a lot of the heavy lifting. David Galazin's nodding to that effect. We simply package it. And depending on if the large lot has like conservation in it, or urban, or some other designations, Planning helps tell us well, how many acres are actually ag. So, we're all kind of working in it. And...but, you know, my staff has been persistent over the years saying, why we, boss, why are we doing this? And I couldn't give a great answer other than, you know, we do that, we have good subdivision files. We keep the records. When someone comes in, in the future and says hey, I want to subdivide this parcel and we can pull out the old file and say well, you can't 'cause you only got one left. They could do that, certainly, if they went to Planning and they had the records, too. So, anyway, it's, you know, again, it's up to you folks. But the volume is, was 12 last year. So, it's not a significant load. Thank you.

CHAIR CARROLL: Planning, do you have comment?

MS. CHOUTEAU McLEAN: Thank you, Chair. I would agree that in whichever department maintains the inventory of the agricultural conservation lots should also be the one to be responsible for processing subdivisions under the scale. I joked with David that Public Works lost that fight 20 years ago, and they keep trying to gain some ground on it. It's been working well with Public Works. I'm not aware of any situations where there've been any problems with maintaining it. So, kudos to them, and we would be supportive of them continuing. Thank you, Chair.

MR. GOODE: One final thought, Chair. One final thought, you're gonna love this.

CHAIR CARROLL: Mr. Goode?

MR. GOODE: You know, I was looking for a really large coin that we could flip. You know, that way kind of keeping Council, make it easy. I was trying to find one that had two

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heads on it, but I just couldn't do it. So, you know, look, if it's the will of the body, you want us to keep doing it, we're fine doing it. I'll just leave it at that. Thanks.

CHAIR CARROLL: Mr. Hokama?

VICE-CHAIR HOKAMA: So, Director Goode, you know, we appreciate you doing it. My question is, since we already know, and, you know, we can all read. So, we already assigned the Finance Director to prepare and maintain perpetual inventory of all lands and equipment of either personally owned, leased, rented, or controlled by the County. So, the list you have is part of this list that Finance is required to have? Or is this a different list that by Charter, Finance is required to maintain?

CHAIR CARROLL: Mr. Goode?

MR. GOODE: Chair and Mr. Hokama, this sounds different. This isn't property that's controlled by us. This would just be a list of properties that have this particular designation and agreement recorded on it. That's my understanding.

VICE-CHAIR HOKAMA: Okay. So, Mr. Galazin, this approval that is required to have, be verified, wouldn't fall under the Chapter 4 I guess where the director is required to maintain this inventory of lands in your perspective?

MR. GALAZIN: Chair?

CHAIR CARROLL: Corporation Counsel, could you make comment?

MR. GALAZIN: Thank you. And so, as you're referring to Chapter 4 in the Charter in subsection, where is it, 11, that the Finance Director prepares and maintains perpetual inventory of all lands and equipment, or other personally owned, leased, rented, or controlled by the County, we wouldn't consider this to be controlled by the County, even if it were subject to a unilateral agreement. These would just be lands that, you know, had zoning, had gone through this special alternative subdivision process, and it just lets, you know, I think as Director Goode mentioned, it just lets them know which properties have already gone through the subdivision so that if somebody tries to come back again, as you mentioned, they maintain great subdivision files. They can pull it out and they'll know right away. So, I don't think there's a conflict.

VICE-CHAIR HOKAMA: So, even let's say, per se, we had that scenario of we were able to make different taxation rates and considerations for active production versus fallow or non-production. So, that determination which would then impact taxation, . . . *(inaudible)*. . . control, that wouldn't come under the control of the County?

CHAIR CARROLL: Corporation Counsel?

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MR. GALAZIN: No, not under this bill that we're talking about now. Although, I think you hit on some really salient points that, you know, I think Department of Real Property Tax, you know, should have some input on what effect, if any, this might have.

VICE-CHAIR HOKAMA: Well, 'cause I'm thinking of doing something next property tax session. So, 'cause I'm, I hear the other Members. And I think that is one way for us to help implement and enforce policy. So, I appreciate your comments. Thank you, Chairman.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, thank you, thank you. I...just listening to everybody and one of the thoughts that keeps on coming to my mind is the ability for designation of prime ag land to be important ag land designation, which is, you know, available through State statute. And I think the only person, or only organization on this island that has done that is HC&S, or A&B with their 36,000 of 27 are IAL. But I wonder if that's something that we need to look at? Is there any value for us to do that for all of our ag lands, to kind of look at it and so, be able to categorize prime ag land? And I like what I'm hearing for discussion. I wonder if you have an opinion on that? I have another question.

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: Thank you, Chair. Several years ago, we asked the State Legislature for funding to put together an IAL proposal and we were not successful in getting that. And then, during our annual budget, during the annual budget process we asked for funding to pursue IAL designation and we were not given the funding for it, and so, we stopped asking. So, in FY '19, we did not request and didn't receive funding for IAL. But in the past, the Department had wanted to pursue that.

COUNCILMEMBER SUGIMURA: So, in relationship to this discussion, is there value to pursue that for this?

MS. CHOUTEAU McLEAN: It would depend on what you mean by value. If one of the goals that some of the Members have talked about is to get agricultural land in production, I don't know that the IAL designation would achieve that. It adds added protections, but that's what this bill also seeks to do. So, it would complement the bill. But I don't know that it would further it or accomplish more than the bill would do on its own in that regard.

COUNCILMEMBER SUGIMURA: So, the unilateral agreement then, fulfills some of the requirements to maintain?

MS. CHOUTEAU McLEAN: It's a...right, similar objective, yeah.

COUNCILMEMBER SUGIMURA: And part of the, my side project is the one farm plan initiative, or one farm plan program, which I'm getting feedback from farmers and

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ranchers, or the different groups. And part of that is the structure that was determined by the departments. And I just want to tell you this because it can help with some of the other Members' discussion is that the Finance, or RPT, has agreed to take in farm plans that right now everybody does it for each, the three different departments. So, they would take in the initial farm plan with the map and the designation and, you know, whatever else would be required. And they would do, they said that they could do the investigation and just to check it out and verify it. And primarily for Water, so, Water would take their designation after they did their inspection to make sure that it's a bona fide, you know, farm plan. And then, of course, when they come before Planning it's something else altogether because we need to, you have to have a whole nother process. But it'll be tied into the process so that it, there would be a designation of a, you know, of a farm plan and agreed on and inspected by RPT. So, if that goes through, and it has to go through, you know, this body. But that's kind of the thought on it. So, I just wanted to add that, you know, that it would add to this in terms of enforcement or questions that may come up because the farm plan has to, you know, be there in conjunction with the land that it's been designated, and of course to receive, you know, real property tax. And I agree with Mr. Hokama's question because I was going to ask that question about how does RPT tie into this because then the homes that are on this ag land, does that then, is it, do they get Ag rates or, you know, what is the, what are the details that are, gets affected. So, I'm curious on that. Thank you, Chair.

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: Members, in looking for this discussion that we were going to have, you know, about Public Works, or Planning, I went and made two amendments over here. What I'd like to do is to put an amendment first for Public Works handling this on the floor. After discussion if that doesn't pass, I have another proposal for Planning to control. I'd like to put that on the floor, so we can discuss that.

COUNCILMEMBER GUZMAN: So moved.

CHAIR CARROLL: And if we don't agree that Public Works should be the one, it gets voted down, then I'll ask for a motion, I'll entertain a motion to have Planning to administer the section. But I would like to go with Public Works first. Alright, the Chair will entertain a motion to amend Section 2 of the further revised proposed bill which you all have, it's been distributed, proposed Section 19.30A.035(H) by striking Planning Director and inserting Director of Public Works in its place.

COUNCILMEMBER GUZMAN: So moved.

CHAIR CARROLL: It's been moved by Mr. Guzman, seconded --

COUNCILMEMBER SUGIMURA: Second.

CHAIR CARROLL: --by Ms. Sugimura. Alright, discussion, maker of the motion?

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COUNCILMEMBER GUZMAN: Nothing further. Thank you, Chair.

CHAIR CARROLL: Discussion, the floor is open.

COUNCILMEMBER SUGIMURA: I think we heard Public Works say that they would, well, they both said they would do whatever needs to be done and Public Works is doing it, so.

CHAIR CARROLL: Public Works, do you have any further comment to the motion on the floor? Mr. Hokama?

VICE-CHAIR HOKAMA: So, Chairman, thank you. You know, right now I'm leaning to supporting you with reservations. I believe my colleague, Ms. King, brought the best question up. So, is this about a subdivision adjustment, or is this a Planning adjustment? And, you know, I'm not too clear what it is 'cause for me, I'm still unsure of my financial impacts. But if we agree that it's Public Works, then this is all about subdivision processing and subdivision adjustments.

CHAIR CARROLL: It's my understanding it would be subdivision. But we can clarify with Corporation Counsel.

VICE-CHAIR HOKAMA: 'Cause that's what it's all about right, creating a cluster under the subdivision which is under Public Works. Okay.

CHAIR CARROLL: Again, that's why I recommended...

VICE-CHAIR HOKAMA: But yet, most of the justification, this is great planning concepts. Okay, planning.

CHAIR CARROLL: That's why we recommended Public Works.

VICE-CHAIR HOKAMA: So, again, Chairman, I just, you know, telling you I have a dilemma 'cause the convincing, you know, discussion is it's a great planning thing. But yet, we're talking about a subdivision component of processing from the Public Works. So, you know, I don't know why we don't make it Management or Finance either then. Thank you, Chair.

CHAIR CARROLL: Any further discussion to the motion on the floor? Ms. King?

COUNCILMEMBER KING: Chair, yeah, you know, I still have that dilemma because I keep hearing this is about adding more agricultural lands, making more agricultural lands available. And so, who, which of the two departments currently has the inventory of agricultural lots?

VICE-CHAIR HOKAMA: David, right?

CHAIR CARROLL: Planning?

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COUNCILMEMBER KING: That's in Public Works or Planning?

CHAIR CARROLL: Planning Department?

MS. CHOUTEAU McLEAN: Public Works administers the Subdivision Code --

COUNCILMEMBER KING: Well...

MS. CHOUTEAU McLEAN: --and so, determining how the sliding scale works and how many lots are remaining, if there's any subdivision potential remaining under the scale, that's administered by Public Works.

COUNCILMEMBER KING: Yes, that wasn't my question though. I said which department currently maintains the inventory of agricultural conservation lots?

MS. CHOUTEAU McLEAN: Right now, there is no such thing as an agricultural conservation lot. This bill would create that.

COUNCILMEMBER KING: Okay. Well, do we have, which department has the inventory of agricultural lots?

MS. CHOUTEAU McLEAN: I'm...inventory of agricultural lots, I can't say that there's one department that has an inventory of agricultural lots. I mean, Real Property has the parcel inventory, Planning maintains the zoning inventory, Public Works administers the Subdivision Code. So, there isn't necessarily an agricultural lot inventory presently.

COUNCILMEMBER KING: Okay. 'Cause I still, Chair, am not, you know, my mind, I mean, when I asked the question about the intent of this bill, it was more, it was kind of from the point of view of we have to decide what the intent of this bill is. If the intent of this bill is to create more productive agriculture, then we might need to strengthen certain parts of this, the language. If the intent is to make it easier to do subdivisions in agricultural lots then, you know, would go ahead with these other uses. But we, you know, then that would squarely put it into Public Works. But I'm just not convinced yet. So, I truly don't know how to vote on this. And I'm kind of hoping that we can take it back to, you know, a temporary working group, or bring it back to the agricultural community because I'm hearing two different things. I'm hearing one thing from folks who want to subdivide. I'm hearing another thing from folks who want to see more agriculture. And to me it's, you know, when I first looked at this again I'll say that I assumed it was, we were making it easier to make these subdivisions so that we'll get more agriculture, that the end intent was more agricultural, more productive agricultural land. And I'm not sure that that's accomplished in this bill from what I heard.

CHAIR CARROLL: The Chair's recommendation is brought, that we have the motion that we have on the floor, was brought about from all of the discussions that we had before.

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And the reason I put this on the floor to add further discussion, but there is no way I would be going there and sending this out to somebody else. This is a policy decision. We have all this information before us. This is not exactly brand new. We need to go over there with the knowledge we have, and we'll make these policy decisions and that's why we're here.

COUNCILMEMBER KING: Okay. Well, you know, just, I will just say that until the last time that we looked at this, this was new, I mean, it was new to me. So, I'm still struggling with the intent.

CHAIR CARROLL: But again, it is either-or, one or the other department, whichever this Council...whatever this Committee decides is the appropriate action is what we're going over today. And that's why I put a motion on the floor, so the Members could go over there and with all the information that we have now, can make their views known by a vote. Further discussion? Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. As it appears that we do need to make some amendments to the bill and there may be more amendments to come, I would rather that we have something solidified for the next revision. So, that's why I'm supporting what the Public Director and the Planning Director has relayed to or conveyed on the floor that the Public Director is willing to take on this load. So, just for drafting purposes would like to have something set. We can always amend it later on. But at least this issue has been somewhat resolved moving forward.

CHAIR CARROLL: Any...Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, thank you for my colleague, Mr. Guzman's, comments. I would support his perspective this afternoon. I would say that in Section 1, and as well as in Section 2, under Section A that we be very clear if that is our true intent, Chairman, where I would ask you to consider in the redrafting that we add the protection of active productive agricultural activities. Okay. So, we're clear we're talking about, you gotta use it if you want to use this tool. This cluster tool is for active productive agricultural lands. The lands that will be...maybe we need a clock 'cause either you use it, or you lose it. But I think, you know, that we're very clear, that this is a tool and these our are very specific benefits that we're looking at for helping productivity and bringing in housing for agricultural sector at a price that makes sense, Chair. You know, we've looked at it many different ways which, you know, the Committee we saw various ag proposals that for various reasons they didn't move forward to Council. And that's fine, Chairman. But I think we have something here that can address it from another perspective. And again, taxation is, can be a whipping tool to make it work, Chairman.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Chair, I, so, I agree with Member Hokama of adding the word active. And I think it's what Member Cochran was talking about when we opened. And throughout the bill, this is referred to because of --

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COUNCILMEMBER COCHRAN: . . .*(inaudible)*. . . a motion?

COUNCILMEMBER SUGIMURA: --the title.

VICE-CHAIR HOKAMA: They're going to redraft.

COUNCILMEMBER COCHRAN: Sorry, I had a motion.

COUNCILMEMBER SUGIMURA: Oh, we did have that motion but we're having discussion about this. So, I wondered if that word "active" can be put in more sections of the bill where it says agriculture conservation, before that you can put agriculture, active agriculture, protect active agriculture, where it says conservation. So, if you can add that in to the bill also.

CHAIR CARROLL: Alright, you have that down? Okay. As to the motion on the floor, is there any further discussion on the motion as it has been presented? All in favor say...

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Yes?

COUNCILMEMBER COCHRAN: Chair. Yeah, I'm still, I was listening to Mr. Hokama...and oh, sorry, yeah, you're wondering who's speaking.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. The Department of Finance, I'm reading in the Charter, and I know we went through this. But who prepares and maintains the perpetual inventory of all lands, all lands, and then, Planning Department, prepare, administer, and enforce zoning ordinances, zoning maps, regulations, and any amendments or modifications hereto. So, I mean, I know, yeah, so again, I think it does go to the question of Ms. King about we're focusing on ag and housing and new type of housing model? And if anything in the end, if I'm going to give up some ag, productive ag land, those houses better be affordable. It better be affordable in perpetuity. And the land that's given on that remaining acreages best be something usable that can turn into production, that feeds us, that creates something that gives back. And gullies, heiaus and any anything else that's sensitive, cultural, should be already. That shouldn't even be considered in the number of acreages. That should be a given it's protected. So, that's kind of my general overview. And I think this ought to be about the agricultural production, as Mr. Hokama mentioned too. So, those are just the tip of the iceberg of changes. Also, if we're going to talk about the ag conservation land, yes, make it prime ag so it's usable. And it best not be in any flood zone. No zones that are going to hinder that from being productive as in a flood zone area. So, those types of verbiage, I'm definitely looking forward to inserting here when we come back. Thank you, Chair.

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CHAIR CARROLL: Any further discussion to the motion on the floor? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed?

COUNCILMEMBERS: No.

CHAIR CARROLL: Roll call, Mister...yes.

MR. WAGNER: Chair, it appears that the vote was five in favor, two opposed.

COUNCILMEMBER COCHRAN: No. I think Mr. Hokama...

COUNCILMEMBER SUGIMURA: Roll call.

COUNCILMEMBER COCHRAN: Yeah, you should do a roll call.

MR. WAGNER: In that case...

VICE-CHAIR HOKAMA: . . .*(Inaudible)*. . . Public Works responsible.

MR. WAGNER: Yeah.

COUNCILMEMBER COCHRAN: Right.

COUNCILMEMBER SUGIMURA: That's the question, right, Public Works is responsible?

MR. WAGNER: Yes. Member Crivello?

COUNCILMEMBER CRIVELLO: I'm sorry, I misunderstood the motion.

MR. WAGNER: Sorry. Are we...

COUNCILMEMBER CRIVELLO: Chair, please, read the motion again.

CHAIR CARROLL: Certainly. The motion on the floor reads, well, the Chair will entertain a motion to amend Section 2 of the further revised proposed bill, proposed Section 19.30A.035(H) by striking Planning Director, and inserting Director of Public Works in its place.

COUNCILMEMBER CRIVELLO: I'm going to vote "no" only because at this point I don't really support the existing bill that's before us, Chair.

CHAIR CARROLL: You don't have to explain your vote.

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COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR CARROLL: Just a simple yes or no. We have a motion on the floor. Alright. Proceed, Mr. Wagner.

MR. WAGNER: Member Sugimura?

COUNCILMEMBER SUGIMURA: Aye.

MR. WAGNER: Member Cochran?

COUNCILMEMBER COCHRAN: No.

MR. WAGNER: Member Hokama?

VICE-CHAIR HOKAMA: No.

MR. WAGNER: Member Guzman?

COUNCILMEMBER GUZMAN: Aye.

MR. WAGNER: Member King?

COUNCILMEMBER KING: No.

MR. WAGNER: Chair?

CHAIR CARROLL: Aye.

MR. WAGNER: Chair, the motion fails three to three [*sic*].

CHAIR CARROLL: Alright, Members.

COUNCILMEMBER SUGIMURA: Let's defer this.

COUNCILMEMBER KING: I think it's four.

COUNCILMEMBER SUGIMURA: Let's defer this.

COUNCILMEMBER KING: Four "noes."

CHAIR CARROLL: Members, the motion has failed.

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VOTE: AYES: Chair Carroll, Councilmembers Guzman and Sugimura.

NOES: Vice-Chair Hokama, Councilmembers Cochran, Crivello, and King.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Atay and White.

MOTION FAILED.

CHAIR CARROLL: Would you...

COUNCILMEMBER GUZMAN: Chair, so since it...just to clarify.

CHAIR CARROLL: Yes?

COUNCILMEMBER GUZMAN: Since the motion failed, the existing language, designating the Planning Department, is going to be left within the bill?

CHAIR CARROLL: Right now, in the bill as it is drafted...alright, one-minute recess here. . . .(gavel). . .

RECESS: 3:52 p.m.

RECONVENE: 3:53 p.m.

CHAIR CARROLL: . . .(gavel). . . Alright, it's still split because we didn't decide that one department would go over there and take. So, they both have different responsibilities. And the whole idea was to make one department responsible for everything. So, if you don't want Public Works, the only other department to take over everything would be Planning.

COUNCILMEMBER KING: That's what...

CHAIR CARROLL: However, that would require a motion to take the, in the appropriate section to change the Public Works to Planning. And that would be the second motion that I said that I was prepared to offer on the floor.

COUNCILMEMBER GUZMAN: So moved.

CHAIR CARROLL: So moved. Seconded? There is no second. Motion is gone, is dead. I'm sorry? Mr. Hokama?

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VICE-CHAIR HOKAMA: Chairman, again, yeah, I think part of what I would ask you to consider is at your next meeting also bring representatives from Finance Department and would like to hear their rule. Because, Chairman, one of the components I think we should consider if it make sense in this legislation is the enforcement component of making this policy work.

CHAIR CARROLL: I've already...

VICE-CHAIR HOKAMA: And if it becomes a taxation thing, then Public Works Director, or Planning Director cannot make that change if it's a taxation issue. It's going to have to come from Finance. And the enforcement then, would be Director of Finance if we go with that route in the final legislation, Chairman. That's why I think for us at this time there's a difficulty in finding who we would want to be the key keeper of the policy is because we're not too sure yet. And again, I would want us to talk about enforcement. We keep hearing that from our community. Yeah, you guys pass this, but nothing happens 'cause nobody enforces. Beach safety, nobody enforces, Parks, nobody enforces, Water, nobody...okay. We hear that enforcement come up over and over, Chairman. And I would like to see if there's a way we can implement in this legislation. Let me tell you, if you feel it in the wallet, I'm sure we'll get enforcement and compliance 'cause nobody likes to feel it in the wallet, Chairman. Thank you.

CHAIR CARROLL: We already have your original comments which we were going to forward to Planning [sic]. We will add your comments now and forward it to them and request that they be, come forward to answer these questions at the next meeting.

COUNCILMEMBER GUZMAN: Chair, may I suggest that we have Finance here as well if we are going to...

CHAIR CARROLL: Who?

COUNCILMEMBER GUZMAN: Finance Department, because it appears that Mr. Hokama is indicating that there should be a component of the Finance Department.

CHAIR CARROLL: Well, that's what I just said.

COUNCILMEMBER GUZMAN: Right.

CHAIR CARROLL: We're forwarding all this. We will let them know what it is, and we will have them at the meeting to answer the questions that have come forward.

COUNCILMEMBER GUZMAN: Okay. Yeah, just to weigh in and see what their input is in terms of whether they have the capacity to administer the final version of this bill. Thank you, Chair.

CHAIR CARROLL: We will make sure that Finance is here, and we will forward them all the concerns that came up on the floor, so they will be prepared to answer those questions

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and any other questions that the Members may have. Members, I had one more thing over here that I'd like to do. I know it's getting late. But as you know, Mr. Goode did have a proposed amendment and I would like to put that on the floor for the Members' discussion. The Chair would entertain a motion to amend the proposed section 19.30A.035(D), Maui County Code, in accordance with the documents distributed entitled, recommended amendment from the Director of Public Works.

COUNCILMEMBER GUZMAN: So moved.

CHAIR CARROLL: So moved? Moved, and seconded?

VICE-CHAIR HOKAMA: I'll second the... Chairman, for now.

CHAIR CARROLL: By Mr. Hokama. Discussion? And this is, we can all, if you'd like further clarification Mr. Goode is over here too, if you have any questions about his proposed amendment. Ms. King?

COUNCILMEMBER KING: Thank you. Chair, I just wanted to get Planning Department's weigh-in on the proposed amendment.

MS. CHOUTEAU McLEAN: Thank you, Chair. It does seem to be cleaner than having the second table. It, my understanding, and I'd want to read through it again, but it substantively and effectively is identical to the bill as presented. It's just in a cleaner format. So, I'd want to review it to make certain of that. But it doesn't change the substance or the outcome at all.

COUNCILMEMBER KING: Okay. And then, Chair, if I may ask Mr. Goode, you made a statement earlier that this wording would clean up any potential loopholes --

CHAIR CARROLL: Mr. Goode?

COUNCILMEMBER KING: --that might be found in this section? So, can you just kind of clarify what that might be, again?

MR. GOODE: Thank you, Chair and Ms. King. I think the previous version had not necessarily loopholes but maybe potential loopholes or could be subject to more interpretation. And so, this, the goal here was really is to keep the same intent, as Ms. McLean mentioned. But to make it so that it's pretty black and white to administer.

COUNCILMEMBER KING: Okay. Do you want to name any of the potential loopholes or, I mean, I'm just trying to figure out where it was tightened up so that, what you saw as a potential loophole?

MR. GOODE: Well, I think Mr. Frampton mentioned in the previous meeting, so it had to do, it had, if you've already done a subdivision on the sliding scale, whether to it' full potential or to part of its full potential could, it wasn't clear if you, it was potentially

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unclear whether you could get a whole new set of, you know, get the same number of lots all over again, if you will. I think double dipping I think was a concern. So, it was, the way it was worded, one could read it I guess either way. So, we just didn't want to be in a position where, on the administration side we're spending a lot of time trying to interpret that, or get into a beef with somebody, getting into a lawsuit. I mean, it's just, let's just get it clean first time.

COUNCILMEMBER KING: Okay. Well, from speaking with Mr. Frampton, my understanding was that he was concerned that if you had already started using the sliding scale, you couldn't then come in and do clustering on the rest of it. And even though those were the, even though you were going to do the same total number of lots, so is this, this allows you to do that? To have a combination of the sliding scale and the cluster, as long as the total number remains the same under the sliding scale?

MR. GOODE: I think that's my understanding.

COUNCILMEMBER KING: Okay.

MR. GOODE: Yeah.

COUNCILMEMBER KING: Maybe, if...

CHAIR CARROLL: And Members, again, this changes nothing. This just makes it clearer what is in there already. But there's, this does not create any change. This just --

COUNCILMEMBER KING: Okay. But...

CHAIR CARROLL: --makes it easier for somebody to read, to understand what it is for.

COUNCILMEMBER KING: Okay. But, Chair, I was just told, you know, by Mr. Frampton that the previous version did not allow for a combination of the sliding scale and the cluster. And so, I just wanted to, maybe Corp. Counsel can verify. So, this new wording makes it clear that you can have a combination as long as the total number --

CHAIR CARROLL: . . . *(inaudible)* . . .

COUNCILMEMBER KING: --of lots do not exceed the allowable lots, number of lots under the sliding scale.

CHAIR CARROLL: Thank you, Ms. King.

MS. CHOUTEAU McLEAN: Chair, if I could comment on that? An earlier version of the bill was worded in such a way that it would be one or the other. And the most recent version addressed that and allows them to be combined.

COUNCILMEMBER KING: Okay. Thank you.

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CHAIR CARROLL: Members, further discussion to Mr. King's, I mean --

COUNCILMEMBER COCHRAN: Yeah.

CHAIR CARROLL: --Mr. Goode's recommendation? Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. Actually, it was a question for Ms. McLean because it seems to be very, kind of the opposite I'm thinking, but perhaps not. Item D, the verbiage, first sentence, as an alternative to, but not in addition to, has been taken out. So, I think Ms. McLean, you had that in. So, now you're saying okay?

CHAIR CARROLL: Planning?

COUNCILMEMBER COCHRAN: Was that not the last version, the very last version we looked at had that in it?

MS. CHOUTEAU McLEAN: A version even before that said as an alternative to, but not in addition to. And so, that's where the concern was raised that if someone had started under the original scale, they couldn't then continue with the cluster concept.

COUNCILMEMBER COCHRAN: Right.

MS. CHOUTEAU McLEAN: And so, the language not in addition to, got taken out. And then, as an alternative to, that also suggested that it would be one or the other but not both. And so, by phrasing it that, by clarifying that the maximum number of lots is based on the sliding scale, which is 1930A.030(G), then that sets your ultimate limit. And so, whichever concept you use that limit is the limit no matter what. And that's clearer.

COUNCILMEMBER COCHRAN: Okay. So, it is protecting us from the double dipping concept?

MS. CHOUTEAU McLEAN: Yes.

COUNCILMEMBER COCHRAN: Okay. I just wanted to make sure.

CHAIR CARROLL: Further discussion to the motion on the floor? Seeing none, all in favor of say...

COUNCILMEMBER COCHRAN: Oh, wait, sorry. Chair?

CHAIR CARROLL: Oh, I'm sorry. I thought you were finished.

COUNCILMEMBER COCHRAN: And then, I just want to be clear about the 70 percent of the 92. I guess that's in referencing A...B, 1B, which means the 92 acres, 64 acres will be preserved, at least 64 acres of the 92 would be the preserved area. Is that right? So,

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28 acres could be developed? Is that the math there? Okay. And the 64 acres could have 2 farm dwellings --

CHAIR CARROLL: Planning?

COUNCILMEMBER COCHRAN: --per lot.

MS. CHOUTEAU McLEAN: On the cluster lot, at the last meeting the Committee voted on the uses that would be allowed on the cluster lot and those include farm dwellings and farm labor dwellings. So, yes, it could have the two farm dwellings and farm labor dwellings if they meet the criteria.

COUNCILMEMBER COCHRAN: Okay. And then, on the large preserved lot, did we say you could have, on the, just accessories to the farming or ag production?

MS. CHOUTEAU McLEAN: On the cluster lots, on the one-acre lots you can have any of the accessory uses. On the conservation lot, the accessory uses you'd be allowed to have would be limited. And that's what the Committee discussed last time and voted on just a handful of uses.

COUNCILMEMBER COCHRAN: Okay. Yeah, I still would rather have the housing be affordable in that aspect for sure here. There's, I don't know, Chair, I have a lot of different versions in my head that I'd like to see here and this one fell swoop thing isn't really working for me right now.

CHAIR CARROLL: Thank you. Ms. King?

COUNCILMEMBER KING: Okay. So, under this, in D2, I'm sorry, D1B, it says the minimum area of an agricultural conservation lot shall be at least 70 percent. So, the agricultural conservation lot we're talking about is the remainder of the lot. So, we're saying it only has to be 70 percent agriculture and then the 30 percent could be what?

CHAIR CARROLL: Planning?

MS. CHOUTEAU McLEAN: This says, so, if you have a 100-acre lot, we'll use an easy number, a 100-acre lot then 70, at least 70 acres shall be that agricultural conservation lot. And the remaining 30 acres could be subdivided into the 1-acre lots. However, the maximum you'd be able to get would be 15. So, if you have a 100-acre lot, you could have 15 acre, or excuse me, you could have 15 cluster lots which the bill says can be between 1 and 1½ acres in size. And then, the remainder could be the ag conservation lot, or roadways, or things like that.

COUNCILMEMBER KING: Okay. So, why, I think what's confusing is the way it's worded because I thought the agricultural conservation lot was the piece that's left over after you cluster?

MS. CHOUTEAU McLEAN: Yes.

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COUNCILMEMBER KING: So, you've already clustered, now you've got 100 acres leftover, 70 percent of what's leftover has to be in agriculture? What's the other 30 percent of what's leftover? Okay. Because you're talking, are you calling the entire TMK an agricultural conservation lot?

MS. CHOUTEAU McLEAN: You start off with one parcel, un-subdivided...

COUNCILMEMBER KING: A TMK?

MS. CHOUTEAU McLEAN: You have one TMK.

COUNCILMEMBER KING: Right.

MS. CHOUTEAU McLEAN: Let's say that's 100 acres in size. Okay. So, the...

COUNCILMEMBER KING: Okay. But listen to my question. So, that entire TMK is considered the agricultural conservation lot?

MS. CHOUTEAU McLEAN: No.

COUNCILMEMBER KING: Okay. 'Cause that's what it says here.

MS. CHOUTEAU McLEAN: No.

COUNCILMEMBER KING: The minimum area of an agricultural conservation lot shall be at least 70 percent of the subject lot area. So...

MR. GALAZIN: I think, Chair?

CHAIR CARROLL: Let Corporation Counsel to comment.

MR. GALAZIN: Thank you. Yeah, Councilmember, if you look at the first page, the subject lot area is defined as the size of the entire agricultural cluster subdivision to begin with. So, that limitation, the 70 percent of the subject lot area means 70 percent of what you started with before you carved anything out.

COUNCILMEMBER KING: Okay.

MR. GALAZIN: So, it's 70 percent of the whole shebang.

COUNCILMEMBER KING: Okay. So, 70 percent of 92 acres is about 55 acres. So, 55 would have to remain in, be the agricultural conservation lot. And then, the other 37 could be the clustering? Okay.

MR. GALAZIN: But that would still be subject to limitation, you know, they would only be allowed I think 15 if we're talking about a 100-acre parcel, so.

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COUNCILMEMBER KING: Fifteen...

MR. GALAZIN: Between one and one and a half, so, you know.

COUNCILMEMBER KING: Okay.

MR. GALAZIN: You'd be looking more at around 85 --

COUNCILMEMBER KING: Okay.

MR. GALAZIN: --acres.

COUNCILMEMBER KING: So, is there something else that they could do with that balance of acreage? You know, if you only need, if you only need, what is 15 times 1.5? You need 15...22 acres, say, for the clustering, you have to keep 55 acres in conservation. So, is there like a balance, you've got a balance of, I don't know, 15 acres, something like that?

MS. CHOUTEAU McLEAN: It would predominantly go into the conservation lot. When you create a subdivision and you have lot sizes that are between one and one-and-a-half acres, you also have, you can also have roadways and other things that use up land area but that aren't lots. So, all of the balance wouldn't go into that conservation lot.

COUNCILMEMBER KING: Okay.

MS. CHOUTEAU McLEAN: But most of it would. There could be a roadway or something like that.

COUNCILMEMBER KING: Okay. But there's not like, there's not an intent to have, to split it off and have it be something else other than...

MS. CHOUTEAU McLEAN: It couldn't be...

COUNCILMEMBER KING: Whatever's the remainder after your clustering is the agricultural conservation lot?

MS. CHOUTEAU McLEAN: Correct. There is no other lot available.

COUNCILMEMBER KING: Okay. Yeah it just kind of leaves that little window there that's undefined.

CHAIR CARROLL: Further discussion to the proposed amendment that we received from Public Works? Ms. Cochran?

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COUNCILMEMBER COCHRAN: Chair? In line with Ms. King's questioning and the remaining percentage, that would allow 15 units? Your example with the 100, 70, and 30 --

CHAIR CARROLL: Planning?

COUNCILMEMBER COCHRAN: --is that right?

MS. CHOUTEAU McLEAN: If you have a, if you start with a 100-acre lot --

COUNCILMEMBER COCHRAN: Yes.

MS. CHOUTEAU McLEAN: --that's never been subdivided before --

COUNCILMEMBER COCHRAN: Right.

MS. CHOUTEAU McLEAN: --you, under the way the bill is written, you could get 15 cluster lots.

COUNCILMEMBER COCHRAN: Okay. And those lots, what are the sizes? Are there limits to the size of the home on these lots? 'Cause I see the developable lot square footage. But does that mean the entire lot can be the home?

MS. CHOUTEAU McLEAN: They're, so, as you have noticed, the lot is limited to between one acre and one-and-a-half acres. And then, the bill also calls for a maximum developable area of 4,000 square feet. So, the home, and if you have the second farm dwelling, that second farm dwelling is already limited to 1,000 square feet. So, the main home would be limited to 3,000 square feet. And if you have a garage, that would count toward that area as well. So, the total footprint you could have on that one to one-and-a-half-acre lot would be 4,000 square feet.

COUNCILMEMBER COCHRAN: But that would be inclusive as you just mentioned the driveway, what, that's strictly the dwelling or deck?

MS. CHOUTEAU McLEAN: I don't believe we count driveways, but decks would count, a garage would count.

COUNCILMEMBER COCHRAN: That's like really huge. It's like bigger than the lot my mom's three-bedroom, two-bath house is on. Okay. Doesn't seem affordable to me.

CHAIR CARROLL: Further discussion to the motion on the floor?

COUNCILMEMBER KING: So, Chair, just to be clear, we're just voting on this one amendment from the Public Works Department --

COUNCILMEMBER COCHRAN: Right.

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COUNCILMEMBER COCHRAN: Well, yeah, it was just how, are we able to submit amendments to this? Can we do that ahead of time? Or how do you want that being done, amendments to this bill? Amendments?

CHAIR CARROLL: I don't have any further amendments.

COUNCILMEMBER COCHRAN: No, I do.

CHAIR CARROLL: Oh.

COUNCILMEMBER COCHRAN: So, I would like to know when and how you want me to submit it to you.

CHAIR CARROLL: You do? If you, no, the Chair, excuse me, the Chair will accept amendments from the floor, yes.

COUNCILMEMBER COCHRAN: So, from the floor?

CHAIR CARROLL: Yeah, that means you.

COUNCILMEMBER COCHRAN: No, not right this second, when we return. I want to --

CHAIR CARROLL: Yeah.

COUNCILMEMBER COCHRAN: --you know, prepare it and work with...

CHAIR CARROLL: Oh, no, no, the Chair will accept amendments from the floor. So, at the next meeting if you want to prepare amendments, you'll have time to go over there and, you know, work out the verbiage and everything else. And the Chair will be accepting from any Member, amendments on the floor.

COUNCILMEMBER COCHRAN: Okay. Sounds good, thank you.

CHAIR CARROLL: Any further discussion or requests? Ms. King?

COUNCILMEMBER KING: No not on --

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER KING: --this issue.

CHAIR CARROLL: Mr. Hokama? Ms. Cochran?

COUNCILMEMBER COCHRAN: No, Chair.

CHAIR CARROLL: Ms. Sugimura? Ms. Crivello? Alright, we, if there's no objection, I'm going to defer this item.

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COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: AA, MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR CARROLL: This item is deferred. We have one more item on the agenda today. But I don't even think we get time for me to read through the initial parts.

ITEM LU-58: WAIALE ROAD EXTENSION PROJECT (WAILUKU) (MISC)

CHAIR CARROLL: Alright, the second item on the agenda today is LU-58 Waiale Road Extension Project Wailuku. And just so the public knows, I'm going to just briefly explain what the bill is. Members, during this year's Budget Session, the Budget and Finance Committee discussed the Waiale Road Extension Project which was proposed to be a two-lane roadway extension to Waiale Road from Waiko Road to Honoapiilani Highway, including a bridge spanning Waikapu Stream and other safety improvements. The project was to cost \$2 million in 2019 for project design and cost, and an anticipated \$18 million in 2022. The matter was referred to the Committee because the uncertainty stemming from condition 3A of ordinance number 2053, which is, has been distributed for your reference. The condition states, the developer, Kehalani, shall participate in traffic improvement needs, including the extension, construction, and improvement of Waiale Drive from the vicinity of the proposed Mahalani Street intersection to Honoapiilani Highway in conformance to the standards of the County of Maui. Land construction of this, land and construction of this roadway extension is to be funded entirely by the applicant and shall be ordered...offered for dedication to the County of Maui upon completion of its construction. By correspondence dated April 11, 2018, the Director of Public Works stated it is clear the reference to Honoapiilani Highway in Condition 3A of the ordinance is at the intersection of Honoapiilani Highway at Kuikahi Drive. Since then, Waiale Road was built by Kehalani, and Kuikahi Drive was built by the County of, using Federal funds. Kehalani had also completed other roadway improvements required by the ordinance. However, the Director of Planning pointed out in correspondence dated July 16, 2018, other requirements of the ordinance may not be fulfilled. Correspondence from the Budget and Finance Committee Chair, dated April 16, 2018, also requested the Department of Corporation Counsel's response to the question about whether a private entity is responsible for funding the extension project. Corporation Counsel responded on April 18, 2018, stating that further research is required to make the determination. That said, the Council referred the matter relating to the Waiale Road Extension Project, CBS-1069, to the Land Use Committee on May 18, 2018. Since that time, the Chair requested the Department of Corporation Counsel and Department of Planning conduct the research necessary to opine on the matter. Both have responded to my requests and both are here to go over the responses and any other questions the Committee may have on this item. If the Committee is willing to stay for another 15 minutes or so, we can at least go over

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there and put this on the floor. Alright, Corporation Counsel, we're going to change. . . *(inaudible)* . . .

COUNCILMEMBER COCHRAN: Microphone, your mic is off.

CHAIR CARROLL: Alright, Corporation Counsel, thank you for your thorough response to our request for further research. Could you please summarize your finding as explained in correspondence dated July 17, 2018, to the Committee?

MR. HOPPER: Thank you, Mr. Chair. I'm, I see we have ten minutes left. I'm not sure how late the Committee wants to stay. But I can at least go over, briefly, a summary of the letter I had written. I think we were able to answer some questions and some questions remain unanswered. But in follow-up to the April correspondence from Budget and Finance Committee, there was a question as to whether or not the current Waiale Road Extension Project, which is the extension of Waiale Road from its current terminus at Waiko Road to a point connecting with Honoapiilani Highway in the vicinity of the Tropical Plantation. That distinction is significant because we're going to talk about several different Waiale Road Extension Projects based on history. The question that I was asked was whether or not a private entity was responsible for that current extension, which is a project that's being contemplated. Specifically, I was asked about a condition on the Wailuku Project District 3, which is better known as the Kehalani Development. There was a zoning ordinance, Ordinance 2053, that had a variety of zoning conditions in it. And in that zoning ordinance, condition three went over specific traffic improvements that were required to be completed. And one of them as you read in your introductory remarks, talked about an extension, the condition read, the extension, construction, and improvement of Waiale Drive, from the vicinity of the proposed Mahalani Street intersection to Honoapiilani Highway, in conformance with standards of the County of Maui, land and construction of this roadway extension is to be funded entirely by the applicant and shall be offered for dedication to the County of Maui upon completion of its construction. Well, reviewing this condition, there was some discussion over where this Honoapiilani Highway connection would be, and where that was contemplated. And what I wanted to be able to do, was to review the project file for this project and as such, since this was approved in 1991, the Planning Department had to order documents from storage. We got those documents. I did have a chance to read over them, and in the letter that I provided to the Committee dated yesterday, so, I understand if you haven't had a chance to review it, I think I provided some helpful information that I reviewed in determining the exact requirements of condition 3A. And in reviewing condition 3A, in the project file I found a couple of, several important things. One of them was a document provided to the Maui County Council in 1991 that had essentially a list of the proposed traffic improvements for the project. In addition, after that, we did find some correspondence back and forth from the project developer to the County of Maui further specifying those improvements pursuant to the conditions of zoning. And I attached a couple of maps which I believe have been made available to you. If you're reading the opinion letter, the maps are attached. Exhibit "B" to the opinion letter, there is an Exhibit "A" to Exhibit "B" that shows a map that essentially lists improvements that were required at that time and put in front of the Council. There

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was also a list of improvements provided as a, on another map, Exhibit "C" to my opinion letter, Exhibit "A" attached to that provided from C. Brewer Homes, which was the developer at that time has actually a color-coded map that goes over the improvements. And the conclusion that I reached from this is that condition 3A requires, required the developer to fund and construct an extension of Waiale Road from Mahalani Street to intersect with Honoapiilani Highway in the vicinity of Kuikahi Road. At that time, Waiale Road ended much earlier, much further north than it does currently. And so, the extension that was pointed out in both of the maps, one that was provided to Council, one that was discussed after, showed the improvement of Waiale Road being extended to Honoapiilani Highway, in the vicinity of Kuikahi Drive. That doesn't end the analysis though, because there was another zoning condition, condition 3E that talks about a different improvement, and that's called, that talks about the applicant, that condition reads as follows, the applicant shall provide its fair and equitable share of the costs of the planning and construction of a future bypass roadway south of the Waiale Drive extension and the southern end of the project district, past Waikapu Town, which includes, but which is not limited to, the offer of dedication of the future bypass right-of-way to the appropriate governmental body. The value of the applicant's participation in the improvement in the planning and construction of the roadway shall be credited against any impact fee assessment. And that improvement in both the maps that were given to Council, and in the further discussion between the developer and the Planning Department, circa 1995, indicates an improvement that runs from approximately the terminus of Waiale Drive in 1991, which was in the Kuikahi Road vicinity, all the way through Waiko Road, and eventually connecting to Honoapiilani Highway in the vicinity of the Tropical Plantation. So, in my judgment, condition 3E does encompass a requirement from the developer to provide its fair and equitable share of the cost of planning and construction for a lengthy bypass road. But that road would also include the current Waiale Road extension that we are discussing. So, that distinction was very important because condition 3A required the developer to fund and construct in its entirety, that improvement. And condition 3E requires a fair and equitable share, including but not limited to, dedication of the roadway. And condition 3A referred to a connection to Kuikahi Drive further north, condition 3E discusses a much further, I guess a much longer roadway improvement. And the requirement for that road was to provide its fair and equitable share of the costs, including but not limited to, dedication. Now, another issue with these conditions is that it does require a couple of different traffic agreements to be made with the County. There is a condition two, that requires a 20-year master plan for traffic, and a condition four, that requires a traffic study approved by Public Works before each segment of the improvements. In Kehalani's 2018 compliance report they do say that these agreements were, and for condition two, submitted to the County. In condition four, an agreement was approved by the County. At least in the Planning Department's files and in discussing with Public Works and Planning, I haven't been able to locate these agreements. It would be helpful to have an agreement that would set forth what the pro rata share of the developer would be if dedicating, and I would note that in the correspondence to Council in 1991, and in its correspondence to Planning, the only proposed action for the longer, what they called Waikapu bypass, but which encompasses Waiale Road now, was dedication of the right-of-way. They did not propose any additional roadway

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or construction or planning funds. They had proposed dedicating the right-of-way. And it would be helpful to have had an agreement as required by the conditions with the Department to say, that that is an adequate statement based on either a traffic study or other data of your fair share for this roadway. But we don't have that. And so, that's why I say there are still outstanding questions with respect to these conditions. And we did recommend that Kehalani be contacted because they put in their compliance report for 2018, that several agreements were entered into, although we don't have a record. At least to date, I have not been able to find a record of those actual agreements being entered into. And I understand that you're running short on your meeting time. I think if you have time to review the opinion and we can follow up for additional questions, you know, that's an option. I'm certainly available to answer questions. But I understand that your meeting time is short and this represented a fair amount of review of documents and research. And so, we may not be able to cover everything in the time available.

CHAIR CARROLL: Thank you. As your recommend in your correspondence, we will follow up with RCFC Kehalani LLC to find out if the agreements were completed. If not, for the entity to work with the appropriate departments. I'd now like to move on to Planning. Planning, do...in your correspondence dated July 16, 2018, you mentioned a meeting with the Department of Public Works, State Department of Transportation, and Corporation Counsel, that occurred yesterday. Could you please provide any new information gained from that meeting, as it relates to the Waiale Road Extension Project?

MS. McLEAN: Thank you, Chair. Mike did a great job of summarizing the results of his research and it also covers the discussion that we had yesterday. So, I don't have anything to add.

CHAIR CARROLL: And, Mr. Shishido, thank you for coming. We really appreciate it. According to the map the Staff distributed entitled, Graphic Summary of Brewer Home Incorporated's Fair Share Contribution. Are you aware of any opinion from the State Department of Transportation on the Waikapu Bypass?

MR. SHISHIDO: No, we're not aware of any other agreements that, you know, Mr. Hopper talked about, you know, in that compliance report and, not as far as we're concerned, you know it's, I assume they met their fair share agreements.

CHAIR CARROLL: Members, since he was so gracious to come down over here and wait all this time, do you have any questions?

VICE-CHAIR HOKAMA: For the gentleman from the State?

CHAIR CARROLL: We're going to get to Mr. Goode afterwards, but for department, the State Department of Transportation. If not, I appreciate your coming down. We're really stressed [*sic*] for time. We would spend a lot more but thank you for coming. Mr. Goode? Do you have any opening comments, or any comments that you'd like to

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make? We're not going to get into anything real in depth over here. But any comments you would like to make as for representing Public Works?

MR. GOODE: Chair, no other additional comments. I mean, Mr. Hopper summarized I think our collective position very well. And it jives with what I wrote back in April. So, that's it for now, Chair.

CHAIR CARROLL: Alright, we'll spend about five minutes if anybody has any requests. Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, first, I want to thank you for forwarding the information for us to Mr. Hopper and Corporation Counsel. I appreciate the hard work. You know, it's unfortunate, Chairman, unless a Member recalls history, wouldn't have even thought about this or talked about this because nobody else could recall what happened in zoning in 1991. And that is what I'm hoping with software technology even people like me not around, the departments will follow through on ordinances that have directed conditions of zoning for the benefit of the community. Okay. I don't know why we don't have all those housing units that we made conditions of zoning. And why aren't they built yet? Okay. But that's another story, Chairman. But I am, if I heard correctly, Corporation Counsel is still yet to make additional completions of, I guess, awaiting additional information on possible additional agreements, whether it be with Land Court, Bureau of Conveyances, or the succeeding developer's representatives, Mr. Hopper?

MR. HOPPER: Yes, that is correct. There are some points made in the 2018 annual compliance report by RCFC Kehalani, who's the successor to C. Brewer Homes. And they talk about, they say a 20-year master plan has been submitted to Public Works, was submitted to Public Works prior to subdivision approval. And they also talk about a, they call it a long-range traffic master plan, which they say was approved by the State and the DPW. While there were some, it looked like some letter agreements that went back and forth between Planning and the developer, those agreements actually talked about, these will be memorialized in agreement no later than I think it was like May of 1995. And in talking with the departments, we cannot find those agreements and if they were ever memorialized. So, they may exist, and Kehalani does talk about them. But I have yet to, I haven't located them, and I don't think the departments are aware of them. And it would be beneficial to execute those agreements, because I think they really refine things like when the Council puts the term in, fair and equitable share, it really refines what exactly you're going to do and when. And that would've been helpful, certainly.

VICE-CHAIR HOKAMA: Do we have a copy of that 20-year master plan in a department that was submitted for County review and approval? 'Cause I would say that would be part of their supporting documentation that they complied with the conditions since we should have a copy of that 20-year master plan.

MR. HOPPER: In the documents I saw at the Planning Department, I did not find that. And I don't know if, A, I don't know if it was submitted, I mean, I certainly wasn't there in

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1995. But I don't know if it was submitted based on the record and can't speak for the departments. But in my correspondence to them, or in my discussion with them, they have said they don't have anything in the form of a 20-year master plan as stated.

VICE-CHAIR HOKAMA: Thank you, Mr. Hopper. Chairman, I thank you for the efforts you and your Committee have done, your Staff, so, I would support the Committee to allow the department, appropriate departments to go and complete the review or investigation. Thank you.

CHAIR CARROLL: At the next meeting we should have the, more information about the agreements. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And I know this has come up, as Infrastructure Chair, this has come across my desk and come across, of course, the budgetary process many times. And this is definitely holding up some high prioritized points that the community wants, our community plan wants, you know, the list goes on and on that we want affordable housing and we want to do anything in our power as County to help, you know, to help push those forward. So, this is in direct relation, obviously, for Mr. Atherton and the Waikapu Town project. You know, so, I mean, we can, I think we're going to sit here spinning our wheels in a sense. And I know as Mr. Hokama said, you know, going back in history and trying to dig up these files and agreements, or, I mean, again we're going to set this back that much longer. I mean, I would love to see this body, this Council, the developer, whoever involved, along this extension to do a cost sharing, you know, to build this out and to make sure there's no impacts to the State highways and all of that. But we cannot, I just feel like we've been going around and around and around in circles. And I know we have a willing landowner and developer here to provide what this community needs. And we need to give a little too, you know. The other half of that roadside is County. I know it's slated for a baseyard. But what if, what if this particular developer who is very open to building more, would like to assist this County in building additional housing along this same roadway, you know? And so, it's a win-win, I look at it. And as long as that other half is willing to pitch in and we could pitch in, that's that private-public partnership that we all talk about. And it really, you know, never materializes. And I think this is a great opportunity for all of us to share in it for the benefit of the community, which is affordable housing. So, I mean, that's my take. And thank you for all the work in trying to dig up all the back history, and I get it. I mean, from here on out, yeah, by golly, we better start, you know, filing it properly, or you know, backups upon backups or something to where we don't lose these things, where we gotta go search through trailers for documents, and we still are. You know, I don't, I mean, it's frustrating and all I can say is that I'm willing to help step up and work with, you know, a willing landowner who wants to...I mean I don't think it's fair for them to foot the entire bill. Maybe that's somewhere in some agreement somewhere. But we can't find it. So, here we are people, here right now, today, who are willing to help, you know, work with. And so, that's my take on all this. And I'd like to go down that road and figure that out. So, thank you, Chair.

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CHAIR CARROLL: And the Chair --

COUNCILMEMBER COCHRAN: Those are my comments.

CHAIR CARROLL: --and my Staff will be working on trying to trace down these agreements and any that were there. And if there are no agreements that were supposed to be done, we will work with the entities to work with the right departments to go over there and have these agreements be in place. So, hopefully that won't take that long, we hope. But we will do our best to expedite it. And again, there's no legislation attached to this item today. It's merely to clarify who is responsible for what, and when. And so, at the next meeting I think that we should be able to have a very, very good idea, we already do from Corporation Counsel's statement, of where we're at and where we're going to need to go.

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: Alright, Members --

COUNCILMEMBER KING: Chair, can I?

CHAIR CARROLL: --it is late. I'll let one more comment from Ms. King, one brief comment from her before we adjourn the meeting today.

COUNCILMEMBER KING: Okay. Thank you, Chair. I'll try to be brief. But I just wanted to clarify that what we're looking for, is this, on this map, this piece right here is that we're looking for an agreement from a different developer for Kehalani, is that in, with the intent of trying to figure out if we can move ahead with the design of this road? Or, you know, is the intent to, if, I mean...and then I just kind of want to get a timeline because if we have to come back to this Committee for clarification on what already happened and how we move forward, then do we then refer that to Budget and Finance for our budget amendment after that?

CHAIR CARROLL: Well, right now this Committee's only task is to clarify the responsibilities of all the parties involved in the Waiale Road Extension. That is the, that is what this Committee is tasked with right now.

COUNCILMEMBER KING: Okay.

CHAIR CARROLL: And that is all this Committee is tasked for at this time.

COUNCILMEMBER KING: Okay. So, existing or previous agreements is what we're looking for?

CHAIR CARROLL: Yeah.

COUNCILMEMBER KING: Not future.

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CHAIR CARROLL: Any agreements that were made before and/or existing agreements that are there now, to find out where we stand and whose responsibility toward what and how much.

COUNCILMEMBER KING: Okay. Because I believe this was, you know, taken out of the budget with the intent that if we could get this clarified, this would be sent to Budget and Finance for a budget amendment. Is that, I mean, maybe Mr. Hokama can clarify that.

CHAIR CARROLL: That wouldn't be considered at this time. Well, this Committee certainly not, wouldn't consider it.

COUNCILMEMBER KING: No, not this Committee but...

CHAIR CARROLL: Budget and Finance, would you care to make comment?

VICE-CHAIR HOKAMA: I'll be happy to post once we get verification because this is in ordinance, Chairman. Okay. Condition of zonings by ordinance, it's County law. So, unless you're going to open up the Zoning Ordinance and make amendments, compliance is compliance. Okay. And I'm not going to let the taxpayers pay for something that was agreed to, to get the zoning approval. Thank you, Chair.

CHAIR CARROLL: And thank you. And of course with the information this Committee can clarify and make clear that will help Finance and Budget and everyone else to go over there and also when a lot of, when portions of this come up for consideration that we will have the information, so we can act on it.

COUNCILMEMBER KING: Okay. Yeah, 'cause I have, you know, same concerns everybody has about 1,000-plus units that we could be, hopefully get started on this year.

CHAIR CARROLL: Corporation Counsel, if you can make comment?

MR. HOPPER: I just wanted to state that I think the initial thing I had said in distinguishing between conditions 3A and 3E, it does not appear that Kehalani would be 100 percent responsible for the, for this roadway improvement because those conditions are different. It talks about fair and equitable share. And the discussion was of the right-of-ways. But the condition A talked about full construction, and it made a distinction between the improvements. This said fair and equitable share for this particular improvement.

COUNCILMEMBER KING: Right.

MR. HOPPER: So, that would have to be looked into, as far as what fair and equitable share was.

COUNCILMEMBER KING: Okay.

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MR. HOPPER: But based on the condition, you know, that is to be distinguished from a different condition that says full construction and providing the --

COUNCILMEMBER KING: Right.

MR. HOPPER: --construction itself.

COUNCILMEMBER KING: Right, I understand that. But in this letter here it says that the conditions of 3A have been met. So, that's done but...

MR. HOPPER: Yes, because that's a different improvement.

COUNCILMEMBER KING: Right.

MR. HOPPER: That has nothing to do with, and it's confusing because back then, they talked about the Waiale Road extension, which ended way further north. So, that extension to Honoapiilani Highway was considered the Waiale Road Extension.

COUNCILMEMBER KING: Oh, okay.

MR. HOPPER: The Waiale Road Extension today was referred to as the Waikapu Bypass back then. And if you look at the map, number 1 was for condition 3A, and number 6 was this Waikapu Bypass on 3E. And that has the portion of that is the present-day road. I guess it was supposed to follow an old cane haul road and that's, and it ends right here where in the vicinity of where we are now. So, that was the, the main purpose of getting this out there, even though we had unresolved questions was, so the Committee could see these maps and other information which we had no access to. We only had the actual zoning conditions which if you read them in a vacuum, could, you know, could be deceiving as far as what improvements they talked about.

COUNCILMEMBER KING: Okay. Alright, well thank you for that. Thank you, Chair, for following through.

CHAIR CARROLL: Alright, Members, thank you very much. I know it's going a little bit late. The Chair appreciates your attendance. If there's no further discussion, if there's no, I will defer this item.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: AA, MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

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CHAIR CARROLL: This item is now deferred. And since we've come to the end of our agenda, this Land Use Committee meeting stands adjourned. . . .(gavel). . .

ADJOURN: 4:44 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

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Transcribed by: Marie Tesoro

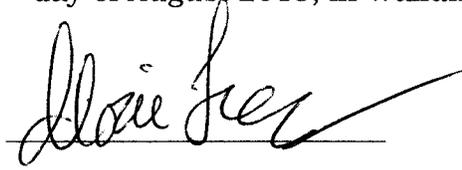
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CERTIFICATE

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

DATED the 9th day of August 2018, in Wailuku, Hawaii

A handwritten signature in black ink, appearing to read "Marie Tesoro", is written over a horizontal line.

Marie Tesoro