

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

December 19, 2018

Council Chamber, 8th Floor

CONVENE: 1:48 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Riki Hokama, Vice-Chair
Councilmember Elle Cochran (in 2:26 p.m.)
Councilmember Stacy Crivello
Councilmember Don S. Guzman
Councilmember Yuki Lei K. Sugimura

EXCUSED: Councilmember Alika Atay
Councilmember Kelly T. King
Councilmember Mike White

STAFF: Carla Nakata, Legislative Attorney
James Krueger, Legislative Analyst
Rayna 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.: Joseph Alueta, Deputy Planning Director, Department of Planning
David Raatz, Administrative Planning Officer, Department of Planning
David Goode, Director, Department of Public Works
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Noelani Ahia
Zandra Amaral Crouse
Hugh Starr
Bobbie Patnode
Annette Niles
Albert Perez, Executive Director, Maui Tomorrow
Scott Shapiro
Autumn Ness
(2) additional attendees

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

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting of December 19, 2018 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First, may I request, if anybody has anything makes noise, please turn it off or put it on the silent mode. With us this afternoon, we have the Vice-Chair of the Committee, Mr. Hokama --

VICE-CHAIR HOKAMA: Chairman.

CHAIR CARROLL: --Mr. Guzman, Ms. Sugimura --

COUNCILMEMBER SUGIMURA: Good afternoon, Chair.

CHAIR CARROLL: --and Ms. Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: Excused is Alika Atay, Elle Cochran, Kelly King, and Mike White. Department of Corporation Counsel representative, David Galazin, Deputy Corporation Counsel.

MR. GALAZIN: Good afternoon.

CHAIR CARROLL: We have David Goode, Public Works; Joe Alueta, Deputy Planning Director; David Raatz, Administrative Planning Officer, Zoning and Enforcement Administration Division, Department of Planning. Committee Staff, we have Rayna Yap, Secretary; Legislative Analyst, James Krueger; Legislative Attorney, Carla Nakata; Dawn Lono, Hana District Office Staff; Denise Fernandez, Lanai District Office Staff; and Ella Alcon, Molokai Office Staff. LU-5, Amending Comprehensive Zoning Ordinance to Allow Agricultural Cluster Subdivisions in the Agricultural District. For people giving testimony, you have three minutes to give testimony. Please identify yourself by your name and any organization you might be representing. Proceed.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. KRUEGER: Mr. Chair, the first person signed up to testify is Noelani Ahia, testifying on agenda item LU-5, to be followed by Zandra Amaral Crouse.

MS. AHIA: Okay. Aloha, I'm Noelani Ahia, testifying on LUC-5 [*sic*]. Thank you for being here today. I am in opposition to these amendments at this time. There seems to be a lot of confusion in the community about the details of these amendments and I would like to see it deferred until the community has had time to gather more information and vet this through thoroughly. The main concern I have is the potential to

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subdivide exponentially without a mechanism for community review and input. Also, this amendment doesn't address issues of affordable housing, size limits, would they be available for short-term rentals, and issues like that. And I think those are other amendments that could be added to this amendment. Given Maui's need for food sustainability and the fact that if the boats stopped coming due to a storm or any other disaster like a nuclear disaster, we don't have enough food and we have to focus on food sustainability first and foremost for all of our people. And issues dealing with ag and legislation regarding ag needs to be given intense scrutiny to ensure that there are no loopholes which allow inappropriate development on ag land. The survival of Maui's people depends on it. In addition, I also have a problem with some language, specifically the part that says lot owners shall not be held liable for any inconvenience, discomfort, or injury to property or health arising from normal and accepted agricultural practices and related operations. I'm not sure that harming people's health is okay. I don't know where that line is drawn. Ag land is supposed to promote health for our people, for the aina, and for the future generations. And for these reasons, I would ask that you defer this item until it's vetted more thoroughly. Mahalo.

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

MR. KRUEGER: The next person signed up to testify is Zandra Amaral Crouse, to be followed by Hugh Starr.

MS. AMARAL CROUSE: Good afternoon, Committee Chair and Councilmembers that are here. I'm sorry to see so many gone. Good afternoon. My name is Zandra Amaral Crouse, testifying on LU-5. Cluster housing refers to a development where homes are situated in groupings relatively close together while larger areas of open space within the development form a buffer with adjacent land uses. Often, this is accomplished through small individual lots with the remainder of the land becoming common ground. There are three primary benefits to this development pattern, one, the contiguous open spaces are good practice either for conservation and wildlife habitat purposes, or for agriculture. Two, grouping homes together reduces the initial investment of roads, streets, and utility lines as well as the public sector's maintenance and replacement costs. Three, relatively close proximity to neighbors means that one is more likely to get acquainted with neighbors and develop a sense of caring communities. This isn't a new concept, guys. It's not something that an urban planner just concocted. Modern...mountain and lake villages, as well as many other historical sites where people basically farm the outskirts of their towns are the prototypes for this contemporary development, with lots becoming very wide at the rear of the lot. In places that practice land use zoning, sometimes the cluster development is able to take advantage of an existing planned unit development district, a PUD. PUDs allow more flexibility in lot size and placement than typical zoning districts. The concept of cluster housing development, sometimes known as conservation subdivisions, also may be adapted to suburban or even urban environments where large, undeveloped parcel has been assembled. From an ecology standpoint, the cluster housing development is preferable to most subdivisions

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conceived under traditional zoning and subdivision laws. When a zoning ordinance requires a minimum of lot size, a minimum amount of street frontage, maximum lot coverage limits, and minimum setback, this encourages lots of a fairly uniform size, each with its own lawn. Yet, when providing wildlife and bird habitat become high priorities in terms of preserving rural character, grassy individual lawns cannot begin to compare to native vegetation and contiguous patches of wilderness. Even in semi-rural developments where the cluster housing idea is often perceived as most feasible, large...if I may conclude in one minute?

CHAIR CARROLL: You don't have one minute. Please conclude.

MS. AMARAL CROUSE: Okay. Basically, the purpose of cluster development is to promote integrate site design that is consistent with its natural and top...topography, I'm sorry, protect environmental sensitive areas, minimize nonpoint source poll...pollution, sorry, and encourage saving cost in infrastructure. We say we want affordable homes for our young men and women. This gives it to you costing the developer little to none. Thank you. Mahalo.

CHAIR CARROLL: Any clarification needed from the testifier?

MS. AMARAL CROUSE: Thanks, guys.

CHAIR CARROLL: Seeing none, thank you. Proceed.

MR. KRUEGER: The next person signed up to testify is Hugh Starr, to be followed by Bobbie Patnode.

MR. STARR: Aloha, Chair --

CHAIR CARROLL: Aloha.

MR. STARR: --Councilmembers. I just want to take a second and thank Councilmember Crivello and Guzman for your service. Mahalo and good luck. I'm here, Hugh Starr, from Makawao and I'm here to testify in favor of LU-5 and I have submitted just this afternoon, I apologize, excerpts from a PowerPoint that I did for the Council a couple of months ago illustrating what the, how land use patterns are affected by the cluster provision and comparing it to the sliding scale, which is always an existing alternative, the only alternative right now, and the previous years when it was all, you were able to develop a piece of ag land into two-acre lots prior to 1998. So, the major benefit as we know, and I think we agree, is this preservation lot will end up, if it is developed as a cluster, be 85 to 90 percent of large parcels over 100, 200 acres. And this will actually provide, in my opinion, the first time that ag land where ag, actual farmers and ranchers aren't competing with the real estate market for farm land because that preservation lot's primary purpose is for agriculture in perpetuity. So, this is a revolutionary idea for Maui. But this concept of clustering has been used across the nation very, very successfully. The, I wanted to address just a prior testifier's thing about, I just wanted, or remind everybody that the State does have a statute, the Right

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to Farm Act where farming is assured on ag land and so, that's something that's already enshrined in our State law. Also, I wanted to remind some that this cluster bill has been heard by the Molokai Planning Commission, the Lanai Planning Commission, and the Maui Planning Commission and it's been before your Council numerous times for discussion. And I want to thank the Council for taking the time to focus on this issue. It's not been easy. And thank you all for actually forming that task force in the last couple of months to try to sort out some of the final details of this. And I commend you for that process and the dedication. So, with that, I just would encourage you to please support LU-5. Thank you.

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

MR. KRUEGER: Mr. Chair, the next person signed up to testify is Bobbie Patnode, to be followed by Annette Niles.

MR. STARR (*from gallery*): Thank you, Chair Carroll. I forgot to thank you.

MS. PATNODE: Good afternoon. Aloha, Council and Chair. My name is Bobbie Patnode, and I'm testifying in support of LU-5. I'm a member of the Ag Working Group and I have participated in discussions to improve this bill after the last time it was on the agenda. This bill presents an alternative to the sliding scale method which will allow large parcels to be preserved in perpetuity. It is not intended to remedy issues we currently have with how ag land is used and should be understood as just another way to divide our large parcels and keep the same rules as apply to all other ag parcels. I recommend a change in Section I. We want to ensure that owners of the preservation lot and cluster lots understand the agricultural nature. And we are governed by Hawaii's Right to Farm Act and this is stated in Paragraph 1. The language in numbers 2, 3, and 4 is redundant with HRS 165, the Right to Farm Act. I attached the Right to Farm Act to my testimony. It's not very long and it is clear. If we add different language to LU-5, this will create confusion and potential legal problems. I recommend we stick with our existing language in our State law as is referenced in number 1 and eliminate the next three paragraphs. Paragraph 2 does not specify injury to property and health of who, the owner, anyone on the property? Paragraph 3 just restates what is in HRS 165 already. Paragraph 4 adds the complication of liability for injury to property or health. Again, injury to whose property or health? The State law does not include this and specifically states nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety and welfare. So, keep Paragraph 1, and take out 2, 3, and 4. Thank you for all the work you've done to make this an option for those who want to subdivide and help preserve agriculture here on Maui. Thanks.

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

MR. KRUEGER: The next person signed up to testify is Annette Niles, to be followed by Albert Perez.

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MS. NILES: Good afternoon, Chair, Council. My name is Annette Niles. I'm a rancher, farmer, added value products that I do. I'm here in favor of the cluster bill. And for the reason is that I live around people that has gentlemen farms and I'm sick and tired of looking at our ag properties get eaten up by people that move in and do not do nothing with it. With this bill, it will preserve the big parts of ag. I have another parcel down below that should have 85 lots that could've been to 20 and 30 lots a piece with big mansions on 'em and slicing and dicing our agricultural property. So, I am in favor of keeping preservation on this ag piece and not seeing condominiumized all around me. And that's all I have to say. Thank you.

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

MR. KRUEGER: The next person signed up to testify is Albert Perez, to be followed by Scott Shapiro.

MR. PEREZ: Good afternoon, Councilmembers. I see you have the volume turned up a little bit. I'd like to wish our departing Councilmembers good luck and thank you for your service. I'm Albert Perez, Maui Tomorrow. I was actually asked to be on the stakeholders' group for the cluster bill. And so, I believe we had two meetings, although maybe we had three and I missed one. Anyway, the current law provides for subdividing based on the sliding scale. And subdivision of our ag lands is already occurring very rapidly. The proposed clustering ordinance does not allow any more lots to be created than the current sliding scale. Contrary to what some, there's some misunderstanding that's happening out there in the public. But for example, 600 acres could only be divided into 44 lots and not 600. So, I think that we've done a lot of work on this bill. I think there needs to be more education. The public needs to be brought in. There's a lot of misunderstanding out there. The basic idea behind the cluster alternative is to preserve larger ag parcels intact. So, on the 600-acre example, instead of a maximum 132-acre parcel, you would get a 514-acre parcel, and then you would have a cluster of smaller 1 to 2-acre parcels. So, that's the benefit. You get a bigger ag lot preserved. The downside is that the infrastructure cost of building infrastructure for the small cluster of lots is much lower. So, I think this is actually going to accelerate ag subdivision and that's the downside of it. They'll be closer together and easier and cheaper to provide infrastructure for. However, I just want to say this bill in its current form, with all due respect, it's not what the majority of the stakeholders' group agreed to. There are some sections that I consider unnecessary, like the Right to Farm, it's already covered in State law. Also, the prohibition on special use permits for cluster lots makes this option different from the sliding scale, less attractive. If it's not just as attractive as the sliding scale, the subdividers will choose the other option and then it won't work. So, I also think that if we're going to make it cheaper to subdivide, we need a separate ordinance, or maybe we could work it into this one, that would require public notice and a sign announcing all subdivision proposals, not just on ag land. Right now, when there's a subdivision, most of the public only finds out about it when the bulldozers show up. I think that we have it almost right but not quite. I'd like to ask that the bill be deferred. It could be

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improved by adding in requirements for public notification. And also, my last comment is that Hawaiian cultural interests were not represented, as I recall, on the stakeholders' group and I think that should be included. So, I ask you to defer the bill. Mahalo.

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

MR. KRUEGER: The next person signed up to testify is Scott Shapiro, to be followed by Autumn Ness.

MR. SHAPIRO: Good afternoon. My name is Scott Shapiro. I'd like to testify on LU-5. I haven't really decided whether I'm for or against this yet. Hearing testimony, I'm leaning to the positive to be for this cluster development. I do have concerns though about a few things. One of the big concerns is kind of the talk of A&B selling land to an outside investor and possibly all that land becoming available for cluster development if we don't know who this, you know, company is, or what the plan is. So, I would just kind of advocate for a little restraint on some of the larger parcels. I looked at the land between Kahului and Kihei before I came over on the, on one of the websites and there were four large parcels that basically comprise all the land between Kihei and Kahului and they're all owned by A&B. It equals about 7,000 acres. So, I'm just kind of worried about that in general, about these large parcels. The other thing is kind of, these agricultural cluster lots aren't really agricultural. They're people's homes. They're, you know, they're kind of pseudo agricultural lots. It's kind of a farce to call them agricultural in any way, a one-acre lot nobody can farm. So, why call it agricultural? It should be potentially zoned as a Residential lot where residential property taxes are paid, as well as residential water rates. So, if it moves forward, I think that should be looked at. I don't know if that's part of it, that if somebody is allowed a lot in a cluster development that they pay agricultural water rates and agricultural property taxes. It wouldn't be really fair. That's mainly just those points. I just wanted something else to think about. I think it's a good idea. But I think it's not ready yet. So, thank you.

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

MR. KRUEGER: Mr. Chair, the last person signed up to testify in the Chambers is Autumn Ness.

CHAIR CARROLL: Anybody that has not given testimony that wishes to do so, please go to the lobby and sign up.

MS. NESS: Aloha, Committee. My name is Autumn Ness. As a member of the public looking at this bill, there could be two really good goals which both I am really interested in. One is incentivizing the building of housing which would fill a need for our residents, and also, incentivizing ag on ag land. Both are great if done properly. But I see some big holes in this bill. The first one in Section I that has the, essentially

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what the other testifier was talking about is the Right to Farm language. I actually love Right to Farm language. You can't put a house next to a pig farm and then complain that the pigs stink. I agree with that language completely. However, I do, being really intricately involved with State and court level pesticide law, I see a problem arising when you put, reinsert different Right to Farm language in a County level bill, especially because right now, for example, there's Hawaii pesticide law and case law that says that pesticides shouldn't move off a target. It's already illegal. So, essentially when you're asking someone to sign a waiver to move into an adjacent lot, they're signing away their rights to complain about overspray which is, undoes the whole entire regulatory framework of keeping your pesticides on your property. So, I think referring to HRS Right to Farm law in this bill and just leaving it at that would be a really good idea and would accomplish the same thing with less legal questions in the future. Also--that was my main point--while I'm here, the other goal which would be, I'm assuming as a member of the public who is really concerned about housing policy, that if the intent is to increase, or to incentivize the development of affordable homes, it would behoove us to A, exclude the short-term rental and B&B activity on all of these parcels that would keep these homes in locals' hands. And also, lower the size of a maximum allowable size of dwellings. We know that if you give developers a range, you're about to, you're allowed to develop homes between the 400 and \$600,000 range and call it affordable, the develop \$600,000 homes because that's what's more profitable. That's their job is to build for profit. So, if we tell them you're allowed to build a home up to 4,000 square feet, they're going to build a home up to 4,000 square feet. And nobody I know that needs a home right now can afford that dwelling. So, if we write into this law, we're going to allow you to develop in clusters, but the max size of those homes is something like 1,500 square feet. We are by default making sure that what is developed on those lands is something that local people can actually afford. And that's a need, we don't need 4,000-square-foot homes on ag land right now. We just don't. The need in our home, in our community is for starter homes, for workforce, or whatever you want to call it. But whatever can be afforded is something in the 1,500 square foot or less range. So, it would be cool if it was in that bill. Thank you.

CHAIR CARROLL: Any clarification needed from the testifier?

MS. NESS: Thanks.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Ms. Ness, for your input. One of the questions I have is, initially when this bill came about being drafted in 2015, we had a concept of having the smaller lots be affordable agricultural lots for those who could not attain the large lots via lease because during those times in 2015, and it may be happening right now, is that startup farmers that go through the mentoring program at the Untied Farmers Association were having a hard time getting leased lands. And so, these smaller lots were comparable to like, look, can we have these small lots, live on them, and try farming? And have it kind of a agricultural/affordable housing cluster area. And then keeping the large contiguous lot via unilateral agreement as in

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perpetuity in agriculture, not to be touched other than for agriculture. My question is, would that concept be better posed in the bill or just the language in more general terms? Because that was the original intent way back when. We just didn't...it was in there, this, I think this might be the tenth or eighth draft.

MS. NESS: Right.

COUNCILMEMBER GUZMAN: But it was in there originally.

MS. NESS: Right.

COUNCILMEMBER GUZMAN: So...

MS. NESS: What was the max, the maximum allowable size of a unit was in the original bill? I can't remember.

COUNCILMEMBER GUZMAN: The original bill didn't have the size of the unit. But the, I think maybe the ninth draft at one point we did put in maximum square footage. It didn't make it through the Committee.

MS. NESS: Right.

COUNCILMEMBER GUZMAN: I believe Chair Hokama was filling in for Mr. Carroll, requiring us to get some stakeholder meetings. During that time, the footage was removed out of the eighth draft, I believe --

MS. NESS: Right.

COUNCILMEMBER GUZMAN: --ninth draft, yeah. So, it was in there --

MS. NESS: Yeah.

COUNCILMEMBER GUZMAN: --it's just the restrictions --

MS. NESS: Right.

COUNCILMEMBER GUZMAN: --added more hurdles --

MS. NESS: Right.

COUNCILMEMBER GUZMAN: --and so, we just took it out, so.

MS. NESS: If you're asking my opinion, whether that should be put back in, from my understanding, if I'm understanding this correctly, once this bill becomes law, there is no further Council review or anything. And it, I don't know, I think it should be put in there because right now, if the intent of this bill is to do two things, then that should be clearly stated in the bill, you know. And like I said, if developers are allowed to

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build this big of a house, they're going to build this big of a house just because it's more profitable. So, if you want to put that safeguard, if you want to have that safeguard to actually make sure this is providing housing for people, I feel like it should be in the bill. But that's my opinion. I wasn't involved in the working groups for...I don't know why it got taken out. But I feel like it's important enough that it should stay in there.

CHAIR CARROLL: Thank you.

MS. NESS: Thank you.

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

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR CARROLL: 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. Having no one further in the Chamber, and nobody in the District Office waiting to give testimony, if there's no objections we will close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

. . .END OF PUBLIC TESTIMONY. . .

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

CHAIR CARROLL: Members, we have one item on the agenda today, LU-5 Amending the Comprehensive Zoning Ordinance to Allow Agricultural Cluster Subdivisions in the Agricultural District. The Committee last met on this item in September 5, 2018. At the meeting, the Committee received much testimony requesting revisions to the proposed bill as it was considering at that time. As such, the item was deferred. Since that time, Councilmember Guzman has consulted with the community on the

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item and prepared a new proposal for us to discuss today. Mr. Guzman, could you provide the Committee with any opening comments you may have, as well as the summary of the revisions you are proposing?

COUNCILMEMBER GUZMAN: Thank you, Chair. Yeah, I would just make a quick correction. During the last meeting, I believe it was chaired by Mr. Hokama. And he had suggested that a, further revisions be conducted with a stakeholder group. Councilmember Sugimura was the one that reached out and created the stakeholder group and invited me to attend and to help vet the amendments through. We had had three meetings on the various issues that were presented during the last Committee and we're presenting the amendments today. Also, this item was, as indicated in my explanation to the testifier, was sent to the Commission, the Planning Commission I believe in 2015. It then went through the vetting of all the Planning Commissions, came back with the original bill. I then brought that bill to a planning conference that the State conducted, and it held numerous accolades from both the developers and the environmental groups. It then got, from the Commission, was passed to, forwarded to I believe to Don Couch's Committee, which was Planning, and several other revisions were made and then that subject matter was then transferred to the Land Use Committee which you chaired, and you made in your Committee several other amendments to it. And from there, we took it as to the stakeholder groups. Just a quick explanation, the intent has remained the same. And if I could explain that to the general public, just by this demonstrative exhibit that the, one of the testifiers had submitted I'd like to show this to *Akaku* that we, in our County, we have what you call a sliding scale ordinance which requires that all agricultural land that is going to be subdivided be required to be subdivided by a sliding scale formula. That is the current law. So, if you have, for example, 450 acres, you put that through the sliding scale formula, and now to, in order to subdivide even one parcel of your, of that agricultural land, you are required to subdivide the entirety, the entire 450 acres if you are going to subdivide. And it will be required to be subdivided, for example, 450 acres, 14 lots would be 2-acre lots, 8 lots would be created with 15, as 15 acres, 5 lots would be created for 25-acre lots, and 2 lots would be 40-acre lots. This is our current law. What this bill does is gives an alternative. We still have the sliding scale formula. You have to use the entire parcels and subdivided into these different hodgepodge sizes, thereby utilizing all of the space. And some of these spaces that are here are gentlemen estates as we all know, versus an alternative measure which this bill provides. It doesn't replace the sliding scale formula. It just gives an alternative to allow the same amount of agricultural lots, under the sliding scale it would be a total of 29. The total under this agricultural cluster bill would still be 29. But the 29th agricultural lot would be a very large contiguous lot, this huge open space here. And 28 of those would be divided into smaller lots here. So, it would be the same amount under the sliding scale lots allowed and 29 lots allowed in this bill. But only a reconfiguring so that this bill would allow this huge contiguous lot here to preserve. And so, when we got into Committee, there was issues as to, and one of the issues was do we allow the same permissive uses in this bill, this ag cluster bill as is being utilized and being permitted under the sliding scale? Permissive uses under agriculture in our Code Title 19 allows, if you're going to farm, then it has accessory uses and these accessory uses under the formula of what we currently have are, let's

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say, hiking, ag...commercial ag structures, things like that. These are other permissive uses, accessory uses that are all attached to Agricultural-zoned land. Now, the issue is do we allow the same permissive uses in this cluster type alternative to it? And so, the Committee...the stakeholders group made some amendments that basically are in the bill now that will allow the permissive uses so that the lots that are within this bill are at par with the lots that are permitted in the sliding scale formula. So, I know that during our last Committee meeting, the Councilmembers wanted to limit, and they suggested limiting the accessory uses. And so, we went through all the accessory uses and voted on whether or not some accessory uses would be allowed, and some would not. The stakeholder group had vetted it through and there's some rationale as to allowing what they had come to realize that to be on par with the sliding scale, all the uses in the sliding scale, in the current law that we have should also be permitted in this alternative way of subdividing so that there would be...there wouldn't be any kind of discrimination towards subdividing the lands this way, while in fact this is more beneficial to our County when you have larger open spaces dedicated in perpetuity. So, this larger scale, as indicated, this larger lot would be dedicated in agriculture via a unilateral agreement. So, it would be filed with the Bureau of Conveyances and would run with the land. So, this large contiguous lot would remain in agriculture and these other cluster lots that are smaller here, the other issue there was in the previous bill limited these smaller lots to certain, only certain uses. The stakeholder group again had come to the conclusion that they should be, these smaller lots should have the same permitted uses as a normal Agricultural-zoned land under the sliding scale. So, we made amendments to that. There was another issue as to the Right to Farm Act. These smaller lots on this ag cluster alternative, they wanted to make sure that all of the lots here are farming lots, even if it's two acres, yeah? They should be farming. And so, one of the issues came up that they, we should have language in there that quotes the HRS Chapter 165, which is the Right to Farm Act. So, we incorporated those language into the bill. But according to some of the testimony received today, it's duplicate as well as it may be confusing. So, I understand that maybe we should just leave it as just citing the HRS Right to Farm. I do have proposed language that was given to me yesterday by the Farm Bureau. But it, the language that's proposed in my amendments to today's bill just mirrors the HRS. It's just purely, you know, taking it word for word on the Right to Farm Act. So, I'm not sure whether or not this body would like to place that language in there instead of citing the HRS section. We've received some commentary from the Planning Department which was quite surprising because in the previous versions the Planning Department supported this bill. But now that the permissive uses that are normally used in the sliding scale, our laws today, since we are now allowing in this bill those same uses under agriculture, there seems to be an opposition from the Planning Department. So, maybe we need more work. It sounds as though the public may not understand the concept of the sliding scale formula versus this alternative way of being able to preserve larger tracts of land. And so, I would suggest that maybe we allow that opportunity for more education to the public and it's your call, Chair. I can propose these amendments before you take action on the bill.

CHAIR CARROLL: Yeah, we're going to get into that --

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COUNCILMEMBER GUZMAN: Okay.

CHAIR CARROLL: --shortly.

COUNCILMEMBER GUZMAN: Sure. Okay. So, thank you.

CHAIR CARROLL: Let the record show at 2:25, Ms. Cochran has joined us.

COUNCILMEMBER COCHRAN: Chair, thank you very much.

CHAIR CARROLL: Thank you. Alright, Members, and what Mr. Guzman went over, the proposed amendments are on Page 3, and the Right to Farm reference is HRS 165 in cluster lots for the UA. Alright, Members...thank you, Mr. Guzman. And, Members, the Chair's intention today is to discuss Councilmember Guzman's proposal and defer the item. I have submitted County Communication 15-152 and the revised proposed bill for Council consideration. They are posted on this Friday's agenda. Before we begin further discussion, I'd like to receive comments from the departments. Public Works is not here. Planning Department, Members, we received a response from the Planning Director dated October 18, 2018 providing comments on the latest version of the bill. Deputy Director Alueta, do you have any comments to provide at this time?

MR. ALUETA: Thank you, Mr. Chair. Good afternoon, everyone. Yeah, the bill that is before you is significantly different from our previous bills that we reviewed. Our letter dated December 18, 2018 that was transmitted to you summarizes the significant changes and our opposition to the bill in its entirety at this point in time. The changes that were made significantly undermine or reduce any benefit that would have occurred to encourage or protect agricultural lands in Maui County. One, the sliding scale, we feel this, the current provisions as, is basically an end-around around the existing sliding scale provisions which have greatly reduced the subdivision of agricultural lands. This basically goes back to pre-'98 where lots could be chopped up into two-acre lots and that's basically what will happen as a result of this with the cap, with the only cap being the maximum number allowed under the sliding scale. Under the sliding scale, if you have a 450-acre parcel, as indicated by Mr. Guzman, you are not required to subdivide that entire 450 acres at the onset. You can hold agricultural lots in reserve and you see that in many places here right now is that large agricultural lots because it is not feasible. Once they hit, once they do the maximum of 14 or 15 2-acre lots and they get into the 5 and 15, once they get larger than that, it's not economically viable for the subdivider, for the landowner or it's not very, it's not profitable anymore because the infrastructure cost gets stretched out and you have in a roundabout way you get a large agricultural lot preserved as a result of the sliding scale. We saw the benefits from this cluster housing in the sense that it would have one, preserved a larger single agricultural lot for agricultural purposes. But by adding all of the accessory uses that would be allowed, you kind of, you lose that. The other concern, although it's not so much a concern, but you, to the benefit, and we, I guess we were given up to the benefit of the developer is that they would be able to have reduced cost on the development of these smaller cluster lots. In exchange, the community would

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gain a preserved in perpetuity, a large agricultural lot that could be preserved. Those preservations, again it would be undermined by that allowance for a lot of the different uses, including B&Bs and STRHs, as well as some kind of riding stables that are allowed. And we had agreed to it previously to allow for accessory uses and that would purely be beneficial toward a genuine agricultural operation and the current amendments do not do that. Secondly, another concern that we had that is no longer being addressed is the maximum lots. As we indicated, and we give an example, we felt I think we had at the time that the maximum without any public review would be like 40 or 50 lots because we do have large agricultural lots, single lots of 7,000, 5,000 acres. And in our letter, we do give examples. So, a 3,000-acre parcel would have the potential to develop 127 lots. A 5,000-acre parcel would be 192. And I believe in one of the meetings Ms. Cochran had brought up about her concern of some land near her that is a large single owner, a large single lot that could be chopped up without any public review, without outside. And we felt that up to 50 lots was inappropriate, but anything below, above that would need to be, have some type of extra review. Other concerns that we had and we outlined in our letter also deal with the amount of lot coverage for the cluster lots itself. We had had a maximum lot coverage of I believe around 4,000 square feet and now it's I believe 10,000 square feet. So, that's a large single-family home, or a large farm dwelling. Again, the changes to the bill have become significant that we feel that these need to go back to the three Commissions and Hana Advisory Committee also, which is an advisory committee to the Maui Planning Commission. But they also had some strong concerns given that east side and Hana District has some, again, large acreages that could be subject to this sliding scale, excuse me, Cluster Housing Bill. So, if you have any questions, Mr. Chair, that's pretty much summarizes my comments.

CHAIR CARROLL: Members, before I open the floor for questions for Mr. Alueta, I'm going to ask for Mr. Goode to come down. And after Mr. Goode finishes, then I will open the floor for questions to either him or Mr. Alueta. Mr. Goode, do you have any opening comments?

MR. GOODE: Good afternoon, Chair, David Goode here, Director of Department of Public Works. Sorry, I missed your first call. So, for our Department the only thing we noticed for, and affects us would be there's a, we normally have the ag allocation agreement that's executed. This bill appeared to remove it for cluster subdivisions. It still may need to be in there because they, someone conceivably could not subdivide to the full extent, right? So, let's say they were allowed 100 and they only did 50. What we would need to know, I guess, where the other 50 goes. So, I think in that instance it'd probably be good to have the allocation agreement in there. Other than that, we have no further comment. Thank you.

CHAIR CARROLL: Alright, Members, the floor is now open for discussion. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. So, prior to the stakeholder meetings that Mr. Hokama requested that to be conducted, we had three community stakeholder meetings, some revisions were made. So, Mr. Alueta, the revisions that were made specifically, the Department is in opposition, or doesn't like the changes of allowing

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the accessory uses to be at par with the sliding scale, correct? And then, number two would be, I believe one of the testifiers mentioned the scale of the houses which was removed. You would request those be placed back in? And number three, the, it sounds as though you would like to have a notice to the public prior to subdividing? And number four would be the Right to Farm Act language. And all of those changes you're suggesting that if we were to...were to remain in the bill this whole, the entirety would have to be forwarded back to the Planning Commissions for review because it's changed the bill substantially? Is that correct? Is that what you're trying to say? And I guess my question, if it's in the affirmative, then my question to Corp. Counsel is, is it that substantial enough of changes that it is required to go back to the Commission? Because the intent is still there. I would agree that it needs more work. It sounds like it needs more work. There's some issues there. I think we've done a really good job trying to vet this through. The Council suggested that...the Committee suggested that we form these stakeholder groups. This is the language that we were proposed, and this is what the majority requested. I believe also one of the testifiers mentioned that they would like to see the Special Use Permit in Section 19.30A.060 be allowed in the cluster lots. We had removed that so that people couldn't apply for special uses. But that was the only, I guess, measure that we added for, to prevent any type of other uses on the cluster lots. So...

CHAIR CARROLL: Corporation Counsel?

COUNCILMEMBER GUZMAN: Yeah, if you guys can respond?

CHAIR CARROLL: Proceed.

MR. GALAZIN: Thank you, Chair. So, Member Guzman, is your question just simply at this point about the difference between the original bill as it was transmitted to the Planning Commissions and how it appears today?

COUNCILMEMBER GUZMAN: . . .*(inaudible)*. . . need to go back to the Commissions? I mean, obviously there's some changes that the stakeholder group suggested. And so, by doing so, does it now need to go to the Commissions?

MR. GALAZIN: Well, in response to your question, this was back in 2014 when these were transmitted. And while the general intent appears to be the same in both bills, a lot of the language is pretty different. If you wanted to be on the safe side, you could take the approach that we're almost five years removed from the Planning Commission's comments on this and it's evolved so much that it may be beneficial to have the Planning Commissions look at it again from a policy perspective. At this point, I can't give you my opinion one way or the other on whether it's changed so substantially that it would definitely require going back to the Planning Commissions. I would need to review it and compare it a little bit further to the 2014 one which was sent before I came back here.

COUNCILMEMBER GUZMAN: Okay. And so, Chair, I know that I, that there's like 70 entries in our Legis of working this bill through, I think nine or ten drafts later, five

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years later. And we were almost there and it seems as though Planning has pivoted in opposition. So, I did make an attempt to meet with the stakeholders so maybe now the next step is to go back to Planning Department and try to see if we can get a more reasonable bill that they could support. So, I won't be around to help this through. But I know that this is, your intention is to try to, is not take action on this. But it is on the agenda for Friday's Council meeting. It's...

CHAIR CARROLL: I left it open on Friday's Council meeting --

COUNCILMEMBER GUZMAN: Okay.

CHAIR CARROLL: --because I did not know what would transpire here today.

COUNCILMEMBER GUZMAN: Okay. Okay. So, I would suggest that on Friday that you request it be discharged to the Chair for discretionary referral --

CHAIR CARROLL: We have auto-referrals.

COUNCILMEMBER GUZMAN: --to the next...yeah, auto-referral to the next Council.

CHAIR CARROLL: We have auto, it's automatically referred.

COUNCILMEMBER GUZMAN: Yeah, to the next Council. And hopefully whoever is in, who gets the assignment of the Chair of the Land Use or Planning can take the foundation of this. It's good legislation. It's got good intent. It just probably needs a little bit more work to get the support of the Planning Department. So, I've done what I could, you know, Chair. And I just have to leave it in the hands of the next Council.

CHAIR CARROLL: Thank you, Mr. Guzman. We have a very limited amount of time. I'm going to go right down the line over here. Mr. Hokama?

VICE-CHAIR HOKAMA: And, Chairman, thank you. And I appreciate Mr. Guzman's dedicated effort to make the improvements of this proposed legislation. A couple things, Chairman. I find it interesting we don't have any comments from State Department of Agriculture on this proposal and how they view whether or not this still meets the intent of the purpose of agricultural districts, which is to promote local long-term viable agricultural productions. So, two things that I believe for myself, maybe the Department can assist us with, and I understand we may not do it today, but I am interested in the type of legislation language that would definitely one, in its purpose propose clear safeguards again, against speculation of this type of ag development for non-agricultural purposes. Two, I think the Committee, or the future Council should have a sense of what type of acreages and where these potential lands are in the County so that we can make smart...I mean, you know, Lanai we have one giant 33,000-acre ag lot. Okay. So, I want to know how that's going to impact me on Lanai. The other thing that I think might be also important for us to understand regarding this is also on this proposed preservation lot, and let's say you get, make it easy, ten residential components to this one big preservation lot. Is the assumption

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that Real Property will then assess that preservation lot equally among the ten other property owners and each pays 10 percent of whatever's the tax bill for the preservation lot? What if one of those tenants doesn't do ag although they have an ag lot? How are we paying for the preservation lot?

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: Thank you. Based on this bill, the lot would be a stand, these lots would be standalone. So, therefore, the preservation lot, that's the intention is this preservation lot would be sold.

VICE-CHAIR HOKAMA: To who?

MR. ALUETA: To anyone that...

VICE-CHAIR HOKAMA: It's not tied to the cluster?

MR. ALUETA: No. I mean, it's a regular subdivided lot. So, that lot is going to be then sold to whoever wants to do agriculture on it.

VICE-CHAIR HOKAMA: Right, not necessarily be part of those ten cluster houses around the lot?

MR. ALUETA: No, this is, the way this bill, at least the way I read it, this is not a...

VICE-CHAIR HOKAMA: No, no, I mean, I am happy to hear your point of view.

MR. ALUETA: Yeah, there is, I mean, we have seen in Haiku where someone did a similar agricultural clustering where the remaining lot was maintained by the homeowner's association. And that, I believe that was done in Haiku. I forget how they did it and what provisions they did it by. But this is just going to be, as far as I understand and the way I read the bill is just going to be another lot that would then be marketed --

VICE-CHAIR HOKAMA: Independent.

MR. ALUETA: --independently, right.

VICE-CHAIR HOKAMA: Well, thank you for your, how you're reading the proposal 'cause that's a new perspective for me, Director. Thank you, Chairman.

CHAIR CARROLL: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, thank you very much. And I'm in support to auto-file [sic] this item for further vetting and discussion. And I appreciate the vetting of the Planning Department and their comments here today, and just having it go back to the drawing board basically. And with the new Council coming into term to get a chance to go through this and really have it thoroughly vetted. I knew that this is

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already going to be put on the Friday's agenda for full Council. I had some points I wanted to make. So, wanting to at least say them on record right now, Chair, if you don't mind? It's a couple different points to this bill, or...

CHAIR CARROLL: Proceed.

COUNCILMEMBER COCHRAN: Okay.

CHAIR CARROLL: We do only have until three o'clock. So, try to keep it concise so the other two Members have a chance to say something.

COUNCILMEMBER COCHRAN: Okay. D3 in here points out special uses in the 19.30A.060 shall not be allowed on cluster lots. And I'd like to, as Mr. Alueta mentioned to put in no short-term rentals and, you know, rental B&Bs type uses. The bill makes zero reference to the sizes allowed and I think that was discussed a little bit ago with Autumn.

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

COUNCILMEMBER COCHRAN: Yeah, and then, so, because we want to stimulate the actual need which is not 4,000-square-foot-type homes, 19.30A.040 limitations on resubdivision under B, a question is what does this do? And the other question is why mention it if we're adding language that it excludes the application to ag cluster subdivisions? The 19.30A.040(F) undermines basically the entire intent of this bill, allowing further subdivision of one acre lots and allows deferral agreements too, which has been a very contentious issue. And I believe that whole section should be deleted. But hopefully the next Council will see that too. And then, once the bill passes, Council, as far as I can tell, would have zero oversight on what and where development occurs on ag land, and which is very similar to the CPRs that occur. And I've been wanting to take that out of our system completely. So, just looking to, and then having sole discretion given to the Planning Director and not speaking, you know, for or against any particular. But I just think that to have the determination on this ag land hopefully it could be part of a Council-made decision, not just solely a Planning Director's. So, those are some key points, Chair, I wanted to make and to put it on record, and hopefully we can have the new term Council vet.

CHAIR CARROLL: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: I wanted to, one of the testifiers, Mr. Shapiro I think, mentioned his concern. I just wanted to address it, of the 36,000 acres of A&B land and he thought that this would affect the A&B properties that he researched, I guess, in Kihei. But I think a lot, I don't know what particular TMK, but a lot of the A&B

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land is Important Ag Land which is designated forever. And how would that be affected by this?

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: I believe the, not all of their lands --

COUNCILMEMBER SUGIMURA: Yeah, not all.

MR. ALUETA: --have been designated. I believe there's about --

COUNCILMEMBER SUGIMURA: 9,000.

MR. ALUETA: --6,000 to 8,000 that is not within, designated as agricultural lands important to the State of Hawaii. Those, I believe they just provide them with tax benefits as...and streamline on building permits. I do not know if it, I don't think it restricts any on subdivision at all. I'm not familiar enough as far as...but I don't...I believe changing it, meaning taking it out of the Agricultural District makes it incredibly difficult.

COUNCILMEMBER SUGIMURA: So, does...

MR. ALUETA: But I can't speak to whether or not it precludes or limits the subdivision provided they're staying within the same zoning class, or State designation.

COUNCILMEMBER SUGIMURA: Okay. That's further discussions. And just kind of clarification, yes, I did help, Mr. Guzman and I did meet with a stakeholder's group just to kind of talk about this after Mr. Hokama was chairing the Land Use Committee meeting. I only went to one meeting. And because of Sunshine, I didn't go to the other. I thought there was only more meeting. But I didn't go to another meeting just in case decisions might be made through discussion on that. So, I eliminated myself from, I thought was only one, but I guess there were three total meetings of which I missed, I did not go to two. So, I just wanted that clarified so it doesn't jeopardize Mr. Guzman's good work. I appreciate the work that was, that has been done and I look forward to looking at this, you know, in future Council just so that we can have bigger discussions. I agree with the Planning Department that maybe with these changes it maybe should go back to, after it gets some review, go back to the Planning Commissions just to get input on what we currently are looking, not with the changes that occurred since then. So, thank you, Chair, for bringing this up.

CHAIR CARROLL: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Okay, Chair, thank you. So, you know, normally I'd like to be able to close out matters that have come before us as, before ending of the term. But I think this has not been vetted enough. First of all, you know, if you're gonna do residential, do residential. I think the lots are assessed higher in our County. Residential lots, I believe, are assessed higher than ag lots. So, if you're going to do

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ag, do ag. The other discussion I think that needs to also be brought up is how do you set up with the new laws was the usage of pesticide, how do you set up buffers for the residential that are clustered on the ag lots? So, you know, I think one testifier said that it's sort of like a farce to call Ag zoned residential, you know. So, it's going, it needs to be one or the other. But then, I guess this would be vetted further with the new Council. So, I hope though those kinds of things will be, because if I'm farming and then I have a cluster of lots of residential next to me and I have this humungous nursery and I put on the lights during the night so that I can bloom my flowers or bloom whatever, will I be interfering, you know, aside from pesticide? I know that's kind of exaggerated but that's the consideration. Bottom line, we want residential development, zone it as such so we can be assessed accordingly. If we're going to do ag work, do the farming on ag lots. That's just my opinion. But we'll wait how this gets vetted out more and have further discussion. Thank you.

CHAIR CARROLL: Members, we only have about four minutes before we have to adjourn. Very brief comments from anyone? Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Members, for your comments and as well as those who have been working on the bill since 2015, the farm ag working group, all of the other consultants and the stakeholders. Thank you very much for all of your time and effort in trying to draft out a working bill. Again, it's, we're almost there it looks like. I guess we just need to, the next term, the next Council would need to work with the Planning Department because the previous bill that came before this Committee, Planning was on board. However, the testimony came in, didn't like the bill. So, I worked with the stakeholders to find the compromise. And now, Planning is in disagreement with the bill. So, I guess it needs to go back to Planning and hopefully it'll get worked out, some of the tweaks. So, please, those people who have put in such effort into the bill, the concept and the intent is there. It just needs to have a little bit more tweaks and maybe more vetting from the public. So, I appreciate all of your time and all the people that have put such effort into it. Thank you.

CHAIR CARROLL: Members, we come to the end of the meeting today. It will be on Friday's agenda, and you know the intent at that time already. Alright, I would like to thank you all especially. I mean this has gone on for like five years, at least. I would like the public to be really aware that all of the effort that has been made and we still haven't met a resolution; that's because we want it to be right. We don't just want to pass out something that is going to come back and bite us in the end. Everybody says, how come we're so slow? We're so slow because of that. And also like to congratulate and thank Mr. Hokama, the Vice-Chair of the Committee. A Vice-Chair, in case anybody doesn't know, has only one responsibility, to take over the Committee in case the Chair cannot do it; and he did admirably when I was not available. Thank you, Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman.

CHAIR CARROLL: Having no further business of the Committee...

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MS. YAP: Chair? Chair?

CHAIR CARROLL: Yes?

MS. YAP: Staff would just like to thank you for being a wonderful Chair this term, and we're going to miss you. And we hope you have a wonderful, blessed new journey in life. Thank you so much.

COUNCILMEMBER SUGIMURA: Well said.

CHAIR CARROLL: Thank you. Having no further business of the Committee, this meeting...

VICE-CHAIR HOKAMA: Chairman, Chairman, Chairman?

CHAIR CARROLL: Yes?

VICE-CHAIR HOKAMA: You going ask us to defer the item, right?

CHAIR CARROLL: Oh, I'm sorry. Yes, we went too fast. If there's no objection, we will defer this item.

COUNCILMEMBERS: No objections.

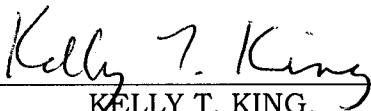
COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: AA, KK, MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR CARROLL: This item is now deferred, and this meeting stands adjourned.
...(gavel)...

ADJOURN: 2:59 p.m.

APPROVED:



KELLY T. KING,
Council Chair

lu:min:181219:mt

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 7th day of January 2019, in Wailuku, Hawaii

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

Marie Tesoro