

# PLANNING COMMITTEE

Council of the County of Maui

## MINUTES

December 4, 2007

Council Chamber

**CONVENE:** 9:08 a.m.

**PRESENT:** Councilmember Gladys C. Baisa, Chair  
Councilmember Jo Anne Johnson, Vice-Chair (in 9:14 a.m.)  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Michael J. Molina, Member

**EXCUSED:** Councilmember G. Riki Hokama, Member

**STAFF:** David Raatz, Legislative Attorney  
Michael Geers, Legislative Analyst  
Clarita Balala, Committee Secretary

*Seated in the gallery:*

Dianne Shimizu, Supervising Legislative Analyst, Office of Council Services  
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Cheryl Okuma, Director, Department of Environmental Management  
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental Management  
Jeff Hunt, Director, Department of Planning  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

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

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CHAIR BAISA: ...*(gavel)*... Will the meeting of the Maui County Council Planning Committee of December 4<sup>th</sup>, 2007 come to order. I'd like to note that a quorum is present and I'd also like to ask anyone who has a noisemaking device, if you would please turn it to the silent mode so that we will not be interrupted during our proceedings. Thank you very much.

This morning I'd like to introduce you to the Committee Members that are here. I'd like to introduce you to Bill Kauakea Medeiros.

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COUNCILMEMBER MEDEIROS: Good morning, Madam Chair.

CHAIR BAISA: Good morning, Bill, and how's everything in your District?

COUNCILMEMBER MEDEIROS: Lots of water. We can share with the rest of the County.

CHAIR BAISA: Very good. Thank you. And our other Member who's present, Michael Molina.

COUNCILMEMBER MOLINA: Good morning, Madam Chair, and it's great to be a Warrior's fan.

CHAIR BAISA: Amen. Go Warriors! You know, I'm so old that I still want to call them "Bows". Excused this morning are our Member Riki Hokama, our Council Chair, and Jo Anne Johnson, who is the Vice-Chair of this Committee and we expect Jo Anne in shortly.

From the Department of the Corporation Counsel we have a representative, Michael Hopper, Deputy Corporation Counsel. Good morning, Mike.

MR. HOPPER: Good morning.

CHAIR BAISA: And with us also we have from the Executive Branch, we have Cheryl Okuma, the Director of Environmental Management. And Cheryl, would you like to introduce the gentleman --

MS. OKUMA: Yes.

CHAIR BAISA: --with you?

MS. OKUMA: Yes. Thank you, Committee Chair Baisa. Next to me I have Tracy Takamine who's the Division Chief for Solid Waste Division.

CHAIR BAISA: Thank you very much and welcome both of you. And our wonderful and loyal and devoted Committee Staff, David Raatz, our Legislative Attorney, and Clarita Balala, our Committee Secretary. And also with us today is a new County Legislative Analyst, Michael Geers. Welcome to all of you, too.

Public testimony will be accepted for all items on the agenda starting in a few moments. Those wishing to testify should sign up at the Secretary's desk. Testimony shall be limited to three minutes. Testifiers are requested to state their name for the record and to indicate who they are representing.

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Today we have two items on our agenda, Members. PC-21, which is Contracts for Goods and Services for the Glass Recovery Program, and PC-28, which concerns Rural Zoning Districts.

**ITEM NO. 21     CONTRACT FOR GOODS AND SERVICES FOR THE GLASS RECOVERY PROGRAM (C.C. No. 07-233)**

CHAIR BAISA: On PC-21, our first task today is to consider whether to recommend that the Council consider adopting a proposed resolution entitled "INDEMNIFYING THE STATE OF HAWAII PURSUANT TO A CONTRACT FOR GOODS AND SERVICES FOR THE GLASS RECOVERY PROGRAM". The purpose of the proposed reso is to idemnify [*sic*]...indemnify the State Department of Health with regard to the contract for funding of the County's Glass Recovery Program. This resolution was transmitted to the Council by the Director of Environmental Management earlier this year.

Before we get into our deliberations we will accept public testimony on this item. I will also accept testimony on our other agenda item for anyone who can't wait until that item comes up. Secretary, do we have any person signed up to testify?

MS. BALALA: No.

CHAIR BAISA: Anybody signed up on either item?

MS. BALALA: No.

CHAIR BAISA: In that case without objections, the Chair would like to close public testimony today.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR BAISA: Thank you, Members. Testimony is closed. At this point, I would ask...like to ask Cheryl Okuma, our Director of Environmental Management to review her correspondence dated October 30<sup>th</sup>, 2007 responding to the questions about the Glass Recovery Program and the reso. Ms. Okuma.

MS. OKUMA: Yes. Thank you, Committee Chair Baisa. Maybe what I could start doing is a little bit of background regarding this proposed resolution with respect to this Glass Recovery Program.

CHAIR BAISA: That would be very helpful to us. It will bring everybody on the right place on the page. Thank you.

MS. OKUMA: Okay. This is the first time that the Council has seen this proposed resolution which basically requests authorization to enter into a contract with the State regarding this program which is administered by the Department of Health and is actually set forth

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and is in accordance with State law. The grant was first issued and it's been done so on an annual basis since 1996. And it was beginning in October of 2004 that this glass advance disposal fee applies only to glass containers that are not glass deposit beverage containers or that are not HI-5 containers. And glass is basically defined by State law in terms of what applies with respect to this particular program.

But basically, what has been happening is that the County pays our glass recycling processor, such as Aloha Glass or the other one is Maui Disposal, a fee that is determined by the County until we draw down on the advance deposit fee funds that are provided to us by the State. Basically, the State collects one and a half cents on glasses they define glass that is imported into the State. This fee then goes into a special fund that is handled by the State and is allotted to each of the counties based on population. The counties then enter into these contracts with glass processors such as Aloha Glass or Maui Disposal and pays those processors an agreed upon monthly fee until these ADF funds are drawn down. The processors are also required to pay their glass haulers, the ones that haul...private companies that haul glass to their facilities. They're required by law to pay a buy back fee which is essentially determined by the County and that fee amount has been at \$10 per ton per...\$10 per ton is the fee that's been paid.

Basically, as I understand it, the ADF funds currently are used for glass...all the glass is recycled currently and is not shipped out. There was a point in time I believe where Maui Disposal was shipping out, but at this point in time, my understanding is that all ADF funds under this program are basically for...glass is all processed on...within the County here.

The one thing that I would mention is with respect to the contract with Aloha Glass and even with Maui Disposal we do require them to sign an indemnification and defense of County provision as well. In addition, we do require insurance...that they obtain insurance naming the County as an additional insured.

CHAIR BAISA: Thank you, Ms. Okuma. Anything else that you'd like to add? If not, we'll --

MS. OKUMA: Yes.

CHAIR BAISA: --go ahead with questions.

MS. OKUMA: Okay. The other thing is I do know that there was a correspondence from Committee Chair Baisa for the Committee in terms of the Glass Recovery Program and I think that the background I provided does go into that unless there are any specific questions that are asked. There was also asked, what are the ramifications if the Council does not adopt this proposed resolution? Well, essentially what would happen is the County would lose out on the State funds with respect to this Glass Recovery Program, and right now that changes from year to year, but as of this year it is \$151,000.

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The other thing to just be aware of, too, is the County does have an ordinance with respect to liquor serving establishments and the requirements for them to recycle their glass and without this type of incentive under the advance disposal fee that may be very difficult for the liquor establishments to comply. The other thing to be noted is the ADF glass contract funds are available from July 1, 2007 to June 30, 2008. So this \$151,000 for this year is only available until June 30, 2008.

CHAIR BAISA: Thank you very much. Members, questions? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

CHAIR BAISA: Before you start, Member Molina, excuse me, if you don't mind.

COUNCILMEMBER MOLINA: No. Go ahead.

CHAIR BAISA: I'd like to note the presence of Member Johnson. Welcome Jo Anne.

VICE-CHAIR JOHNSON: Good morning, Chair.

CHAIR BAISA: Alright, Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I guess here we go with another case of the State trying to, uh, I don't want to use the term "pass the buck", but I guess I'll use that for now. So just so we can get a full understanding of what we're voting on if we approve this. The deal is we approve the resolution, the County gets the 150,000; we don't approve it, the 150,000 goes out the window.

MS. OKUMA: That...that's correct.

COUNCILMEMBER MOLINA: Okay. And could I get a clarification on I think the fourth whereas of the resolution which states County indemnification of the State of Hawaii, its officers, employees, and agents pursuant to Sections 7, 8, and 33 of the General Conditions of the Contract could result in a claim or settlement in excess of 7,500. Does this mean if there's a claim made against whoever the contractor and the County is named in this, does this mean we're obligated to pay claims less than 7,500 as well, if there is any type of suit filed by someone in the rare event that something should occur like that?

CHAIR BAISA: Member Molina, should we direct that maybe to Corp. Counsel?

COUNCILMEMBER MOLINA: Yeah, maybe either Director or Corp. Counsel.

CHAIR BAISA: Mr. Hopper.

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MR. HOPPER: Well, if the...you wouldn't need a resolution if the claim was below 7,500 because you don't need Council authorization --

COUNCILMEMBER MOLINA: Right.

MR. HOPPER: --to enter into a settlement. The Department wouldn't need that authorization if the settlement was below 7,500. If it's above 7,500, that's where you would need the Council resolution. It's obviously hard to predict, but if...for example, in the contract you had language that said indemnification only for claims below \$7,500, then I believe you wouldn't need Council approval for that language because it would...could cap the claims at below \$7,500. Now I can check on that on what we had done in the past. But Council authorization or indemnity is only required if the claim is below \$7,500 because you wouldn't need Council authority to settle a claim for that amount...below that amount.

COUNCILMEMBER MOLINA: Okay. So either way below 7,500 the State is still indemnified under this resolution?

MR. HOPPER: Well, if...yeah, it would include that --

COUNCILMEMBER MOLINA: Oh.

MR. HOPPER: --but you wouldn't need the Council authorization. But if you authorize it, yes, all claims would be indemnified. You would indemnify them in all claims and the language in the contract, which is a standard General Conditions would involve claims that the...that basically results from the acts or omissions of the County. Those are the types of claims.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Molina. Member Johnson.

VICE-CHAIR JOHNSON: Yes, and I apologize if this question was already answered, but I noted in the response, Ms. Okuma, that other counties have not entered into this type of a resolution and is there justification on the part of the other counties? Are their ordinances different from ours?

MS. OKUMA: I believe that when we checked that in fact the other counties have accepted the terms of the State's contract. Now whether they have to go for resolutions I can't opine on that. But the one thing I can say is that based on our looking into this with respect to other counties, they have entered into this State contract with that indemnification provision.

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VICE-CHAIR JOHNSON: Okay. So in other words it's the Administration in our particular situation that wants the positive step from the Council to basically authorize them to enter into this type of contractual agreement. Is that correct?

MS. OKUMA: Yes. We would like your support to enter into that contract.

VICE-CHAIR JOHNSON: Okay.

MS. OKUMA: That's correct. Thank you.

VICE-CHAIR JOHNSON: Okay. And, and I understand, Madam Chair, because I know in the past other Members of the Council, as well as I think every one of us here, have concerns about entering into these things. I know on the placards, too, for disabled, we've had similar issues so I guess, you know, we'll just have to hope for the best that we don't get any lawsuits which would cause us to have to pay claims for both the State and the County. But hopefully, the 151,000 that we would be compensated at least would take care of some of that liability if that situation arose. So I can sort of justify it that way. It's just very unpleasant when it's a very one-sided kind of arrangement where we're always the people who get dumped on and then we have to defend everyone else. So we're sort of low on the totem pole.

MS. OKUMA: And, and perhaps to address that, that you're raising, Councilmember Johnson, with respect to what we call "pass through funds", these funds are actually just passing through the County and going to the processor and the haulers. Since 1996 is when this program began and my understanding is there has never been any kind of legal claim. So that's over ten, ten years.

VICE-CHAIR JOHNSON: Yeah, and that...that's really good. Plus, I'm really glad to see that the materials are actually being used here in glassphalt and other things and keeping it out of the landfill. And since I recycle like glass it's really important that we support this even though there may be some displeasure about, you know, the actual terms. But as Mr. Hopper said, Madam Chair, this is sort of the way the State does business in all of their standard contracts, like it or not. Thank you.

CHAIR BAISA: Thank you, Member Johnson. Yes, I've been familiar with State contracts for many, many years and this is pretty boilerplate. If you want the money, then you do the contract and I think that's a decision that we're trying to make here. And it's the recommendation of the Department and the Administration and I think that, you know, you can't insure every risk, nor can you predict every risk.

Many years ago a very good attorney friend of mine told me that the only way that we could proceed--cause you could never buy enough insurance and be ready for everything--was to protect yourself by having good procedures, good training, and you know, take good safety precautions, and that way you'll prevent a lot of the problems that will come along.

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And I'm very happy after talking to Ms. Okuma when she told me that the program had been in operation for over ten years, and so far, you know, we've done really well. And I for one am very excited about the fact of recycling the glass here and using it on Maui. That is wonderful! I wish we could use more of our recyclables and not have to ship them off or worry about what to do with them. So I think this is a really great thing.

Member Medeiros, any comments? Questions?

COUNCILMEMBER MEDEIROS: Yes. Mahalo, Madam Chair. I want to tell...thank the Director for the information she presented this morning and also thank her for sharing information to us prior to the Committee meeting which was very helpful. And I did ask this question during our meeting, Director, and I just need to maybe share this with the public that's watching that this requirement for recycling, imported glass, describe for us what is imported glass?

MS. OKUMA: Okay. Basically, that is glass that is defined by State law as I understand. It does not include the HI-5 redemption glass and I'm just trying to...I mean it's defined by State law. Let me see if I can...if I can find that.

COUNCILMEMBER MEDEIROS: While you're looking for that, the word "imported" implies that it's coming from outside of the State. Does that mean other states, other countries?

MS. OKUMA: It's coming from outside of this...I'm sorry, okay, it's coming...first answer to the import issue, --

COUNCILMEMBER MEDEIROS: Okay.

MS. OKUMA: --it's coming from outside the State of Hawaii. That's the definition. So I would interpret that to mean that could be other states, that could be other countries. I would...that would be my interpretation.

COUNCILMEMBER MEDEIROS: Okay.

MS. OKUMA: Okay, and I'm still looking for the glass container...okay, so by definition, it's from reading the statute literally, it's the individual, separate sealed glass container used for containing at time of import 64 ounces or less of a beverage or the empty individual, separate glass container that will be filled with 64 ounces or less of a beverage and sealed in this State so that these glass beverage containers will basically be subject to this, this law.

COUNCILMEMBER MEDEIROS: Okay. Thank you. So what is the State law that requires this program?

MS. OKUMA: The State law is Hawaii Revised Statutes Sections 342G or Chapter 342G.

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COUNCILMEMBER MEDEIROS: Okay. And...now this requires establishments such as restaurants, bars, hotels to recycle their containers?

MS. OKUMA: No. This is just a pass through...what I call a pass through contract and our only relationship is with the glass processor --

COUNCILMEMBER MEDEIROS: Right.

MS. OKUMA: --who has a contract with the hauler. We are not, through this program, making a requirement on those establishments. But those establishments can use these haulers, which eventually comes to this processor.

COUNCILMEMBER MEDEIROS: Yeah. My question was that, does the law require these establishments to recycle their glass?

MS. OKUMA: Let's see. Not, not this...oh, okay. There's...the only ordinance that I've been...that I'm aware of is for licensed liquor establishments. But just to clarify, this HRS Chapter 342G, only addresses with respect to this special environmental fund and how that fund is allotted to the County. So it's just that administrative portion. It doesn't address requirements on the establishments that are actually, you know, like, like the licensed liquor establishments, and on this one we happen to have an ordinance in place.

COUNCILMEMBER MEDEIROS: So, so this is voluntary by any entity for their...the contractor to pick up their containers and take it to the glass recycling?

MS. OKUMA: Yeah. Well, I want to be careful about that because I haven't, you know, I was really just addressing this administrative portion but if you want a specific answer on that, I would prefer to go back to be absolutely sure about it because I didn't look at all the requirements in all the establishments with respect to glass. I can only say that with respect to the subject of this resolution and this statute, this was not intended to impose any requirement on the establishments. It only sets up requirements with respect to this fund and how the County handles it as it goes to the processors.

COUNCILMEMBER MEDEIROS: Okay. If, if the County decides not to participate in this program, what would the State then have to do with this program?

MS. OKUMA: I would assume--I can't speak for the State--but I would assume they'd have to decide what they want to do. I can't predict what they're gonna want to do. But. . .

COUNCILMEMBER MEDEIROS: So there isn't a statute that the State has established requiring this program?

MS. OKUMA: The statute sets up this program and specifically sets out the process by which these funds go to the counties. They are required by statute to make these funds available

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to the County generally is what it is. So the statute specifically provides for that and sets forth the procedures for that.

COUNCILMEMBER MEDEIROS: I see. Okay. Thank you, Director, for that information. Mahalo, Madam Chair.

CHAIR BAISA: Members, any additional questions? Member Johnson.

VICE-CHAIR JOHNSON: Yes, and because we get \$151,000 approximately out of this program, is that sufficient to cover the cost of the entire fee that we pay to the outside contractor?

MS. OKUMA: Basically, as I understand what happens, that 151,000 is pretty much general terms divided by 12 and that equates into the monthly fee and we're required to draw down on that. But if in terms of is the question being, is what we get from the State enough to cover all the glass in the County of Maui that is being hauled, the answer is no.

VICE-CHAIR JOHNSON: And would you have any idea what percentage the 150,000 really bears to the overall cost for us to recycle?

MS. OKUMA: No, no, we don't, but you know, the only thing I can tell you is that in recent years through this program, we know from the data that we require from the processor, they're handling about I believe it's 5,000 tons right now. But I don't...I know that's not the entire tonnage in this County, but we, we don't have any idea in terms of what percentage that is from the total.

VICE-CHAIR JOHNSON: Yeah, and, and so I guess what, what my other question would be is because we're diverting the glass away from the landfill, which has its own cost, because every time we fill up the landfill more quickly, of course the closing cost and all the other things add up very rapidly. I would be really interested to know by first reading, assuming that this goes forward, what that percentage would be, what the overall cost would be, and what the percentage would be of the amount that we receive from the State and the overall administration 'cause I see here that they're going to allow us an administrative fee that we can collect that's limited. But you know, in this case if you're saying that the cost or the I guess the administration plus the other cost combined isn't really sufficient even with the 150,000, I, I would be interested to see what that would be.

MS. OKUMA: Okay. Maybe, maybe I can address it from this standpoint. While the con...while in years past, there has been this administrative fee that's allowed. The reality is that over...since 1996, the amount of these funds have gone down from 220,000 to about 57,000 when the HI-5 came in and now it's 151,000. And so any administrative fee is being pulled from the amount that's allotted by law to the counties so it would be pulled out of this \$151,000. When we looked at what amount of work is our Recycling Specialist spending on this program in comparison as a percentage of all our programs in recycling, it's really very small, maybe about one percent related to this program. So I

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guess the judgment call on our part is whether it's worth it to go after that amount as an administrative fee given the size of what we get and the extent of effort we put into this program.

VICE-CHAIR JOHNSON: Okay, and. . .

MS. OKUMA: And I'm not sure if that sheds light in terms of the area. . .

VICE-CHAIR JOHNSON: Well, it does on the overall cost I guess in comparison to what kind of budget you have for the other components that you handle out of the recycling. But I believe that I heard Chair Hokama ask a question and because he's not here right now I think that his question that he had asked previously was, if we choose not to do this program, is there even an option for us to say, look State, you mandate it, but we don't want to have anything to do with it. I believe that that is certainly a valid question if it's something that we can't escape from if it's required by law and then we would just have to do it without the benefit of the funding from the State. Could you address that issue?

MS. OKUMA: Sure. We don't have to do this. We don't...there's no way the State can force us into a contract. The question is whether we can get the Council support to do something that we think is beneficial for the community. So, you know, to address the point you're raising, they can't make us do it, and so if we don't enter into the contract, then basically we're not going to get the money is what happens.

VICE-CHAIR JOHNSON: Okay. And I believe the second part of his question was that, well, given that, what would the State ordinarily do then? Will the State issue, you know, enter into a direct contract themselves or were they just simply not engaged in any recycling at this level?

MS. OKUMA: I can't answer for the State. I can't, you know, I think that's beyond the realm of what I can address so I can't...I don't think I can answer that question.

VICE-CHAIR JOHNSON: Okay. Thank you very much. Thank you, Madam Chair.

CHAIR BAISA: Thank you. Member Molina.

COUNCILMEMBER MOLINA: Yeah. Madam Chair, just following up on Member Johnson's question. If we could send a correspondence out to one of the State officials just to, you know, try and answer Member Johnson's question if, if in the event we decide not to do it, then what's the next step – what would the State do.

CHAIR BAISA: Sure. I mean I can have the Staff take care of that. Thank you.

COUNCILMEMBER MOLINA: Thank you.

CHAIR BAISA: Member Medeiros.

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COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I just wanted to follow-up on some questions. Because we get a share of that one and a half percent that the State collects and there's a formula you said that divides up what goes to the counties?

MS. OKUMA: Well, the literal language of the statute and I don't know how the State figures it out but it's de facto population of the county. So each county is getting something different.

COUNCILMEMBER MEDEIROS: Okay. And so this one and a half percent can change from year to year so we can expect to have different amounts from year to year?

MS. OKUMA: Yes.

COUNCILMEMBER MEDEIROS: Okay. So the contractor enters into a contract knowing that they're going to have an amount that's maybe different every year and yet would have to accomplish the same amount of work?

MS. OKUMA: No, no. Because their pay, pay based on ton...tonnage.

COUNCILMEMBER MEDEIROS: Okay. So the 151,000 that we got that goes to pay the contractor?

MS. OKUMA: Well, we haven't gotten it yet. But if we do...if we do get it that, that's, you know, what we would look to. We would enter into a contract with Aloha Glass or Maui Disposal and pay them a monthly fee until this fund is drawn down until the 151,000 is completely gone.

COUNCILMEMBER MEDEIROS: Right.

MS. OKUMA: And we pay them based on tonnage.

COUNCILMEMBER MEDEIROS: So you said that this fee would be divided up by 12?

MS. OKUMA: I think generally that's how it would work. So if, for example, in 1996 it was 220,000, we would have figured out, well, what does that equate to generally in the year's period. So each...so each year if the total amount changes, then your monthly amount is going to be different from year to year.

COUNCILMEMBER MEDEIROS: Right.

MS. OKUMA: And it in fact has fluctuated over the ten-year period.

COUNCILMEMBER MEDEIROS: But that's only a guideline, right? Because in the first month they can, you know, make more tonnage or just recycle more tonnage than the

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monthly prorated fee is. So you would have to be taking from the rest of the funds. And so in essence that fund can be drawn down before the end of the year?

MS. OKUMA: I guess it...yeah, I'm told it could.

COUNCILMEMBER MEDEIROS: And so once that fund is drawn down to zero what happens to the program then?

MS. OKUMA: Well, that's all we can...there's nothing...there's nothing more in that program. That, that's it and then we come...and then we come back next year for next year's grant.

COUNCILMEMBER MEDEIROS: So the contractor then stops?

MS. OKUMA: In...well, they don't...I don't think they stop. What happens is they just don't get paid from our ADF funds. I don't...I don't know what else they do after that but they continue their business.

COUNCILMEMBER MEDEIROS: Okay.

MS. OKUMA: It's just that they're not going to get any monies from this grant, --

COUNCILMEMBER MEDEIROS: Okay.

MS. OKUMA: --which is seen as an incentive to them.

COUNCILMEMBER MEDEIROS: Right.

MS. OKUMA: So, okay, Tracy would like to. . .

COUNCILMEMBER MEDEIROS: Okay. Thank you.

CHAIR BAISA: Mr. Takamine.

MR. TAKAMINE: I can add, add some information to that. From what I understand...well, first of all, I just want to clarify this is a grant. It's not a contract, okay. We do grants to the Aloha Recycling. But you're right, once they draw down on the funds and there's no money available from what I understand they could say we won't accept anymore . . . *(change tape, start 1B)*. . . glass. But what I understand they do is they turn...under this program as long as there's funds, when that hauler brings in the glass from all these commercial businesses, they pay the hauler \$10 per ton. When the funds runs out, they charge the hauler to try to get some cost reimbursement back. In addition, I, I understand that the funds are not sufficient to cover the cost of the recycling processing of the glass so they actually are also charging the commercial establishments for taking this glass. So they have funds coming in from the ADF grant in addition to charging the commercial businesses. And we don't know what it is because it's their...it's a private business so,

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you know, they don't give us any information to cover the cost. But even that is... doesn't really cover the cost of the glass. Glass is a very hard thing to recycle. And I want to add also that although they getting paid under the, the ADF grant process, they cannot collect the money until they show us that they have supplied the materials to an end user. So if they take in 12... 12 tons today and process it and crush it and it's sitting on their property, they cannot claim for it until they, they take that glass and it goes to a user. Once they show that to us, then it can be paid. So some... sometimes they cannot collect the money because they can't find a end user of the product.

COUNCILMEMBER MEDEIROS: So is it my correct understanding then that from this grant we pay the contractor per ton and in turn the contractor process the material and he sells it to an end user and he gets paid for that also?

MR. TAKAMINE: That's how it would normally work but at this point in time because nobody wants the glass they giving it away free.

COUNCILMEMBER MEDEIROS: I see.

MR. TAKAMINE: They give it to contractors to use as backfill on trenching. So right now it's a material that nobody really wants unfortunately. So they're, they're doing the recycling keeping it out of the waste stream and they're just giving it away and at some points they can't even give it away. So at that point they don't get paid until they can get, get rid of it.

COUNCILMEMBER MEDEIROS: So, so the benefit to the County in this because we have talked about, you know, unfunded, you know, mandates by the State, but the benefit to the County in this is that it encourages the recycling of glass and diverts it from the landfill.

MR. TAKAMINE: Exactly.

COUNCILMEMBER MEDEIROS: Okay.

MR. TAKAMINE: There's no... there's no profit. There's no... the big benefit is it keeps it out of landfill --

COUNCILMEMBER MEDEIROS: Right.

MR. TAKAMINE: --and we reuse the glass. That's the major benefit to this whole process.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Takamine and Director Okuma. Mahalo, Madam Chair.

CHAIR BAISA: Thank you very much. Members, any additional questions? Member Molina.

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COUNCILMEMBER MOLINA: Just one, one quick question for Mr. Takamine. So the materials itself the County still uses it for I guess glassphalt for various resurfacing?

MR. TAKAMINE: It can be used for that but from what I understand right now the big use is just for the contractor using it to use as backfill material in trenching...piping.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Any other questions? Member Johnson.

VICE-CHAIR JOHNSON: When the contract is issued to the provider of service, because these are private businesses and it's a grant, my assumption is it's a competitive basis. Does it either...if it's a grant, does it go out in the regular grant process or is it done through a request for proposal? How is this determined? Because you made a comment, Mr. Takamine, that this is proprietary information because it's a private business and yet they're getting government funds. So how does that work?

MS. OKUMA: Let me try to answer that. I think that's something that we're looking at internally, but generally, the grant monies and those agreements or contracts don't go through the process that some of the other like construction contracts or design contracts go through. It's a...it's a different...it's another process outside of that. We do have an internal process to handle these grants, but I think that's one thing that we're taking a look at internally and so on this I can't, right now as we sit here today, provide you with a specific answer specifically on how this might have been handled other than to say that generally, we do handle grants within the Department. We do have a process, but I'll tell you right now that internally we are taking a look at that and that has been discussed.

VICE-CHAIR JOHNSON: Yeah, and...

MS. OKUMA: But I understand that where you're coming from is, you know, is this put out competitively. But let me just say on this there are only two processors that I understand on island, Aloha Glass and Maui Disposal, and those...these are the two processors that have over the ten years been in agreement...entered into these agreements for this grant monies with the County.

VICE-CHAIR JOHNSON: Yeah. And, and I think because of the proprietary aspect of the information that Mr. Takamine said that we're unable to actually get from the provider, that I think in and of itself should give some kind of I guess credence to going at least through some kind of process that would open this up to any entity if they are the only two processors or even if there's only one, then sole source provider may be appropriate. But to me, I think pretty much our grant recipients for many kinds of grants even though they may be private businesses they still, I believe, should be required to provide information if it is within their contract.

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MS. OKUMA: Let me just address it this way and it's probably something we need to deal with Corporation Counsel on, but generally in these type of procurement or contract processes you may have businesses that have proprietary information that they don't want released to the public. Most, most...for the most part these documents, these agreements, and whatever proposals are coming in would be considered, I believe, public information, and so unless a business indicates that it's proprietary and not to be released, we may consider it public information. But again, that's all part of the process in how it's been set up and I'm glad that you are raising these questions since we're looking at the grant program internally within the Department. That's certainly something we can consider as we're taking a look at the program.

VICE-CHAIR JOHNSON: Okay. Thank you very much.

CHAIR BAISA: Members, any additional questions, comments? Ms. Okuma...oh, Mr. Molina.

COUNCILMEMBER MOLINA: Oh, no, I just ask for your recommendation.

CHAIR BAISA: Oh, okay. Ms. Okuma, anything else you'd like to add?

MS. OKUMA: No, thank you.

CHAIR BAISA: That's good. Mr. Hopper, you okay with this? . . .*(laughter)*. . . I want the blessing from my Council. . .*(laughter)*. . . I love having Michael Hopper here. He's always very helpful to us. Members, Chair would like to clarify something. Mr. Molina, your request for the letter, would you be okay with us passing this out of Committee without that letter? Because, you know, even if we get to the 21<sup>st</sup> Council, you know how the State operates. It's very unlikely we'll have an answer then. But you'd be willing to go ahead without it? Okay. Thank you very much.

Based on that, the Chair will make a recommendation. I'd like to thank everybody who participated in this discussion. I think it's a very good discussion. It's certainly a subject that the County is very, very happy to be participating in. You know, this week we've been very environmental. We yesterday talked to the folks from the Watershed and that made me feel really good that the County is so involved with that. And we have to look at our environment and I think this is a very positive way of doing that. So I'm very happy about supporting this. I would like to ask the Members to adopt the resolution as revised to incorporate technical changes and file the communication.

VICE-CHAIR JOHNSON: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR BAISA: Thank you very much. We have a motion and a second. Any comments?

COUNCILMEMBER MEDEIROS: Madam Chair?

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CHAIR BAISA: Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes. My only reservations with supporting this is that it's another State mandate that's unfunded but I think the overwhelming part that I support is that it helps our recycling program and it helps us divert some more material away from our landfills and I think that's important. And I, I think as long as the Environmental Management and Solid Waste Division can handle the administrative part of the pass through funds, then you know, I'm fine with that. So I'll be supporting this motion.

CHAIR BAISA: Thank you very much. Other Members? Member Johnson.

VICE-CHAIR JOHNSON: Yes, and I think that with the figures of I believe it was – what is it? Five thousand tons or is it five tons?

MS. OKUMA: Five thousand.

VICE-CHAIR JOHNSON: Five thousand. You know, that's a substantial amount of tonnage to be diverted out of the landfill and I know what the cost are that we all bear with keeping materials out of the landfill. And I...for me, Madam Chair, I think as you mentioned about the environment, one of the things that we have to take a look at and I believe the visitor industry really needs to step up to the plate because most of the materials, whether they be glass or other items that do eventually end up in the landfill are items that are brought in to serve a good percentage of the people in the visitor industry and to my knowledge, and correct me if I'm wrong, Ms. Okuma, there's never been a State study to really determine what the waste stream is for the visitor industry. And I realize that that's not a specific topic on our agenda today, but if the Administration could really urge and perhaps even the Council urge the State to utilize some of the money that comes in to at least enter into some kind of a study of our waste stream, where this is coming from and what portion is attributable directly to the visitors, I think that the old theory of camping--when you pack it in, you pack it out--I would use that same analogy when we're looking at goods that are imported into the State. So I thank you, Madam Chair, for bringing this forward and I have my own sets of concerns, but I will support this because I, I agree with Member Medeiros. It does keep it out of our landfill which is a totally different cost. Thank you.

CHAIR BAISA: Thank you, Member Johnson. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair, and you know, like my fellow colleagues I feel like I'm walking on glass--no pun intended--with this proposed resolution, but nonetheless, it's something that I will still support. It's obvious we need to do whatever we can to keep the glass out of our landfill. My only hope is that we can come up with creative ways for, you know, anybody out there to make use of this recycled material. But I'm really appreciative of our own County Department using glassphalt for I guess various areas on the island, especially in the recycling areas, and

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hopefully we can make more use of this stuff. So I'll be supporting this measure. And it's always again the State putting us in this position where we're always caught between a rock and a hard place, but I guess that's the way it is. Thank you.

CHAIR BAISA: Thank you very much. Unless any of us are moving on, that's the way it is. Member Medeiros.

COUNCILMEMBER MEDEIROS: Yeah. Madam Chair, I'm not sure if procedurally you will allow this and I ask for your discretion, but I wanted to ask during the discussion part of the motion if I could ask one final question of the Director?

CHAIR BAISA: Absolutely, Member Medeiros. You know me, I'm easy to get along with. Go ahead.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Director Okuma, I just wanted to ask, is there any potential for the County to have to fund any deficit of this program?

MS. OKUMA: My knowledge of the years past is the County has never subsidized this program at all. Everything has been reliant on ADF and I envision that it will continue to be so long as we do get the ADF grants.

COUNCILMEMBER MEDEIROS: Okay. Mahalo, Director Okuma. Mahalo, Madam Chair.

CHAIR BAISA: Thank you very much. That certainly makes me want to move ahead with the vote. All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: And no? None. The vote is four in favor and none against and one excused.

**VOTE:       AYES:   Councilmembers Medeiros and Molina, Vice-Chair Johnson, and Chair Baisa.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of revised resolution and FILING of communication.**

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CHAIR BAISA: Thank you very much, Members. And thank you very much Cheryl and Tracy for being here.

MS. OKUMA: Thank you.

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: If I could request a short recess before you go into the next agenda item?

CHAIR BAISA: If you don't mind, we certainly could recess until ten. Let's take our morning recess. I'd like to get on with the second item. Our Planning representative here today is really not feeling all that well so I'd like to get on with it. But let's take our morning recess while we take our break. Thank you. The meeting is now in recess. . . .(gavel). . .

**RECESS: 9:52 A.M.**  
**RECONVENE: 10:09 A.M.**

CHAIR BAISA: . . .(gavel). . . The meeting of the Planning Committee will be back in order. Thank you for the little break. That was very helpful.

Joining us this morning is our Planning Director, Jeff Hunt.

MR. HUNT: Good morning, Chair.

CHAIR BAISA: Good morning. And Mr. Joe Alueta who is the Senior Planning--what's your title again, Joe? I can't ever remember.

MR. ALUETA: Administrative Planning Officer, Madam Chair.

CHAIR BAISA: The ad...I'm sorry, Administrative Planning Officer for the County Planning Department. He's becoming so famous that everybody knows him as Joe now. We don't know all the rest of that stuff.

**ITEM NO. 28 RURAL ZONING DISTRICTS (C.C. No. 07-310)**

CHAIR BAISA: Alright. Our second item today is PC-28 and it's in regard to Rural Zoning. We have before us a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, RELATING TO RURAL DISTRICTS". The purpose of the proposed bill is to amend Chapter 19.29, Maui County Code, to clarify the development standards for properties zoned Rural. The Planning Director transmitted this bill to the Council earlier this year. As I read the bill, it is

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essentially a housekeeping matter intended to improve the consistency of the County's Rural zoning system. I also understand that this legislation may have practical benefits to residents in several communities, including in Maui Meadows.

Before we get into our deliberations we will accept...I'm sorry, we've already closed public testimony so we will not be accepting public testimony on this item.

We'd like to hear from the Planning Department and Corp. Counsel in regards to the bill. Shall we start with you, Mr. Hunt or Mr. Alueta, whoever's going to take the lead here?

MR. HUNT: I'll just defer to Mr. Alueta since he knows the bill.

CHAIR BAISA: Thank you, Mr. Hunt. Mr. Alueta.

MR. ALUETA: Thank you, Madam Chair. As you indicated, this is more of a housekeeping matter. As indicated in our transmittal letter, back in 1997 the Council did adopt a rural ordinance that established the RU-0.5 and RU-1 within the County zoning. What it basically comprehensively zoned...everything that was community planned Rural and State Rural, as well as County Interim with the exclusion of Hana. Because they included the interim provision that had to be County Interim it neglected to include lands that were already designated as County Rural. Interestingly enough there were properties that had sought and obtained County Rural, as well as on a couple of our land zoning maps we had some that were already zoned as County Rural. Essentially, by, by excluding these areas and just establishing standards for the RU-0.5 and RU-1, these County Rural designated areas were left without any type of development standards, whether it be height limitations or setbacks, and we're only governed by what was allowed under the State Rural District under 205 as far as use goes. And because there was no County standards, the de facto standard went to the Housing Code and so this is it basic. And as you know, there is in the works by Department of Public Works to eliminate the Housing Code altogether, and therefore, in discovering their...of them getting rid of it we are pushing this bill through to create standards for these areas that were...that are currently governed under the housing bill. This would be...as a side note, there is also a bill to amend the Interim District that will come before you later, maybe hopefully earlier next year, but this is our first bill to try to get ahead of the ball I guess and create some standards for these areas that were excluded from the County ordinance. Thank you.

CHAIR BAISA: Thank you, Mr. Alueta. Mr. Hopper, comments?

MR. HOPPER: I think Mr. Alueta said it pretty clearly. The key with this was the background in 1997 when the Council passed the rural bill. It, it automatically zoned certain properties RU-0.5 or RU-1.0...zoned them. The properties zoned were properties that were State Rural, Community Plan Rural, and the language was "and zoned Interim". The lands had to be zoned Interim or else they were not designated as RU-0.5 or RU-1.0 automatically. As a result, there are certain properties within the County where if you

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look at the zoning map, it just said rural. It did not say RU-0.5 or RU-1.0 because they didn't exist yet – it just said rural. The problem was that in the Code there were no standards for rural. It didn't really mean anything. It just said zoned Rural but there were no standards for it. And so when the rural bill passed, it was and, and it seemed there's evidence it was intentional, but the, the only properties that were automatically zoned RU-0.5 or RU-1.0 were those that had Interim Zoning. Other properties were not automatically zoned so those properties remained in rural with no standards which resulted in the Housing Code standards which had certain setbacks and certain height limitations being applied to those properties.

It came to our attention that some of the communities believed that those properties should have been rural zoned because they were community planned Rural and State Rural for the most part and the zoning said rural but had no standards. So what this does and it's got a sense of urgency because the Housing Code is going to be repealed leaving rural zoned properties with no standards because the Housing Code is gone. This will provide standards that are...that mirror the RU-0.5 zoning category and the Planning Department can be more specific as to where these areas are that are zoned County Rural. Maui Meadows is one of the more notable areas, for example. But it would essentially say that if you're zoned County Rural, these are your standards, and the standards are listed in the bill. They're the exact same as the County Rural standards and they'll basically be treated as County Rural. But that's sort of what precipitated this was reviewing the County zoning seeing there's no standards for a current zoning of this property and so adopting standards was the easiest way in order to, to accomplish that goal. And I believe that all the Planning Commissions recommend that adoption of, of this change with a couple of minor changes, but essentially adopting what the Department had proposed.

CHAIR BAISA: Thank you, Mr. Hopper. Any additional quest...comments from Staff? If not, we'll go to the Members. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Just to follow up on your comments, Mr. Hopper, and I guess if Mr. Alueta or Director Hunt would like to add into my question. So we're setting standards in our rural zoned properties, was there any other reasons like have there been examples out there in the community of a property zoned Rural with a structure that caused con...structure or structures that caused concerns that might have been the impetus for this as well? I know I guess this is like looking ahead so we don't have anything that might be deemed inappropriate for the community.

MR. HUNT: There's a couple factors that are coming in to play here. One was the fact that the Public Works Department was going to do away with the Housing Code so we needed to address that. At the same time, there was ex, ex...there was concerns expressed from some of the existing developments that infill was occurring that was not consistent with their vision of that...of that development and the standards that should be applied. And so I think in response to that concern, as well as just the housekeeping.

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COUNCILMEMBER MOLINA: Okay, great. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Molina. Mr. Hopper.

MR. HOPPER: I'd also point out, yeah, with the height issue, the reason that the height under this Code provision, height will be a maximum of 30 feet from finished or natural grade, whichever is lower. But in the Housing Code that provision doesn't apply because the definition of height is it's not part of the County Code. Once you adopt the standard and put that category in the County Code, then that height...that, that definition of height would apply. But currently because you're using the Housing Code, the height could be from finished grade. And so that's another one of the, the issues that are taken care of by putting this in the Code as standards. So that's one of the important changes that the Code would precipitate.

COUNCILMEMBER MOLINA: Madam Chair, can I do a quick follow-up --

CHAIR BAISA: Go right ahead.

COUNCILMEMBER MOLINA: --on Corporation Counsel's Hopper's issue on heights?

CHAIR BAISA: Sure.

COUNCILMEMBER MOLINA: Parks Department, I believe, had a concern with heights, as well I think in one of the...our letters that we had in our binders. Can you comment on their concerns? I believe it's dated July 30<sup>th</sup>, 2007 as Exhibit 4. I guess their concerns relate to gymnasiums typically exceed the mentioned 30-foot height. Can I guess the Department respond to Parks Department's concerns on that? This is from I guess Parks Director Horcajo.

MR. ALUETA: This...if I may, Madam Chair?

CHAIR BAISA: Yes, please go ahead.

MR. ALUETA: This deals with the Rural District, not with Parks. So if they had parks or gymnasiums, I'm not sure what they would be doing in the Rural District unless they came in...they wanted to come in for a new public/quasi-public standards. I'm not exactly would know what their specifics about.

COUNCILMEMBER MOLINA: Okay.

MR. ALUETA: So this is an issue that probably needs to be dealt with in a separate ordinance either with the definition of height or an exemption from the height in certain categories for, for public buildings. But that's not what we're attempting at least in this --

COUNCILMEMBER MOLINA: Right.

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MR. ALUETA: --bill and it's not what was reviewed by the three Planning Commissions.

COUNCILMEMBER MOLINA: Okay. So I guess it seems like their concern was more that if there is a proposal to put a gymnasium in a Rural District zoned area, then that's where I guess...I would assume that this is the Director's concern about establishing height limitations. For example, I guess it mentions here gymnasiums typically exceed 30 feet so...okay, I guess that's for another time and another place I guess.

CHAIR BAISA: Mr. Hopper, did you have a comment?

MR. HOPPER: Well, I'd also point out all this bill does is establish that for property zoned County Rural, --

COUNCILMEMBER MOLINA: Okay.

MR. HOPPER: --and, and parks are...parks for public use is a principal use permitted in a Rural District. You already have 30 feet as a height limit for RU-0.5 and RU-1.0 zoned properties which is, I believe, the vast majority of the Rural zoned properties 'cause most of those properties were zoned Interim I think at the time the '97 bill came out. You're only talking about properties that are zoned County Rural right now and I'm not aware if Parks actually has any land in, in those areas that it's...that it's, you know, build gymnasiums on. But to the extent that it would have them on currently zoned RU-0.5 and RU-1.0 properties they would be subject to that height limitation if they're in those particular zoning categories. So, again, this is relatively limited change because you're only dealing with properties where if you look on the map it says Rural. For example, Molokai and Lanai don't have any property that's, that's zoned that way, and so...and it's relatively rare. So I'm not sure if the Parks Department actually has property that's zoned County Rural right now.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you. Director Hunt.

MR. HUNT: Just to follow-up on that. The ordinance does allow parks in the Rural zone, but it would be difficult to, to have a height limit for, for gymnasiums, that then you have a lower height limit for the houses. I mean or let me put it conversely, you wouldn't want to allow the houses to be built as large as gymnasiums. So I think if the Parks Department comes in and wants a gymnasium in a Rural zone, then we would have to deal with that specific issue. Most of these would probably be restrooms and little community facilities.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR BAISA: Thank you. Member Medeiros.

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COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Yeah, on the issue of the height standard. Also, in a permitted uses in Rural are barns and typical barns like we see constructed on the mainland that, you know, maybe farmers would also want. How would that be addressed? So the barn would have to be less than 30 feet in total height also? Because the barn can be as big as a gymnasium as far as height because they have the loft, the second level in the barn.

MR. HUNT: The barn would have to be 30 feet from either existing or proposed new grade. So . . .

COUNCILMEMBER MEDEIROS: The highest part of the building?

MR. HUNT: Which...whichever is. So the...again, the intent on that height ordinance is we've received a lot of complaints in some of these existing subdivisions where people are coming in building up the land putting a big mound of dirt on the vacant lot next to them and then putting the house up on top of that. And so it's difficult to deal with that and, and still allow for these larger buildings.

COUNCILMEMBER MEDEIROS: So would it be permitted under your proposal as far as height that if a farmer or rancher wanted to build a barn and the design was going to be that it's over 30 feet high, would they be able to excavate down in order to place that building there?

CHAIR BAISA: Joe Alueta.

MR. ALUETA: Thank you, Madam Chair. Not under the current Code because we...it's measured from the point below --

COUNCILMEMBER MEDEIROS: So it's existing. . .

MR. ALUETA: --or finished grade, whichever is lower.

COUNCILMEMBER MEDEIROS: Finished grade, whichever is lower.

MR. ALUETA: Correct. I just wanted to point out that 30 feet is taller than a two-story house.

COUNCILMEMBER MEDEIROS: Right.

MR. ALUETA: I mean so that's...if you're doing farming, farming is allowed in the Rural District.

COUNCILMEMBER MEDEIROS: Right, --

MR. ALUETA: Okay, but...--

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COUNCILMEMBER MEDEIROS: --and barns are too.

MR. ALUETA: --and so are barns, but these are pretty much small farms. They're not large farms. I'm just trying to envision from a practicality standpoint when in any of our Rural Districts do you have large farms in the rural area that would require a large barn, like an HC&S-size warehouse barn. Typically, you're going to find those in the Agricultural District. Because I mean I'm in the Rural District also and...but it's...I just have a hard time believing that there's going to be a farmer who needs a large enough barn than 30 feet on small rural lots.

COUNCILMEMBER MEDEIROS: Okay, and so Rural District zoning is described as the 0.5 or the 1.0 acre lots. Nothing bigger, is that correct?

MR. ALUETA: Those are the minimum lot sizes.

COUNCILMEMBER MEDEIROS: Oh, that's minimum. So they can be larger than that as far as lot sizes?

MR. ALUETA: That is correct.

COUNCILMEMBER MEDEIROS: Okay. . . .*(change tape, start 2A)*. . . I have one more question. I'm trying to remember what it is. You know what, I'll, I'll just yield to Member Johnson until it comes back to me. Mahalo, Madam Chair.

CHAIR BAISA: Thank you very much, Member Medeiros. We all have those moments. . . .*(laughter)*. . . Member Johnson.

VICE-CHAIR JOHNSON: Yes. And, and when you talk about the Housing Code or housing standards, that's not the same as the Uniform Building Code. So when you're talking about the Housing Code or the housing standards that they were going to do away with, what are you actually referring to? Because I've looked through all the minutes and nobody has really answered that question.

MR. ALUETA: You're correct. It's not the Uniform Building Code. It's called...it's typically from my understanding from what's been relayed to me from our Zoning Administration Division is that the Housing Code is typically administered by the Department of Health. It has to do with air, light, and minimum openings and stuff like that and that's why it's being...in other jurisdictions it's maintained by the Department of Health and not by the Building Code.

VICE-CHAIR JOHNSON: Yeah, and I think that's where...that's where, you know, just reading this through it was getting a little confusing to me because when I think of the Housing Code, I either think of our Workforce Housing, you know, Act or I think of Uniform Building Code. But you know, this Housing Code, you know, that, that is

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something that I had a question about. But apparently as long as it's not one of those things that would basically, you know, just let people build whatever they want to build and not have a standard I don't have so much of a problem with this. I also see in reading the minutes how some of the issues came about particularly from Maui Planning Commission because I think it was Madge Schaefer that's quoted in here as having this concern about the finished grade, you know, and then adding in the language about whichever is lower. So that's really...I'm, I'm glad to see that.

My, my main question though is because in some of the existing portions of the bill already it talks about agricultural activities being able to take place on rural zoned land. Now, that is not a part, from my understanding, of what's being changed. But did you get any comments from any of the individuals about actual...I guess it would be Mr. Medeiros's question if on rural zoned land, agriculture can take place. I noticed that there's a restriction saying it must be consistent with I guess another section of the Code. And yet under State law I believe they passed legislation saying you could not prohibit any agriculture activity on, you know, I mean you couldn't limit it. But is that only applicable to ag lands and not rural lands?

CHAIR BAISA: Mr. Alueta.

MR. ALUETA: I'm not following the question, Member Johnson.

VICE-CHAIR JOHNSON: Okay. The question basically is that underneath the way that the bill, and I'll just read you the section. It says, No. 2, this is on Page 3 of the ordinance, growing and harvesting of any ag or ag crop or product, subject to restrictions set forth in this chapter. And then later on it just says--I guess this would be a restriction or accessory use--stands for the purpose of displaying and selling ag, floriculture or farming products, if such products have been produced or grown on the premises, subject to standards in Section 19.29.020, Maui County Code. Goods produced off-premises are expressly prohibited. And yet I, I know that at the State level there was legislation adopted that basically said that you could not restrict the type of agricultural activities to try to promote under the State Constitution farming and farming opportunities. So does this have any applicability whatsoever in this particular ordinance even though it's not part of what we're changing? Was this part looked at for consistency with State law?

MR. ALUETA: In essence, no. It's not...it's not establishing any restrictions. The restriction in there is basically saying that you can't have goods offsite. That's...the same restriction applies to the Agricultural District meaning you can't...to have a farm like say to sell crops you can't import crops from Washington and then bring it on to your ag land and sell it as if it's yours or open up a farm...a roadside stand or sell it. It allows for retailing. It allows for...there's nothing in here that restricts agricultural activity. That, that...I think the intent of the State law was primarily with State agricultural lands and sometimes there's private covenants that override State law with regards to farming activities and that's where they were trying to get at. But no, I do not believe that anything in this Code that, in the changes that we have, restrict agricultural operations,

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and in those areas that talk about ag land we made no changes so these are the existing rule...law that were adopted in 1997.

VICE-CHAIR JOHNSON: Okay. So basically, if an individual who's living in rural zoned land wants to have roosters or chickens or whatever it is, they would be permitted to have that if it's Rural zoned land?

MR. ALUETA: It says that it would be allowed as an accessory use.

VICE-CHAIR JOHNSON: Okay, 'cause...and it's just what I wanted to make sure because we...you know the number of calls we get from individuals saying, oh, you know, I don't want those who are not permitted, I live in a residential area, and yet if they're living in land that is zoned Rural, then they could have rooster noise. Is that correct?

MR. HOPPER: Well, I mean as far as the State restrictions you're talking about the only thing I can find right now is on Agricultural Districts to tell you the truth. This is not an Agricultural District. And even to that extent I believe--I'm looking for it now--that this limitation of, of the stance that you brought up, and again, this has...this is pretty removed from what our bill is doing. The bill isn't affecting that in any way and I don't want to get into any Sunshine Law problems discussing it too much in-depth. But as far as your concern I think it's actually more consistent with State law because it's requiring you to sell the prop...the crops that you have from that land. I think they're trying to prohib...you know, prevent grocery stores essentially or that type of use that's more of less of an agricultural type use and more of a commercial use on the property. I think that's what this, this does. It stands for the purpose of displaying and selling agricultural, floricultural or farming products as such products have been produced or grown on the premises subject to standards in Section 19.29.020. And so I think that that's, if anything, very consistent with the State ag restrictions to make sure that the agriculture is done on agricultural or I mean in this case, rural land, --

VICE-CHAIR JOHNSON: Rural.

MR. HOPPER: --rather than a commercial type of use. So I, I think it's actually consistent with that. But again, this new bill will only add County Rural to here. It will not add...change RU-0.5 and RU-1.0 property which is the vast majority of what these properties are right now as I understand it.

VICE-CHAIR JOHNSON: Okay. And all the laws with regard to agriculture that are stipulated here, those were not being looked at at all, just only the part that dealt with establishing a standard?

MR. HOPPER: Yeah. The only changes in the bill which you can see in Ramseyered format there's, you know, there's...there was adjustments made to adult day care homes, just to specify that it includes adult day care. There's reference to County Rural made throughout which is necessary when you add County Rural to those, those districts. You

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can see a few underlined areas where you talk about special use permits. It allows the same special uses in County Rural as it does in RU-0.5. Same minimum lot sizes, RU-0.5. It does not change any of the uses and in fact in one of the Commission meetings that I advised, they, they looked at that a bit and I did raise the concern of the Sunshine Law issue of the bill going to the Commission was to only add this in there. It was not agenda'd [*sic*] as restricting the use of whatever in the County Rural land, which if that was the agenda item, you may have different people come to the meeting or different people have interest.

VICE-CHAIR JOHNSON: Yeah. And, and the only reason that I'm raising the issue at all is because it's a part of the total bill which we're looking at and I just was curious, you know, if the people particularly that came and testified who are raising these other issues, had actually looked at the bill and looked at what was currently permitted as an accessory use, keeping of livestock, hogs, poultry, and fowl and game birds. So, you know, I mean, Madam Chair, even though it's not part of it when you're looking at altering any bill, if the people who live in these areas that are impacted are in support of the bill, then I think they should be aware of what's in the entire bill, not just the little specific component of what it is they're looking at. So I...other than the 30 foot restriction, you know, and that seems pretty consistent on County Rural, half-acre and RU-1. So, and as far as the administrative rules because one of the things that they list is that the, I believe, it's the Planning Director rule making authority. The Director may adopt rules to clarify and implement this chapter. Mr. Hunt, have you already done draft rules? Are there rules already in existence or will you be doing that?

MR. HUNT: There may be rules already...internal policies/rules already adopted that affect the implementation or interpretation of this Code of this particular chapter. I'm not aware of them. In response to the question whether we have already adopted implementing rules, no, not yet.

VICE-CHAIR JOHNSON: Okay. And if you do go through the process of implementing or adopting the I guess it would be administrative rules to clarify and implement, that would be a separate process entirely?

MR. HUNT: Separate from?

VICE-CHAIR JOHNSON: From our Council.

MR. HUNT: Yes.

VICE-CHAIR JOHNSON: Okay. Just wanted to get that on the record. Thank you.

CHAIR BAISA: Thank you, Member Johnson. Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Okay, my senior moment came back to me. . . .(*laughter*). . . In your bill, the height limit of 30 feet, I'm going to get

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back to that again. How does that impact 19.30A.303, District standards at E, that allows for non, non-dwelling structures such as a barn or silo that is over 35 feet high? So it's already allowing in the ordinance for silos and barns to be over 35.

MR. ALUETA: It doesn't impact it because that's the Agricultural District. This is the Rural. . .

COUNCILMEMBER MEDEIROS: That's only ag?

MR. ALUETA: That's ag. 19.30A is the Agricultural District.

COUNCILMEMBER MEDEIROS: I think my page turned.

MR. ALUETA: Yeah, 19.29 is the Rural District.

COUNCILMEMBER MEDEIROS: Okay. I got...okay. My next question is, like in Hana there's a lot of Interim Zoning and when we go to say zone Rural Districts, which Hana is a lot of either ag or rural, what happens to nonconforming existing lots as far as meeting minimum lot sizes? What happens to lots that are less than half-acre but are in the rural area that will be part of Rural zoning? Are they grandfathered in? Are they allowed?

MR. ALUETA: We have an existing nonconforming provision.

COUNCILMEMBER MEDEIROS: Okay.

MR. ALUETA: Provided that...provided that they're already rural. So I wouldn't...it's on the last page on Page 6, which is Section 7. You must know that...remember in '97, Hana, the entire Hana District was excluded from being comprehensively zoned to an RU-1 or RU-0.5. So at the time of when they come in for zoning that's when we would deal with the issue.

COUNCILMEMBER MEDEIROS: I see. And so is that available to them if their property doesn't meet the minimum lot size as described in your bill?

MR. ALUETA: I believe that it has been like in the case of Hana house lots. Individually, they have come in for their individual change in zonings to the County RU-0.5.

COUNCILMEMBER MEDEIROS: Okay. I'm back to, you know, barns and silos, and I have a hard time seeing the difference between a barn and a silo on Ag zone and what the difference would be on Rural zone where farming and ranching is also allowed – why it would be different as far as the height. Would you know what the rationale was behind that?

MR. ALUETA: Yes. If I may, Madam Chair?

CHAIR BAISA: Yes, please go right ahead.

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MR. ALUETA: You must understand the concept of rural I guess you could say is kind of the land... a lot of the people call it the land in between. You have this buffer zone between what we consider the State Urban areas of the County of Maui and a lot of time in these outlying areas you have...we designated as Rural, and it some...has some urban characteristics, but not all urban characteristics either urban services. And it also...and it sort of acts as a buffer between what we've traditionally called ag lands. And that's why you'll see within the, the both the State and the County Rural Districts you have this cross between some urban uses, as well as some agricultural uses. And so it's not ag, but it's not urban. Okay. So it's...you call it the land in between and that's why you have a mixture of these uses. And again, they tend...the reason it's half-acre, they tend already to be smaller in lot sizes and they have single-family. If you look at it, single-family uses are an allowed use. Whereas, in Agricultural District, it needs to be subordinate to an agricultural activity.

COUNCILMEMBER MEDEIROS: Right.

MR. ALUETA: Farming is allowed, but you typical...it's not normally a principal use that's always there. Normally, it's subordinate to a single-family residence. So in the Rural District I would characterize it as more of you have single-family uses and where the farming activity is subordinate to the single-family house and not the other way around. Whereas, in the Agricultural District, in theory in the Agricultural District, the house is subordinate to the farming activity. The only purpose of the house there is so you can be on the land. So, and we've created standards and that's I mean like I say because it's more of an...has more of an urban or single-family use to it or emphasis, farming is not...I mean the height limitation is set up more of at a residential scale.

COUNCILMEMBER MEDEIROS: I see. Okay. Thank you, Mr. Alueta, for that explanation. It makes sense. My final question is if a property owner has Rural zoning and they have a lot larger than, you know, half an acre or one acre and they are farming, is the variance application process available to them if they wanted to go higher than the standards allow?

MR. ALUETA: Yes. The variance application is, is available to everyone.

COUNCILMEMBER MEDEIROS: Okay. Thank you very much. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Medeiros. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Question for Director Hunt on Page 4 of the bill, Section 4, under Rule making authority, Chapter 19.29.060, where it states, "The director may adopt administrative rules to clarify and implement this chapter". Could you give me some I guess background or clarification on why the use of the word "may" rather than "shall"? I guess I would assume "may" gives you that flexibility to go either or. Whereas, "shall" you'd have to, you know, implement

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administrative rules for clarity. Can you just share with the Committee why the choice of going with “may” rather than “shall”?

MR. HUNT: Most jurisdictions allow the administrations to adopt administrative rules that clarify interpretations that set future interpretations so that the staff has clear direction on how we should interpret or administer code provisions. Not every code provision needs that. Generally speaking, those rules or interpretations are adopted as problems arise and we wrestle with them and come to a solution after discussing it with legal counsel, precedent, et cetera, et cetera. So it's not necessarily absolutely sure that we will need administrative rules. This provision allows us in the future if the issue comes up and we want to, we may, but we don't have to.

COUNCILMEMBER MOLINA: Okay. Just to give you that option in the event that you do need it.

MR. HUNT: Correct.

COUNCILMEMBER MOLINA: Okay. Thank you.

MR. HOPPER: Madam Chair?

CHAIR BAISA: Mr. Hopper.

MR. HOPPER: I drafted the language. I took it directly from another section of the Code from the Parks Department. It said, “The Director may promulgate such rules and regulations pursuant to Hawaii Administrative Procedures Act to implement any other provisions in this chapter”. There's similar language across the Code. Planning Department, unfortunately, doesn't have the blanket authority to do that under all sections. There's a section here, a section there, that has the rule making authority, but I don't think it's in every single section so that's why it's generally I think popping up in the new bills in sections where it may be necessary to, to do that. But it says “may” just because that's what the language said in the previous Code sections that I had read that language in.

COUNCILMEMBER MOLINA: Of course, the Council has the...or the Committee has the option of if we had wanted to make it a requirement, we could do that, but it would probably hold things up if we were to require the Director to. Okay. Just thought I'd ask. Thank you, Chair.

CHAIR BAISA: Thank you, Member Molina. Members, any additional questions? If not, Chair would like to make a recommendation.

COUNCILMEMBER MEDEIROS: Recommendation?

CHAIR BAISA: Chair would like to recommend passage of the bill on first reading and filing of the communication.

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COUNCILMEMBER MEDEIROS: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR BAISA: Thank you very much, Committee. Any comments? Any Member would like to make any comments? If not, Chair will call for the vote. All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR BAISA: Opposed? Motion passes.

**VOTE:       AYES:       Councilmembers Medeiros and Molina, Vice-Chair Johnson, and Chair Baisa.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmember Hokama.**

**MOTION CARRIED.**

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

CHAIR BAISA: Thank you very much, Committee. Announcements from anyone? If not, the Chair would like to make an announcement and it's an important one. Tentatively, and we'll be posting the agenda...the next Planning Committee agenda on the 11<sup>th</sup> of December for our next meeting on December 18<sup>th</sup>. But tentatively, we are planning to move our meeting to Lahaina at the Lahaina Intermediate School beginning at 6:00 p.m. because we will be discussing a matter which is very relevant to the area and we'd like to make it available to the residents of the West Side. So I just want everybody to know not to come here on that...on the 18<sup>th</sup> in the morning because we'll not be available. Just a moment, please. . . .*(short pause)*. . . Well, again, like I said this is tentative. It could be five or it could be six and please look for the agenda that will be posted on the 11<sup>th</sup> to be sure that you have the right time and that we confirm the right place and everything. I think it's fairly definite and we will not be here the morning of the 18<sup>th</sup> at 9:00. And the exact time and the...what goes on in Lahaina is still tentative, but we'll let you know. I think it's really important that we give the public advance notice because many people like to come and join us and I'd like to give them, as well as the Staff, and anybody else who has to prepare, notice ahead of time.

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So, again, thank you very much. Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just a follow-up on your announcement. Have you received any word from the Policy Committee which normally meets in the afternoon as to whether they'll take your morning slot because, --

CHAIR BAISA: Yes. Yes, they have.

COUNCILMEMBER MOLINA: --because, yeah, I would be concerned that if Policy meets in the afternoon, then it would prevent those of us that need to get to Lahaina.

CHAIR BAISA: It's my understanding that arrangement has been looked into and they've agreed.

COUNCILMEMBER MOLINA: To have their meeting in the morning?

CHAIR BAISA: Mr. Raatz says yes.

COUNCILMEMBER MOLINA: Okay. Fantastic.

CHAIR BAISA: Thank you very much. You know, it's very hard when we're trying to do schedules here. You move one domino and all the rest fall down. So it's a constant thing of trying to balance many priorities.

COUNCILMEMBER MEDEIROS: Madam Chair?

CHAIR BAISA: Yes, Member Medeiros.

COUNCILMEMBER MEDEIROS: The meeting at the Lahaina Intermediate School, is that the cafeteria?

CHAIR BAISA: Mr. Raatz, can you help us? It's the cafeteria.

COUNCILMEMBER MEDEIROS: Okay. Thank you.

CHAIR BAISA: Yes.

COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

CHAIR BAISA: Again, like I said, the details will be posted in our Planning Committee agenda that will be posted on the 11<sup>th</sup> so look for that. But put that in your date books now so you know you don't have a free evening. We hope all of you will be able to come to Lahaina.

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Also, I'd like to thank everyone who came here today. I'd especially like to thank the Department representatives and I'd like to thank our Staff and all of you, Members. It's a very difficult time to be sitting here buckling down to work with the sleigh bells ringing and all the elves running around the County Building making everything look wonderful. I invite the public. If you want to see something beautiful, come up and take a look, particularly in Member Mateo's office. It's a sight to behold that you don't want to miss. And I'm wearing purple today in his honor and so is Member Johnson.

So aloha all and this meeting is adjourned. . . .(gavel). . .

**ADJOURN:** 10:49 a.m.

APPROVED:



GLADYS C. BAISA, Chair  
Planning Committee

pc:min:071204

Transcribed by: Clarita Balala