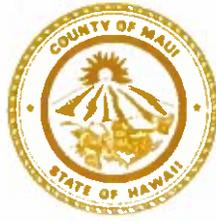


RICHARD T. BISSEN, JR.
Mayor

KATE L. K. BLYSTONE
Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

March 1, 2024

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Richard Bissen 3-4-24
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Council Members:

SUBJECT: A BILL FOR AN ORDINANCE TO AMEND THE DEFINITIONS OF "FARM" AND "FARM LABOR DWELLING"

On October 20, 2023, the County Council adopted Resolution 23-220 (attached), with direction to refer a proposed bill to amend the definitions of "farm" and "farm labor dwelling" to the Planning Commissions for review, comment and transmittal of their findings and recommendations to the Council.

Background Information

Definition of "Farm":

As currently proposed in the attached bill, the definition of "farm" is proposed to be amended as such:

Proposed bill's definition of "Farm":

"Farm" means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation."
(text proposed to be repealed is bracketed and new text is underscored)

As discussed in the attached Planning Department's (Department) December 13, 2023

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For Transmittal to:
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Memorandum to the Planning Commissions, the Department opposed amending the definition of “Farm” as proposed because, in brief, it is contrary to the purpose and intent of Chapter 19.30A, specifically 19.30A.010, A1, A2, A4, B1, B2 & B3. It will arbitrarily and unnecessarily reduce the requirement to farm the majority of a parcel, regardless of whether the deducted area was needed to farm a majority of the parcel. To address this concern, the Department recommended to the Planning Commissions a revised definition of “Farm”, as follows:

Department’s proposed revision to the definition of “Farm”:

“Farm” means a lot on which [the majority] at least 51 percent of the area of the land is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation. If it is determined by the Director that more than 49 percent of the lot is not usable, accessible and feasible for farming or ranching, then those areas deemed unusable, inaccessible and infeasible may be excluded provided that the remainder of the lot is used for the predominant activity of agriculture or agricultural land conservation. For the purpose of this definition, land that is not usable, accessible and feasible for active agricultural uses shall, subject to the approval of the Director, include culturally sensitive areas, slopes steeper than 1 to 1, streams or gulches, or land containing earth material that cannot be farmed.

We understand that the intention of the revised definition of “farm” as proposed was to exclude areas that are not suitable for farming from the calculation. We believe the proposed revision will provide greater clarity to staff who will implement this code and memorialize Council’s intent.

Definition of “Farm Labor Dwelling”:

As currently proposed in the attached bill, the definition of “Farm labor dwelling” is proposed to be amended as such:

“Farm labor dwelling” means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands, under section 205-45.5 Hawaii Revised Statutes.

As noted in the attached December 13, 2023 Memorandum, the Department opposed amending the definition of “Farm Labor Dwelling” as proposed because, in brief, it is contrary to the purpose and intent of Chapter 19.30A specifically 19.30A.010, A1, A3, A4, B1, B2 & B3. It will separate the basis for the creation of farm labor dwelling units from a productive commercial farming activity. This separation may allow for and further facilitate the misuse of the agricultural zoning district for nonagricultural uses. More specifically, the Department outlined the following four concerns to the Planning Commissions:

Honorable Richard T. Bissen, Jr.
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- 1) Changing the type of worker to include alternate types (interns and apprentices) may be inconsistent with the intended use of agricultural “employees”, and will be difficult to regulate.
- 2) “Part-time work is not defined. Permitting a “part-time” worker and/or the family of a “part-time” worker that is employed for an unknown number of hours to reside in the farm labor dwelling potentially turns the farm labor dwelling into a third farm dwelling or transient use under the pretenses of an agricultural educational or internship program.
- 3) The proposed revisions loosen the requirements of a farm labor dwelling by removing the clause “employees”, which assumes some type of payment to the worker.
- 4) Since the farm labor dwelling has no restriction on size nor is counted towards the ten percent developable area, accommodating a family would assume that the dwelling would be larger than normal and may impact the availability of agricultural activity occurring on the farm.

The Department reached out to various agencies for their comment on the proposed bill, including the State of Hawaii Department of Agriculture, Maui County Farm Bureau, County of Maui Department of Housing and Human Concerns, County of Maui Department of Agriculture, County of Maui Department of Fire and Public Safety, and the U.S Department of Agriculture. For the reasons noted in the attached December 13, 2023 Memorandum, the State of Hawaii Department of Agriculture is opposed to the bill.

Commission Recommendations

The attached December 13, 2023 Memorandum to the Commissions was provided by the Department with its analysis and recommendations on the proposed bill.

Public hearings were held by the Lāna‘i Planning Commission on December 13, 2023 and January 17, 2024, the Moloka‘i Planning Commission on December 13, 2023, and the Maui Planning Commission on January 9, 2024. Attached are the minutes from each of these meetings. The following is a brief summary and action taken during each meeting:

- **Lāna‘i Planning Commission Meetings:**
 - **December 13, 2023 Meeting:** The Commission voted to defer the item to their following meeting so that the Department could provide additional information pertaining to the following:
 - 1) Commission requested that the County Department of Agriculture provide comment on the proposed bill.
 - 2) Commission requested that the County Council provide input on the Department’s concerns with the proposed bill.
 - 3) Commission requested that the County Council provide input on the State Department of Agriculture’s comments on the proposed bill.
 - **January 17, 2024 Meeting:** In response to the Commission’s questions from the December 13 meeting, the Department provided the Commission with the attached Memorandum, dated January 17, 2024, which also included attached comments from the

Honorable Richard T. Bissen, Jr.
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County Department of Agriculture. After hearing the Department's summary of the Memorandum, the Commission voted to recommend approval of the Department's revised definition of "Farm" (as noted above). Additionally, the Commission shares the concerns raised by the Department as shown in the four bullet points noted above. The vote was 7-0, with 2 absences.

- **Moloka'i Planning Commission Meeting:**
 - December 13, 2023: The Commission voted to recommend approval of the proposed bill to change the definition of "Farm" as recommended by the Department, and the definition of "Farm labor dwelling" with amendments that would add the following text: "except for Moloka'i". In general, prior to the vote, a concern was expressed that Moloka'i needs to have a more focused effort, especially involving the agricultural community, in determining what works specifically for Moloka'i. The vote was 7-0, with 2 absences.
- **Maui Planning Commission Meeting:**
 - January 9, 2024: The Commission voted (5-0) to recommend the Department's alternative (as noted above) for the definition of "Farm". Additionally, the Commission commented that there should be some way to include the County Director of Agriculture in determining the usability/feasibility of land as it pertains to 51%.

In regards to the definition of "Farm labor dwelling", the Commission was in favor of the proposed definition in the bill, but provided the following comments for the Council's consideration:

- The farm owner needs to maintain records of written agreements with its employees, including interns and apprentices, that address how long they are staying on property and hours of work so that it can be monitored from an enforcement perspective; and
- The farm owner should be incentivized to give preference to local residents for farm labor over people from off island.

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



KATE L.K. BLYSTONE
Planning Director

Attachments: Department Transmittal Letter to PC
Planning Department Memorandum dated January 17, 2024 to Lāna'i PC
Moloka'i PC Minutes, December 13, 2023
Lāna'i PC Minutes, December 13, 2023 and January 17, 2024
Maui PC Minutes, January 9, 2024
Resolution 23-220

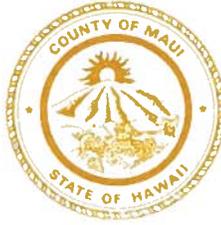
Honorable Richard T. Bissen, Jr.
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cc: Jordan E. Hart. Planning Program Administrator (pdf)
Gregory Pfost. Administrative Planning Officer (pdf)
Rogerene Arce. Director, Maui County Department of Agriculture (pdf)
S:\ALL\APO\19 30A\2023 Reso to revise farm and farm labor dwelling\Council Transmittal Report Definition of Farm and Farm Labor Dwelling.docx

RICHARD T. BISSEN, JR.
Mayor

KATHLEEN ROSS AOKI
Director

GARRETT E. SMITH
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

December 13, 2023

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: KATHLEEN ROSS AOKI, Planning Director

KRA

**SUBJECT: A BILL FOR AN ORDINANCE TO AMEND THE DEFINITIONS OF
“FARM” AND “FARM LABOR DWELLING”**

The attached bill proposes to amend Title 19 of the Maui County Code in order to revise the definitions of “farm” and “farm labor dwelling”.

The Department opposes amending the definition of “Farm” as proposed because it is contrary to the purpose and intent of Chapter 19.30A, specifically 19.30A.010, A1, A2, A4, B1, B2 & B3. It will arbitrarily and unnecessarily reduce the requirement to farm the majority of a parcel, regardless of whether the deducted area was needed to farm a majority of the parcel.

The Department also opposes amending the definition of “Farm Labor Dwelling” as proposed because it is contrary to the purpose and intent of Chapter 19.30A specifically 19.30A.010, A1, A3, A4, B1, B2 & B3. It will separate the basis for the creation of farm labor dwelling units from a productive commercial farming activity. This separation will allow for and further facilitate the misuse of the agricultural zoning district for nonagricultural uses.

Background Information

On October 20, 2023, the County Council adopted Resolution 23-220 (attached), with direction to refer a proposed bill to amend the definitions of “farm” and “farm labor dwelling” to the Planning Commissions for review, comment and transmittal of their findings and recommendations to the Council.

Discussion

Proposed revision to the definition of “farm”:

The Department cautions against the piecemeal evaluation and revision to sections of the Agricultural Zoning Code. Changes to this section will have dramatic effects on the land use and development pattern of the County of Maui and should be carefully evaluated in the context of the existing General Plan and component parts.

As discussed extensively within the Planning Department’s report on a proposed bill to increase the size of a second farm dwelling from 1,000 to 1,500 square feet, which is a separate item on today’s Planning Commission agenda, retaining and encouraging agricultural uses in Maui County is imperative as addressed within the General Plan, Maui Island Plan and the Maui County Code (MCC).

Hawaii Revised Statutes (HRS) specifies that “farm dwellings” are permitted as an accessory to a “farm”, and that they are considered “single-family dwellings”. Similarly, the MCC currently identifies “farm dwellings as accessory to the principal uses of agriculture, and defines “farm dwelling” as *“a single-family dwelling that is located on and used in connection with a farm” (emphasis added)*. The MCC also currently defines “farm” as *“a lot on which the majority of the land is used for and the predominant activity is agriculture and/or agricultural land conservation” (emphasis added)*. Thus, in accordance with these definitions, in order to have a “farm dwelling” on a “farm”, a “majority” of the lot must be used for the “predominant activity” of “agriculture” and/or “agricultural land conservation”. Conversely, without a majority of the lot being used for agriculture, then a farm dwelling should not be permitted.

To ensure consistency with the purpose and intent of the Agricultural District and the definitions identified above, the County utilizes its permitting and enforcement processes to make sure that property owners who desire to construct a “farm dwelling” on a “farm” are truly utilizing a “majority” of their land for the “predominate activity” of “agriculture”. Specifically, prior to issuance of the first building permit for a farm dwelling, the property owner must file with the County a declaration verifying that they will comply with the MCC and HRS. Then, prior to the issuance of any subsequent building permit(s), the County conducts an inspection of the property to ensure that a “majority” (51%) of the lot is being used for active agricultural purposes.

There has been difficulty in the enforcement of the intended use of the agricultural district due to the pressure for the use of the agricultural zoning district for nonagricultural purposes, predominantly single-family use on a large lot. Property owners regularly attempt to develop a “farm dwelling” without the exitance of or a legitimate intention to farm. Such challenges often are at odds with the County’s established goals and policies to retain and encourage agriculture and instead promote a desire for development and non-utilization of agricultural lands. Hence, refinement of the definition of “farm” is a welcome endeavor but should be addressed with careful consideration of the overall development pattern being sought by the County of Maui’s General Plan and component documents.

As currently proposed in the attached bill, the definition of “farm” would be amended as such:

“Farm” means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation.”

(text proposed to be repealed is bracketed and new text is underscored)

The Department is supportive of the proposed bill’s revision to change “majority” to “51 percent” as this provides clarity and is consistent with Department’s current interpretation and administration of “majority”. Technically, a majority is anything more than 50%, and thus, if desired, the Commission may wish to recommend a change to the proposal text to state “more than 50%”, instead of “at least 51 percent”.

However, in regard to the proposed second phrase, “...that is usable, accessible, and feasible for farming, ranching or conservation.”, this qualifying language is a departure from the County’s current goals and policies to retain and encourage agricultural uses, and thus the Department is not in favor of as currently written. Specifically, the current definition is clear in that a majority of the entire lot, meaning at least 51 percent of the total lot area, must be used for active agricultural use. On the other hand, the proposed text would exempt from the total lot area those areas that are not “usable, accessible and feasible for farming, ranching, or conservation”. Subsequently, the amount of a lot used for active agricultural use would end up being less than what the current code requires, thereby reducing the amount of active agricultural use, which would be considered inconsistent with the County’s goals, policies, and purpose and intent of the Agricultural District.

For example, a lot in the Agricultural District would currently require a majority (51%) of active agricultural use in order to be deemed a “farm” and able to accommodate the accessory use of a “farm dwelling”. As proposed in the draft bill, the same lot would be able to exclude an amount of the total lot area that may be deemed as not “usable, accessible or feasible for farming, ranching or conservation”. Using the same example, suppose the property contained a stream/gulch with steep embankments that were deemed not to be usable, accessible or feasible for farming of approximately 10% of the parcel. Under the proposed revision, the same lot would then require 46% of active agricultural use instead of the 51% required under the Department’s existing implementation of MCC. A lot that was 40% unsuitable for agriculture would only be required to farm 31% of the total land area, even though 51% was always suitable for agricultural activities.

The current MCC already addresses areas that are not “usable, accessible or feasible for farming, ranching or conservation” Specifically, the MCC currently requires a “majority” (51%) of the lot to be used for active agricultural purposes, which also means that the remaining lot (up to 49%) does not need to be devoted to active agricultural purposes. Therefore, the 49% portion

of a lot not devoted to active agricultural use could consist of those lands that are not usable, accessible or feasible for active agricultural use. The remaining 49% can also be used to accommodate the maximum 10% of lot area that is permitted for use of a main farm dwelling and a second farm dwelling. Thus, using the same example in the paragraph above, the current MCC already allows for the stream/gulch with steep embankments to be removed from the area of active agricultural land as it would simply be part of the 49% of the lot that does not need to be utilized for active agricultural use.

The Department recognizes that in some cases there may be an agricultural lot that is severely limited on the area of the lot available for active agricultural uses. Specifically, for those lots that have more than 49% of its land not usable, accessible or feasible for active agricultural use, this provision may provide some assistance to the property owner by allowing for additional areas to be excluded over and above 49%. An alternative may be considered that would allow for additional areas to be excluded over and above 49% provided that the remainder of the lot is used for active agricultural uses, instead of only 51% of the remainder of the lot as currently proposed. An alternative definition for the Commissions' consideration could be as follows:

Alternative 1:

"Farm" means a lot on which [the majority] at least 51 percent of the area of the land is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation. If it is determined by the Director that more than 49 percent of the lot is not usable, accessible and feasible for farming or ranching, then those areas deemed unusable, inaccessible and infeasible may be excluded provided that the remainder of the lot is used for the predominant activity of agriculture or agricultural land conservation."

(text proposed to be repealed is bracketed and new text is underscored)

Alternative 1 above would provide for more active agricultural uses than the current proposal, and thereby would be considered more consistent with the County's goals and policies. For example, if it was determined by the Director that a two-acre lot (87,120 square feet) had 55% of its land as not being usable, accessible and feasible for farming or ranching, then Alternative 1 would require that 47,916 square feet (55%) be excluded, while the remainder 39,204 square feet (45%) be used for active agricultural purposes. Without the revised text of Alternative 1, and utilizing the bill's proposed text, then the same 87,120 square foot lot would only require that 51% of the remaining land that is usable, accessible and feasible be used for active agriculture use, which in this case would be 19,994 square feet.

If there is support to change the definition of "farm" to exclude certain areas that are deemed not to be "usable, accessible or feasible for farming, ranching or conservation", either as proposed or as proposed in Alternative 1 above, then the Department also recommends that the terms "usable", "accessible" and "feasible" be further defined. Without defining these very subjective terms, the County will have difficulty regulating what land areas may be excluded. For example, in determining what is "usable, accessible or feasible", land that is identified as having culturally sensitive areas, slopes steeper than a specified degree (such as 1 to 1), streams or gulches,

or containing earth material that cannot be farmed could be types of land areas to be excluded. Department staff are by no means experts in the field of farming and therefore it is important to acknowledge that there may be other types of land not feasible for farming that have not been listed. Department staff did contact the State Department of Agriculture, County Department of Agriculture, Maui County Farm Bureau and USDA for an opinion on the matter, of which USDA indicated that generally they would agree that land that is culturally sensitive, has steep slopes, streams or gulches is unsuitable for farming. If it is desired by the Planning Commission to include such a definition, then the Department would recommend revising Alternative 1 with the following Alternative 2:

Alternative 2:

“Farm” means a lot on which [the majority] at least 51 percent of the area of the land is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation. If it is determined by the Director that more than 49 percent of the lot is not usable, accessible and feasible for farming or ranching, then those areas deemed unusable, inaccessible and infeasible may be excluded provided that the remainder of the lot is used for the predominant activity of agriculture or agricultural land conservation. For the purpose of this definition, land that is not usable, accessible and feasible for active agricultural uses shall, subject to the approval of the Director, include culturally sensitive areas, slopes steeper than 1 to 1, streams or gulches, or land containing earth material that cannot be farmed.

(text proposed to be repealed is bracketed and new text is underscored)

If either of the Department’s alternatives (1 or 2) identified above are not supported, and there is a desire to pursue the proposed revision as currently drafted, then the Department would at minimum recommend removing the proposed term “conservation” since “conservation” is not identified as a permitted use in the State Agricultural District. As such, the Department would recommend the following change:

Alternative 3:

“Farm” means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming or ranching, [or conservation] is used for, and the predominant activity is, agriculture [and/or agricultural land conservation.]”

(text proposed to be repealed is bracketed, new text is underscored, and new text proposed in this Alternative 3 is double underscored)

Proposed revision to the definition of “farm labor dwelling”:

In addition to “farm dwelling,” there is another type of residential use permitted on a lot within the Agricultural District known as “farm labor dwelling.” According to Section 19.04.040, “farm labor dwelling” is currently defined as “a dwelling or lodging unit that is used exclusively

by agricultural employees employed full-time or seasonally in the County, and that is located on a farm and is ancillary and secondary to agriculture.” Thus, the difference between a farm dwelling and a farm labor dwelling is that the occupants of the farm labor dwelling must be employed by the agricultural operation occurring on site, whereas the occupants of a farm dwelling do not. Further, while the Agricultural District permits only one farm dwelling and one second farm dwelling per lot, the number of farm labor dwellings permitted on a lot is based upon the size of the lot in that one farm labor dwelling is permitted per every five acres of lot area. Further, the size of a farm labor dwelling is not regulated (such as the second farm dwelling) nor does it count towards the ten percent maximum developable area (such as the main and second farm dwellings).

As currently proposed in the attached bill, the definition of “farm labor dwelling” would be amended as such:

“Farm labor dwelling” means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands, under section 205-45.5 Hawaii Revised Statutes.

(text proposed to be repealed is bracketed and new text is underscored)

There are three proposed content changes to the existing code definition. First, the proposed revision changes the terminology of those working on a farm from “employees” to “workers, including interns and apprentices”. The Department believes the intent of this change is to accommodate workers on a farm that may not be specifically “employed” with the intent of payment, such as that which may accommodate a volunteer type internship or apprentice in exchange for being able to reside on the property. Although it does not explicitly exclude these workers, whether they be interns or apprentices, from being paid at the discretion of the owner. The Department’s concerns regarding this revision is that it changes the type of worker to include alternate types (interns and apprentices) that may be inconsistent with the intended use of agricultural “employees”, and will be difficult to regulate.

Secondly, the proposed revision changes the timing of work by the farm laborer. Specifically, it replaces “employees employed full-time or seasonally in the County” with “full-time and part-time”. The Department believes that the intent of this change is to capture the nuances of farming wherein from time to time the necessity for a full-time worker may be necessary during portions of a season, but perhaps only part-time during others. Also, interns and/or apprentices may be working only on a part-time basis during a portion of the year that may not be termed as “seasonally”. The Department is concerned with this change in that the existing definition assumes that the employees will be working either full-time year-round or seasonally, whereas the revised definition allows for “part-time” work, which is not defined. “Part-time” may result in so little time working, that the farm labor dwelling may incidentally serve as third farm dwelling, which would be inconsistent with the intent. Additionally, a “part-time” worker, with

family residing in the farm labor dwelling may turn into a transient use given that “part-time” is not clearly defined.

Thirdly, the proposed revision introduces an allowance for “*family members of the agricultural worker*” to reside in the farm labor dwelling, which the current code is silent on. Combined with the previous two revisions, there is also the potential for deviation from the intended purpose of a farm labor dwelling by allowing a family of a part-time worker that is employed for an unknown number of hours to reside in the farm labor dwelling; again, potentially turning the farm labor dwelling into a third farm dwelling or transient use under the pretenses of an agricultural educational or internship program.

In summary, the proposed revisions loosen the requirements of a farm labor dwelling by removing the clause “employees”, which assumes some type of payment to the worker, and introduces the ability to house family members of the worker regardless of how many hours the worker may be employed. It raises the question of whether a farmer can now lease a farm labor dwelling to a family that may only have one of its members working part-time with no definition of what part-time means; creating the opportunity for abuse and limiting the ability to implement the stated purpose and intent of the Agricultural Zoning District. Since the farm labor dwelling has no restriction on size nor is counted towards the ten percent developable area, accommodating a family would assume that the dwelling would be larger than normal and may impact the availability of agricultural activity occurring on the farm; potentially being inconsistent with the purpose and intent of the Agricultural District. The Department is not in favor of the proposed changes unless there are additional provisions added to control the potential abuse.

Agency Comments

The Planning Department reached out to various agencies within and outside of the County for comment on this draft bill. The following comments were received:

- State of Hawaii, Department of Agriculture – As shown in the attached comment letter, while the State Department of Agriculture (State) does not have a concern with the portion of the proposed revision to the definition of “farm” indicating that at least 51 percent of the land is usable, accessible, and feasible for farming and ranching, they do have a concern about making “agricultural land conservation” equivalent to farming and ranching uses and activities. The MCC currently defines “agricultural land conservation” as:

"Agricultural land conservation" means the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration.

The State is of the opinion that this definition sets a very low bar for what activities farm dwellings may be accessory to because the activities of “agricultural land conservation”, as defined, are not ends in themselves. Additionally, the State believes that “improvement

of air quality” and “habitat restoration” should not be included in the activities under “agricultural land conservation”. While the proposed bill does not include any changes to the definition of “agricultural land conservation”, the Department believes that the State’s concerns have merit and should be considered in the future.

Despite the State’s concern with the definition of “agricultural land conservation”, which is not subject to the proposed bill, the State is also concerned that allowing a farm labor dwelling for agricultural workers on a farm that consists exclusively or primarily for the “agricultural land conservation” activities of “improvement of air quality” and “habitat restoration” would be antithetical to the purpose of the Agricultural District.

Further, the State has concerns about establishing “interns and apprentices” as equivalent to “full-time and part-time agricultural workers” who may occupy farm labor dwellings. Their comment expresses a concern that without a pay-for-work requirement, how will the “interns and apprentices” be distinguishable from visitors and others who pay rather than be paid to work or learn on a farm. Further, their concern is heightened if the farm consists exclusively or primarily of the “agricultural land conservation” activities of “improvement of air quality” and habitat restoration”.

- Maui County Farm Bureau – support for this proposed bill (see attached letter).
- County of Maui, Department of Housing and Human Concerns – support for the proposed bill.
- County of Maui, Department of Agriculture – No comment at this time, but requested to be kept informed as to status of bill.
- County of Maui, Department of Fire and Public Safety – No comment on this matter as it will not change the way we review the permit.
- U.S. Department of Agriculture – USDA indicated that generally they would agree that land that is culturally sensitive, has steep slopes, streams or gulches is unsuitable for farming. Otherwise, they had no other comment at this time, but requested to be kept informed as to status of bill.

Recommendation and Options

The Department is recommending a more holistic evaluation of the Agricultural Zoning District in the context of HRS 205 and the County’s General Plan and Component parts rather than piecemeal changes to portions of the zoning code which will result in outcomes contrary to existing stated goals, policies, objectives, purpose and intent. If a version of the definition of “farm” is proceeded with, the Department would prefer Alternative 2 of this report. In regards to the definition of “farm labor dwelling”, the Department is not in favor of the proposed changes and recommends that the Commission review the comments by the Department and the State and determine if any additional modifications should be proposed.

Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission
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The Commission has the following options:

1. Recommend approval of the proposed bill as is to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments: Resolution 23-220
State Department of Ag Comments 11092023
20231114 2nd Comment from Maui Farm Bureau

xc: Garrett Smith, Deputy Director (pdf)
Jordan Hart, Planning Program Administrator (pdf)
Gregory Pfost, Administrative Planning Officer (pdf)
Ann Cua, Planning Program Administrator (pdf)
Danny Dias, Planner VI (pdf)

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JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

November 9, 2023

Rec. #27736

Mr. Gregory Pfost
Administrative Planning Officer
Department of Planning, ZAED
County of Maui

Dear Mr. Pfost:

Subject: Maui County Council Resolutions (23-36 and 23-220)
Proposed Updates to Maui County Code
Chapter 19.30A Agricultural District

Thank you for the opportunity to provide comments on the two Council Resolutions. The Department of Agriculture ("Department") limits its comments to Resolution 23-220 that proposes to amend the definitions of "farm" and "farm dwelling" as follows.

1. By amending the definition of "farm" to read:

""Farm" means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation."

2. By amending the definition of "farm labor dwelling" to read:

""Farm labor dwelling" means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture.] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands. under section 205-45.5. Hawaii Revised Statutes."



Department positions – We concur with the proposed amendment to the definition of “farm” where at least 51 percent of the land that is usable, accessible, and feasible for farming and ranching is used for agriculture. We continue to have concerns about making “agricultural land conservation” equivalent to farming and ranching uses and activities. In the Maui County Code, “agricultural land conservation” is defined as planting plants and trees “...to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration;” The Department is of the opinion that this definition sets a very low bar for what activities farm dwellings may be accessory to, pursuant to Section 205-4.5(a)4, Hawaii Revised Statutes. The Department strongly believes that “agricultural land conservation” activities such as soil nourishment and prevention of soil erosion are employed in preparation for undertaking agricultural production-related activities and uses and are not ends in themselves. The Department also recommends that improvement of air quality and habitat restoration not be included as activities under “agricultural land conservation”.

The Department concurs with having a “ranch” as the equivalent to a “farm” and where a “farm labor dwelling” may be located. However, we are strongly concerned that allowing a “farm labor dwelling” for full-time and part-time agricultural workers on a farm or ranch that consists exclusively or primarily of the “agricultural land conservation” activities of “improvement of air quality” and “habitat restoration” would be antithetical to the purposes of Maui County’s agricultural district (Section 19.30A.010, Maui County Code).

The Department has concerns about establishing “interns and apprentices” as equivalent to “full-time and part-time agricultural workers” who may occupy “farm labor dwellings”. If it is intended that these interns and apprentices are to be paid for their work on the farm or ranch, then it should be specified as such. Without a pay-for-work requirement, how will “interns and apprentices” be distinguishable from visitors and others who pay rather than be paid to work or learn on a farm or ranch? Our concern is heightened if the farm or ranch consists exclusively or primarily of the “agricultural land conservation” activities of “improvement of air quality” and “habitat restoration”.

This concludes our comments and recommendations. Please direct your questions and concerns to Earl Yamamoto at (808) 973-9466 or email at earl.j.yamamoto@hawaii.gov.

Mr. Gregory Pfost
November 9, 2023
Page 3

Thank you for the opportunity to provide our comments and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Sharon Hurd". The signature is written in a cursive style with a large initial 'S' and a long, sweeping underline.

Sharon Hurd, Chairperson
Department of Agriculture

c: Maui Department of Agriculture
Maui County Farm Bureau
Hawaii Farmers Union United
Office of Planning and Sustainable Development



MAUI COUNTY FARM BUREAU

PO Box 148, Kula, HI 96790
mauicountyfarmbureau.org

November 9, 2023

Re: Resolution 23-200 To Amend Title 19, Maui County Code, To Revise Definition of “Farm” and “Farm Labor Dwelling”

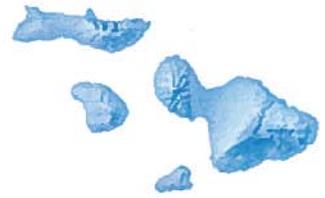
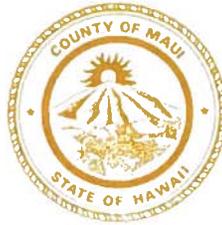
The Maui County Farm Bureau supports amending the definition of “farm” with at least 51 percent of the usable land is used for agricultural purposes. The primary use of agricultural land should be agricultural products and not for other purposes.

Maui County Farm Bureau also supports the amended definition of “farm labor dwelling”. MCFB supported the original definition as it clearly stated the only purpose for a farm labor dwelling. The amended definition also states the purpose for having a farm labor dwelling.

As with any bill, the concern is enforcement. Proper enforcement is critical to ensure accomplishing the intent of the amendment and to avoid unintended consequences.

RICHARD T. BISSEN, JR.
Mayor

GARRETT E. SMITH
Acting Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

January 17, 2024

MEMORANDUM

TO: LANAI PLANNING COMMISSION

FROM: GARRETT E. SMITH, Acting Planning Director

A handwritten signature in blue ink, appearing to read "GES".

SUBJECT: Agenda Item B-2: January 17, 2024 Lanai Planning Commission Meeting – Additional Information

At the December 13, 2023 Lanai Planning Commission meeting, the Commission reviewed an agenda item related to a proposed County Council initiated Bill that would amend the Maui County Code definitions of “farm” and “farm labor dwelling.” The Commission voted to defer the item to their next meeting to be able to obtain additional information from the County Council before the Commission would provide a recommendation. Specifically, the Commission requested that; 1) comments be received from the County’s Department of Agriculture, 2) that the County Council provide input on the Department’s concerns with the proposed Bill, and 3) that the County Council provide input on the State Department of Agriculture’s comments on the proposed Bill.

In regard to receiving comments from the County’s Department of Agriculture, since the December 13, 2023 Lanai Planning Commission meeting, the Department reached out to the Director of the County’s Department of Agriculture to request additional feedback on both proposed Bills as requested by the Commission. In response, the Department of Agriculture has provided the attached correspondence directed to the Maui Planning Commission for their meeting on the same topic, which was held on January 9, 2024. As shown in the attached correspondence, the County’s Department of Agriculture is supportive of the proposed Bill to amend the definitions of “farm” and “farm labor dwelling.” After Planning Department Staff inquired further into their recommendation, the Department of Agriculture Director followed up with the attached additional letter providing further detail on their recommendation, which includes a request for additional time to consult with stakeholders pertaining to the definitions of “usable, accessible, and feasible” as it relates to the proposed definition of “farm.” Further, in regard to the proposed definition of “farm labor dwelling,” the Department of Agriculture was in favor of having families reside with the full or part-time worker, but did not feel that interns were the same as employees. The Department also agreed the definition of “work time” (part time or full time) needs clarity. Both comment letters will be provided to the Council when this item returns for their consideration.

In regard to the Commission's request to have the County Council provide additional input on the Department's concerns with the proposed Bill and to have the County Council opine upon the State Department of Agriculture comments, unfortunately the process of reviewing Bills does not provide for an interaction between the Council and the Planning Commission. Specifically, Section 8-8.4 of the County Charter prescribes the process for review of changes to ordinances, wherein it indicates that "*The appropriate Planning Commission shall review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearing, transmit such ordinances with its findings and recommendations thereon to the Council for consideration and action.*" Additionally, there is a 120-day time period in which the Commissions should provide input; thereby also limiting any back-and-forth correspondence between the Council and Commissions. Essentially, the Council is asking for the Commissions input on the proposed ordinance amendments and does not have the ability to respond to Commission questions. Unlike Agenda Item B-1, this proposed Bill did not go to Council Committee before going to the Commissions. Within the transcribed minutes of the October 20, 2023 County Council meeting, it is noted that the author of the proposed Bill intends for the Bill to go to Council Committee after the Planning Commissions provide their input. Whether or not it comes back to the Planning Commissions at a later date is unknown at this time.

The Department recommends that the Commission provides their input on this proposed Bill, which may be in the form of recommending approval, approval with specific amendments, denial, or provide specific concerns through a majority vote. The Department will then relay the Commission's position on the proposed Bill with a copy of the meeting minutes to the County Council for consideration. If the County Council or Council Committee determines that additional input is needed from the Commission, then they will direct it as such.

Hopefully, this Memorandum addresses the Commission's requests.

Attachments: Correspondence from Maui County Department of Agriculture

xc: Jordan Hart, Planning Program Administrator (pdf)
Gregory Pfof, Administrative Planning Officer (pdf)
Danny Dias, Planning Program Administrator (pdf)

S:\ALL\APO\19.30A\2023 Reso to revise farm and farm labor dwelling\LPC Item B-2 Additional Information Final.docx

From: Rogerene Arce
To: planning
Date: 1/9/2024 11:11 AM
Subject: Testimony

Aloha Planning Committee,

I am submitting written testimony for January 9 Planning Committee meeting for the proposed bill to amend Maui County Code Section 19.30A.050(B) and a proposed bill to amend the Maui County Code Section 19.04.040.

The County Department of Agriculture supports the suggested amendment of Section 19.30A.050 of the Maui County Code. We are seeing a decrease in family farms and many agricultural operations are unable to hire agricultural labor. Various reasons support this. Non-competitive wages for agricultural work, coupled with the high cost of living, will likely not afford an ag worker the cost of housing. While some multi-generational farm families who have members still active in the farm operation are not able to subdivide or pass on land to children. A little bigger second dwelling will provide more living space necessary for a family. For a multi-generational family who have an integral part in the farm operation, having a second dwelling would keep our farm families in agricultural production and continue contributing to Maui County's food security while not exceeding the 10% of the total lot area.

The County Department of Agriculture also supports Section 19.04.040, Maui County Code. Defining the percentage of land use for farming, ranching or conservation activity makes it clear to the land owner to be accountable and obligated to perform those activities. To have steady or increased production, a labor force is needed. Providing an ag dwelling for farm laborers and ranch hands on the property is an added benefit that can contribute to a stable workforce in a time when housing is limited or not affordable. Other benefits are that the ag worker is not having to travel to work, reducing the carbon footprint while residing on the farm potentially reduces or eliminates ag theft and vandalism.

Since Covid, the food insecurity was heightened leading some to grow some of their food while some individuals have changed careers to become food producers. The tragic fire, has increased the need for housing and to some extent, affected people needing new employment. Farm labor comes in various forms. The term "intern" usually refers to people in a workforce program that a farm or host work site agrees to provide hands on experience for a specified term in a contract of which, at the end, the intern will receive a stipend from the workforce program, not from the farm or conservation operation. Examples of workforce development agencies are Americorp and KUPU. Comparatively, an "apprentice" usually has a college or trade school education and gets hired as an apprentice trainee at a farm/ranch or organization in the industry to further develop and hone their skill set sometimes as an entry level worker. This person receives a paycheck from the agriculture operation, is an employee at will, applying for employment and is able to resign or be terminated. A farm dwelling may incentivize ag workers to continue working on the farm/ranch and attracts new ag workers.

Mahalo,

R. Kali Arce, MS
Director of Agriculture
Maui County
Office phone (808) 270-8278
Cell (808) 495-5649

RICHARD T. BISSEN, JR.
Mayor

ROGERENE K.M. ARCE
Director

KOA HEWAHEWA
Deputy Director



DEPARTMENT OF AGRICULTURE
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

January 16, 2024

Mr. Gregory Pfof
Administrative Planning Officer
Department of Planning, ZAED
County of Maui

Dear Gregory Pfof:

Subject: A BILL FOR AN ORDINANCE TO AMEND THE DEFINITIONS OF FARM AND FARM LABOR DWELLING IN THE COMPREHENSIVE ZONING ORDINANCE

The Maui County Department of Agriculture is providing its stance about the proposed amendments to Section 19.04.040 of the Maui County Code which suggest a revision of the definition of *farm* and *farm labor dwelling*. The Maui County Department of Agriculture generally supports the proposed revision to the bill where the definition of *farm*, as it is stated in the attached bill, will be amended with the following language where [bracketed text are proposed to be repealed and suggested new text is underlined] as stated below: .

FARM means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is agriculture, [and/or] agricultural land conservation.

We agree to the proposed amendment defining that 51 percent of the total usable, accessible, and feasible land for farming and ranching is used for agricultural production. The former Director of the Department of Planning, Kathleen Ross Aoki, pointed out that the proposed statement could also denote that land that is not *usable, accessible, and feasible for farming, ranching, or conservation* which would exempt the total area to become less than 51 percent of the total area. This would be contrary to the what the code requires.

Being relatively a new department lacking staff capacity with *agricultural land conservation* expertise, the Maui County Department of Agriculture would like more time to have discussions with stakeholders on their thoughts. We would also like to review the three suggested alternative definitions that Ms. Ross-Aoki noted in her response.

We also could learn more about Honolulu City and County's Department of Planning's recommendations for Important Agricultural Land (IAL) designation in accordance with the Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR) 15-15-17 to get a better perspective of agricultural land use. IAL designation refers to a State land use designation that makes it possible for

keeping agricultural lands active and grants landowners access to incentives and supportive measures to reduce farming costs.

For the second proposed amended statement in the bill regarding the definition of the *farm labor dwelling* to be amended as stated below where [bracketed text are proposed to be repealed and suggested new text is underlined]:

Farm labor dwelling means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands, under section 205-45.5 Hawaii Revised Statutes.

The Maui County Department of Agriculture agrees that the farm labor dwelling should be on a farm or ranch. Also, we agree that a part time or full-time agricultural worker of the said ranch or farm should be allowed to live there with their family members providing employment is for agricultural operation on the land where the dwelling is located. We believe that at least one family member should be employed in the agricultural operation.

We do not agree that *interns* are employees. Whereas, an apprentice could be considered as an entry level employee learning from a skilled employee to develop their trade. They would be on the payroll receiving income for their work as an at will employee whom can resign or be terminated unlike a termed intern assigned from a workforce program through an agency that is placed at a cooperating site (farm or ranch).

We tend to agree with the Department of Planning that the definition of the “work time” (part time or full time), also needs clarity. The Maui County Department of Agriculture agrees with Planning that the “work time” needs to be well defined so as to clearly show who resides there and to avoid the farm dwelling from becoming a transient housing. We would like to also discuss these proposed amendments with stakeholders.

Sincerely,



Rogerene “Kali” K. M. Arce
Director of Agriculture

Ms. Lindo: Yeah, so the motion should just say, "except for Molokai," yeah? And, we've done it before so I'm sure that the Planning Department knows exactly what I mean.

Chair Poepoe: And, it's going to be consistent with staff recommendation with the exception? Okay. If no more discussion, we can call for a vote. All members in agreement with the -- with the motion on the floor, please raise your hand. And, okay, are we including Commissioner Albino? Commissioner Albino --

Ms. Albino: Aye for the motion.

Chair Poepoe: Okay. Motion unanimous.

Ms. Albino: Thank you.

It has been moved by Commissioner Lindo, seconded by Commissioner Albino, then unanimously

VOTED: to recommend approval of the proposed bill and include the language, "except for Molokai," to the County Council.

(Assenting: L. Albino; K. Bishaw-Juario; K. Hirata; D. Kelly; Z. Lindo; B. Mowat;
J. Phifer; L. Poepoe)

(Excused: S. Kaahanui)

Chair Poepoe: Pass, for the record. Moving on to Item B.2. now:

Chair Poepoe read the following agenda item description into the record:

2. A BILL FOR AN ORDINANCE TO AMEND SECTION 19.04.040, MAUI COUNTY CODE, TO REVISE THE DEFINITIONS OF "FARM" AND "FARM LABOR DWELLING"

Ms. Kathleen Ross Aoki, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions, a proposed bill to amend Maui County Code Section 19.04.040, to revise the existing definitions of "farm" and "farm labor dwelling." (G. Pfof)

The entire text of the proposed bill for ordinance is available at <https://mauicounty.gov/DocumentCenter/View/143752/RESO-23-220-Referring-a-Proposed-Bill-to-Amend-the-Definition-of-Farm-and-Farm-Labor-Dwelling?bidId=>

Chair Poepoe: And, I'll hand it over to staff. Thank you.

Mr. Pfof: Yes, thank you. Thank you, Chair. Again, I have a staff report presentation to do on this item as well. It's a little bit longer than the last one. I'll try and be a quick here. Let me share my screen. Hopefully, you can all see that screen. Yes. In regards to the

item before you, in October of this year, the Council adopted the resolution referring this proposed bill to the planning commissions for transmittal of their findings and recommendations. The amendments that are being proposed are to change the definition of "farm" and "farm labor dwelling." And, I'll go into this a little bit more detail, but the definition of "farm" will be changed in two ways, and the definition of "farm labor dwelling" will be changed in three ways. And, I'll go into a little detail on each one of them.

Again, as I mentioned before in the last presentation, it's important to consider agricultural land use and retaining and encouraging that land use in the County of Maui, and I've identified again the policies from the General Plan and the Maui Island Plan that move towards that direction in encouraging agricultural land use. Again, the -- the zoning code in the agricultural district also, through the purpose and intent, moves towards preserving and protecting agricultural resources. I just want to remind you all of this. And again, the -- the allowed uses in the district, the agriculture district, as noted, are principal uses are mostly of agricultural base, and then the accessory uses allow for more development, including two farm dwellings and one farm labor dwelling. And again, these are incidental and subordinate to the principal use so, again, I'm making the statement that agricultural uses are primary in the agricultural district.

I'll start off with the proposed revision to the definition of "farm", and there are actually two changes to the definition of "farm," and you can see the proposed amendments at -- at the top of this slide, and I'm going to focus on the first one which talks about changing the term "the majority" to "at least 51 percent," and I think important here is -- is to recognize that there is a link between the definition of "farm dwelling" and "farm," and we're amending the term "farm." So, both the Maui County Code and the State recognize that a farm dwelling is a single-family dwelling located on a farm, and so when you take these two definitions together, it's important to acknowledge that a farm dwelling may only be permitted if it is located on a farm, and in order to have a farm dwelling on a farm, the majority of the lot must be used for agriculture; that's per definition and per code. Conversely, if you were not farming, you cannot have a farm dwelling on your property. The Planning Department, through its enforcement of -- and inspection process, and permit issuance and inspection process, is how we move towards evaluating and making sure that farm dwellings are in operation with a farm. In this particular instance, in this phrase, the Department does support the change from majority to 51 percent as it simply provides clarity in the existing requirement, and so the Department supports that part of the phrase.

The second part in the change to the definition is actually qualifies what can and cannot be used for agriculture by inserting the words "'farm" means a lot in which 51 percent of the area of the land that is usable, accessible and feasible for farming and ranching or conservation is used for agricultural use," so it's adding those terms. And, the current code, as I mentioned before ... (inaudible)... for agricultural uses, so that's of the entire lot. The proposed revision, however, lessens that amount of land that would be used for agricultural purposes by excluding those areas that are not usable, accessible and feasible first, and then taking 51 percent of whatever is left over and using that for

agricultural uses. So, the Department has concerns with this portion of the revision to the definition because we think it is inconsistent with the policies of the General Plan to encourage agricultural use by lessening the amount of agricultural use that would occur on a farm. Additionally, the terms that are identified here in this proposed definition of "usable, accessible and feasible" are subjective and they need to be defined. And so, what staff -- and let me show you an example, a couple of examples here on how a two-acre farm, how the proposed revision would lessen the amount of agricultural use. So, in Example A, we have a two-acre farm of roughly 80 -- of 87,000 square feet, and assuming that 10 percent of the lot is not usable, where 90 percent is usable for agricultural use, the proposed revision, which would require 51 percent of the land area that is usable, would only yield 39,988 square feet of agricultural use that would be mandated, whereas the existing code would yield a higher amount of 44,446 square feet, so the existing code actually requires more agricultural use than what the proposed amendment would be.

Now, in Example B, the Planning Department recognizes that when you do have perhaps properties that have a lot of area that is not usable, this definition change may make some sense, and this is an example that shows that. So, assuming instead of 10 percent, like in Example A, assume that 55 percent of the area of the lot is not usable, the proposed revision in that case then would indicate 51 percent of the land that is usable, so in this case, the area that is usable would be 39,000 square feet, or 45 percent, so the proposed revision is 51 percent of the land area that is usable would yield only 19,000 square feet of agricultural use. The existing code, on the other hand, as I mentioned, would be 51 percent of the total lot area, which would yield a total of 44,000 square feet. Well, the problem here is that the existing code requirement that would require 44,000 square feet of ag use is actually more than what potentially is usable on the property.

So, as I mentioned, when you have a property that has unusable area that is more than 49 percent, you obviously can't farm up to 51 percent, so that's -- that's the problem, so we see some merit with the proposed change when you have a lot that's over 49 percent of unusable area. So, to address that, the Department has come up with a revised condition or revised phrase that says, "If it is determined by the Director that more than 49 percent of the lot is not usable, accessible and feasible for farming or ranching, then those areas deemed unusable, inaccessible and infeasible may be excluded provided that the remainder of the lot, not just 51 percent, but the remainder of the lot is used for the predominant activity of agriculture. So, we believe that this change actually meets the intent of the policies of the General Plan to promote agricultural use and also accounts for potential areas that are unusable of more than 49 percent of the property. So, as an example, again, assuming 55 percent of the lot's unusable and 45 percent is usable, the proposed revision then would, as before, only yield 19,000 square feet of -- well, over 19,000 square feet of agricultural use, but the alternative one revision that the Department is proposing would actually require the remainder of the usable area to be used for agricultural use, so you can see that the Department proposal actually yields more -- more use for agriculture than what is being proposed as the amendment.

As I mentioned earlier, there is a concern regarding the definition of terms of what is usable, accessible and feasible for farming, and so the Department went another step and actually tried to include a definition for what usable and accessible and feasible may be. So, this is in Alternative 2, and it includes basically everything in Alternative 1, and then adding the highlighted area: For the purpose of this definition, land that is not usable, accessible and feasible for active agricultural uses shall, subject to the approval of the Director, include culturally sensitive areas, slopes steeper than 1 to 1, streams or gulches, or land containing earth material that cannot be farmed. So, that was the Department's attempt to try and define areas that are not usable so, with that, the Department would be supporting Alternative 2 in the definition of "farm" as opposed to what is being proposed before you.

That concludes really the definition of "farm." If you'd like, I can -- we can talk about questions regarding that before I moved farm labor dwelling or I can just move forward with the definition of "farm labor dwelling" and the Department's comments on those, if you'd like.

Chair Poepoe: Thank you. Members, any questions before I move on?

Ms. Lindo: Yeah, actually, I would just like you to move on to the definitions and what you, sorry, and what you propose, but -- but when you -- can you go back a couple slides?

Mr. Pfof: Sure.

Ms. Lindo: You made the revision to the language right here on active agriculture. What -- what definition of active -- of "agriculture" are you using, the State's definition, meaning that it needs to be something that produces an economic benefit?

Mr. Pfof: Yeah, we would be using the definition for "agriculture" that's in the zoning code, and I could try and pull that up, but we would be using that definition.

Ms. Lindo: Okay. Okay. I just wanted to be clear on that. Thank you.

Chair Poepoe: If no other members have questions, we can continue on.

Mr. Pfof: Okay. Then, regarding the proposed revisions to the definition of "farm labor dwelling," and this one's a little bit more nuanced and I apologize for the length of the slide here, but I wanted to, again, describe the difference between farm dwellings and farm labor dwellings in that -- and we've discussed farm dwellings as you can have two on your property, there's no occupant restrictions, and that the farm dwellings must be in connection with a farm, at least 51 percent of the farm must be used for agricultural use. One of the dwellings, currently, cannot be more than a thousand square feet, the other one can be as much as possible, but both dwellings cannot be more than 10 percent of the lot area; where farm labor dwelling is something entire, not entirely different, but quite different in that the occupancy for farm labor dwellings are only for agricultural employees

only, and you're allowed one farm labor dwelling per five acres of lot area and have to meet certain criteria that are more related to more of a commercial agricultural operation, and you have to meet at least two of the first three criteria. And then, on Molokai and Lanai, you have to only meet the first two criteria; actually, a little bit more restrictive.

Regarding the farm labor dwelling, there is no restriction on the size of a farm labor dwelling or -- or does it have to meet the 10 percent maximum developable area of a lot. So, there are some differences between those two. I want to make sure we're talking about the same thing here when we're looking at the definition of "farm labor dwelling."

The proposed amendment, as shown here, basically has three changes in content. One, it changes the timing and work of the farm laborer, specifically, it replaces employees employed full-time or seasonally in the County with the term "full-time and part-time;" additionally, it changes the terminology of those working on a farm from employees to "workers, including interns and apprentices," and it introduces an allowance for family members of the agricultural worker to reside on the farm labor dwelling.

The Planning Department, again, in looking at these proposed revisions, it's important to look at the goals and policies of the General Plan, the Maui Island Plan, and the purpose and intent of the Maui County Code, and in doing so, the Department feels that the proposed changes -- or has concerns with the proposed changes in that it decreases or reduces the intent of what a farm labor dwelling is supposed to be, as currently defined in the code, and potentially may impact agricultural activity on the property. Specifically, the Department is concerned that when you change the type of worker to interns and apprentices as opposed to employees, one, it'll be difficult to regulate who those interns and apprentices are and what type of work that they're doing, but it's -- it's -- I think it changes the type of worker that we're looking at when -- when employees are more related to actually in the more the commercial ag operation that I mentioned. Additionally, the term "part-time" that is proposed in the definition is not defined and, therefore, a part-time worker and/or the family of the part-time worker that is employed for any unknown number of hours can be an hour a day, an hour a week, an hour a month would be able to reside on the -- in the farm labor dwelling potentially turning the farm labor dwelling into a third farm dwelling or a transient use and that would be a concern. Further, the proposed revision loosens the requirements of a farm labor dwelling by removing the clause "employees" and, therefore, I kind of mentioned this before, assumes the type -- which assumes the type of payment for workers so we're not sure if interns would have to pay, or would be paid, or they're just working as voluntary -- voluntarily, it kinda drifts again away from what the intent was for employees to be working on the farm. And, finally, since the farm labor dwelling has no restrictions on size, nor is counted towards the 10 percent developable area, by allowing a family to also live in the farm labor dwelling would assume that that structure would probably be much larger than a normal farm labor dwelling, what we might expect from a farm labor dwelling and, therefore, may impact the availability of agricultural activity occurring on the farm.

Those are the concerns of the Department. And also, I might note that we did reach out to various agencies in regards to the proposed definitions of “farm” and “farm labor dwelling.” We did hear back from the State of Hawaii, Department of Agriculture, and they did also have concerns regarding -- they actually had concern in using agricultural land conservation -- conservation as one of the activities of a farm. They felt that it kinda sets a low -- low bar for what activities are for farm labor dwellings. You can see the definition there. The State was also concerned about, similar to the Department, about interns and apprentices not being equivalent to full-time and part-time agricultural workers, how these interns and apprentices would be distinguishable from visitors and others that -- that pay, rather than being paid to work -- to learn on the farm. So, they had similar concerns as the Department.

With that, the Planning Department’s recommendations in regards to this proposed bill is, regarding the definition of “farms,” is to move forward with Alternative 2, as recommended by the Department. And regarding the definition of “farm labor dwelling,” the Department is not in favor of the proposed changes and recommends that the Commission consider the Department and State’s comments and determine if additional modifications should be made.

Again, the Planning Commission's options are to either approve the proposed bill as proposed, recommend approval with amendments, or recommend denial, or vote to defer the action for additional information. And, that concludes my presentation. Thank you.

Chair Poepoe: Thank you. Before opening up to public testimony, any members have questions? Seeing none, we’ll open up public testimony for Item B.2. Any members of the public wishing to testify on Item B.2., please do so and get sworn in.

Councilmember Johnson: Chair?

Chair Poepoe: Councilmember Gabe Johnson.

Councilmember Johnson: Yeah, aloha. If you’ll allow me, I’d like to testify.

Chair Poepoe: Okay ...(inaudible)... do you wish. You swear to tell the truth in your testimony?

Councilmember Johnson: I certainly do.

Chair Poepoe: Okay, go ahead.

Councilmember Johnson: Okay, well, first off, thank you, Chair and Commissioners, for allowing me this chance to testify on this bill. This is a very important bill. I -- I am a farmer on Lanai, and I'm also the Councilmember and Chair of ADEPT Committee, which is Agricultural Economic Diversity, Environmental and Public transportation. This bill came -- I worked with this bill with the ag working group, and this was some of the ways

that we have come up with and fight some of the issues that we've had that -- that the -- that the law allowing them to do some of the things they wanted to. So, first off, the -- the 51 percent of usable farm land was really important to put that down as usable. "Usable" is the key word because we have farms, I'm sure Molokai, some of you folks know, there are farms with gulches, some blue rocks, some areas that are unfarmable, so the fact that we're making it usable farmland is a very key part of that definition of farm. The second part I wanted to talk about is the families in the farm labor dwellings, you know, we want to have -- we want to make it available for a working farm to bring in its labor, and we all know the cost of labor is so high, and when we bring in laborers, farm laborers, if we could allow them to have their family come, that is an incentive, and I'm a single father, I'm a farmer, and if I could have an apartment to rent or, you know, be part of the deal, on lands that I would farm, that would incentivize me to do farming. So, the point of this, right now, as it is, it's kind of discriminatory that only one person can live in the farm labor dwelling, but, whereas, if we, you know ... (inaudible)... a family member, even my daughter, that would be ideal to have. It would -- it would allow me to come and work for those folks who farming, who are actual working farms. So, I wanted to bring that up. The other thing is -- is, you know, some of the concerns that -- that we talked about as far as like the interns and what that means, well, HFUU has an internship program that hires interns to -- to learn the trade of farming; that's a big, very successful program throughout the State. There's also GoFarm, they have interns. There's also those folks that we know is WOOFERS, like some farms need just labor and would have -- have that and able to allow them to add that to a kind of a benefits package. It's the sole key to bring in their labor. I also -- the other thing is I want to address the State's concern about, you know, conservation. Well, look, if you -- I -- I think conservation is a ... (inaudible)... endeavor and if that -- if you have land that you want to work out with conservation efforts to make it -- that protect certain species or protect soil, those are -- those are things that require labor. So again, that's another way to help increase the -- the benefits for the folks who are working, who are actually putting their hands in the soil. So, that's my testimony, Commissioners. I appreciate you hearing this, and mahalo.

Chair Poepoe: Thank you, Councilmember. Members, any questions for the previous testifier? Seeing none, if anyone else in attendance would like to testify on Item B.2. Seeing none, we can close public testimony for Item B.2. and open the floor to a motion.

Ms. Lindo: Chair, I'd like to make a motion. I make a -- I make a motion to include the language, "except for Molokai." I -- and I wanna -- and then if somebody seconds, I can state my rationale.

Ms. Mowat: I second.

Chair Poepoe: Go ahead, Commissioner Lindo.

Ms. Lindo: Thank you. Thank you, Commissioners. My rationale behind this, once again, is that there is public pressure to approve these things, and I also want to commend

Councilmember Johnson and our Planning guy, what's his name again? You awesome. What is his name again, for the record?

Mr. Pfof: Greg Pfof.

Ms. Lindo: Greg, you're awesome.

Mr. Pfof: Greg -- Greg Pfof. Thank you.

Ms. Lindo: You're awesome. I -- I love the clarity and the simplicity of your slides, and your presentation was easy to understand. The biggest problem I have with any changes right now, and my reluctance to change the status quo, is because, to me, agriculture in its very definition is adversely affecting the way that we malama our `aina. Agriculture in the State of Hawaii, under the definition, solely has to do with economic enterprise. It doesn't solidify food security. It doesn't recognize our cultural and indigenous practices. And so, it disqualifies plenty of other things we do for just grow food on our land without having to sell it. Part of the problem and language changes necessary within the farm dwelling definition stems from what does work on your land ...(inaudible)... for DHHL families to -- to have ohana live on their land, and it literally means like you have to show that you pay these people to work on your property and so it prohibits like families from having to -- from being able for just live there and malama their mother and father in food security. And then, it also -- some of the 51 percent versus 49 versus an open majority, to me, are all things that have to be addressed. But, I think Molokai needs to have one focused concentrated effort on figuring out what works for us because I think, unlike some places or majority of places of Maui, we get what people would think is unusable land to the -- to the economic engine of agriculture is absolutely prime land for different things we like grow, and can grow, and -- and can diversify. And again, I not one farmer but I've seen areas in my own -- in Kumimi, where my family is, where the kalo grow on the side of the hill, on the wall of the hill, where, technically, under the zoning and under our tax key map is designated unusable land. And so, I feel like there is a need to have more discussion for language and I do agree with the Department that language, and -- and -- and with Councilmember Johnson, that there needs to be different ways of -- of clarifying as we move on so that this can be one living document that truly supports our community. But, for right now, I not sure that this language, like the previous ordinance, is something that Molokai necessarily needs right now, and with the absence of any farmer or anybody testifying in -- in agreement or support of this, I would move forward in saying that I would like to approve this with the following conditions that it say, "except for Molokai," and then urge our Molokai people, especially our agricultural community, to come up with policy and languages that truly support our growing ohana and our need for food security, and then one last plea that we take a look, as a community, as a Department, as a County, as a State on changing the definition of "agriculture" to include food security, to include non-financial benefit from farming so that -- so that it can be more advantageous to land for what it's -- it was intended to be. Mahalo.

Chair Poepoe: Thank you, Commissioner Lindo. Any other members would like to -- any statements or ask questions of the Department? If not, we can move for a vote.

Mr. Brown: Chair, may I ask a question of Gabe Johnson or is that not allowed?

Chair Poepoe: No. Sorry. We cannot allow members of the public to participate at this time. Thank you. So, I can move to a vote. By show of hands, everyone in agreement to the motion on the floor, please raise your hand. The motion passes unanimously.

It was moved by Commissioner Lindo, seconded by Commissioner Mowat, then unanimously

VOTED: to recommend approval to the County Council of the proposed bill with the Department's recommendations and to include the language, "except for Molokai."

(Assenting: K. Bishaw-Juaricio; K. Hirata; D. Kelly; Z. Lindo; B. Mowat;
J. Phifer; L. Poepoe)
(Excused: L. Albino; S. Kaahanui)

Chair Poepoe: And, we will move on to --

Mr. Pfof: Chair, would you mind if I just ask question real quick on the decision? Is that -- was -- I'm sorry. I'm just a little confused. I want to make sure I move this along correctly. Was it -- was the -- the motion to allow the -- the amendments to move forward, which is the accept as proposed but with the exception of Molokai? That's -- that is the motion. Am I correct?

Ms. Lindo: Yes.

Mr. Pfof: The ones that are proposed in the bill move forward with the exception of Molokai, right?

Ms. Lindo: Well, the ones that are uphold with your recommendations, right? So, you --

Mr. Pfof: Oh, okay.

Ms. Lindo: The Department made revisions to, so your recommendations, we approve your recommendations, move forward with the -- with the bill with your recommendations, including except for Molokai.

Mr. Pfof: Okay. Okay. Thank you. I think I understand. Thank you.

Chair Poepoe: Thank you. Moving item -- moving on to C., Contested Cases, number one, Unfinished Business:

Alright. Alright, Commissioners it's 6:41 p.m. Um, would everyone be okay with doing a quick break, a quick recess to resume at 6:50 p.m.? We'll do nine minutes. Alright, we'll go ahead and recess until 6:50 p.m.

(The Lanai Planning Commission recessed at 6:41 p.m., and reconvened at 6:50 p.m.)

2. A BILL FOR AN ORDINANCE TO AMEND SECTION 19.04.040, MAUI COUNTY CODE, TO REVISE THE DEFINITIONS OF "FARM" AND "FARM LABOR DWELLING"

Ms. Kathleen Ross Aoki, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions, a proposed bill to amend Maui County Code Section 19.04.040, to revise the existing definitions of "farm" and "farm labor dwelling." (G. Pfost)

The entire text of the proposed bill for ordinance is available at <https://mauicounty.gov/DocumentCenter/View/143752/RESO-23-220-Referring-a-Proposed-Bill-to-Amend-the-Definition-of-Farm-and-Farm-Labor-Dwelling?bidId=>

Ms. Atacador: All right. It is 6:50 p.m. I can ask the commissioners . . . (inaudible) . . . Okay. Um, do I have to reestablish quorum, Butch, like calling names and stuff?

Mr. Gima: No.

Ms. Atacador: Or Selina. Sorry.

Ms. Pannell: No.

Ms. Atacador: No? Okay.

Ms. Pannell: It's probably more than I do, but you're good, yeah.

Ms. Atacador: Thank you both. All right, so next agenda item is B.2., a bill for an ordinance to amend Section 19.04.040, Maui County Code, to revise the definitions of farm and farm labor dwelling. We'll go ahead and open up public testimony. Leilani, do we have anyone signed up to testify?

Ms. Ramoran-Quemado: Thank you, Chair. Um, there's no one signed up to -- oh, no, there is, um, Councilmember Johnson. But would you want the, the staff member to do his presentation first before you take public testimony?

Ms. Atacador: I'm so sorry. Yes. Sorry, sorry.

Ms. Ramoran-Quemado: No, no problem. Thank you. I'll wait then, um, after the presentation.

Ms. Atacador: My apologies. All right, so we'll go ahead and open it up to the presentation by the Planning Department.

Mr. Pfost: Yes, thank you, Chair, members of the Commission. It's me again, Greg Pfost. Let me share my screen real quick. Here we go. Um, the item before you is the proposed bill to revise the definitions of farm and farm labor dwelling. And this bill was actually heard or at least in the Resolution 23-220 was adopted by County Council in October of this year referring the bill to the Planning Commissions for action and transmittal of their findings and recommendations.

This bill moves to amend the definitions of farm and farm labor dwelling. There are actually two specific changes to the definition of farm and three to the definition of farm labor dwelling. And I'll get into those in a little bit more detail, and I'll separate this presentation on each of the, um, of the items. Excuse me. Before I do, again, just a reminder, as I mentioned in the last bill the importance of agricultural lands in the County and retaining and encouraging those as defined through the policies of the Countywide Plan, as well as the Maui Island Plan. I talked earlier about the purpose and intent of the agricultural district, the zoning districts and the importance of agricultural uses and preserving and protecting those agricultural resources. I talked about the principle and accessory uses in the zoning district of agricultural and noting that here that the accessory uses are incidental and subordinate to the primary uses of agricultural uses. And here, we're going to be focusing more on the farm labor dwelling that's within that definition.

And so, I'll take first the definition of farm, and I'll go through a brief presentation, and we can pause for questions on that. And then I can move into farm labor dwelling, or we can, I just go through the whole thing and we can ask questions on both. We'll, we'll determine that after the definition of farm here.

And sorry, the extensiveness of this slide, but the proposed amendment, you can see is the definition of farm is at the top of my slide. And there's actually two separate segments that are being added or changed in this definition, and I'll take those separately. The first one is changing the term majority to at least 51 percent. So as I mentioned, actually in my last presentation, in order to have a farm as defined is using at least a majority of the property for agricultural uses. That's the definition of a farm. So what the proposal is to change, in this particular instance as highlighted, is changing the term majority to at least 51 percent. As I kind of mentioned in the last presentation there is, there is a relationship between the definition of farm and farm dwelling. Both the County and the State identify farm dwelling as being a single family dwelling located on an accessory to a farm. And, and the definition of farm is, as you can see, here is the predominant use of agriculture, or a majority of it as the primary use of agriculture. So in, in order to have a farm dwelling, it must be on a farm. And in order to have a farm dwelling on a farm, the majority of that lot must be used for agriculture. Conversely, if you're not farming the majority of that lot for agriculture, you should not have a

farm dwelling on the property. So I just want to point out that relationship because it's important when we talk about the change in definition for farm.

Um, as I mentioned, we, we deal with the definition of farm and ensuring 51 percent through its, our permitting and inspection processing to determine whether a property for a farm is asking for farm dwelling is actually on a farm. And in regards to specific change here, it's highlighted changing the term the majority to at least 51 percent. The Department supports this change in the definition as it simply provides clarity in the definition by establishing actually a percentage of the lot that needs to be farmed.

The second phrase that is being added to the definition of farm is actually a kind of a qualifying phrase on what can and cannot be used for agriculture within the definition of farm. So it adds the area that is highlighted that indicates 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching or conservation is used for agriculture. And so the current code, as, as you can see in the current definition, requires, as I mentioned earlier, 51 percent of the entire lot to be used for agricultural uses in order to be considered a farm. The proposed revision, on the other hand, would require that 51 percent of only what is usable, accessible, and feasible for agricultural use would be considered a farm. In other words, it's taking out those areas that are deemed unusable, accessible and feasible, and then only applying to 51 percent towards what's left.

The Department has concerns in regards to this change in definition because it will end up with being -- there will be less agricultural use, agricultural use of the property under the proposed definition than what the existing definition provides for. Additionally, the terms of usable, accessible and feasible are subjective and should be defined, and they're subject to interpretation. I see a hand raised. I don't know if we want to entertain questions.

Ms. Atacador: Thank you, Greg. Commissioners, did someone have a question on the presentation at this point?

Mr. Gima: Chair, I have, I have a question for the, for Greg.

Ms. Atacador: Yes?

Mr. Gima: Because this is a very confusing bill and that you guys have different thoughts about the language, I heard you say that the Planning Department is in favor of changing it, the language from majority 51 percent. So that's clear to me. I need to understand the, the revised language that's highlighted in yellow. Does the Planning Department agree with that or disagree with that proposed language?

Mr. Pfof: Regarding the, the highlighted yellow that's before you on the slide right now, the Planning Department has concerns with that language, and has, is recommending some, some changes to the language. And I'll go through those as, as my presentation moves on.

Mr. Gima: Thank you.

Mr. Pfost: And the concern that, the concern that we have with the language that is currently before you is, as I mentioned, the terms are subjective, they're subject to interpretation, and they really need to be defined. And then also the -- because of the language that's being proposed, what it does is you'll end up with less agricultural use than what the current definition provides for. And because of less agricultural use, we would be concerned that it would be inconsistent with the policies of the General Plan and the Maui Island Plan of promoting and trying to encourage agricultural use of properties.

And I'll go into real quick on the next slide is an example we're using some, some square footages to show how this is less than, than under the proposed change, less than what the current code is. So with this example in Example A, we have a two acre lot again, which is the minimum lot size. And assuming ten percent of the lot is unusable or deemed unusable would mean that we'd have 90 percent of the lot is usable. Under the proposed revision, you would require only 51 percent of that area that is usable to be used for agricultural uses. Under the existing code, it is 51 percent of the total lot area is required for agricultural uses. So you can see under the existing code, in this example, a little over 44,000 square feet would be required to be used for agricultural uses as opposed to the proposed, proposed revision would be almost 40,000, or 30,988 square feet. So this example shows that the existing code actually provides for more agricultural use than what the proposed revision would be. Of course, when the percentages increases, assuming that more than ten percent, if you go to 20 percent or 30 percent, is, is, is not usable, then those differences actually increase and get further apart.

Now, in the Example B, I wanted to indicate an example of when the unusable area is more than 49 percent. And the reason why I use 49 percent is because the current code requires 51 percent to be used for agricultural uses. So what happens if more than 49 percent of the lot is not usable? And we're using the code definition. And so in this example, we have a two acre lot. We're assuming 55 percent of the lot is unusable and 45 percent is usable. The proposed revision would only have that 51 percent of the land area that is usable or it would result in only roughly or close to 20,000 square feet of area for agricultural use. Under the existing Code, as, as I mentioned, the existing code requires 51 percent of the total lot area, and so the existing code, as shown also in Example A would require over 44,000 square foot of agricultural use. But the problem here is and which does give some merit to making a change to the definition, is that the existing code would require more agricultural use or 44,000 square feet, more than what is available to farm, the 39,000 square feet.

So the Planning Department in trying to retain or being consistent with the policies of the General Plan and the Maui Island Plan to encourage agricultural uses, is proposing an alternative where the remainder of the property would be used for agricultural uses when there is a determination that more than 49 percent of the lot is not, is unusable. Let me give you an example, and this is actually the alternative one that the Planning Department is recommending, and recommending to insert the highlighted portion to the existing code.

And in this example, the proposed revision --. Let me read, read the alternative. The alternative is adding a highlighted section, if it is determined by the Director that more than 49 percent of the lot is not usable, accessible, and feasible for, for farming or ranching then those areas deemed unusable, inaccessible and infeasible may be excluded, provided that the remainder of the lot is used for the predominant activity of agriculture or agricultural land conservation. So in other words, as shown in the example, the proposed revision would require 51 percent of the land area that is usable. Again, this assumes 55 percent is unusable. And the proposed revision requiring only 51 percent of that land area that is usable would yield a little over 19,000 square feet of agricultural land area.

The alternative one revision shown with the highlighted language would show that it does account for, uh, not — it does account for excluding those areas that are not usable, accessible and feasible, when over 49 percent. And subsequently, you can see the resulting amount of acreage that would be used for agricultural purposes. So we believe that the alternative one revision, I hope I haven't confused you too much, the alternative one revision is, is a more appropriate revision that's consistent with the, consistent with the code, and policies of the General Plan.

I also mentioned concern about the definition or how, how usable, accessible and feasible are defined. And so what we've also provided as a potential alternative two is basically taking our alternative one and then adding the language shown in the highlighted portion for the purposes of this definition, land that is not reasonable, accessible and feasible for active agricultural uses shall be subject to approval to approval of the Director, include culturally sensitive areas, slopes deeper than the one you're on, stream or gulches, or land containing plant material that cannot be farmed. So we added some additional language to help hopefully define what is meant by not being usable, accessible or feasible.

So that concludes really the on the definition of farm. As I mentioned, the department is supportive of change in majority to 51 percent, but believes we need to add some additional language in here to deal with the usable, accessible and feasible aspects of it and defining those features.

I can proceed with the rest of the presentation to deal with a farm labor dwelling or we can stop here and just focus on the definition of farm if you like. That's the choice of the commission.

Ms. Atacador: Uh, yes, Chair Gima, I see your hand raised.

Mr. Gima: You're right, Greg. I'm confused. Can you go back one slide? The reason why I'm confused because it says planning, Planning Department recommended alternative one, and then the next slide, you guys are recommending alternative two. So I don't know if it's an issue of semantics with the way you guys worded it, but --. And then in the packet alternative two is your recommendation. So I just wanted to make that real clear for myself.

Mr. Pfof: Yes, thank you. I apologize for that. It is a matter of semantics. It's really, the Planning Department is recommending alternative two. I was just trying to take you through a progression of how we got to alternative two, but it's really what we're recommending is alternative two.

Ms. Atacador: Thank you. All right, we'll go, if that's okay, Greg, we'll go ahead with the questions on just this portion of the presentation before we move on to the farm dwelling one.

Mr. Pfof: Sure.

Ms. Atacador: All right. Thank you, Commissioner Manna, I think I seen your hand raised.

Mr. Manna: Yeah, thank you. Um, I think I answered my own question, but it looks like alternative two is just an addendum to the alternative one. Correct, Greg?

Mr. Pfof: That is correct.

Mr. Manna: Thank you.

Ms. Atacador: Thank you. Commissioners, any other questions on this portion of the presentation? All right, Chair Gima?

Mr. Gima: Um, Greg, the wording agricultural land conservation. Correct me if I'm wrong, the State has a problem with this language, right? And can you talk about that?

Mr. Pfof: Um, that is, that is correct. I actually have a slide that goes into that a little bit deeper when we get into the definition of farm labor dwelling. I actually have a slide if we can hold off or do you want me to go ahead and address that now? I was going to talk about it towards the end of that next presentation on farm labor dwelling, and change that definition.

Mr. Gima: I mean, if you could talk about it now, then then I won't get us confused.

Mr. Pfof: Okay. Yeah, the, the State was concerned regarding agricultural land conservation. It had to do with farm labor dwelling because it was concerned about, one, about our current definition of ag, agricultural land conservation. It has a couple of qualifiers in it that deal with it, um, agricultural land conservation can be used to improve air quality. And so, for example, and that was one of their concerns, is using air quality to allow for interns or apprentices to occupy, occupy a farm labor dwelling or for farm labor to be utilized for agricultural land conservation when you have things such as just improving air quality, is it really necessary to have farm labor when that's all you're doing as far as agricultural land conservation? Does that makes sense?

Mr. Gima: Ah, somewhat. My, my, my reading on that was if the State doesn't want agricultural land conservation in here because it's kind of like just doing decoration agriculture and not true producing, you know, for, for human consumption. You know, just growing, growing stuff so it makes the soil better and you know. That was my reading on what agricultural land conservation practices are.

Mr. Pfof: Yeah, that, that's -- you surmised it better than I did, yeah. Exactly because land conservation practices are really kind of it could be for preparing the soil for something. It could be actually conserving it for other things. And again, within the definition itself of agricultural land conservation, improvements to air quality and habitat restoration are two things that are, are deemed as agricultural land conservation, and they had a problem with that. So they had a, they had a problem with that definition specifically. But then as it related to farm labor dwelling, they kind of tied it into that as well and the concerns about that. We're not actually looking at changing the definition of agricultural land conservation. That's not really the topic of, of which comes up on this proposed bill. But I suppose the Commissions can recommend listening to the State's concerns and making and recommending change in that as well.

Mr. Gima: So is the Planning Department neutral on the State's concern about agricultural land conservation?

Mr. Pfof: I think in the context that you're mentioning as far as what the current definition is, we had, we didn't really look at it. Frankly the, the States comments about how it relates to farm labor dwelling and the use of farm labor dwelling and having farm labor be used for agricultural land conservation, the Department does agree with that concern and hence had some -- that's why we had some issues with the definition of farm labor dwelling when I get into that. Honestly, we didn't really look into the definition of agricultural land conservation and make an opinion upon that at this time.

Mr. Gima: I'm going to harping on this because of my previous conversation about fake farms, right? You got these guys on, on these lots and saying, yeah, I'm a farmer, I'm doing ag. But then they do this decoration kind of agriculture. So that's why I'm kind of harping on this and wondering what position the Planning Department is taking on this.

Mr. Pfof: Yeah. And I understand your, your concern. I think just in the Department did not look at the definition of agricultural land conservation nor whether that should be removed from this proposed definition. We just didn't look at that, on that issue. I, I, I'm tentative to provide an opinion upon that until I've actually researched it a little bit further. But I, I do understand and I, I understand your concern because as I mentioned in the last bill, we also deal with some of the enforcement issues of, of folks that don't necessarily intend to farm, but want to increase development on their property. So we deal with those enforcement issues in our Department. So I understand the concern, but we just didn't get into whether or not that should or should not be removed.

Mr. Gima: Thanks, Greg. Chair, I have one more question but I'll let the other commissioners chime in first.

Ms. Atacador: Thank you, Butch. Commissioners, any comments on the discussion or to add to the discussion? I have one just because it, it's regarding what, you know, the current conversation between Greg and Chair Gima was. Just something that, you know, goes back and forth in my mind is if we are penalizing the true farmers and people who truly intend to use this because of the people that, you know, do these fake farms and everything. I would hate to not allow the opportunity to true farmers and people who do plan to improve the agriculture ways of Maui County. Are we penalizing them by being too harsh, worrying about the fake farms and the conservation practices, conservation farming? Because, you know, as Commissioner Grove said earlier food security is a concern for us here in Maui County and Hawaii in general. So is it, you know, are we dealing with the issue that we're discussing right now? Or would it be more towards the enforcement side that we have the issue with versus the, you know, these proposed amendments to the ordinances? So that's, that's just my comment, you know, moving into further discussions about this bill. Thank you. All right, Chair Gima, any further comments before we move on?

Mr. Gima: Yeah, Greg on, on the whole 51 percent and usable, you know, all that stuff, um, I'm, I'm a bit confused because I'm thinking, ok, if you want to farm and you know this block of land has unusable land because it has steep, slopes, and a gulch and stream running through, and you know of the ag bill's requirements about using everything is 51 percent, why buy the land? I mean, is that, is that a fair question or a fair consideration?

Mr. Pfof: It's a fair question if the property owner wants to put a farm dwelling on the land, right? If you wanted to just purely do agriculture on the land without having a farm dwelling on that, then it makes sense to purchase the land despite these impediments to actually doing farming because you can farm a portion of the land. You no longer have to, you don't have to farm 51 percent to, to still do agricultural use on, on a piece of property. Where the 50 --. A definition of a farm means that you do 51 percent. And that definition of farm is important when you talk about a farm dwelling because a farm dwelling can only be located on a farm. So subsequently, if you're, if your interest is to put a farm dwelling on the property under the existing code, but a majority of your property is, is, is impeded by or unusable to be farmed, then you're not going to be able to get a farm dwelling on your property under the existing code. And what the change does here, it recognizes at least the, the Department's recommended alternative, it does recognize that in some cases you will not be able to farm 51 percent of your property because there is so much land that is unusable. So this deals with those cases where you cannot farm at least 51 percent on the property.

And I think it goes in a direction that is in comparison to the proposed bill, it goes into a direction that actually provides for more agricultural use of the property while still recognizing that there may be, there may be properties that are over 50, over 49 percent that are unusable, accessible and feasible. And so subsequently, this, this definition addresses that aspect.

Mr. Gima: Okay, thank you.

Ms. Atacador: Thank you, Chair Gima and Gregory. Any further questions, Commissioners, before we ask Greg to move on with the rest of the presentation? All right, seeing none, Greg --

Mr. Gima: Chair, I was, I was wondering if we want to take public testimony specific to this portion before we move on to the farm labor dwelling section? Up to you.

Ms. Atacador: Um . . . I think because it's one bill, we should wait until the end of, the end of it. Especially how Greg was saying, you know, there's another slide that goes into more details that have information with this first part. So I'd like to hear the rest of the presentation first. All right, Zane, did I see your hand up regarding a question?

Mr. de la Cruz: Yeah. Um, just --. So I mean, I, similar to what Chair Gima had in the other bill, but this, you know, this, this is coming about, this definition, or amendment to this definition is coming about because they, the, it's understood that there might be a agricultural lot that is 49, more than 49 percent unusable. Is there any hard number on that? Like do we, do we have an inventory of agricultural parcels where it has been deemed that more than, that 50 percent or more of it is not arable?

Mr. Pfof: I do not know any information that we would have that would determine that. I mean, it would be very difficult, I think, to actually make that determination. I don't know. The existing, existing definition doesn't get into what is usable or not usable, and I think that was the, the reason for trying to augment that definition is because I think folks were coming across a problem where they did not have enough use, a lot of usable area to be able to farm. And subsequently, I think what we looked at, it was important to make sure that we get as much agricultural use out of the property as possible and that's why we formulated these definitions, which apply to when you are exceeding more than 49 percent of the area not being usable. The, the bill, as proposed, would, would take out any area that's not usable, whether that's 10 percent, 20 percent or more. We just found that there was merit when, there was merit in the bill if there was more than 49 percent and hence that's why we added the additional language.

Mr. de la Cruz: I guess a follow up. So the assumption here is that, let's say there's a two acre lot, 50 percent of it is unusable, so you have one acre worth of land or one acre of arable land. The assumption is that that land will not be worked because someone cannot put a house on it?

Mr. Pfof: The assumption is that, in, in your example, is it that one acre is can't be used because of some sort of either topographic or material, and they can't use that for farming. That's the assumption of what we're talking about. It's not, it's not usable for that matter. And so, and so thus they would have a problem if it was at 50 percent or anything more than 49 percent because then they couldn't farm 51 percent per the definition. And because the definition of farm dwelling requires you to be on a farm, you wouldn't be able to have a farm

dwelling, right? So, so I guess it does make sense to the Department in whether or not when you do have a property that is more than 49 percent unusable because then you theoretically can't even meet your 51 percent. So I don't know if I'm confusing the matter more or answering your question.

Mr. de la Cruz: So going on --. So the purpose of this is to basically produce more, make more agricultural products, right?

Mr. Pfost: That's the, that's the --

Mr. de la Cruz: So --

Mr. Pfost: The purpose of the department's proposed revisions, yes, is to try and encourage, to try and get more agricultural use than what the proposed definition is.

Mr. de la Cruz: Okay. And so what I'm asking is that is the assumption of the Department that if someone is not able to put up a dwelling on their lot because of the percentage restrictions that they would just not, that that land would be fallow, that it wouldn't be put into production because someone couldn't live on the land to work.

Mr. Pfost: I suppose, yes. If, if, if they weren't able to, if they weren't able to meet their 51 percent in regards to definition of farm, they would not be able to put a dwelling on the property. And so . . . (inaudible) . . . still, you could still cultivate the property, remediate the property without necessarily living on the property I suppose.

Mr. de la Cruz: That that's kind of the crux of the question there. Is it the Department's assumption that even though technically you could work the land but not live on it, is that parcel less favorable because they would not be able to live on it, as well as working? And that's why they're in favor of this particular definition?

Mr. Pfost: Yes. Yeah, I would say so. And so it does allow, it does allow -- you're right -- it does allow for a provision to allow a dwelling unit on a property, a farm dwelling on the property that has more than 49 percent of unusable area. So the provision does do that, yes, accommodate a farm dwelling, yes.

Mr. de la Cruz: And if I can ask another question Chair or Vice? Um, like, I know it says here in the language to, determined by the Director, are there any, like, tangible steps for that determination? Like would a surveyor have to come out to identify slope? What is the definition of Earth material that cannot be farmed?

Mr. Pfost: That's, that's a very good question, and we would expect that the property owner would provide that. Whether or not they're looking at slopes steeper than one to one, we would want to look at some sort of topographic map of the -- excuse me -- of the property that would show that the steep slopes of more than one to one. And prepare some sort of

calculation that identifies any streams or gulches and how much land that takes. So we would expect the property owner to provide something to us that shows how much of this land is restricted.

Earth material that cannot be farmed, that's a difficult one. I'm, I readily admit I'm not a farmer, so I'm not exactly sure what that is. But considering such as rock or things like that is what we would probably be looking at.

But we left it up to the Director because we wanted some sort of ability to be able to review this and not, I think, would be just a blanket assumption by the property owner that they could just indicate whatever they felt was unusable. At least we have at least a reviewing body of the Director that would have to confirm that.

Mr. de la Cruz: I'm sorry, I've got something that just came up while, uh, you, you speaking. Like, what if, like, these conditions change? Like if there's some sort of Earth moving project or, you know, land quality improvement? Would -- how would that affect the already issued permits in, like, you know, in 20 years or whatever there is some land improvement projects that the landowner does, and you know, it went from 50 percent unusable down to only 47 percent unusable or more?

Mr. Pfof: Um, I'm trying to figure out what type of, what type of things that the landowner would do to make their property unusable, accessible and feasible. I suppose, I guess if they're doing land movement, we'd need a grazing permit to do some sort of --. Or if they're creating steep slopes I'm not exactly sure . . . (inaudible) . . .

Mr. de la Cruz: Okay, in reverse of that. If they're doing land improvements. If, you know --

Mr. Pfof: Okay.

Mr. de la Cruz: -- they're reducing grain, if they're adding topsoil. If, something like, or that happens naturally, like, how would that affect an already issued permit for the region or, or the usable land?

Mr. Pfof: That's a good question. I'm not sure. And you would --. The question I think what you're saying is is whether or not we would require than, does that change the calculation and require more agricultural use to be use, more of the land to be used for agriculture? That's a good question. I don't know. I haven't thought that through. Very good question. I'm not sure if we would require that. We've already probably had issued a, in this particular case, we would have issued a, a, a farm dwelling unit based upon what the calculations were submitted at that time. If they have, turned out to have more agricultural use, it doesn't necessarily, it doesn't increase the size of their farm dwelling unit, but potentially it should then necessitate the increase in agricultural use. I get your point, but that's not necessarily built into the way the condition is at this moment.

Ms. Atacador: All right. Good question, Zane. Connecting a lot of dots for us. Do you have any more questions before we move on?

Mr. de la Cruz: No, I'm, I'm good for now. Thank you.

Ms. Atacador: All right. Commissioners, any other positions on moving to the next portion of the presentation? Okay, I think we're ready, Greg.

Mr. Pfof: Okay. Great questions and thank you, and if you thought this one was confusing, we only do this next one. So I apologize if I'm confusing you. I tried to put this in some sort of matter that we could at least have a discussion about, and hopefully that's helping.

Uh, so the second part of the bill is a proposed revision to the definition of farm labor dwelling. And I apologize for the amount of text on this slide but I wanted to again reiterate there is a difference between farm dwelling and farm labor dwelling. I mentioned that farm dwelling and we talked about that at the last item, you can have, the last agenda item is there's no occupancy restrictions. You can have up to two farm dwelling units provided that there you are on a farm of more than 51 percent, at least 51 percent of the land is being used for agricultural use. We, we talked about how one of the farm dwellings can be no larger than a 1,000 square feet, and the total development area of both farm dwellings cannot exceed 10 percent of the lot area.

Well a farm labor dwelling, on the other hand, has occupancy restriction to agricultural employees only. Additionally, a farm labor dwelling is you can only have one farm labor dwelling per five acres of lot area, and must meet certain criteria. There are more related to commercial ag project and a larger farm than what you might find in smaller farms. And hence, I think while farm labor dwelling is one for five acres requiring employees to help and assist in that, in that operation. It must meet two of, two of the three criteria. But however, on Molokai and Lanai, and you see that fourth bullet point under farm labor dwelling, the owner must meet just the first two, which are a little bit more stringent than the third one. Additionally, there's no restriction on the size of a farm labor dwelling because it's a, it's a use necessitated for the agricultural use when it's used. And it does not need to comply with the ten percent maximum developable area of a lot.

The proposed amendment that's before you has three changes to its content. The first change is the timing of work by a farm laborer as it replaces employees employed full-time or seasonally in the County with the term full-time and part-time. It also changes the terminology of those working on a farm from employees to workers, including interns and apprentices. So it changes the type of employee or the type of worker on the property. And it introduces an allowance for family members of the agricultural worker to reside on the farm in the farm labor dwelling as well.

Again, when the Department looks at changes to text to the zoning code, we again look to the General Plan and Maui Island Plan, and the purpose and intent of the Maui County Code.

Again, looking to make sure that there's not an impact to agricultural resources as a result of the change, ah, specifically in the agricultural zone. In this particular case, the Department is recommending not to approve these changes, and we have a variety of concerns with the language as currently proposed. One, in changing the type of worker to include alternate types, such as interns and apprentices, it may be inconsistent with the intended use of agriculture employees that are working more in a commercial ag operation by having interns and apprentices.

Part-time, the term part-time work is not defined and therefore you could be permitting a part-time worker and or their family for an unknown number of hours, it could be just an hour a day, an hour a week or an hour a month, to reside with farm labor dwelling and potentially turning that farm labor dwelling into a third farm dwelling or a transient use. Again, some concerns with the clause and employees, it's now changing from an employee, which assumes some sort of payment to the worker, to an intern or apprentice, which changes the type of program. And, and is that consistent with what the intent was for farm labor dwelling?

And then also the -- since the farm labor dwelling does not have a restriction on its size, nor is counted towards the ten percent developable area like a farm dwelling, it, and assuming it could accommodate a family, you're probably going to see a larger type dwelling that would be proposed on a property and then potentially would impact additional agricultural activity occurring on the farm.

Those are the Department's concerns with the proposal that changes in farm labor dwelling. Ah, as mentioned earlier by the Chair, we did reach out to various agencies in regards to the proposals in these definition changes, and we did hear back from the State of Hawaii Department of Ag. And they had concern, as the Chair mentioned in regards to the term, the definition of agricultural land conservation as being part of the definition of farm. And I've listed the definition of agricultural land conservation there. And as I mentioned earlier, on, agricultural land conservation could be including improvements to air quality and habitat restoration. And that was some of the concerns that the State had of those terms being in the, in the definition of agricultural land conversate, conservation.

The State believe that the definition, this current agricultural land conservation definition set a low bar as to what type of activities farm labor, the workers of farm labor dwellings may be accessory to in, in the Ag district. Additionally, the concern was that interns and apprentices are not equivalent to full-time and part-time Ag workers. And how will the interns and apprentices be distinguishable from visitors and others that pay rather than be paid to work or learn on the farm, which kind of share the same kind of concerns as the Planning Department.

With that, the Department's recommendations regarding the definition of farm and farm labor dwelling is, as we discussed, and the definition of farm was to move forward as an alternative two definition. And regarding the definition of farm labor dwelling, the Department is not in favor of the changes and recommends that the Commission consider it the Department's

changes as well the State's changes and determine if additional modifications should be made. Again, the Planning Commissions' options on this bill is to recommend approval of the bill to the Council; record approve, recommend approval of the bill with amendments; recommend denial of the bill; and or vote to defer action of proposed bill to gather additional information. That concludes my presentation on this matter. Hopefully I haven't confused you too much, and I'm available for questions. Thank you.

Ms. Atacador: Great. Thank you, Gregory. Um, Commissioners, any questions on the presentation?

Mr. Gima: Erin, I don't know if we want to take public testimony before we go to the Commissioners' comments and questions.

Ms. Atacador: Understood. Thank you, Chair. Leilani, I think you mentioned we had one person signed up to testify.

Ms. Ramoran-Quemado: Thank you, Vice Chair. Yes, it's Council Member Gabe Johnson.

Ms. Atacador: Thank you. Council Member Johnson, we are ready for your testimony.

Council Member Gabe Johnson: Thank you, Commissioners. I know it's really late in the evening and I just want to thank you all for spending your time in this late night discussing these matters, and I just want to say thank you.

So I'm going to testify in support of this. I wrote the bill, but I wrote it with a -- the way I write bills is that I work with a lot of other people. So, uh, for example, the Ag Working Group helped me work, work this out, along with former Director McLean of the Planning, Planning Department. She helped me work this out. So, of course, new administration has new Planning Directors and but it's still sound. I think it stands on sound grounds. That being said, we're changing definitions here, okay?

So I just want to say that for usable is the key term in that type of farm language, usable land, right? So a lot of farmers, they, they have lands that are in gulches. They have lands that have Hawaiian artifacts on them. They have lands that are unfarmable and they shouldn't be --. This clarify, this clarify is it because before it was just discretion. This puts it in Code, okay?

The other thing is, as far as moving on to the second part, that includes families, all right. Bring a farm labor dwelling, who used to be just for one farmer, one worker on that, on that farm. By including the worker's family, I think, it's first off, it isn't very -- if I find a little bit kind of not fair for folks who like myself, I'm a single father, right? If I wanted to go and farm, I wouldn't be able to work on a farm labor dwelling because --. So this bill allows families to get into that and I think that's important. As a farm, you have to look at like the carrots and sticks, right? You have to look at what draws your workers. And what draws your workers would be housing. We're in a crisis right now, okay? The, the idea that if I'm going to go and farm on some land, then, and they're going to offer me housing, yes, then it is compare, comparable

to how, a hotel wages. It is comparable to what the job market shows. So I would -- many farmers would want to take up on that.

The, the concern that the Department had on like part-time workers, I think that kind of concern is from folks who don't farm, okay? If you look at HFUU, they have an internship program here and it's full. There's other internship programs going Go Farm Hawaii, and those, those interns could be a valuable asset. You know, there's roofers. There are people who do come here and work part-time and they'll need a place to stay. And I'd rather have them stay there and then try to take up some other actual housing for our, the rest of the residents. So it keeps them in their lane, as they say.

I think --. The other thing I want to add is, okay, the, the State's concerns. Okay, we can't supersede, County law can't supersede State law, of course. But, but, the, the concerns they have are --

Ms. Ramoran-Quemado: Three minutes.

Council Member Johnson: Okay, I'll conclude, thank you. The concerns the State has is those are good ventures to have. Conservation? We should farm people who are working or we should house people who are working in conservation. We should house people who are working on windbreaks and planting trees to prevent the dust blowing. So that's, that's my point. I'm sorry I ran out of time, but thank you so much, Commissioners.

Ms. Atacador: Thank you, Councilmember. Commissioners, any questions for Councilmember Johnson?

Ms. Grove: I had one.

Ms. Atacador: Okay.

Ms. Grove: Is there any --? Commissioner Johnson, thank you for your work on this. Is there anything else you'd like to add in terms of rebuttals to what the Planning Commission put forward?

Council Member Johnson: Well, I think it's an interesting concept. Thank you, Commissioner Grove, for a question. I think it's an interesting contrast from the previous bill where you were totally open or it's totally open to have abuse on that one. But on this one, it was very strict on the get into work, farmer worker housing is that you have to show that you're on, you're using ag water, you have to show you make at least 35 grand a year. You know, those are very strict bars that, that prevents the abuse that some of us have concerns with. And I have concerns with them too. But I just wanted to add that that this is a very stringent way to make sure that these, these units are for our work, workforce or they are for our work class.

And the last thing I will add is that, yeah, of course, there's many more examples in Maui and maybe even Molokai. But here on the Lanai, the company could put workforce housing out of the piggery. They could put workforce housing out at, at --. I keep calling it workforce housing. I'm sorry, it's farmer worker housing. You know, we get all confused with the terms. But it is, we, they could put homes for our workers who work on farms out by the airport, out by the piggery, out by Sensei. And that, that is totally could affect our island housing crisis. Thank you.

Ms. Atacador: Thank you, Lisa. I think I've seen Chair Gima raised his hand after Lisa, and then we'll go Negus and then Zane.

Mr. Gima: Thank you. Thanks for joining the meeting because it goes to the question I asked Greg earlier, and maybe you can comment on this. What, what problem existed that prompted this bill? And if this bill passes, what problem would we be solving? That again will provide context. And for future bills that you forward to the Planning Department, it would be helpful if you could provide that kind of context. It will help the Commissioners make a better decision.

Council Member Johnson: Thank you, Chair Gima. I know it's a --. Let me just start with the basics. So back in the day in Arakawa's Administration, it was just totally up to the Planning Commission to, the Planning Department to go up and see the farms themselves. This is kind of a way that, like some, sometimes the farmers would say, hey, you know, I have this land and I'm kind of concerned. Look, can we get it in law? Can we make it a law here that says this area of my land is unfarmable? You want me to go down in a gulch and farm? That doesn't make any sense to people. So that was a concern. It was trying to make it very specific on 51 percent and farmable and, you know, as opposed just the majority. So there was a problem. There was a problem back in the day, in that administration. So we're trying to fix it. And this came from specific farmers who had to struggle with that.

As far as the --. So that's the first part on that. So as far as, let me pull up my bill. I hope you guys have looked at the bill because it's just a page. But as far as the other problem in --. The, if you think about how limited you are on having a work house, farm, farmer, farm labor dwelling homes, whereas you only have yourself to be in there as opposed to bringing in your family, you're limiting. That's a problem. If you want, we are competitive. We're competing with other industries for workers. And the fact that you can now have house your family in those homes is a huge problem and fixing that by allowing families.

Mr. Gima: So the, the individuals and the groups you worked with, I mean, was the intent that this bill would increase potentially food security, increase employment, and increase economic diversification?

Council Member Johnson: Yes, certainly.

Mr. Gima: I mean, were those, were those three concepts discussed with the individuals in your group?

Council Member Johnson: I'm specifically thinking of a rancher named Brandon. You guys might know him. He's upcountry, a farmer, rancher. He's getting old and he needs help, and he needs those workers to come help him, right? Otherwise, his family farm is going to go belly up. And farming is a dying, it's, it's hard, right? If you look at the average age of farmers, they're getting older. So the fact that he can have a little unit for someone to come work his ranch, that's, that's the problem we're trying to solve, to help farmers like that.

Mr. Gima: Okay, thank you.

Ms. Atacador: Thank you, Chair Gima. Commissioner Manna?

Mr. Manna: Thank you, Chair. Gabe, two questions. The, the farm, uh, focus group you referred to, was that the Maui County Department of Ag Focus Group or is it your own focus group?

Council Member Johnson: Thank you for the question. It's the Ag Working Group; Maui, Maui Island Ag Working Group. And it consists of a lot of farmers, and they, they, they were existing before I came, before I became Chair of Ag. They, they worked with other Council Members on some bills. They worked with some other administrations on some bills. This is a bill that they've been asking for, for years, and, and no one has introduced it. And I mean, specifically about the usable land, right? They were so worried about this getting, getting, getting jammed up, we'll just call it, over, over not having the, you know, getting kind of penalized for not, for not farming their gulches. Or I know one specific farm has beautiful petroglyphs on the side of these stones and they are not going to farm that land. That whole area is kind of sacred. But because that's not, they don't want to farm it, they shouldn't get penalized for that. We should be protecting those areas.

Mr. Manna: Thank you, Gabe. And second question is, with the recommendations the Planning Department made with recommending alternative two, are you in support of that?

Council Member Johnson: Thank you for your question, Commissioner Manna. Yeah, I would support the alternate two. I read it. I'm malleable. I'm willing to work with folks. I'm, I'm not going to --. Yeah, I would support that.

Mr. Manna: Thank you. Councilmember Gabe Johnson.

Ms. Atacador: Thank you, Commissioner Manna. All right, Commissioner de la Cruz, did you have any questions? I thought I saw your hand up earlier. Sorry.

Mr. de la Cruz: Yes. I guess I had one clarifying question and a couple came up during the other ones. It's just in regards to Councilman's remarks about Pulama being able to put up a workforce housing, or sorry, farm labor housing. It's my understanding that the farm labor

dwellings have to be attached to the specific TMK on which the production is being done. I just want clarification on that.

Council Member Johnson: Yeah. Okay, I don't know the TMK numbers off the top my head at the piggery, nor at the airport, the gardens, so I don't know if they're one TMK or several separate. I honestly, I don't know the answer to that, Commissioner.

Mr. de la Cruz: Um, I'm not, I'm not asking specifically about that. I'm just clarification that the farm labor dwelling has to be on the same parcel on which the --?

Council Member Johnson: Yes, that's true.

Mr. de la Cruz: Okay.

Council Member Johnson: Yeah.

Mr. de la Cruz: And this -- once again, these are probably going to be --. This next one is a bit about semantics. I was currently unaware of the ag land conservation definition. But because of that, like, is there really any land that is unusable if that piece is in there? Like, you know, there's provision, like air quality or probably water infiltration or anything like that? Or slope stabilization? Is there such a thing as unusable Ag land if that conservation bit is in there?

Council Member Johnson: Well, unusable Ag land would be like gulches and the like. But I, I think that that's a State, a State issue. And to be honest with you, I, we, maybe we could ask as a Commission or I can even ask as a Councilmember to clarify the State's definition of it. Because when I hear conservation, I mean, we all know what conservation is. And we also know that wind lines and you know windbreaks are also a type of conservation. In fact, many farmers get grants just to build wind, wind lines, right, and windbreaks. And so that is part, and that's Federal funding that you can get from, for that. I think Your Old Farm, Alberta's Old Farm, where you're at has gotten that. So I'll have to get maybe get back to you on that, get more specifics with that, Commissioner.

Mr. de la Cruz: And I guess for the, the third one, this is going to be probably very or get people kind of contentious with me. But, like, I totally understand, like, cultural sites and things like that not being available for farming. But if that's the case, should they be agricultural lands? Like if this is an area that is deemed unfarmable for very good legitimate reasons, why are we allowing that to stay within agricultural definition?

Council Member Johnson: And you would propose maybe turning it in conservation land conservation?

Mr. de la Cruz: I'm not sure what the definition of the area of because I'm not terribly familiar with it. But yeah, like making it unable to be arable, making it, defining it in a completely

separate manner so that, you know, if this one farmer doesn't want to farm it because of its cultural importance, that doesn't mean, you know, some outside entity will come in who has no regard for it and will plow it down, right?

Council Member Johnson: Right.

Mr. de la Cruz: So if we want to remove that as arable land, we should remove that from arable land.

Council Member Johnson: Well, we have to be careful when it comes to a taking, right? So I maybe we can --

Mr. de la Cruz: No, I'm not saying taking the land, but, like, if it's going to be, if we're deeming it unusable, we are taking it out of agricultural production. And so it's being removed from agriculture production, it should just be --. If we deem it fit to be removed for this reason, it should be removed, period.

Council Member Johnson: I do not disagree with that. I mean, we want to protect the petroglyphs being an example, one of them. The iwi kapuna, okay, that's another example. Um, I agree with that. But this is just a change in definitions that we're trying to work on. You know, maybe I can come up with another bill for something like that, but I think the bill before you is just changing the definitions. If there's something, if there was a way that we could do it in, in another bill, I would certainly be amenable to it.

Mr. de la Cruz: That's all I have. Thank you.

Ms. Atacador: Thank you, Zane. Um, Commissioners any other questions for the testifier? All right, hearing and seeing none. Thank you, Gabe. Appreciate you being here with us tonight. All right, Council members, questions and discussion on the presentation of the bill in front of you?

Mr. Manna: Sorry Chair, could you repeat your statement?

Ms. Atacador: Oh, I'm just opening up for a discussion if anyone has any comments. Um, Commissioner Alboro, did I see you raise your hand? Yes, go ahead.

Ms. Alboro: So I just want to make sure I'm reading it right and correct, but, so now a farm labor on a farm, you can have a farm dwelling and a second, and a second farm dwelling per lot. And now they're trying to make it where it's -- I'm just reading the, in the bill -- but it says, um, the size of the farm labor dwelling is not regulated. It's just every five acres per lot. So you can have, like, a 100 acres and have a mini resort, then, is what I'm seeing because there is no restriction on it. Correct? And then at the end, it says it does not count towards the ten percent maximum developed area. So does that, like, take away from ag land? Where, where is this land, you know? Like, that's my question. Is there, is all this specifications on the first

bill, but this bill is like pretty loose, like, you can just have a mini hotel and have like 400 occupants. There's no restriction. I get it. We need housing, but maybe it's not all going to be used for the right thing, you know, is my concern.

Mr. Manna: I'd like to address that comment, Council Member Alboro. Um, I think there is because they said it had to be a commercial operation earning at least 35 or having an income of at least \$35,000. So, I mean, there are some requirements for them, right? It's got to be a farm for them. First, it's got to be classified as a farm. And I think you're right, it does remove agricultural land. But if we're trying to increase the productivity, that's only going to happen with the workforce or more technology. And the workforce is probably the more affordable option because --

Ms. Alboro: But wouldn't, but wouldn't your \$35,000 or your income be coming off rental income generated by that workforce housing?

Mr. Manna: That's a good question.

Ms. Alboro: I mean, I'm sure if you're not going to live there for free, there's going to be some type a rent or, you know. But that's just where I see it. Like, I see it as a hidden motive for some, for some people where they would build all these structures and rent it out and you know, I see where the Planning Department is coming from where they can specify part-time, casual, intern or whatnot. Because you could technically work an hour but just but just getting all paying \$900 rent, you know? So that's kind of where I see a problem. Not everybody would do it, but just, just seeing just how it is now on Maui especially with no housing and yeah.

Ms. Atacador: Thank you, Nikki. Gregory, did you have any --? Did you have any, any answers to Nikki's questions?

Mr. Pfof: Yeah, yeah, maybe. Yeah, thank you, thank you, Chair. Yeah, I think a couple of things. One, it's, it's important to recognize that the existing code, the way it is right now, allows you . . . dwelling unit for five acres. So in her example, the existing code allows for farm labor dwelling units to be put on an, on a parcel provided that you have at least five acres, one for five acres. The important thing to remember is the occupancy of those farm labor dwelling units must be agricultural employees only. So you can't use it to turn into a hotel or something like that. But they have to be Ag employees only.

Additionally, the comment was made about the \$35,000. Um, it's actually you must provide proof of at least \$35,000 of gross sales of Ag products. So you're actually showing that the Ag employees are working on an ag farm by showing that there's actually ag products that are being, that are being sold. And so that's part of the requirement of having farm labor dwelling.

I think when it gets into the concern that the Department had was defining what part-time is and potentially seeing some of the potential abuses as it relates to that and having a person

there that may only be working one hour or whatever, and whatever the definition of part-time is. But you are creating a farm labor dwelling to house people that may not be actually working, what you would consider working on a farm. So that's our concern is that there's, there's a lot of ambiguity to be, to be concerned. And then when you, when you add on adding, it's not the Department is opposed to, I think, having families, but that it's, it's adding that in conjunction with part-time. I mean, how is that going to be regulated? We're just seeing concerns of potential abuse to create farm labor dwellings without really serving for farm labor itself the way that we, the way Code envisions it. I hope, I helped, helped and answer some of the questions.

Ms. Atacador: Thank you, Greg. Nikki, any, any other questions? No? Thank you. Um, Commissioner Grove and then Commissioner Manna.

Ms. Grove: I just had a follow up question to the comments just made about a person who, you know, may be working an hour a month or something like that, the lack of definition of part-time work. What would be the motive of the farming operation to have people living in farm dwellings not farming?

Mr. Pfof: I suppose the question to me, yeah?

Ms. Grove: Yeah.

Mr. Pfof: Um, yeah. I suppose it's just, it's just the potential, the potential for it to turn into a third farm dwelling and allowing anybody to be living on that, in that, in that dwelling. So are we adding more dwelling units to an area that really is only supposed to have two farm dwellings and farm labor for it to house farm labor? But we're concerned that the potential abuse. That's the only thing that we're concerned about is that it turns into something that has folks living there that truly aren't really the type of farm labor that the Code currently envisions as being labor. So that's, that's the concern.

Ms. Grove: And, and what, what's the difference in terms of the type of farm labor that you envision versus what you see being exploited, potentially exploited?

Mr. Pfof: Well, I think the difference might be in that when we're talking about farm labor that is a farm labor dwelling needs to be on a property that provides a certain amount of gross sales ag product. So you're assuming that it's more of a larger operation that needs actually employees or farm workers to be there. Now, you could still meet that gross sales product per year, but I'm concerned that if you have just part-time workers not -- they may be there just for, you know, just for, maybe they're there for a short time, under six months or a month, and then you get into transient issues. You then have their family living there and then it's hard to enforce or control in that aspect. So we're just seeing the potential for abuse the way the current definition is worded. I suppose not a lot of structure there, and a lot of subject to interpretation, seeing that what we see and trying to deal just with the farm labor, the farm

dwelling trying to meet their 51 percent, and some of the enforcement issues we get in that aspect that we just see this as opening that realm up as well as the concerns.

Ms. Grove: Thank you.

Ms. Atacador: Thank you, Commissioner Grove. Commissioner Manna?

Mr. Manna: Thank you, Chair. My question is to Gregory. Would you be satisfied if we placed a certain amount of hours to define part-time? Saying, you know, 20 hours a week? Would that satisfy you and reduce your, your, um, your concerns? If we amended the language?

Mr. Pfost: Yeah, I believe that goes kind of in that, in that direction. It's, it's interesting when you look at the existing Code, it says employees employed full-time or seasonally in the County. The seasonally in the County kind of opens up for interpretation. Are they full-time seasonally or are they part-time seasonally? So I guess there's some subject to interpretation there. But I think moving in a direction to define part-time might be better.

The other concern is interns and apprentices, in that language, and does that have a different connotation than what you might find as just a regular farm worker or an employee that is actually a working in farm? You may have an interim program -- and nothing against the interim programs. I think they're I think they're great for agricultural use. Um, but does, if they just have one intern for a limited period of time, does that really meet what, what is expected when we talk about farm labor and farm labor dwelling? So, um, and, and then does that lead to some potential abuse of having, well, I built this farm labor dwelling and it houses my intern that's only here for a limited amount of time. So it's all those kind of things that they kind of leave it to subject to interpretation and, and potential abuse. Adding some hours or trying to define that further, that I think does help, would help.

Mr. Manna: Well, you know, I'm a strong advocate for, for farm workers. As a farmer, I know we need employees and housing them. I think still trying to move things in the right direction, um, I, I could compromise with you by, you know, regulating the hours that defines part-time and, and possibly including the interns or apprentices falling in, must fall into that part-time category. Well, I'd like to try to find some middle ground so we can get this to move forward.

Ms. Grove: Can I just say that I worry a little bit about 20 hours a week and as the, the high end thresholds, especially when people are struggling with maybe a couple of two or three different jobs. And you know, it's one thing, the example that we keep hearing is one hour a week or one hour a month. But you know, ten hours a week to a struggling farm operation is, you know, 40 hours a month is a lot of time from, from somebody. And to me, getting to some threshold that is also allowing the farmer to be successful. I also, I also feel like I can totally understand that we're looking for the gotcha and all the things that could be wrong here. But sometimes I feel like that's a stumbling block from getting things done and really helping our farmers. We all say we want to help our farmers, and then we're looking for all the ways in which we think these farmers are going to cheat us. And I, I, I know that people aren't doing

that intentionally, and they're asking good questions and they're being investigative and inquisitive and all the things we want. But it concerns me that we're, we're holding our farm community back by thinking about all the ways in which they're going to take advantage of this, of these rules, especially when they were propagated by farmers.

Ms. Atacador: Thank you, Commissioner Grove. Yeah, I agree with you on that. And my unpopular opinion is on this that, you know, we, we don't want to have them potentially doing a third farm dwelling because we want to provide the housing for workers, you know, that are actually working on the farm. But you know, we, we all seen the video on Expeditions where the tourists come to Hawaii and participate in the agricultural practices and learn something. So if that can benefit and make money for a farmer, if they can potentially offer, you know, a guest to Hawaii an experience and come here and, you know, to tourists that are genuinely looking for that experience and contributing and learning something off of agriculture here in Hawaii, especially, you know, traditional practices, why shouldn't we allow them to do that? You know, I understand the priority is for workers that are, you know, here, workforce labor. But I mean, if there is an avenue for them, you know, to help support them and, you know, their agriculture endeavors, I don't want to close them off to that opportunity either. You know, I understand that that, you know, definitely opens the door to it being abusive. But if that's something you know, we see on our Expeditions ferry, that's, you know, an opportunity that tourists can come here and participate in agriculture, then I think that that is something that we should consider that can support our agriculture efforts in Maui County. So that's, that's my two cents kind of piggybacking off of what Lisa was saying is that we're might be hurting our farmers and our ag community by being a little bit more critical on, on everything that we're trying to change to better them. It's my two cents.

Ah, yes, Chair Gima?

Mr. Gima: Yes. Um, I have a procedural question for the Planning Department and or Corp Counsel. Because the Planning Department prefers alternative two and is not in favor of proposed changes for the farm, um farm dwelling -- farm labor dwelling, I'm sorry -- do, do, do we have the option of voting those separately or do we have to vote as a combined bill?

Ms. Pannell: So, I'm sorry. Do you mean the two different items on the agenda or the two different items discussed in this one agenda item? I'm sorry, I didn't quite catch the first part of the question.

Mr. Gima: The second agenda item involves the, the definition for the farm and the definition for the farm labor dwelling. My question is --

Ms. Pannell: Got it. No --

Mr. Gima: Do we have to vote on it together?

Ms. Pannell: Together.

Mr. Gima: Okay. That's going to make the motion much more difficult then. That being said, um, it would have helped me, Planning Department, if you and or Council would have said, yeah, this bill will impact 75 percent of the farmers. But not knowing that it, it makes it difficult for me. I mean, if this is, if this is going to only affect 13 percent of the farmers, then maybe I don't put that much time and energy in this. But if it's going to affect 75 percent of the farmers then, yeah, we got, we got to do something. So that would, that would be helpful.

My, my assumption is the intent is to incentivize ag operations. The intent seems to be supporting current farmers in terms of improving or increasing their operations. And I'm assuming that this also is intended to de-incentivize fake farmers. Is that, is that accurate?

Ms. Pannell: You know, to what extent that it's, um, appropriate, and I think that Greg had said this prior, we don't know the intent of this bill, you know, in this forum, right? We didn't bring this bill forward. We don't know exactly what the intent was. But I would, again, just to the extent that it's helpful, in the package that is provided, the meeting material, they did include the testimony of, of all the Council Members and the public testifying. And a lot of these questions are addressed in that. Um, so that's the only information I have on the intent of it.

Mr. Gima: So going back to you, Greg and your department, please, in the future implore Council when they send something to you, find out what the intent, what the problem is. I tell you it would make things a lot easier for you guys and for us, specifically us. Because if I knew that that was the intent, it would be easier for me to vote on it or to make a motion. I'm at this point, guessing and assuming.

Mr. Pfof: Yes, thank you. And I'll, I'll take that message as far as I can take it to try and get more intent and purpose when I get bills initiated by Council. Thank you.

Ms. Atacador: Thank you, Chair Gima. Any, um, other --

Mr. Gima: Well, one, so one last thing for Planning Department. So, Greg, you guys are neutral on the definition of the farm labor dwelling because you guys are not offering any alternative on the definition. Is that accurate?

Mr. Pfof: That is correct. We have not offered any definition. We have concerns with the definition as currently proposed, but have not offered a revised definition. That's correct.

Mr. Gima: So is there a reason why you guys aren't offering an alternative for the farm labor dwelling, but you offered an alternative for the farm definition?

Mr. Pfof: Um, I think in at first glance of the definition, at first glance of the definition that was provided to us, we had, we had so many concerns we weren't quite sure how to how to change it. We had concerns regarding the part-time aspect. We had concerns regarding interns and

apprentices, and as well as how those relate to family members. And I think all of that combined was just a general concern of do we really need to change this definition? Why not leave the definition is currently is, as it currently is? There may be opportunities to revise it to address some of the concerns that we had. We just didn't take it to that step, you know. We just had concerns about what was being proposed in all three of the different areas. So I apologize, but we did not come up with a revised definition.

Ms. Atacador: Thank you, Chair Gima. Thank you, Gregory. Chair Gima, any other questions?

Mr. Gima: No, just a comment that I think because the Planning Department is neutral and has not offered, explained why they have not offered an alternative, I think it would be hard, we will be hard pressed to make a motion on this.

Ms. Atacador: Understood. Understood. Commissioner de la Cruz, I see your hand up.

Mr. de la Cruz: For --. I just wanted to --. I had made an assumption in my head earlier and I wanted to maybe clarify it. Can farms charge rent for farm labor dwellings?

Mr. Pfof: There is the --. There's nothing in the Code that says that they cannot. It's only that the farm labor dwelling must have agricultural employees within the farm labor dwelling. And that's, that's what's required. That it doesn't say whether or not you can charge those employees or not so.

Mr. de la Cruz: Okay. But if --. Let's --. If, if they are able to charge them rent, would they still --? Because this is just a, it's a separate beast, right? Would it be subject to the same, like, definitions between, like, a long term rental, short term rental?

Mr. Pfof: Yeah, that is part of the issue that we had if it turned into a transient use of short term rental because of the type of workers that are working there -- apprentices or interns -- for a limited amount of time. And so that's one of our concerns is that I noted in the report is that it potentially turning into a transient rental because, because of limitations on hours and time. And so are you essentially creating a farm dwelling to accommodate either, either the rental or something like that and not really accommodating what is, what the, what we thought the intent of the Code is for agricultural employees. And so I think it loosens it, it loosens it so much that it could lead to that potential. It may not, but it may. So that's, that's the concern.

Mr. de la Cruz: So that --. I'm going to finish on this comment. I guess, compared to some of the other Commissioners, I'm a bit more cynical, um, and it's kind of one of those things, you know, if you can make money on it, you're going to make money on it. And I can see this kind of there is potential here for this thriving farm production backwards, right? If agro-tourism for lack of a better term becomes a thing, right, because this will allow for it. It will give someone a place to stay. It will put more focus on the tourism aspects and the agricultural aspect. And as far as the \$35,000 requirement, like, you could sell a \$1,000 apple, you know, I mean? Like, there's nothing that says you can't do that. And yeah, the cynical aspect of me is saying

that this, this just kind of leaves it, for the current, the way the definitions are currently, it's just kind of ripe for abuse.

Ms. Atacador: Thank you, Zane.

Mr. de la Cruz: I don't disagree with the intent. It's just the way the definitions of labor just seem kind of ripe for abuse.

Ms. Atacador: Understood. Good points. Commissioners, any other questions or additions to the discussion? Are we ready to make a motion?

Mr. Gima: No, I'm not ready to make a motion, but I'm considering, I'm considering a motion to defer to have Council address the concerns that the public, the Planning Department had with the definition of the farm labor dwelling.

Ms. Atacador: So you would be leaning more towards deferring then denying?

Mr. Gima: Yes.

Ms. Atacador: Yes.

Mr. Gima: And -- so I mean, in our package, there are three specific concerns that the Planning Department brought up so that that would be specifically what would need to be addressed by deferring. And then probably also want to get much more clarity on the agricultural land conservation concerns that the Department of Agriculture for the State has. And I think what someone brought up about wanting some specific input from the County Department Ag on these matters. So those, those – that would be five possible specific things of information that we may want to ask for if in fact we defer this item.

Ms. Atacador: Thank you, Chair. Commissioners, any thoughts on Butch's suggestion? Yes, Commissioner Manna?

Mr. Manna: Uh, I would make a motion to recommend approval of the proposed bill with the amendments to recommend that the Planning Department's recommendation of alternative two revision be accepted, and that the farm dwelling part-time labor would be more readily defined by Maui County Council on how, how many hours is considered part-time.

Ms. Grove: I second.

Ms. Atacador: Alright, so it's been moved by Commissioner Manna that we recommend approval of the proposed bill with the amendments to the Maui County Council. Is that correct, Commissioner Manna, with the details that you listed?

Mr. Manna: Correct.

Ms. Atacador: And seconded by Commissioner Grove. Um, do I discussion Chair Gima, or do we do a vote discussion? Okay, discussion on the, on the motion on the table, Commissioners.

Mr. Manna: Yeah. I can start off the discussion. Um, we need, we need this. Farmers need this. This is a big push. The last few years we've seen how important agriculture is to our community's welfare. Maui County has a big push with the creation of the Department of Agriculture. So I would say let's support the efforts that have been put forward and help them define it so that people do not take advantage. Thank you.

Ms. Atacador: Thank you. I guess my question would be so you wouldn't be interested in deferring it to have those specific actions before we move forward with the approval of the bill? It's just a question, you know, relating to Bill's, um, Butch's suggestion to defer, defer action until the next one. Because you're, you're kind of saying that you're waiting. You want those answers, right, on defining the additional verbiage?

Mr. Manna: Yeah, yeah.

Ms. Atacador: And Butch is asking for two by deferring it, not approving it just yet.

Mr. Manna: Right, but I feel that the only difference is that by approving it, we give Maui County Council, that we support agriculture and we just want them to refine the bill on the part that deals with farm labor dwelling, part-time definition.

Ms. Grove: And can I add to that? My mantra for Maui right now is the risk of doing nothing is too great, and on almost everything. And that deferring is could be putting farms out of business or could be making things even harder for them to make ends meet. And it just feels like that the last thing we need to do is delay more things on Maui as they're struggling to cope.

Ms. Atacador: Understood, Commissioner. Good point. Um, I guess my question is for Corp Counsel. If we approve it and you know, we can come back with defining the definitions better and we don't like it, is it too late and we approved it already? Or do we have to vote again and approve it?

Ms. Pannell: You can make a vote to approve as it is or a vote to approve with amendments. And so the amendment part would be where you would, you know, put in your suggestions. You know, amend it to define the things that Commissioner Manna mentioned. That would be the motion to make at that point. You can also vote to reject it entirely, and you can also vote to defer it. . . . (inaudible) . . . entirely, but it not . . . (inaudible) . . .

Ms. Atacador: . . . (inaudible) . . . Sorry.

Ms. Pannell: What was that?

Ms. Atacador: What if we don't like the definition that they come back with, though, when they, you know, . . . (inaudible) . . . define it, what if we don't like it?

Ms. Pannell: Well, then, you know, then that, that may be the end of it. So you can motion to defer at this point, defer it so that you can get more clarity on that. And let's also remember, too, that at this point, it is just a motion or a vote to approve recommendation, right? So the Council will ultimately have to actually approve this. This is just Lanai telling them what they, what you, what you folks think, you know? Um, yes?

Mr. Manna: Also Counsel Selina, uh, wouldn't we have the opportunity as a resident to testify in front of Maui County Council if we didn't --?

Ms. Pannell: Absolutely, yes. When it's actually because --

Mr. Manna: -- agree with their definition?

Ms. Pannell: Yes. So the reason this has come to you now is to get your opinion on it, and then it will ultimately go, and also, you know, the public will have a chance, from the entire County, to testify before it's actually passed by Council and becomes law.

Ms. Atacador: Understood. Thank you for the clarification. All right, any further discussion on the motion, Commissioners?

Mr. Gima: Call for the question.

Ms. Atacador: All right, hearing none, I'll ask if we can do a show of hands votes. If you're in favor, please raise your hand? Alright, that's three. So we'll do a roll call version since it's not unanimous. Nikki?

Ms. Alboro: My vote is with Butch to defer and gather more information.

Ms. Atacador: Okay, thank you. Commissioner Rabaca?

Ms. Rabaca: Defer. There's just too much that is up in the air, like Uncle Butch said.

Ms. Atacador: Thank you. Commissioner Fujie?

Ms. Fujie-Kaauamo: Approve with option for amendments, or redefine amendments. Sorry.

Ms. Atacador: Thank you. Commissioner de la Cruz?

Mr. de la Cruz: Nay.

Ms. Atacador: Chair Gima?

Mr. Gima: Nay.

Ms. Atacador: And Chair -- sorry -- Commissioner Grove?

Ms. Grove: Yay.

Ms. Atacador: And Commissioner Manna?

Mr. Manna: Yay.

Ms. Atacador: And I'm myself is to defer. That's one, two, three, four, five. Five defers, and three to support the motion. Motion fails.

Mr. Gima: Um, Chair, I think, Commissioners either have to vote yay or nay or abstain.

Ms. Grove: And the second one to defer if that's the will of the elected.

Ms. Atacador: My apologizes. Do I have to do it again or the ones that said that they go with deferring it are just chosen as nay?

Ms. Pannell: I think the deferral is implied as nay. But, but, yes, to make it very clear, you have to do it again. And then also, and I'm sorry I didn't catch it, who, whoever said approve with the amendments, that would just be a denial of this motion. So Commissioner Manna, you could, you know, withdraw this motion, make a new one with those specific amendments. Um, but the motion, as it stands, is to approve, I believe.

Ms. Atacador: Oh, I thought, he said approve with the amendments already. That was the motion on the floor.

Ms. Grove: That's right.

Ms. Atacador: Yeah.

Ms. Pannell: Okay. And those amendments require -- clarified during discussion?

Ms. Atacador: Correct. It was kind of --

Ms. Pannell: Okay.

Ms. Atacador: -- the suggestions at the end of the slide where with the Planning Department's recommendations were.

Ms. Pannell: Okay. The motion is to approve with amendments and that is in motion. Maybe let's redo the vote. I apologize.

Mr. Gima: Yeah, so the three options are yay, nay -- yay, nay or abstain.

Ms. Pannell: Yes.

Ms. Grove: The motion --

Ms. Fujie-Kaauamo: And to clarify the motion on the floor --. Sorry, go ahead.

Ms. Grove: You go ahead. Or I can if you want.

Ms. Fujie-Kaauamo: No, I was just, I was just going to clarify, like, the motion on the table was to -- or was to approve with the amendment, correct? Okay. So then somebody needs to resubmit a motion, or it got denied, right? Yeah.

Mr. Manna: They got to revote.

Ms. Atacador: Revote because we didn't say, or it wasn't yay or nay.

Ms. Grove: And it's review with the alternative number two and definition of part-time.

Ms. Atacador: Okay. Um, Commissioner Alboro?

Ms. Pannell: As recommended.

Ms. Alboro: Nay.

Ms. Atacador: Commissioner Rabaca?

Ms. Rabaca: Nay.

Ms. Atacador: Commissioner Fujie?

Ms. Fujie-Kaauamo: Yay.

Ms. Atacador: Commissioner de la Cruz?

Mr. de la Cruz: Nay.

Ms. Atacador: Commissioner Gima? Sorry, Chair Gima?

Mr. Gima: Nay.

Ms. Atacador: Commissioner Grove?

Ms. Grove: Yay.

Ms. Atacador: And Commissioner Manna?

Mr. Manna: Yay.

It was moved by Mr. Negus Manna, seconded by Ms. Elisabeth Grove, then

VOTED: To recommend approval of the proposed bill with the amendments, as discussed, to the Maui County Council. -- MOTION FAILED

(Assenting: E. Grove, M. Fujie-Kaauamo, N. Manna)
(Dissenting: N. Alboro, E. Atacador, Z. de la Cruz, R. Gima, S. Rabaca)
(Excused: S. Kaye)

Ms. Atacador: And I am in nay. So that's five nays. Did I count mine? Five nays and four yays. No, um, that is five nays and three yays.

Ms. Pannell: Correct.

Ms. Atacador: Okay. My apologizes. Start losing me after eight o'clock. Alright, so motion fails. So at this point, are we going -- should we vote to defer this agenda item?

Ms. Pannell: Someone should make a new motion to do that.

Ms. Atacador: Okay, got it. I would entertain a motion to defer this agenda item to the next Planning, Lanai Planning Commission meeting. Do I have anyone that would like to support, um propose the motion? Oh, I see Gregory raising his hand first. Go ahead, Gregory.

Mr. Pfof: Thank you. And I hate to interrupt, but I would just request if you could explain what it is that you're looking for the next, next Lanai Planning Commission meeting. So you're deferring it to the next one, but what is it that you're asking to get by then? It would help us out.

Ms. Pannell: . . . (inaudible) . . .

Ms. Atacador: Chair Gima? I'm sorry.

Ms. Pannell: Oh, just, we could technically go forward with the motion, see if passes, and then asked for clarification. But either way is fine, truly.

Ms. Atacador: Okay, Chair Gima?

Mr. Gima: So I move that we defer Item B.2. to the next month, or to our next meeting and have the Council respond to the three specific concerns or questions that the Planning Department included in our packet. And that we have the Council also respond to the Department of Ag, the State Department of Ag's concerns about agricultural land conservation. And lastly have the County Department of Agricultural, Agriculture provide specific input on this item.

Ms. Atacador: Thank you, Chair Gima. Do we have a second?

Ms. Alboro: I second.

Ms. Atacador: I heard Nikki first. All right. And if we could do a vote by show of hands? If you are in favor of the motion, please raise your hand. Motion passes unanimously, unanimously. And that is to defer it until the next meeting, providing the questions be answered at the next Lanai Planning Commission meeting in January.

It was moved by Mr. Reynold Gima, seconded by Ms. Nicole Alboro, then unanimously

VOTED: To defer and requested further information as discussed.

(Assenting: N. Alboro, E. Atacador, Z. de la Cruz, R. Gima, E. Grove, M. Fujie-Kaaauamo, N. Manna, S. Rabaca)

(Excused: S. Kaye)

D. COMMUNICATIONS *(The following items were deferred at the October 18, 2023 Lanai Planning Commission meeting.)*

- 1. MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the Q2 2023 and Q3 2023 quarterly reports, pursuant to Condition No. 15, for the Project District Phase II Application for the Four Seasons Resort, Lanai, Koele Proposed Improvements (PH2 2017/0001).**

The Report is provided to the Lanai Planning Commission for its review.

- 2. MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the Q2 2023 and Q3 2023 quarterly water usage reports, pursuant to Condition 11, for the Miki Basin Interim Industrial Use Project, Lanai, Hawaii (SUP2 2021/0008)**

The Report is provided to the Lanai Planning Commission for its review.

Mr. Gima: -- increasing --

Ms. Rabaca: I don't -- yeah, nay -- I don't that to happen.

Mr. Gima: Okay, we have one --

Ms. Rabaca: I think it defeats the purpose. Yeah.

It was moved by Ms. Sally Kaye, seconded by Mr. Negus Manna, then

VOTED: To recommend approval of the proposed bill to the Maui County Council.

*(Assenting: N. Alboro, Z. de la Cruz, M. Fujie-Kaauamo, S. Kaye, N. Manna)
(Dissenting: S. Rabaca)
(Excused: E. Atacador, E. Grove)*

Mr. Gima: Okay, so motion is carried with five yay and one nay. Okay, thank you much.

2. A BILL FOR AN ORDINANCE TO AMEND SECTION 19.04.040, MAUI COUNTY CODE, TO REVISE THE DEFINITIONS OF “FARM” AND “FARM LABOR DWELLING”

Ms. Kathleen Ross Aoki, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions, a proposed bill to amend Maui County Code Section 19.04.040, to revise the existing definitions of “farm” and “farm labor dwelling.” (G. Pfof) (*Public Hearing was conducted at the December 13, 2023 LPC meeting.*)

The entire text of the proposed bill for ordinance is available at <https://mauicounty.gov/DocumentCenter/View/143752/RESO-23-220-Referring-a-Proposed-Bill-to-Amend-the-Definition-of-Farm-and-Farm-Labor-Dwelling?bidId=>

Mr. Gima: Um, moving on to unfinished business item two, a bill for ordinance to amend Section 19.04.040, Maui County Code, to revise the definitions of farm and farm labor dwelling. Ms. Kathleen Ross Aoki, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Section 19.04.040 to revise the existing definition of farm and farm labor dwelling. Okay, Greg, it's all yours again.

Mr. Pfof: Thank you very much. Again, and I apologize for the lateness, but you should have received also a Department memo on this item as well, B.2. with two attached letters from the County Department of Agriculture. One of the letters is the same one that was on B.1.. But

there was a subsequent letter that was addressed to myself that we received today that's also attached to that, that memorandum that you should have. So again, the same, I'll summarize what has occurred if you can bear with me.

Again, I need to get to --. There we go. So if you recall the, the bill before you is actually a proposed change by Council, initiated by Council, to a change the definition of farm, and then a change to the definition of farm labor dwelling. Similar to the last presentation I gave last month, I'll kind of break them up into the two, the two sections, the two definitions. Excuse me. You can see the proposed revision to the definition of farm here at the upper portion of the slide. Basically, it's adding kind of two phrases or clarifying the term majority with the term, at least 51 percent. And then also adding some qualifying language of usable, accessible and feasible in determining what should be counted as part of that 51 percent to be used for agricultural use.

As I mentioned in the last, the last month, the Department was in favor of changing that first phrase of the majority to at least 51 percent of the area because it provides more clarity. However, we did have some concerns about the clarifying language or about the language of usable, accessible and feasible, the qualifying language, I should say. Because we believe that the language, as currently proposed, would result in less agricultural use than what the current code definition of farm means. And so we believe that that would be inconsistent with the General Plan and the Maui Island Plan.

Additionally, we believe that the Code, as currently written, because you have to have 51 percent or a majority of the property used for agriculture uses. That means, that means the remaining 49 percent of the lot could be used already for areas that are not usable, accessible and feasible. So we believe the Code already has something built in to discount those areas that are not usable, accessible and feasible.

However, we also, if you remember we discussed this last month, that for those properties that perhaps are have land area over 49 percent that are not usable, accessible and feasible, and therefore they cannot theoretically farm 51 percent that this definition may have some merit. And then we were also concerned that the terms subject, are subjective --the usable, accessible and feasible, are subjective and need to be defined.

So you may recall that as a result of these concerns, the Department came up with a revised definition. This was in the, in the report, it was identified as alternative two. But this is really the Planning Department's proposed definition of farm. So this is an alternative. And with this definition does, there's a revised definition is it only allows you to exclude those, those areas that are not usable, accessible and feasible for farming that are over 49 percent of the lot area. And then it says that the remainder of the lot will need to be used for agricultural purposes. So we're, we're getting to have more agricultural use than what the proposed definition is while still recognizing that there may be those lots that are not usable or a good portion of them, at least more than 49 percent, are usable.

The definition also provides, that the revised definition proposed by the Department also includes some definitions of usable, accessible and feasible that are incorporated in there as well. And also has a determination by the Director so we have somebody that is actually in the Department that actually makes these determinations.

So that was the Department's proposed recommendation on the definition of farm and changing that definition.

On the other hand, on the definition of farm labor dwelling, you may recall, and I have the proposed revisions to the definition by the Council -- it's initiated by Council -- up in the upper portion. It's quite extensive revision and it does basically three different things. It incorporates full and part-time agricultural employees as opposed to those that are determined as full-time or seasonally. So it introduces the term part-time. It also introduces interns and apprentices on the farm as being, as being labor. And then it also allows for family members of the agriculture worker to be able to reside in the farm labor dwelling.

And so, as you may recall, the Department had concerns in regard to the proposed definition. We were concerned that it changes the type of worker to include interns and apprentices, which may not be consistent with what an employee was intended to be with the original definition, and it would be difficult to regulate what an intern and apprentice is. Additionally, part-time work is not defined, as could that be an hour a day, an hour a week, or what have you, and so we are concerned about defining that definition. And then also a general concern of permitting a part-time worker and their family for an unknown number of hours working on the farm, which can be an hour, could potentially turn a farm labor dwelling, which is really supposed to be more from a commercial ag perspective, it turns a farm labor dwelling into more of, a what we're concerned or be concerned about is a transit use or short-term lodging use. And also since the farm labor dwelling has no restrictions on size, only the, only the farm dwellings do, not farm labor dwellings. So since farm labor dwellings have no restriction in size, or nor counted towards a ten percent developable area of a lot, we assume including a family, we assume that you have a dwelling that would be much larger than normal and therefore potentially impact agricultural activity occurring on the farm.

So those were our concerns at the time that we expressed. We do not have an alternative definition that was being proposed, but we did -- we weren't supportive of the proposal of farm labor dwelling as, as currently written for those reasons.

At the December 13th meeting, the Lanai Planning Commission came up with three, again, three things for the Department to look into. One was the Department requested County Department of Agriculture comment on the proposed bill. And, as I mentioned, attached to the memorandum that you received today are two letters from the Department of Agricultural, Department of Agriculture. One is the January 9th letter addressed to the Maui Planning Commission. And then, as I requested more detail to have them really look at our staff report that was provided back in December, they provided, or the Director provided a subsequent

letter dated January 16th and that was addressed to me. And that's in your attachments as well to that, that separate letter, and to that memorandum from the Department.

In general of the, the County Department of Agriculture was generally supportive, but had some issues or concerns that they expressed. One is that they, they were concerned in regards to the definition of farm, they would like some additional time to consult with some stakeholders pertaining to the definitions of what usable, accessible, and feasible are, and see if they can, see if those definitions can be honed a little bit further probably.

In in regards to farm labor dwelling, they were in favor of having families reside with full or part-time workers, but did not feel that interns were the same as employees. They were also concerned about the definition of work, and I think that's related to part-time and, and needed some clarity. And they also wanted to have some additional time to consult with stakeholders in regards to the proposed definition of farm labor dwelling as well. And you couldn't asked, but you know that the Department is asking for additional time. Well, they do have some time potentially to provide some more information on this by the time between this bill going from the Planning Commissions with all of your comments and the other two Commissions' comments and going to Council. So I've, I've asked the Department of Agriculture to, to work on that so that we can get that information to the Council before the Council takes any further action.

Um the -- the Lanai Planning Commission also asked that the County Council provide some input on the Department's concerns with the proposed bill and also input on the State Department of Agriculture's comments on the proposed bill. You may recall that there was a letter from the State Department of Agriculture expressing concerns with the proposed bill. And I apologize I should have probably, we should have brought this up at the last meeting, but the way that the Charter works in the County of Maui is that it only prescribes -- it's not a back and forth process between the Commission and the Council. So even though, I think the Commission was looking for more information or intents of what the, what the bills were about, the Charter doesn't allow for that process. And in fact, there's a, there is a time frame in which we need to get this back to Council. It really just -- the Charter specifies that the Planning Commission should hold a public hearing and transmit their findings or recommendations back to the Council.

Importantly, as this goes back to the Council, the Council can decide whether or not they then again want more information or, or direction for the planning commissions as they decide in the future. I might also note that you may recall that the Item B.1. tonight actually did, was reviewed in Council Committee, but this particular item on farm and farm labor dwelling was not addressed in Council Committee. I know I spoke to the sponsor of the bill who is indicating that he believes and desires for this item to go back to Committee. So I'm sure there'll be a lot more discussion with Council Committee at that time before going to Council for a vote. Whether or not that comes back to the planning commission or not, I'm not sure. That's up to the Council.

Thus with this, with this proposed bill, again, the same recommendations; recommend approval of the bill to the County Council, recommend approving the bill with amendments, recommend denial of the bill to the Council and, or if the Commission has additional comments or recommendations to provide to Council with your action, then with majority vote direct the Department forward those comments to the County Council for consideration.

Again, as part of this recommendation, as I noted, you know, we did have that alternative that the Department recommended for the definition of farm so the Commission, I would recommend that the Commission considered that as, as a potential recommendation or alternative. And that concludes my presentation. Thank you.

Mr. Gima: Alright, thanks again, Greg. Uh, so Commissioners, let's just go with the proposed change in definitions for farm. Let's just focus on that first. So any questions or comments to Greg about the proposed language for farm? Okay, so Greg, um, just to be clear, regarding the 51 percent, the Planning Department is -- are you guys set on the definition of usable, accessible, and feasible for farming, ranching or conservation? Are you going to set on that definition?

Mr. Pfof: We have the definition and the alternative that the Department provided and it included a definition as defined as those as subject to the approval of the Director include culturally sensitive areas, slopes steeper than one to one, streams or gulches, or land containing material that cannot be farmed. That's what the Department came up with. Now, recognizing, we, the Department, are not farmers. And, and I think the Department of Agriculture, the County's Department recognizing that as well, and that's why they, I think, wanted to look into, and, and work with some stakeholders to kind of potentially further redefine those as this goes to Council. So you may see these definitions change. But that's what the Department came up with so I imagine as this move, as this bill moves forward, those, that definition may change or not change, if that's, if that definition is, if those definitions to be used. But that's the Department's position.

Mr. Gima: Okay, the second part of my question is, I mean, the intent of the Code or the Statute is to ensure that a majority or 51 percent of the farm or ranch is used for farm or ranching.

Mr. Pfof: That is correct for the definition of farm, for it to be a farm. And, and -- and I'm sorry if I interrupt you, but, and the importance of that, if you may recall, is in order to have a farm dwelling, not a farm labor dwelling, a farm dwelling, you have to be on a farm. So that's, there's a, there's a relationship. So in order to have a farm dwelling and a second farm dwelling, you've got to be on a farm, which means that a majority of that has to be used for ag purposes. Sorry to interrupt. Hopefully, I'm explaining too much.

Mr. Gima: I, I think there was some discussion at the last meeting that if we put kind of caveat that if the land is too steep or whatever, then the total amount of land used for farming or ag

may decrease to under 51 percent. Is that, is that one of the concerns of the Planning Department?

Mr. Pfof: Yes. Yes. Basically, the definition, as currently proposed, would say that you can exclude those areas that are not usable, accessible or feasible. And when you exclude those areas off the property, then the remainder of the parcel that is usable, accessible or feasible for farming, the remainder of the parcel with the Code, with the definition as proposed would say 51 percent of that remaining area would be used for farming. So it's significantly reduces the amount of agricultural use on the property. Right now, the current definition is, is 51 percent of the total lot area. So you can see that if you remove this area, if you remove what's not usable and only take 51 percent of that area, that it's going to be significantly less depending upon how much usable, unusable area you're excluding. But it could be significant. So that's why, that was our concern.

Mr. Gima: And one of the reasons why I asked because Director Arce from the County Department of Ag, who says that she supports the 51 percent, also recognizes if she follows that line of thinking it's contrary to the Code of what we just talked about. So that --

Mr. Pfof: That is, that is correct.

Mr. Gima: Yeah, so that -- her statement was, was not very helpful for me. Okay. Um, I mean, I'm of the opinion that if you're going to buy land, you're going to know what's usable and not usable. And so it's kind of like, you know, let the buyer beware. If you know it's not usable, and you know that the, the Code says 51 percent has to be in, in an ag farming or ranching, then, I mean, basically, basically tough luck. That, you know, that's how I see that. I think we have to, we have to maintain the intent of the Code where we want to have as much usable land for, for agricultural farming or ranching. Any of you feel similarly or differently from what I just pointed out? Michelle?

Ms. Fujie-Kaauamo: Um, thank you. I, I agree. I do --. And then the other part of it, too, is that concept of like, who is to determine whether or not it is usable. Or even like that there are, you know, areas like who would create that assessment. So if we go on and say, okay, this is originally farm, and then somebody says, oh, wait, but there is this slope over here, now all of a sudden who is going to go back in and assess and monitor that now, all of a sudden, this particular section is not usable for agriculture? So I think it opens up a larger, I guess, issue, and we already know that the Department is short staffed.

And so I am just kind of curious about that. I don't know if that was mentioned somewhere in there, but I agree with Butch in terms of like if a purchaser is purchasing a piece of property for the intent of it being a farm that they should have done their homework.

Mr. Gima: Any other comments, questions about the proposed? Go ahead, Zane.

Mr. de la Cruz: This is, um, something that was brought up last meeting. I don't think there was ever a real answer to it. But like this, this all revolves around portions of the land being unusable or unsuitable for agriculture. And I remember reading some of the material from the last meeting with all the caveats for, you know, . . . (inaudible) . . . conservation, air quality conserve protection, I am not certain that there is unusable land. Like I'm not sure that term is applicable. Because you can always -- yeah you might not be producing food, right? That's what we typically think of when we think of agriculture. But there are, there were a ton of caveats for conservation use, so I'm not even certain that unusable land is a thing.

Mr. Gima: How does the rest of you feel? Negus?

Mr. Manna: Thank you, Chair. Yeah, I think it's you have to look at the bigger picture. I mean, in Maui, there was a lot of agriculture land that was lost because of contamination. So I mean, some land is leased, some land is bought, there's a lot of different factors and we've got to look at it broadly. Thank you.

Mr. Gima: So what would, what would you suggest we consider regarding . . . (inaudible) . . .

Mr. Manna: I would pass it as is. And then, you know, like you said, there's, you know, the farmer who was going to farm a land, he would, you know, look at the land and business plan and things like that. If he did some soil sampling, you know, later on after he purchased and he identified that it was contaminated and then he finds out that's unsuitable, you know, it's hardship that, you know, he has to accept. So like I said, I think it's, you know, we should think more general instead of so specific. Thank you.

Mr. Gima: Sandi, Nikki, Sally, any input? Go ahead Sally.

Ms. Kaye: Yeah, I am familiar with, with the last meeting and the copious discussion and being mindful that we're only in an advisory capacity here. I would think -- my, my, my sense is that the 51 percent, at least 51 percent is fine the way it is. And if, I don't know how others feel, but it seems to me that alternative two addresses most of the concerns that that the Department had and closes some loopholes that people might take advantage of. But this is going to go back to Committee and then it's going to go to Council again, so we're at the really early standing planning stages of this. So I'm not sure how fruitful a discussion would be at this point because they're going to get all our notes anyways. Is that -- that was my question for Greg, right, our comments will go to?

Mr. Pfof: Yes, that is, that is correct. When I bring it back to Council, I'll include the minutes from all of the three Planning Commissions, as well as then, do a summary report to the, to the Council.

Ms. Kaye: Thank you, Chair.

Mr. Gima: Okay, thanks Sally. Good point in terms of where we are in the process, or where this bill is in the process. All right, last call on comments, questions, on the farm part, farm definition. Okay, hearing none, let's talk about the proposed changes for farm labor dwelling.

Greg, can you put up the Department's proposed wording? Or, or do you not have proposed where you just had some concerns about the proposal the Council offered?

Mr. Pfost: Yeah, yeah, that's correct. We just had concerns expressed. I didn't have a revised definition for, for the Department.

Mr. Gima: Okay. Commissioners, any comments about the full-time, part-time language change? How's about --. Oh, go ahead Negus.

Mr. Manna: Thank you. No, I support the, the change. It looks appropriate. Thank you.

Mr. Gima: Okay. Comments, concerns about the interns and apprentices?

Ms. Alboro: Sorry, what, what was on your slide, your, your definition slide? Could you put it back up again that we had, that you had earlier? I just want to see it one more time.

Mr. Pfost: Can you hear me?

Ms. Alboro: Yeah, now we can.

Mr. Pfost: Okay, so sorry. Yeah, so this is the, the upper portion of the, of this slide is the definition of farm labor dwelling as initiated and proposed by the Council. And then the bottom portion was the concerns that we had. So we did not, the Department has not proposed a revised definition. We just, just noted the concerns that we had.

Ms. Alboro: Yeah because I think these were the concerns that we had mentioned too in last meeting, if I'm not mistaken, was the question about the employee and the part-time and all that. So I mean, it's not specified in the definition, and for me . . . it's too broad.

Mr. Gima: So Nikki, you're saying the definition of part-time and full-time is not well defined?

Ms. Alboro: Well, in the original recommendation, it was like it had workers including interns, apprentice, and then, yeah, we didn't know what full-time or part-time was defined as. Like, is that 20 hours? What, what do you consider part-time? And then I think . . . yeah, I mean, that was my concern was, like, it coming into a transient rental or, you know, transient housing in so many words.

Mr. Gima: Yeah, the Planning Department is saying part-time work is not defined. From the last time they changed it from full-time and seasonally, I think they excluded, took that out and changed it to full-time and part-time. So, but, I, I see your point about not well defined

regarding part-time work. Nikki, do you have any comments about the interns and apprentices?

Ms. Alboro: Um, well, that too, like, is it --? I understand apprentice and interns and whatnot, so this is all, like, volunteer, no pay, or is it a paid, are you being paid? How are they . . . (inaudible) . . .

Mr. Gima: So, Greg, both the Planning Department and the County Department of Ag are similar in their concerns about interns and apprentices. Is that accurate?

Mr. Pfost: Yes. We, we -- especially from the Department, we weren't sure if that --. It seems like it kind of deviates from what the intent of farm labor is in the existing Code. And what labor tech, typically is related to more of a, a commercial ag type related use. Not to say that you couldn't have interns and apprentices. When you think of interns and apprentices, they can stay on your farm labor, farm dwelling, not -- you don't have to be in a farm labor dwelling. They could be in a farm labor dwelling, you know. And so there's other alternatives. So we just have concerns about that use.

Mr. Gima: Okay, thanks Greg. Any, any other comments or questions about interns and apprentices? Okay, what about the --? Oh, Negus?

Mr. Manna: Yes. Thank you, Chair. I just wanted to, you know, bring some things to light in case. You know, in the testimony that was provided by the Department of Agriculture, you know, they support these things because Maui, you know, was devastated by a fire, a lot of people lost their homes, they lost their jobs. During COVID, you know, we realized our, our fragility of dealing with food security and transportation. And so there's a big push in the State and the Counties to, you know, get more people involved in agriculture so they were a little bit more self-reliant and self-determinant, you know. And you have to realize that when we going to be hiring people, some are educated, some are not educated formally. You know, the educated ones will probably pick up jobs quickly. The other ones who are going to be having to learn, you know, as they go, being mentored by a farmer. So I just wanted to put that in perspective that, you know, a lot of people lost their jobs in Maui, a lot of them are probably going to start working in agriculture because it's the backbone of our communities. So and this is going to go back, like Sally said, this is going to go back into Committee for discussion and revisions. So I just ask for everybody to support this and get this moved along. Thank you.

Mr. Gima: Okay. Thanks, Negus. If there are no other comments or questions on interns and apprentices, how do you guys feel about the language regarding family members of the agricultural worker may also reside in the farm labor dwelling? I think that was one of the main intent of Councilmember Johnson when he introduced this bill.

Ms. Alboro: I, I think that kind of ties into that last bullet point where there's no restriction on the size of the dwelling. So it could be just all family members, if it, you know, if that's the

case. So I mean, that's where I'm leaning towards. If there's no, like we just said, 51 percent hand to be land, and then we just agreed that the, the farmhouse could be 1,500 square feet and then there's no restriction on the dwelling itself, the farm labor dwelling. I find that weird. I guess there should be some kind of math where if your farm is X-amount of square feet and you can have a 1,500 square foot home, then your farm labor dwelling should be X is my suggestion.

Mr. Gima: So, Nikki, we have to be clear about the difference between farm dwelling, which was --

Ms. Alboro: Correct, yeah. That was 1,500, right?

Mr. Gima: Right.

Ms. Alboro: Yeah, but there's no restriction on this one.

Mr. Gima: And separate that from labor farm dwelling. Yeah, you're correct. There's, there's no restriction on the size of the farm labor dwelling.

Ms. Alboro: That's where my concern is that it would be like a big apartment complex. And then, you know, if, if we didn't have the definitions to support the labor, the part-time, apprentice and all that, it would just be transient housing. So I think that my recommendation would be to have a size limit based on your square footage of your property. If you can have one for the farm itself, you should have one for the farm labor dwelling.

Mr. Gima: Greg, will you comment on that, please?

Mr. Pfost: Sure. I think, I think she's, as she's mentioning, you know, as, and as I've noted in the prior one, you're allowed to have two farm dwellings. One is limited to currently a 1,000 square feet. The other one can be of any size providing those to farm dwellings are no more than ten percent of the total lot area. And those farm dwellings can accommodate anyone. They can accommodate workers. They can accommodate just the family, the farmer, the farmer's relatives, what have you. They can rent those out long-term, get special approval for short-term, but that's what farm dwellings are.

The farm labor dwelling is and she is correct in that you are --. The one restriction is that you're only allowed one farm labor dwelling per five acres. But there is no restriction on the size of what that farm dwelling can be, and, and how many rooms or how many, you know, how big it is. And, and there is no restriction on, you know, it doesn't fall into that ten percent requirement as farm dwellings do. So, so one of our concerns was, and I think, she mentioned that as well is, is when you take all of it together, you know, are you going to have part-time working for an unknown number of hours with their families staying there and, and perhaps a very large structure, in a potential transit use? That was our general overall concern. Not that the Department -- the Department does understand that, you know, farm labor probably it

would be important for some farm labor to have their families living with them. The State to some degree does allow that as well, and so I think that, that is something I think that may be important. But when you combine it with everything else, including the part-time aspect, it kind of goes into that direction that's not what we believe the, the really intent of farm labor dwellings was for.

Mr. Gima: Thanks, Greg. Zane?

Mr. de la Cruz: Is, is family member defined anywhere? Like, is it your dependents? Is it like, what, what would the definition of a family member be?

Mr. Pfost: There, there is a definition for family. It's in the Development Code and it's actually quite a lot. It does, it does include --. Let me see if I can, if I can pull that. If you can bear with me for a minute and let me see if I can pull it up and get that.

Okay, I'm going to just read you the definition. Family means an individual living alone or a group of two or more persons related by blood or marriage in their legal issue living together as a single housekeeping unit in a dwelling unit, and in which two borders unrelated by blood may be living on a long-term residential basis. It goes on; it's a pretty long definition. A family may also be defined as no more than five unrelated persons living together as a single housekeeping unit. In addition, eight or fewer persons who reside in a residential facilities monitored or licensed by the State and it goes into something that really doesn't apply here. And so that's basically the definition. So it includes quite an extensive number of persons that could be considered a family.

Mr. Gima: Zane, did you have any concerns or worries about who might be allowed to live in a farm labor dwelling?

Mr. de la Cruz: Well, one, I was just curious if family was defined because, you know, when I first read the original bill I had assumed that full-time and part-time work was defined. That kind of caught me off guard when it wasn't. So I was curious if family has a definition to it. And I was just curious how strict or lax that would be.

Mr. Gima: Okay. Any, any of the comments, Zane?

Mr. de la Cruz: No, thank you.

Mr. Gima: All right. Sandi, Michelle, Sally? Okay, hearing none, so we have the proposed County Council changes and the definition of farm labor dwelling. We have concerns from the Planning Department about Council's proposed language, but Planning Department does not have an alternate definition of farm labor dwelling. Some of our, some of the Commissioners have expressed support of the County Council's position, some have expressed concerns about certain parts of the proposed language, so talk to me about what you guys want to do. I mean, I -- because we can recommend approval of the County Council's language, which

includes both the definition of farm and farm labor dwelling. Or we can recommend approval of the proposed bill for farm and farm labor dwelling with amendments. And right now, I'm not hearing any suggested amendments. Or we can recommend denial of both definitions. Or we can defer again. But, knowing that we cannot get any further information from County Council to improve making an informed decision. Okay, Sally?

Ms. Kaye: Yeah, I just a point of clarification. Those are normally our four choices. But if I looked at Greg's slide earlier, the fourth option was to submit the comments, which we've done in the past. Which, which was why I kind of said we're not going to solve this tonight and we need to just, you know, it's not ready for prime time. And, and I think if we, if we move to accept the 51 percent because I didn't hear anybody say anything against that, and then submit concerns that are reflected in our minutes and what the Planning Department will submit to Council, I'm not sure what else we can do tonight.

Mr. Gima: I like that. So did you, did, did what you just said include the word move, move?

Ms. Kaye: I so move. Is that good enough?

Ms. Fujie-Kaauamo: I second. Oh.

Ms. Kaye: I'm sorry. I just want make sure that's clear enough for Greg to follow through on.

Mr. Pfof: Yeah, I think . . . (inaudible) . . . individual Commission comments. If there's anything specific, maybe with, with the definition of farm, I'm curious if you are in favor of the alternative definition that the Department came up with or not. And if not, on either one, what specifically is the main concern. I get that you are — it appears that everybody is okay with changing 51, the majority to 51 percent, but it's the rest of that, that definition of farm. Are you okay with the Department's alternative or if not, then is there a specific issues that, that the Commission as a whole can, at least a majority of the Commission can say, yeah? As majority of the Commission, we have concern with farm because of X and in the same with farm labor dwelling. And it could be as simple as we agree with staff's concerns; I think that would be fine. But whatever anything else that can be of importance to the Council to hear from the Commission as a whole, and of course, as a majority of the Commission would be helpful, I think.

Mr. Gima: So before I put the motion on the table, Sally, do you want to modify your motion that, that we support the Planning Department's alternative two on the definition of farm? Or do you just want us to say that we are in support of the 51 percent change? Sally, I think you're on mute if you're speaking.

Ms. Kaye: I'm so sorry. Yes, I'm sorry. I think I would have agree, I would agree with the alternative two, but that's just me. And so there's a motion on the floor and there was a second, I think, from Nikki. So now we're into discussion. So I guess what you're asking is, do I, do I

need to amend it or would there, would any of the other Commissioners like to suggest an amendment?

Mr. Gima: No, I'm suggesting you can amend it now because I haven't really put the motion on the floor yet.

Ms. Kaye: I so move. Is that good enough?

Ms. Fujie-Kauamo: I second. Oh.

Ms. Kaye: I'm sorry. I just want make sure that's clear enough for Greg to follow through on.

Mr. Pfof: Yeah, I think . . . (inaudible) . . . individual Commission comments. If there's anything specific, maybe with, with the definition of farm, I'm curious if you are in favor of the alternative definition that the Department came up with or not. And if not, on either one, what specifically is the main concern. I get that you are — it appears that everybody is okay with changing 51, the majority to 51 percent, but it's the rest of that, that definition of farm. Are you okay with the Department's alternative or if not, then is there a specific issues that, that the Commission as a whole can, at least a majority of the Commission can say, yeah? As majority of the Commission, we have concern with farm because of X and in the same with farm labor dwelling. And it could be as simple as we agree with staff's concerns; I think that would be fine. But whatever anything else that can be of importance to the Council to hear from the Commission as a whole, and of course, as a majority of the Commission would be helpful, I think.

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Mr. Gima: No, I'm suggesting you can amend it now because I haven't really put the motion on the floor yet.

Ms. Kaye: Oh, okay, I'm sorry, I thought I heard a second. I would move that we recommend to County Council that the change in definition of at least 51 percent for farm, defining a farm is, is acceptable as is, and that we would prefer alternative two that the, that the Department has submitted. And I think the, also the consensus was that interns should, should be deleted. I'm trying to be as detailed as possible. I don't think anybody thought that was a good idea.

And we concur with the rest of the Department's concerns regarding part-time needs to be defined and anything else anyone wants.

Ms. Alboro: So we concur with the Department's recommendations not to approve the changes? Is that the one, those four bullets?

Ms. Kaye: I'm sorry. What was that?

Mr. Gima: I think what Sally said incorporates those four bullets, Nikki.

Ms. Alboro: Okay, I just heard her say that part-time and intern. Sorry.

Mr. Gima: So Michelle, do you want a second that again?

Ms. Fujie-Kaauamo: Sure. I will second Sally.

Mr. Gima: Okay, it's been moved and seconded. I mean, it's been moved by Commissioner Kaye, seconded by Commissioner Fujie, um, that's too long of motion so I'm just hoping Greg got all of that.

Mr. Pfof: Let me, I could try something if you like.

Mr. Gima: Okay. Go ahead.

Mr. Pfof: I think it has moved and seconded that in regards to the definition of farm, the 51 percent change is okay, as is, as proposed. And then for preference to alternative two as defined by the Department. And in regards to the definition of farm labor dwelling, the Commission shares the concerns with the Department as shown in the four bullet points.

It was moved by Ms. Sally Kaye, seconded by Ms. Michelle Fujie-Kaauamo, then unanimously

VOTED: To recommend to County Council, for the definition of farm, to change to 51 percent, and accept the alternative two as defined by the Department; and for the definition of farm labor dwelling, the commission concurred with the four concerns noted in the Department's staff report.

(Assenting: N. Alboro, Z. de la Cruz, M. Fujie-Kaauamo, S. Kaye, N. Manna, S. Rabaca)
(Excused: E. Atacador, E. Grove)

Mr. Gima: Any further discussion on this motion? All right, thank you for that suggestion, Sally. So all those in favor please raise your hand? One, two, three, four, five, six. All oppose? All right, motion is unanimously carried. Thank you, everybody. Thank you very much, Greg.

Mr. Pfof: Thank you.

Mr. Gima: At this time, let's take a ten minute recess and be back at 6:14 p.m., 6:15 p.m.

(Lanai Planning Commission recessed at 6:04 p.m., and reconvened at 6:15 p.m.)

C. Discussion on amending the Lanai Planning Commission Special Management Area Rules regarding SMA Exemption Permits applications. (C. Thackerson)

The entire Lanai Planning Commission Special Management Area Rules is available at <https://www.mauicounty.gov/DocumentCenter/View/4151/Chpt-402-Lanai-Planning-Comm-SMA-Rules?bidId>

Mr. Gima: All right. Lanai Planning Commission meeting is back on the record. Let's see, waiting on Negus and Sally to come back on camera. All right, here we go. What we are on, the next agenda item, which is a discussion on amending the Lanai Planning Commission's SMA Rules regarding SMA Exemption Permits applications. So I made a mistake on approving the agenda last week because I kind of glossed over it, thinking that the agenda item was going to be about SMA Minor Permits. So I'll hand this off to Candace and Selina in terms of procedurally what we, what we can or wanted to do with this agenda item. Candace?

Ms. Candace Thackerson: Thank you, Commissioners. So I was under the impression that at the last meeting we had talked about minor permits, SMA Minor Permits. And this body had decided at that meeting that, yes, you would like to pursue reviewing SMA Minor Permits, and directed staff to then work on that language. That's going to take us some time to be doing and we'll have to review that with Corp Counsel, we have to go through the rules, and then when we're ready, we'll bring that back before this body. And that will be a full public hearing and that will be included in your pocket, the language.

This item was listed on the agenda as the exemptions because last time we had kind of talked about the difference between minor and exemption. And exemptions were for things like replacing a toilet inside your home or painting your house where at Maui, we do those permits administratively. And I had kind of mentioned that. So we had placed this, and, and the, the Commission can say we don't want to discuss this if you don't want to. I had thought that we were going to talk about exemptions and whether or not this board wanted to continue to review all those exemptions, or if you wanted the Department to be able to handle that administratively, which was why we wrote it like this on the agenda. Because then we can talk about whether or not you want to keep that authority or you'd like the Department to do it administratively. And so that's why it was written like this on the agenda. So this was intentional to write it like this on the agenda. We talked about minors last time. We were going to talk about exemptions this time. And then I have my marching orders from you guys.

Mr. Gima: Okay, thanks Candace.

1 CHAIR PALI: Yes, aye. Gladly aye. Great.
2 Okay. So I'm going to take a five-minute break, and
3 then we'll go into B2 and then hopefully wrap up for
4 the day. So we'll be back in five minutes. Thank
5 you.

6 (Whereupon, a brief recess was held.)

7 CHAIR PALI: Okay. Thank you, and welcome
8 back to the Maui Planning Commission. I'll give it a
9 few seconds so my other commissioners can join.

10 It is January 9th. Let the record show it
11 is 11:34 a.m. still. And we have one -- technically,
12 we have a couple more items because of the Director's
13 Report.

14 So we have our final big item, public
15 hearing B2. And I will go directly to Mr. Smith to
16 introduce that.

17 ACTING DIRECTOR SMITH: Hello again. We
18 have a second public hearing today concerning more
19 proposed amendments to consider regarding
20 agricultural.

21 And, at this point in time, I'll be handing
22 it off again to Greg Pfof, our administrative
23 planning officer, to discuss proposed changes to
24 Section 19.04.040, and it's pertaining to different
25 definitions for "farm" and "farm labor dwelling."

1 Greg, if you're available, we can hand it
2 over and you can do the screen share.

3 MR. PFOST: Thank you, Garrett. Okay.
4 Hold on a second here. If I can get this -- okay.
5 Can you all see that?

6 CHAIR PALI: Yes

7 MR. PFOST: Okay. Great. Thank you. So
8 as Garrett mentioned, this proposed bill is for an
9 ordinance to revise the definitions of "farm" and
10 "farm labor dwelling."

11 Before I get into it again, just a
12 reminder, as I spoke on the last agenda -- well,
13 first of all, start off in October 2023, the council
14 adopted a resolution to forward this bill to the
15 planning commissions for their action and
16 recommendations to the council.

17 The bills are amendments to definitions of
18 "farm" and "farm labor dwelling." There are two
19 separate changes to the definition of "farm" and
20 three separate changes to the definition of "farm
21 labor dwelling." And I'll go into those in a little
22 bit more detail on each one of those.

23 But as a little bit more background, just a
24 reminder, as I mentioned in the last presentation,
25 that -- the importance of retaining, encouraging

1 agricultural lands in the county. And this is what
2 we used to evaluate proposed legislation that deals
3 with agricultural changes or any changes in the code.
4 We look at our General Plan and our Maui Island Plan.
5 And I listed here the policies that are related to
6 agricultural uses and preserving and protecting those
7 uses on Maui County.

8 As we mentioned before, the agricultural
9 zoning district, also the purpose and intent includes
10 policies that also preserve and protect agricultural
11 resources. The Maui County Code, as I mentioned
12 before, is broken up into principal uses primarily of
13 agricultural use and then accessory uses that are
14 incidental and supported to -- subordinate to those
15 agricultural uses.

16 And in this particular case, we're going to
17 be talking about the structures of farm labor
18 dwellings and farms and -- and farm dwellings as
19 well. So I've broken up this presentation into two
20 sections, and I'll start with just on the revision to
21 the definition of "farm," and then I'll go into farm
22 labor dwelling.

23 We can pause in the middle for questions if
24 you'd like. And sorry for the extensive amount of
25 work here, but I'll try and summarize real quick. Up

1 at the top, it indicates the proposed amendment to
2 the definition of "farm." And as I mentioned, there
3 are actually two changes that are being proposed for
4 this definition.

5 And I'll start with the first phrase and
6 change, and that is changing the term "the majority"
7 to "at least 51 percent." And it's important to also
8 talk about the relationship, the definition of "farm
9 dwelling" and "farm."

10 Both the Maui County Code and the state
11 identify a farm dwelling as being a single-family
12 dwelling located and an accessory to a farm. And
13 then the Maui County farm, the definition for (no
14 audio) that lot being used for the prominent use of
15 the activity of agriculture.

16 So, thus, when you take those two
17 definitions and work them together, basically a farm
18 dwelling would only be permitted if it is located on
19 a farm. And in order to have a farm dwelling on a
20 farm, the majority of that lot must be used for
21 agriculture.

22 So that's an important aspect on having
23 farm dwellings, the first and second farm dwellings
24 on a farm. There must be a majority of the lot being
25 used for agriculture.

1 Now, as we kind of spoke to on the last
2 item, we do that -- we actually do some enforcement
3 in regards to that to make sure that folks are
4 actually doing active agriculture. However, it's
5 been a struggle sometimes as we have property owners
6 desire to develop farm dwellings without really a
7 legal intention to actually farm the lot. So it's
8 been a struggle in the enforcement aspect, which I
9 kind of -- I think you talked about it a little bit
10 in the last agenda item.

11 The department supports the change from
12 "majority" to "51 percent" as -- in that portion of
13 the phrase of the farm, because it just simply
14 provides clarity, and then -- and we don't have to
15 have -- to have discussions on what "majority" means,
16 but 51 percent actually provides clarity. So the
17 department supports that change.

18 The second phrase that is proposed to
19 change for the definition of "farm" is adding -- or
20 actually qualifies what can and cannot be used for
21 the farm -- to be used on a farm for agricultural
22 use. And it clarifies that or provides
23 qualifications as in what is "usable, accessible, and
24 feasible for farming."

25 The current code currently requires

1 51 percent of the entire lot to be used for
2 agricultural uses to be considered a farm. The
3 proposed revision:

4 Would require 51 percent
5 of what is usable,
6 accessible, and feasible
7 for agricultural uses to
8 be considered a farm.

9 And so the department has some concern with
10 the change in definition in this particular phrase,
11 specifically because the proposed definition would
12 require less farming to be considered a farm, and,
13 therefore, would be potentially inconsistent with the
14 policies of the General Plan and the Maui County
15 Code -- Maui Island Plan.

16 Additionally, because the code only
17 requires 51 percent of what -- 51 percent of the lot
18 for agricultural uses, the remaining 49 percent of
19 the lot can be used for anything, basically. Well,
20 not anything as far as development occurs, but if you
21 had areas that were not usable, accessible, and
22 feasible, that could be already within the
23 49 percent. So it would still allow you to do
24 51 percent of your farming on the lot to meet the
25 code requirement and definition of farm.

1 Additionally, the terms are subjective, and
2 the department feels that they should be defined.
3 And I provide a couple of examples here on -- on the
4 department's concern.

5 If we consider, for example, a 2-acre lot
6 and assuming 10 percent of the lot is unusable and
7 90 percent is usable, the proposed revision would
8 allow, as you can see here, less than what -- because
9 it's only 51 percent of the area that is usable, or
10 51 percent of that 90 percent -- is less than what
11 the existing code would require. So you can see in
12 the Example A how the existing code would actually
13 require more farming to occur than what is being
14 proposed.

15 The department, however, understands that
16 in certain situations where you may have a property
17 that is significantly impacted by areas that is
18 unusable -- and we understand that there may be areas
19 that are unusable for farming -- the proposed code
20 amendment maybe has some merit.

21 So in the Example B, if the unusable area
22 is more than 49 percent, meaning that you can no
23 longer farm 51 percent of your lot to be considered a
24 farm, and the unusable area is more than 49 percent,
25 this revision may have some merit.

1 Specifically in Example B, I provide an
2 example where assuming 55 percent of the lot is
3 unusable and 45 percent is usable, then the proposed
4 revision would warrant roughly 19,994 square feet, or
5 51 percent of the area that is usable, whereas the
6 existing code would be 51 percent of the total area
7 at 44,446.

8 But you see the problem here is that the
9 existing code requiring 44,446 square feet of
10 farmland would be more than what is actually usable.
11 So that's where we see that there may be merit to the
12 change in definition for properties where more than
13 49 percent of the property is being deemed as
14 unusable.

15 Hence, and if you can still follow my logic
16 here, the planning department has proposed --
17 provided a recommended alternative that would add
18 additional language that would address when a lot is
19 more than 49 percent deemed usable, accessible, and
20 feasible. That language is shown here on your screen
21 highlighted.

22 And in the example that I've shown below,
23 in Example C, again, assuming that 55 percent of the
24 lot is unusable and 45 percent is usable, the
25 proposed revision, again as I mentioned in the prior

1 slide, would only yield 19,994 square feet, where
2 this Alternative 1 revision would allow that the
3 remainder of the land that is usable to use for
4 agricultural purposes and showing that with staff's
5 proposed change in (no audio) square feet so it would
6 be more than what the proposed definition would be.
7 And, therefore, be more in line with what the -- with
8 the policies and the General Plan and the Maui Island
9 Plan.

10 We took that step -- we took that a step
11 further with an Alternative 2 because, as I mentioned
12 earlier, there was some concerns in regards to the
13 definition of what "usable, accessible, and feasible"
14 are, and that would be really subject to
15 interpretation, and we can see some enforcement
16 issues related to that.

17 And so, subsequently, staff added the
18 second phrase here, highlighted to provide some
19 clarification for the definition of what "usable,
20 accessible, and feasible" may be and identifying that
21 that would be for -- that would include:

22 Culturally sensitive
23 areas, slopes steeper than
24 1 to 1, streams or
25 gulches, or land

1 containing earth material
2 that cannot be farmed.

3 So what the department is recommending is
4 this alternative to -- that you see before you in
5 lieu of the definition that's currently being
6 proposed.

7 That concludes the portion on the
8 definition of "farm." I can pause here, and we can
9 talk about that now, or if you would like -- and I
10 can address any questions -- or if you would like to
11 move further with the presentation to farm labor
12 dwelling, I can move forward in that as well. So
13 it's up to you.

14 CHAIR PALI: Yeah. Greg, I'll have you
15 finish your presentation. We'll go to public
16 testimony, and then we'll come back for questions
17 like we did the first time. Thank you.

18 MR. PFOST: Great. Thank you. So now in
19 regards to the definition of "farm labor dwelling,"
20 first let me go back really -- real quick. And I
21 highlighted this on my last presentation in the prior
22 item, but I just wanted to clarify this again.

23 There is a difference between "farm
24 dwellings" and "farm labor dwellings." As I've heard
25 people kind of mix those around, I wanted to make

1 sure that we understand those per code.

2 So, again, a farm dwelling has no occupancy
3 requirements. You're allowed up to two farm
4 dwellings on a lot provided the farm dwelling's
5 connected with a farm, it has 51 percent of the lot
6 being used for agricultural purposes. One of those
7 dwellings can be no longer than 1,000 square feet,
8 and the total maximum of the developable area of
9 those dwellings cannot exceed 10 percent of the total
10 lot area. So that's a farm dwelling.

11 A farm labor dwelling, on the other hand,
12 is something different. It is occupancy to
13 agricultural employees only. Only one farm labor
14 dwelling per five acres of lot area can be permitted.
15 So smaller farms that are in the 2 acres, 3 acres,
16 and so forth, cannot have a farm labor dwelling per
17 code.

18 The farm labor dwelling must meet two of
19 the criteria, the three smaller bullet points that
20 you see -- the first three small bullet points. And
21 what those bullet points show and also identify in
22 the farm labor dwelling is on a larger lot area, it
23 really kind of goes towards that farm labor dwellings
24 are associated with more of a larger, kind of
25 commercial ag project or use than they are for

1 smaller farms.

2 There's no restriction on the size of a
3 farm labor dwelling, and it does not need to comply
4 with the 10 percent maximum developable area of the
5 lot, some of the things that we spoke about in the
6 last agenda item.

7 So regarding the proposed amendments for
8 farm labor dwelling, it's actually a little bit more
9 extensive, and there's actually three changes to the
10 content. The first change is the timing of work by
11 the farm laborers. Specifically, it replaces
12 "employees employed full-time or seasonally in the
13 county" with "full-time and part-time." It changes
14 the terminology of those working on a farm from
15 "employees" to "workers, including interns and
16 apprentices." And it introduces an allowance for
17 family members of agricultural workers to reside on
18 the farm in the farm labor dwelling.

19 The planning department -- again, as I
20 mentioned before, we used the policies from the
21 General Plan and the Maui Island Plan to look at the
22 proposed changes and what kind of impacts there will
23 be to agricultural resources.

24 The department at this time does not
25 recommend approval of the proposed changes, mainly

1 because it changes the type of worker, and it
2 includes "part-time" which is not defined. Part time
3 could be one hour a day, one hour a week (no audio)
4 part-time workers and/or their farming -- and/or
5 their families unemployed -- that are employed for a
6 known number of hours residing in the farm labor
7 dwelling potentially turns the farm labor dwelling
8 into perhaps a third farm dwelling or a transient use
9 of some type. And so as currently written, we have
10 some concerns regard that -- in regards to that.

11 The -- it loosens the requirements for farm
12 labor dwelling by removing the clause "employees"
13 which assumes some type of employment or payment to
14 the worker.

15 And, also, since the farm labor dwelling
16 has no restriction on size nor is counted towards the
17 10 percent developable area to accommodate a family
18 that, maybe for a temporary time, could see that the
19 farm labor dwelling is larger than what may be as
20 expected in the current code and may, therefore,
21 impact the availability of agricultural activity
22 occurring on the farm given its additional size.

23 We also contacted various agencies to
24 determine whether they had any concerns or comment on
25 the definition. We did hear back from the State of

1 Hawaii Department of Agriculture which did have
2 concerns with the current and proposed definitions of
3 "farm," specifically related to the -- how the
4 definition includes the term "agricultural land
5 conservation" and how agricultural land conversation
6 is -- conservation is defined as "including
7 improvement to air quality" and whether or not that
8 is actually consistent with actually farming. And so
9 the state believes that that definition set a low bar
10 for the type of activities that farm labor dwellings
11 may be accessory to.

12 And the state also had concerns that
13 interns and apprentices are not equivalent to
14 full-time and part-time agricultural workers. How
15 will the interns and apprentices be distinguishable
16 from visitors and others that pay rather than be paid
17 to work or learn on the farm? So those are some of
18 the similar concerns that the department had as well.

19 So, thus, the planning department's
20 recommendations are -- regarding the definition of
21 "farm" is to move forward with Alternative 2 that the
22 planning department put forward. And in regards to
23 the definition of "farm labor dwelling," the
24 department is not in favor of the proposed changes as
25 currently written and unless further changes are

1 made.

2 So that concludes my presentation. Again,
3 the planning commission has the options of
4 recommending approval of the bill, recommending
5 approval of the bill with amendments, denial of the
6 bill, or vote to defer action of the proposed bill.

7 That concludes my presentation. Hopefully
8 I can answer any questions you have. Thank you.

9 CHAIR PALI: Great. Thanks, Greg. Okay.
10 We're going to open up to public testimony. I've got
11 a list here. If you aren't able to hit that chat, we
12 will -- the chat function, we'll go ahead and give
13 you an opportunity to unmute yourself on the phone
14 and chime in when that time comes.

15 And so the first up is going to be
16 Farmer Gerry. I like that.

17 Farmer Gerry, if you can hear me, unmute
18 yourself, and you've got three minutes.

19 MR. ROSS: Aloha, members of the planning
20 commission. Can you hear me okay?

21 CHAIR PALI: Yes, I can.

22 MR. ROSS: Okay. Great. My name is Gerry
23 Ross, and I'm the chief farmer on Kupa'a Farms.
24 Thank you for the opportunity to provide testimony
25 today on the bill having to do with the definition

1 for the farm labor dwelling.

2 I strongly support retention of the term
3 "interns and apprentices" as viable occupants of farm
4 labor dwellings.

5 Our farm is Kupa'a Farms in lower Kula, and
6 our family's been growing food commercially on Maui
7 for over 40 years. Over the last 20 years, we
8 transitioned to organic production and, at the same
9 time, created a vibrant environment where interns and
10 apprentices have come to learn about organic and
11 regenerative agriculture.

12 Interns provide 25 hours of work a week in
13 exchange for room and board. The duration of their
14 stays have ranged from one week to nine years. On a
15 small farm like ours with tight margins, unpaid
16 intern labor is essential.

17 Interns also learn about regenerative
18 agriculture, compost, soil health, and the many
19 aspects of successfully running a business. This is
20 common practice to have interns and apprentices
21 amongst farms on Maui and throughout the state.

22 And some people have used a program called
23 WWOOF, which is a program to find interns. WWOOF is
24 World Wide Opportunities on Organic Farms. It helps
25 connect generally young people with farmers in an

1 intern and apprentice relationship.

2 Additionally, our farm, we have used a US
3 Department of Agricultural rural research branch to
4 advertise opportunities on our farm and have had
5 interns and apprentices that way. Not every farm is
6 equipped to provide employment, but many of us are
7 provide -- are equipped to help train new people on,
8 quote, "how to farm." Being able to provide housing
9 is essential.

10 Over the 20 years we've been farming, we
11 have provide -- we have had over 100 interns, some of
12 who have become farm operators and owners of their
13 own, some who have become involved with community
14 gardens and food hubs, and all (no audio) in
15 responsible fashion. All of these interns have
16 stayed on our farm, and they are an essential part of
17 our farm's operation.

18 To reiterate, I strongly support retention
19 of the term, quote, "interns and apprentices" as
20 viable occupants of farm labor dwellings. Thank you.

21 CHAIR PALI: Okay, Farmer Gerry. One
22 second. Any questions, commissioners?

23 Okay. Commissioner Thayer, VP.

24 VICE CHAIR THAYER: Thank you, Chair. I
25 just have one question.

1 Thank you for your testimony. Do you have
2 any opinion on the timing? You know, the -- like
3 seasonal versus part time versus full time?

4 MR. ROSS: For us, it's -- it's mostly a
5 question of opportunity. The shortest we've had is
6 one week, which you wouldn't think would be
7 worthwhile, but in a curious story, it was a couple
8 who had eloped from Canada and were traveling around
9 the state and contacted us and said, can we stay for
10 a week?

11 We had an unusually heavy coffee harvest
12 that year. And we said, you guys have to harvest
13 these 200 coffee trees, and it has to be perfect.
14 They spent a week, and they did it perfectly. So
15 that would be the short one. And we've had other
16 ones who have stayed for -- off and on for nine
17 years.

18 We don't really have much seasonality here.
19 Coffee harvest, I think, would be a winter --
20 prominently winter, and then that's added on to all
21 the vegetable production that occurs year round. So
22 we're basically, you know, operating every day of the
23 year.

24 VICE CHAIR THAYER: Okay. All right.
25 Thank you.

1 CHAIR PALI: Great. Any other questions?
2 I've got a couple for you, Farmer Gerry.
3 So I think you may have answered it, so maybe just
4 clarify. You talked -- you said you had over --
5 about 100 interns, and you mentioned that some went
6 on to be farmers.

7 Can you maybe give us an idea, of the
8 hundred interns, how many of them were residents of
9 the island?

10 MR. ROSS: That's a very fair question. A
11 lot of people who are residents of the island have a
12 place to stay. So they would -- you know, they might
13 have been living with their parents or sharing an
14 apartment or whatever.

15 So they would usually come on, like,
16 volunteer Mondays and work on the farm. And that was
17 sort of their intern contribution. Most of the
18 interns we've had have come from out of state and out
19 of country from places like -- as far away as
20 Bulgaria, Canada, you name it.

21 CHAIR PALI: Okay. So that was my next
22 question is you're already sort of doing this on your
23 farm? You take in people who are not from here and
24 then -- in exchange for housing, they do work
25 volunteer hours?

1 MR. ROSS: Yes, that's correct.

2 CHAIR PALI: So the code currently allows
3 for it?

4 MR. ROSS: No. That's why I'm a member of
5 the Ag Working Group. And when we had met with
6 former director Michele McLean, we had asked
7 specifically that this part of the code be modified
8 to include interns and apprentices because there's
9 quite a few farms on Maui that operate successfully
10 with interns and apprentices and are unable to afford
11 full- or even part-time employees.

12 CHAIR PALI: Okay. Okay. I see. All
13 right. So this would just clean up the code for you
14 so you'd have a very clear picture that this is
15 allowed.

16 So I have another little scenario question
17 for you. I'm not saying that I'm guilty of this, but
18 I'm tempted towards -- you know, these hotels,
19 they'll say, come and see a timeshare presentation.
20 And then in exchange, they'll give you, like, five
21 free nights.

22 And so I know that people take advantage of
23 that. They'll go -- they'll stay in a really fancy
24 hotel, and all they got to do is spend a couple hours
25 to watch this timeshare presentation, and they gird

1 themselves to not fall into buying something, you
2 know, because they really went for the free trip.

3 And so I don't like creating ordinances and
4 rules to speak to the people who break the rules
5 because I think that's status quo, in my opinion. I
6 think it's important that we build for success, and
7 we build open doors, and we build pathways for people
8 to be successful in these areas and mainly our
9 community. That's the goal.

10 And so my question to you is can you just
11 comment on people who -- have you ever had an intern
12 that tried to do that? Come over and say, yeah,
13 we'll work. We just really want to tour the island
14 and be visitors. Because I think we have a hard
15 time, as lawmakers, to distinguish the short term
16 vacation rentals and the people who truly do want to
17 learn and give to the community and labor on your
18 farm.

19 So have you ever run into an incident where
20 you've had people that you felt like, oh, these
21 people weren't necessarily that genuine and they kind
22 of were using us for housing? Have you, you know,
23 run into that situation before?

24 MR. ROSS: Yeah. You know, we have had a
25 couple of people who have showed up here and were a

1 little bit loathe to put in their hours, and their
2 time here was very short.

3 CHAIR PALI: Okay. So you were on it.

4 MR. ROSS: Yeah. We're a commercial farm.
5 If you don't want to put in your 25 hours, you can
6 hit the road.

7 CHAIR PALI: Okay. Good. Proud of you,
8 Gerry. Thanks. Okay.

9 And so is it a policy where when they come,
10 they sign something? And then you feel comfortable
11 that you can evict them? Or have you ever felt like
12 you've not been able to evict somebody?

13 These are the gray areas that I think we're
14 just trying to weed out as we're trying to look at
15 potentially keeping these terms in.

16 MR. ROSS: Yeah. We've run into a couple
17 of situations where we did have to use the
18 Landlord-Tenant Act, and that there are some vagaries
19 in there.

20 Just yesterday when I was doing a little
21 bit of research, even though we've been doing this
22 for 20 years, and we've had -- you know, you could
23 count on part of one hand the number of times we've
24 had problems, which we eventually resolved, there
25 are -- there is, like, a legal work that you can use

1 for volunteer unpaid farm workers, and we hadn't
2 investigated that when we were setting this up.

3 You know, the WWOOFing program that I
4 mentioned, some farm friends of ours used that
5 program, and they found like it was sort of a 50-50
6 success rate for them. So we never signed up for the
7 WWOOFing program.

8 We went through the US Department of
9 Agriculture. We got people who were committed to
10 agriculture to begin with. They weren't just here
11 to, like, slough off and go on a surfing trip.

12 CHAIR PALI: Sure, sure.

13 MR. ROSS: And, you know, with the advent
14 of FaceTime and Skype and all that kind of stuff,
15 we've been having face-to-face interviews and reading
16 resumes. And that makes a huge difference to get
17 people that are really committed to helping the farm.
18 Maybe they really like the direction that they see us
19 going in.

20 You know, we do a lot of food waste
21 recovery for making compost, and they love the ideas
22 of learning about stuff like that. So, you know, we
23 pick and choose. And we've generally got -- out of
24 the 100, I'd say, we've had -- like, 90 of them have
25 been super good.

1 CHAIR PALI: That's good. It sounds like
2 you're a responsible farmer, and we appreciate that.
3 Okay, last question.

4 So do you currently have a dwelling in
5 which you use for these interns and seasonal workers
6 that you would then want to be defined as the farm
7 labor dwelling?

8 Because since we don't really have a term,
9 per se, is it just currently your cottage that you're
10 using? Or barn? What are you currently using to
11 house them?

12 MR. ROSS: Yes. We have some --

13 CHAIR PALI: And how would this help you?

14 MR. ROSS: This change in the definition
15 would allow us to be legit and legal in terms of
16 structures that we have for farm laborers.

17 CHAIR PALI: I see. Okay. Okay. I see.
18 All right. Say no more. Okay. That's it, all I've
19 got. Okay.

20 VP Thayer, go ahead.

21 VICE CHAIR THAYER: Okay, thank you. I
22 just wanted to clarify. I don't know if I heard an
23 answer, but you had asked about if you had, like,
24 written agreements with the interns? And I couldn't
25 quite catch your answer on that.

1 MR. ROSS: We do not currently have written
2 agreements with interns. It's, you know, a
3 handshake. It's a discussion, and they're pretty
4 committed.

5 They know if it's a complete train wreck,
6 in two weeks they're on their way to wherever they're
7 going to go next, but it's not here. I think out of
8 the 100 interns, I think I can count four that we
9 actually physically kicked off the farm.

10 VICE CHAIR THAYER: Okay. I'm just asking
11 because I'm thinking of, like, the concerns that the
12 department brought up about how do you know that
13 these are, like, actual people who are working on the
14 farm versus people who are coming on a, like, paid
15 vacation?

16 So I'm just trying to see if there's like
17 (no audio) that you're capturing anyway that would be
18 able to legitimize the people who are living in the
19 farm labor dwelling?

20 MR. ROSS: Yeah. I think one way to kind
21 of unify some of that -- I understand, you know,
22 there's going to be people that are going to abuse
23 the system.

24 One way to unify that is -- I think
25 Mr. Greenleaf had mentioned this earlier -- is

1 inspectors. And so, you know, for example, when
2 somebody from RPT comes out to inspect your property,
3 or someone from planning department to see if you're
4 using 51 percent or if you're doing everything,
5 they're not necessarily trained in agriculture.

6 Whereas if you get someone who is trained
7 in agricultural comes out to a property, they would
8 be able to see if this is a gentleman estate, if it's
9 a bona fide farm, if you have tax records, all that
10 kind of stuff.

11 And that might be the kind of inspector you
12 would need that would look at facilities where people
13 are housing interns and apprentices and say, well,
14 you know, they had a nice wet bar and there's a lot
15 of surfboards stored there. I'm not sure this is,
16 you know, strictly just for interns versus coming and
17 seeing a facility that's rustic, I think you could
18 say, and they would go, yeah, this is for interns and
19 people to stay as farm workers.

20 VICE CHAIR THAYER: Okay. Do you think if
21 push came to the shove, you know, if there needed to
22 be, like, showing that you have written agreements
23 with, like, interns or apprentices, would that be,
24 like, burdensome for you to do that?

25 MR. ROSS: No, I don't think so. As I

1 mentioned, I had found just yesterday something on
2 paperwork -- I think it's a US Department of
3 Agriculture publication on paperwork to work with
4 volunteer and unpaid interns and apprentices.

5 VICE CHAIR THAYER: Okay.

6 MR. ROSS: So that's something that could
7 be incorporated into making those positions more
8 legit occupants of farm labor dwellings.

9 VICE CHAIR THAYER: Super. That's all.
10 Thank you.

11 CHAIR PALI: Okay. If there's no other
12 questions, we're going to go to the next testifier,
13 Georgia Pinsky.

14 Georgia, if you want to unmute yourself and
15 state your name for the record again. And you've got
16 three minutes.

17 MS. PINSKY: Hi, there. Aloha. Any
18 background sounds are my three-year-old playing with
19 his train set.

20 My name is Georgia Pinsky, and I'm chiming
21 in today to talk about the change in definition to
22 farm labor dwellings.

23 So back to Greg's presentation real
24 briefly, I support Alternative 2 for the usable land
25 definition. I think including culturally sensitive

1 areas is really important. Some of the land,
2 particularly in the rural areas, has some significant
3 amount of archaeological evidence, and it's best to
4 leave that undisturbed and not farm there.

5 I'm here today to talk about the farm labor
6 dwellings. I just want to kind of pose a question
7 which I don't have the answer, and I was unable to
8 locate online.

9 How many farm labor dwellings are there
10 currently in Maui County? I think it's important to
11 allow farm labor dwellings on 2-acre parcels because
12 a large portion of our ag lots in Maui County are 2
13 acres. Small farms need labor support, too, and that
14 labor needs housing.

15 The link between the need for more food
16 production and the need for expanded housing options
17 is real. So I'm testifying today in support of
18 expanding the definition of who can be living in
19 these farm labor dwellings.

20 I want to clarify that farm labor dwellings
21 cannot be used for rental income. They need to be a
22 direct benefit to the farming activities.

23 I want to suggest that the language of this
24 proposal be adjusted to include that these
25 individuals need to be Hawaii residents. And I'm

1 sorry that this doesn't support the wonderful work
2 that Farmer Gerry was just describing, but this --
3 this need to make these residents -- these farm labor
4 dwelling residents Hawaii residents will discourage
5 people from overseas living in these farm labor
6 dwellings. And that clarification will serve to
7 support the development of our local ag industry and
8 our local ag workforce.

9 The farmer training programs across Hawaii
10 have now produced hundreds of graduates. I've worked
11 with more than three or four hundred myself over the
12 last eight years. They need ongoing support and
13 encouragement to develop their agricultural careers.
14 Allowing them to apprentice or intern on successful
15 farms will be helpful.

16 I suggest requiring farms to have a written
17 and signed agreement with the apprentices and
18 interns. Shortage of labor is a very common need for
19 our farmers, and this change can positively affect
20 this need.

21 In addition, from the farming perspective,
22 it's important to be on the land; to kilo, or
23 observe, your land; to make observations during heavy
24 weather about the crops, the water flow, the wind
25 flow, and et cetera. Being on the land during

1 nonwork hours -- early mornings, late at night,
2 et cetera -- is an important part of farming, not
3 just when you're there sweating in the sun. To see
4 how the water flows during periods of wet weather is
5 really important.

6 That ends my testimony.

7 I want to pose a hypothetical question
8 today of why is the Maui County Department of
9 Agriculture not present at this meeting? I believe
10 it is a part of the new department's charter to
11 support other county departments as they adjust and
12 improve --

13 UNIDENTIFIED SPEAKER: Three minutes.

14 MS. PINSKY: -- (indiscernible) to support
15 the expansion of the Maui agricultural industry. So
16 I think this commission has posed some questions
17 today that the Department of Agriculture could have
18 been helpful with. And I really want to encourage
19 them to join in these meetings in the future. Thank
20 you so much.

21 CHAIR PALI: Thank you, Georgia. Time's
22 up, but I appreciate your comments.

23 Any questions for Georgia? Commissioner
24 Deakos?

25 COMMISSIONER DEAKOS: Yeah. Thank you,

1 Chair. And thank you, Ms. Pinsky, for your
2 testimony.

3 The last thing you mentioned, that we
4 raised some questions that the ag department might
5 answer, can you expand on that a little bit, just
6 name two to three?

7 MS. PINSKY: Yeah. During the conversation
8 about Item 1 before this item, there was some
9 questions posed that I thought perhaps Director Arce
10 or her deputy director, Koa Hewahewa, would have been
11 able to answer or at least shed some light on. And I
12 found their absence palpable.

13 COMMISSIONER DEAKOS: Okay. Do you know
14 one or two of those topics? Do you remember?

15 MS. PINSKY: I didn't write them down. I
16 just found myself going, gosh, I wish they were here.

17 COMMISSIONER DEAKOS: Okay. No worries.
18 Thanks for your testimony.

19 Thank you, Chair.

20 CHAIR PALI: Great. Commissioner Lindsey?

21 COMMISSIONER LINDSEY: Did you get to say
22 your entire testimony? Did you have more to say
23 other than -- you were closing it up. Okay. That's
24 it. Thank you.

25 MS. PINSKY: No, I said it all. I'm all

1 set. Thank you.

2 CHAIR PALI: Okay. Great. We're going to
3 really be just as fair as we can with that three
4 minutes, so I appreciate it.

5 Any other questions? Sure, Commissioner
6 Thompson.

7 COMMISSIONER THOMPSON: Thank you, Georgia.
8 I know you said that -- are you against, like,
9 international WWOOFers and all that? I've used them
10 before and had very good luck, but I have a really
11 hard time finding any local. I can't get anybody to
12 pull weeds for 25 bucks an hour.

13 MS. PINSKY: Well, if you look the minimum
14 wage in comparison to the cost of living, the minimum
15 wage in Hawaii should be \$29 an hour. So,
16 oftentimes, that's part of the challenge. In the
17 farm coaching and advocacy work that I do, I support
18 farmers offering \$30 an hour, even for pulling weeds,
19 because that is what it costs to live here.

20 And, yes, I support this expansion to the
21 residents in farm labor dwellings to really be
22 focused on housing more people, more already Hawaii
23 residents who want to work in agriculture, not
24 bringing them in from elsewhere. It doesn't support
25 our ag industry.

1 COMMISSIONER THOMPSON: Thank you.

2 CHAIR PALI: Okay. Any other -- further
3 questions? Great. Seeing none, thank you, Georgia.

4 Okay, Eve. Eve's back.

5 Eve Hogan, can you hear my voice?

6 MS. HOGAN: Yeah.

7 CHAIR PALI: If you can, unmute yourself
8 and -- yeah, and restate your name for the record.
9 And you've got three minutes.

10 MS. HOGAN: This is Eve Hogan. I'm the
11 owner of the Sacred Garden and a member of the Ag
12 Working Group. I have so many things to say, I'll
13 try and keep it really short.

14 The main one I want to talk about is the
15 51 percent. I liked that the director added in some
16 defining language.

17 My question is when it said the director
18 gets to decide whether it's feasible and usable,
19 which director, the planning department or the
20 agriculture director? Because my experience, with
21 all due respect, is that most of the planning
22 department is -- they are not farmers, and they don't
23 necessarily know exactly what is part of a farm and
24 what isn't, especially when it's on land that is not
25 straight rows and typical ag land.

1 And so it would be really helpful to have
2 some clarity on the qualifications of the person
3 determining that because it's really important. And
4 just to give you guys some history, there used to be
5 a farm plan requirement.

6 And for the last 12 years in that farm plan
7 requirement, it was, I believe -- and Michele McLean
8 could correct me if I'm wrong -- it was stated that
9 it was the usable 51 percent of the usable land, and
10 it started back when we went to Arakawa. The Ag
11 Working Group worked really hard to make sure
12 "usable" was included.

13 And then when they decided to get rid of
14 the farm plan because people were -- you know, it
15 wasn't really working, they went to a farm
16 declaration, an ag declaration that just says you're
17 using 51 percent for ag -- or over 51 percent -- and
18 somehow the "usable" got lost at that time.

19 And it's really important that whoever's
20 worried about the abuse of this recognizes that, for
21 the last 12 years, this is how it's been, and it has
22 just recently gotten lost again in the language. So
23 I want that said.

24 And then the other thing, if I have any
25 more time, is just to let you guys know part of a

1 huge role of the Ag Working Group -- and you've heard
2 several of us on here today -- is that we work really
3 hard with the county to avoid making laws that punish
4 farmers in an attempt to stop your gentleman farmers
5 without recognition that, you know, the county is the
6 one that caused gentleman farmers.

7 When you tell somebody, if you buy land
8 here, you have to do ag, whether you're a -- you
9 know, a car salesman or a teacher or whatever you
10 might be, you have to do ag. And if they have to do
11 ag and install ag, then they start seeking the
12 property tax deductions and the water rights.

13 And then you call them a gentleman farmer
14 and say they're gaming the system when you forced
15 them to do ag. And if -- you know, I am a supporter
16 of ag. I do ag, too.

17 But, you know, we have to recognize how
18 that started and be really careful not to penalize
19 the -- whatever you call a legitimate or real farmer,
20 you know, who's trying to make farming on any piece
21 of property that somebody else has labeled ag that
22 one of the real farm industries didn't want because
23 it's not farmland.

24 You know, you're telling us we have to farm
25 (no audio) so I just think you guys need to look at a

1 big, big picture here and recognize that we don't
2 want to penalize the farmers to try to stop the --
3 what you call a "fake farm," and I appreciate the
4 comments to that message so far.

5 CHAIR PALI: All right. Perfect timing,
6 three minutes.

7 Anybody got questions for Eve? Eve, I
8 appreciate your comments as well.

9 MS. HOGAN: Thank you.

10 CHAIR PALI: Commissioner Deakos?

11 COMMISSIONER DEAKOS: Thank you, Chair.

12 Thank you, Ms. Hogan, for your testimony.

13 So I think everyone on board is with you in
14 supporting farmers, and we're trying to navigate a
15 little bit the balance on how to encourage and
16 support farmers but discourage the abuse of ag land.

17 So do you have -- you mentioned inspectors.
18 I think several people have mentioned inspectors.
19 Perhaps you can elaborate that, and I do -- is there
20 a requirement to show 35,000 of farm revenue to
21 qualify for the -- do you think -- any other
22 recommendations on how we would be able to identify
23 those who are actually farming?

24 MS. HOGAN: So there are certain things
25 that require 35,000, but I think for most farmers

1 that's way too high.

2 And I think what you all need to remember
3 is that whatever you call a "legitimate farmer" is
4 rarely somebody who only farms. Because no matter
5 how you cut the mustard in Hawaii, ag land is not
6 affordable. Whether it's got a giant house or a tiny
7 house, it doesn't matter.

8 It's not affordable land. And none of
9 us -- I mean, or very few of us can make a living
10 farming only. Almost nobody does. And so that's a
11 big one.

12 And then what was -- the first part of your
13 question was --

14 COMMISSIONER DEAKOS: It's more -- I think
15 you mentioned the inspectors again.

16 MS. HOGAN: Oh, yes. The inspectors.

17 COMMISSIONER DEAKOS: Maybe just to help me
18 on the training, who would these inspectors be and
19 how would they be trained?

20 MS. HOGAN: So I'm going to venture out to
21 speak as a member of the Ag Working Group, although
22 not on their behalf but just having sat in on the
23 conversations for over 12 years on this.

24 You know, when we have a farm plan or a
25 farm declaration inspection, they send out a person

1 from the planning department from the current
2 division who is not a farmer and doesn't, most of the
3 time, know what a farm is.

4 And I'm not dissing them because they're
5 just doing their job. But they're not qualified farm
6 inspectors, and they don't understand that coffee can
7 be grown in shade and you can grow things in
8 different ways than the traditional farm.

9 So we've been advocating for years that we
10 have qualified farm inspectors. And a huge part of
11 our prayer for the new Department of Ag is that
12 they're able to have qualified ag inspectors that,
13 when the planning department needs to know if
14 something is ag or the tax department needs to know
15 if something is ag, that there's an ag inspector from
16 the ag department who can (no audio) it makes it
17 clearer to everyone because currently the workers who
18 come out to look really don't know what they're
19 looking at.

20 COMMISSIONER DEAKOS: I appreciate that.
21 Thank you, Ms. Hogan.

22 Thank you, Chair.

23 MS. HOGAN: Thank you so much. Thank you.

24 CHAIR PALI: All right. Any other
25 questions for Ms. Eve? Seeing none, thank you so

1 much.

2 Okay. Next up again is Autumn Ness. When
3 you are able to unmute yourself, just go ahead and
4 state your name for the record and your three minutes
5 will begin.

6 MS. NESS: Aloha, guys. Thanks for having
7 me back again. So to clarify, I work for
8 Councilmember Johnson. And I was initially here to
9 highlight some points in his testimony, but I
10 realized that he has been able to join. So instead
11 of highlighting his testimony, I'm just going to add
12 a couple of things.

13 I would normally not advocate for anything
14 that decreases ag requirements and ag land. I'm
15 normally on the other side, right, of, like, making
16 better protections for our ag land.

17 In this case, for the -- regarding the
18 51 percent thing, I have spent a lot of time on small
19 farms owned by local folks, both through my work with
20 Beyond Pesticides and with Maui Food Hub. And I can
21 tell you, like, across the board, many of our small
22 and local farmers were able to buy the land they're
23 on because it was affordable because it's not ideal;
24 right? Like, they got the bargain piece of, like,
25 2-acre land where it's like if you had any more

1 money, they wouldn't buy it probably.

2 So our locally-owned small farms are really
3 creative about using spaces that some other big or
4 more well-resourced folks would not try to touch. So
5 allowing them to not have to consider the slope or
6 the gulch or the blue rock as part of their
7 51 percent of their usable ag land is a really big
8 deal for them.

9 I would say if you want to leave the
10 decision, like the planning department is
11 recommending, about whether land is usable, I would
12 say, subject to the approval of the director of the
13 Department of Ag.

14 Member Johnson just is working on a bill
15 around taxation that also, like, asks the RPT
16 department to work with with the Department of Ag on
17 definitions. So I think that's an important part of
18 that bill.

19 The other thing about the farm labor
20 dwelling and who gets to live in it, I also did a
21 statewide farm tour. This was years ago now, but I
22 think the (no audio) medium, locally-owned organic
23 farms.

24 And I asked everybody, how are you making
25 this work? You know, what's the difference

1 between -- why are you thriving and your neighbor is
2 not? And they all across the board said they rely on
3 labor that is subsidized through housing, and not all
4 of it was part -- was full time.

5 You know, like WWOOFers are a big deal.
6 They're a big part of farm labor. I don't love that
7 program precisely because what Georgia was saying, a
8 lot of them are transient and are not residents. The
9 reason they're so easy to pull over here is because
10 they're (no audio) one-person unit.

11 If we want to really focus on local farm
12 labor, local people come with family a lot of times.
13 Local folks come with a boyfriend or a husband or a
14 kid, and if you want labor on your farm that is not
15 going to bail on you in two months, which is really
16 the goal, right --

17 UNIDENTIFIED SPEAKER: Three minutes.

18 MS. NESS: -- that is willing to stick
19 with your -- okay. I'll just -- this is the last
20 thing.

21 CHAIR PALI: Yeah, please.

22 MS. NESS: That is willing to stick with
23 you and be reliable labor, then it's going to have to
24 be local folks, and those local folks come with,
25 yeah, family a lot of times.

1 CHAIR PALI: Great. Thank you. I have a
2 question, and then I'll go to the commission. So to
3 clarify, you are in favor -- I just want to clarify
4 your testimony was you're in favor for the 51 percent
5 of usable? But if not, at minimal, you are in favor
6 of allowing those people who fall into that category
7 to go to the director of ag to get that special -- is
8 that what you said?

9 MS. NESS: No. No. I'm in favor of the
10 amendment as -- of the bill as-is, but I saw the
11 department want to add, like, a bunch of language in
12 there about how to define "usable land."

13 If you folks decide to go that route, I
14 would say don't leave the definition of "usable land"
15 to the director of planning. I would say leave it to
16 the director of ag.

17 CHAIR PALI: Right. So if we don't go the
18 way you prefer, you are in agreeance, then, to say,
19 hey, if you're going this route, just change it to
20 the director of ag?

21 MS. NESS: Yeah. If that's the route,
22 yeah.

23 CHAIR PALI: If that's the route.

24 MS. NESS: Yeah.

25 CHAIR PALI: Oh, this is under zoning code.

1 Okay, okay. Okay, great. Okay, great. That was it.
2 I wanted to clarify that.

3 Commissioner Deakos?

4 COMMISSIONER DEAKOS: Yes. Thank you,
5 Ms. Ness. As somebody who's run a nonprofit for a
6 long time, we relied on interns, even paying interns.
7 I think a lot of -- you know, just getting by, just
8 getting your projects down. So I could almost see
9 even paying interns not only not paying, but getting
10 paying interns.

11 And then, of course, the abuse, which is
12 what we're trying to protect, is having people come
13 and pay for essentially what's a vacation rental,
14 call them interns, have them pick a few weeds,
15 whatever.

16 So, I mean, we're going to have this
17 debate, probably go down another rabbit hole again.
18 I mean, having been on both sides of this, do you
19 have thoughts on how do you -- how do you protect the
20 farmers and give them what they want in this but not,
21 you know, open the door for the abusers?

22 MS. NESS: I think the same way you do it
23 is how you define an employee, the difference between
24 an employee and a short-term rental consumer. Like,
25 with an employee, you have some kind of a contract;

1 right? You have some kind of a -- you get paid this
2 much an hour to work on the farm.

3 I think apprentices and interns -- I mean,
4 Gerry is a special thing. Their farm is a well-oiled
5 machine, and they happen to have no paperwork. I
6 don't know how they made it work.

7 But I don't think it's too much to ask to
8 have a written agreement on file so that if an
9 inspector does come by and says, hey, who's living in
10 this farm dwelling unit? You can say, hey, look, we
11 have an apprentice. This is our agreement. They're
12 in a six-month training program.

13 I think that's minor. And, you know, like,
14 MEO -- there's a lot of programs that are running
15 apprentice programs for farm workers, and those
16 people should be able to live in a farm labor
17 dwelling, you know? I think the paperwork is pretty
18 easy actually.

19 COMMISSIONER DEAKOS: Okay. Yeah, but
20 paperwork can be abused also.

21 MS. NESS: That's true. That's true.

22 COMMISSIONER DEAKOS: So it might be a
23 challenge. Okay. Thank you. I was hoping you would
24 solve it all for us. Thank you.

25 CHAIR PALI: Okay. Any other questions for

1 Autumn? Okay.

2 COMMISSIONER DEAKOS: I'm good, Chair.

3 CHAIR PALI: Thank you. Thank you, Autumn.

4 We're going to take a break for five
5 minutes, and we will come back to testimony. So
6 we'll be back in five minutes. Thank you.

7 (Whereupon, a brief recess was held.)

8 CHAIR PALI: Okay. Welcome back to the
9 Maui Planning Commission. It is January 9th. Let
10 the record show it is 12:32, and we are in the middle
11 of public testimony on item B2.

12 Next up to bat is Joanne (sic). Joanne? I
13 think it's Joanne. Yep, Joanne.

14 MR. LALL: No. Hi.

15 CHAIR PALI: Oh. Oh, Johann. I'm sorry,
16 Johann.

17 MR. LALL: Yes.

18 CHAIR PALI: Hello. Happy New Year. Just
19 state your legal name for the record, and then you
20 have three minutes.

21 MR. LALL: Johann Lall. I am testifying on
22 my own behalf. So I just want to say, first, this
23 was really confusing when you have, like, all these
24 percentages and square footages and stuff like that.
25 And so maps would be really helpful, you know, for,

1 like, future reference for the planning department.

2 So there was one thing that was interesting
3 to me in Greg's presentation is the thing where they
4 suggested having the planning director approve the
5 "feasible, usable" and that kind of stuff. The slide
6 was only up for a little while; so I'm not sure I
7 understand that fully, but I think it was saying that
8 if the exempted area was more than 49 percent, then
9 it would be subject to approval by the planning
10 director?

11 I think that should probably be -- any
12 assessment of feasibility should be subject to
13 approval by the planning director and/or the ag
14 director, like Autumn was saying. Because,
15 otherwise, it's -- it seems like it creates a pretty
16 big loophole where you're defining your own
17 feasibility and usability, and that can be pretty
18 subjective.

19 And like the previous testifier was saying,
20 the inspectors are probably not ag experts. So,
21 again, it's one of the things where you don't want to
22 create more opportunities for gentleman estates,
23 which are already an issue with the existing laws.

24 So the other thing is on that subject of
25 gentleman estates, which was -- which was a big thing

1 with the previous item, and I assume will be -- will
2 be subject to discussion with this one, the law
3 doesn't really allow gentleman estates. Ag zoning
4 requires ag use.

5 The problem is that that's subject to the
6 discretion of the planning department and the
7 planning director. So if the planning director is
8 getting pressure from the mayor to approve, you know,
9 Launiupoko or one of those developments, then, yeah,
10 it's going to -- it's not going to be up to the
11 inspectors even if they understand agriculture.

12 And even if they know what they're looking
13 at, they're going to say, okay, this farm plan says,
14 we're -- we've got five orange trees, and we're going
15 to sell some oranges for \$35,000. You know, it's
16 going to get rubber-stamped.

17 So, ultimately, a lot of this is up to the
18 planning director. So, you know, I think you guys
19 need to understand that when you're reviewing this or
20 any other kind of regulation is -- a lot of things
21 are up to the planning director.

22 So the other thing, a lot of the discussion
23 from previous testifiers has been about interns and
24 those kind of folks. You know, I support Autumn's
25 suggestion to have it be restricted to residents, and

1 I think there's a large pool of residents that are
2 untapped. Like I said, I'm testifying on my own
3 behalf, but I work for Lyon Arboretum, at least for
4 the next couple of months.

5 CHAIR PALI: Thank you, Johann. We've got
6 your three minutes, so you want to just finish your
7 thought there?

8 MR. LALL: Yeah. So there are students at
9 high schools who come and -- and volunteer here on
10 the lo'i that we have, and they love it. They come
11 every week, and they do a great job.

12 And so there's a lot of local kids, a lot
13 of them Hawaiian, who would love to do this kind of
14 work. It doesn't have to be people from Canada or
15 wherever. You know, the folks are watching who have
16 farms. Keep that in mind. Thank you.

17 CHAIR PALI: Great. Thank you. Thank
18 you. I have a question for you, and then I'll go to
19 my commission.

20 So to clarify, did you hear a
21 recommendation about if it was left up to the
22 director, it should be the director of ag? Or did
23 you clarify that? Because you didn't say director of
24 planning, which -- actually, the way it's written, it
25 doesn't really say which director. And I don't want

1 to add to your testimony because that would be unfair
2 to the others.

3 But I do want to clarify, did you specify
4 that you did or didn't -- it sounds like you didn't
5 want it to be director of planning, but you didn't
6 specify that director of ag might be a good
7 compromise.

8 MR. LALL: So I was referring to Greg's
9 presentation with the planning department's
10 suggestion that the -- it be a mandate to be subject
11 to approval by the planning director.

12 CHAIR PALI: Yes.

13 MR. LALL: But I think it makes -- it makes
14 more sense to have it be subject to approval by the
15 ag director, but it's Title 19. So I'm not sure if
16 that's possible.

17 CHAIR PALI: Okay. Well, the slide that
18 you said you didn't get to see very long, we have the
19 printouts here. And it actually just says
20 "director." There could have been an implication
21 that it's planning, but it just says "director." So
22 maybe there's an implication there, but I appreciate
23 you clarifying that.

24 Commissioners, any other questions?

25 Okay. Seeing none, thank you, Johann.

1 Okay, we will go to Mr. Councilmember Gabe
2 Johnson. And then next up will be Bill Greenleaf.

3 COUNCILMEMBER JOHNSON: Okay. Thank you,
4 commissioners. Can you -- can you hear me?

5 CHAIR PALI: Yes, we can.

6 COUNCILMEMBER JOHNSON: And my camera
7 doesn't seem to be working, but I'll just get into my
8 testimony. I know --

9 CHAIR PALI: We can see you.

10 COUNCILMEMBER JOHNSON: Okay, great. So
11 I -- you know, thank you for hearing this. And I
12 really appreciate the discussion here. There's a lot
13 that has been said. I'll just kind of go down to
14 some of the things that I wanted to speak to you
15 on -- about.

16 You know, Michele McLean, former director,
17 helped help us write this bill. So the point I'm
18 trying to make here is that -- you know, I'm a
19 farmer. As a farmer, a farm labor dwelling could be
20 another benefit when it comes to recruiting labor;
21 right?

22 You know, before the fire, we had a housing
23 crisis that was awful. Postfire, it's even -- it's
24 even worse. So why can't we have creative ways in
25 legislation that show -- that allows folks to have

1 not only a job -- but, also, a really important part
2 is housing; right?

3 The -- the idea that we're getting hooked
4 on these internships, I'm okay with the language that
5 the department proposes. I just want to remind the
6 body that HFUU has a seven -- seven-month-long
7 internship that's -- that actually on Lanai,
8 specifically, is -- is full.

9 So there are a lot of people who are
10 looking to farm. They're looking for -- for, you
11 know, land, water, and a little bit of capital.
12 That's what the farmers need.

13 But we're going to add one more thing to
14 that, and that's housing; right? Farmers need
15 housing. So that's why I think that there is a
16 movement afoot that people want to get started
17 farming. There's just no housing for them. This is
18 a way to address that.

19 I -- I think the farm labor dwelling
20 parameters are pretty strict. As -- as it begins,
21 you need 35 grand a year to, you know -- people --
22 and right now, as -- as people -- as we're talking
23 right now, people in Haiku and other areas, some
24 WWOOFers, they're living in unpermitted structures,
25 unsafe areas.

1 So this is a way to put them into the fold
2 where it would be permitted, it would be allowable,
3 and because right now there's plenty of people who
4 are doing it off-grid and out in the jungles. And we
5 don't want that; it's not safe.

6 As far as this -- this thing we're talking
7 about how -- which director can come in, you know,
8 the policies and procedures of department of ag is
9 that they can assist in -- in these things. So if
10 you want to keep it in planning, then the department
11 of ag can assist planning when it comes to these --
12 comes to these issues.

13 And then, also, I want to remind everybody,
14 I was looking over the minutes -- or, I mean -- I'm
15 sorry, the test -- the written testimony. Department
16 of ag has responded to some of your concerns, and I'd
17 recommend commissioners look up on the written
18 testimony. So that's -- that's kind of what I have
19 right here.

20 So the idea that part time -- I don't want
21 to get get hooked on part time. You know, part time,
22 20 hours a week, that's fine. I'm malleable to
23 whatever the commission would recommend. And I think
24 that's all of my notes that I have here right here.

25 But internships are six months long and up.

1 20 -- part time is 20 hours. That's fine with me.
2 Those are -- those are kind of the comments that I
3 wanted to add to this.

4 CHAIR PALI: Great. Perfect. Three
5 minutes is up. Thank you, Councilmember Gabe
6 Johnson.

7 Any questions, commissioners? Okay,
8 Commissioner Deakos?

9 Gabe, are you still there? We have a
10 couple questions.

11 COUNCILMEMBER JOHNSON: Yeah. Sure.

12 CHAIR PALI: Okay. Great. Go ahead,
13 Commissioner Deakos.

14 COMMISSIONER DEAKOS: Thank you, Chair.

15 And thank you, Councilmember, for your
16 testimony.

17 And so it's -- you know, I agree with you,
18 I think, you know, support anything that's going to
19 help farmers.

20 CHAIR PALI: So, Commissioner, if you want
21 to give your opinion, we want to make sure that we're
22 open to the rest of the record before we start to
23 show where we lie. That's only your own protection.
24 So just --

25 COMMISSIONER DEAKOS: Okay. So then my

1 clarifying question for you, Councilmember, is
2 there -- there -- it didn't sound like you had any
3 concerns with facilitating farmers that could also
4 facilitate the abuse of ag lands?

5 COUNCILMEMBER JOHNSON: Well, you know,
6 like I was mentioning, the farm labor dwelling
7 bill -- farm labor dwelling, that's pretty strict
8 when it comes to certain requirements. You got to
9 make 35 grand a year, you know. So there -- there
10 are pretty -- pretty much I think that that kind of
11 will weed it out, no pun intended.

12 But I also think of, like, what Gerry was
13 saying, is his farm -- of 100 interns, 10 were
14 naughty. I mean, that comes with tourism, that's
15 part of the game we're in; right? I mean, there's
16 100 tourists, 90 tourists are great, and 10 of them
17 are bad. And that's just -- that's how it is, you
18 know?

19 I think -- I don't want that to be the
20 burden when we're trying to house people whose houses
21 burned down, whose jobs are lost. West Maui has a
22 chance to pivot from tourism. Our whole county has a
23 chance to pivot from tourism. And we're going to
24 have it that it's our bureaucracy, it's our concerns,
25 we're afraid to get our feet wet? That shouldn't be

1 us. That -- we should be making it available for
2 farmers, legitimate farmers.

3 And, again, the bill shows that this -- you
4 know, you got to make 35 grand a year, you got to
5 have certain, you know, documents that prove that you
6 are a legitimate farmer in a farming operation.

7 That's exactly the kind of things that that bill was
8 originally intended for.

9 And by adding on these little bit of
10 widening the gates -- like, who's going to come and
11 farm without your family? That doesn't make any
12 sense. So we made that bill where you can bring your
13 family on.

14 I'm a single dad. I -- that's kind of
15 discriminatory to me as a farmer, that I can't get in
16 those places because I have a kid. But that's --
17 that's -- I don't want us to be afraid to do this
18 because there's a couple bad apples. Because, again,
19 with the -- the planning department and then having
20 the department of ag coming in assisting, we can weed
21 out those folks who are the bad apples.

22 COMMISSIONER DEAKOS: Thank you. And then
23 just the -- I think you mentioned it's helpful to
24 have it local residents, so the farming program
25 support local residents.

1 Does that benefit -- I know it can benefit
2 local growth of ag, but does that hurt the farmer
3 that may be able to get labor outside the island?

4 COUNCILMEMBER JOHNSON: Well, Commissioner
5 Deakos, I think that's going to be a farm-by-farm
6 basis. Like if -- if -- okay, so I just recently got
7 a plot of land, right? I'm going to hire local, of
8 course, because I don't have to teach them as much as
9 I would have to teach them with someone who's here as
10 a WWOOFer, doesn't know the aina like the way most
11 people here, especially those folks who are coming --
12 graduating out of HFUU and have roots in the ground,
13 generational knowledge of Lanai, they know the rains,
14 they know the dangers of some weather, like last
15 night, for example.

16 Mainland folks, they don't know that. So
17 that's kind of a liability for me. If I had a yurt
18 in the jungle of -- of Kihei -- or Kihei -- of Haiku
19 or some area, then I'm kind of -- I would be afraid
20 of somebody who doesn't know the weather systems, who
21 doesn't know the aina and the way farmers who are
22 born and raised here and generational knowledge would
23 know.

24 COMMISSIONER DEAKOS: Okay. So it sounds
25 like you think there's plenty of labor available

1 locally? And that -- I lost my thought. And that --
2 yeah.

3 COUNCILMEMBER JOHNSON: Yeah. The labor
4 locally is available if you give him a house. That
5 is -- this is such a huge part of what comes with
6 this.

7 You know, on Lanai, very large plantation
8 town, that came with it. You worked the pineapple
9 fields, you got company housing; right? The --
10 across the state, we've seen -- we see that model.

11 Now it's 2023. Let's not go back -- or
12 2024, I should say. You know, let's go move forward
13 and say, look, farm labor dwellings is a legitimate
14 way that you have a job, and then you also have a
15 place to stay.

16 I mean, I want to emphasize how hard
17 this -- this crisis of housing is on our farmers.
18 Why would they farm here when they could just go
19 to -- move to Vegas and go get any old job? And
20 that's what we're seeing; right?

21 The part time is -- is -- is a way to kind
22 of, you know, include those folks. You know, have a
23 second job, live in their house, and then go and do a
24 second job. You know, I think it's -- it's a good
25 way to get -- throw a wide net for our labor force.

1 COMMISSIONER DEAKOS: Right. Thank you.
2 Thank you, Councilmember. Thank you, Chair.

3 CHAIR PALI: Great. Commissioners, any
4 other questions?

5 Commissioner Thompson?

6 COMMISSIONER THOMPSON: Yeah. Thank you,
7 Mr. Johnson, for showing up. I have a question about
8 that \$35,000 number and how that came up? I'm just a
9 little concerned on -- there's not a lot of money
10 in -- in agriculture, we know that. Otherwise, we'd
11 be here figuring out how we could outtax them.

12 But on a small farm on two acres, can they
13 do that? Can they do \$3,000 a month? Even if --

14 COUNCILMEMBER JOHNSON: Okay. I'll give
15 you some anecdotal evidence here. I was a farmer
16 before, in 2016. I'm still -- I still consider
17 myself a farmer. But in 2016, lettuce is \$10 a
18 pound, dragonfruit's \$8 a pound. I can harvest 100
19 pounds a week of -- of lettuce easy. That's --
20 that's enough to get me over that 40-grand-a-year
21 threshold. That's one person.

22 Now, I was on a 2-acre farm, not eligible.
23 But if that acre was farm -- a 5-acre farm, it would
24 have been eligible. Then my -- my rent would have
25 been included in that -- in those wages. I would

1 have been ahead of the game.

2 So I -- I'm going to push back a little bit
3 on the idea of farming not being lucrative. Mamaki
4 tea is \$180 a pound, \$180 a pound of mamaki tea. I
5 just went there this weekend at the tea farm
6 Upcountry. Dragonfruit, a great example.

7 And then you add the value-added products.
8 I just want to -- I challenge you guys to come try my
9 lilikoi jam. You're going to be paying top dollar
10 for it; right?

11 I don't -- now, if you're going to talk
12 about picking, you know -- you know, picking
13 pineapple, for example. You know I live on Lanai.
14 Yeah, sure. You just picking it, putting it in the
15 machinery. That's -- that's a 9-to-5 job in many
16 ways. And that -- that's -- that job went -- those
17 kinds of jobs went to the wayside.

18 There are plenty of small farms that have
19 contracts with those fancy (no audio) Four Seasons,
20 for example. They're paying top dollar.

21 And then you add that branding of local
22 brand. I -- I've come to vacation on Maui, I want to
23 eat Maui lettuce. I come to vacation on Lanai, I
24 want to eat Lanai-grown food. And that is going
25 to -- I'm -- as a farmer, I'm allowed to charge more

1 for that.

2 CHAIR PALI: Any other questions,
3 Thompson?

4 COMMISSIONER THOMPSON: No, thank you.

5 CHAIR PALI: I have just one clarifying
6 question, Councilmember Johnson. So it sounds like
7 you -- sounds like you might be okay with the part
8 time since we're putting a wage on the full time.
9 What would the recommendation be for the wage on the
10 part time? Or would we just not be measuring the
11 wage since it's only part time?

12 COUNCILMEMBER JOHNSON: I think the --

13 CHAIR PALI: I knew that there was a -- 20
14 hours was sort of the --

15 COUNCILMEMBER JOHNSON: Right. I think
16 the wage was basically saying that the farm must make
17 35 grand a year. Is that what your question is?
18 And --

19 CHAIR PALI: Oh, the farm itself? Sorry,
20 I misunderstood that. Okay, yeah. Okay. So the
21 farm itself. Okay.

22 COUNCILMEMBER JOHNSON: So in order to be
23 a legitimate farm, as they say, and then in order to
24 be applicable for a farm labor dwelling, that farm
25 must make 35 grand a year.

1 CHAIR PALI: Okay. As their revenue?

2 COUNCILMEMBER JOHNSON: Right.

3 CHAIR PALI: Prior to deductions and
4 things.

5 COUNCILMEMBER JOHNSON: Right. So -- and
6 that's -- that's how it is in the current code;
7 right?

8 CHAIR PALI: Got it.

9 COUNCILMEMBER JOHNSON: So that -- we're
10 just trying to expand it. Like -- you know, I just
11 want to remind the commissioners, it's already in the
12 books to build farm labor dwellings. If there was
13 abuse, where is it? I'm looking high and low.
14 Where's -- where's that guy? Let's get him. Right?

15 But in -- what this is doing -- this bill
16 is expanding it so we can include the families of the
17 laborers. What's -- you know, what's the hubbub?
18 That's -- I'm not seeing it; right?

19 But the -- but the other thing is -- you
20 know, I did try to clarify to make it more -- you
21 know, 51 percent of usable, all those other things.

22 But really what it comes down to is let's
23 make this farm labor dwellings actual in practice.
24 There's the theory and then there's the practice;
25 right?

1 There -- people could be building these
2 today. There's no size limit on them; right? And
3 all these things that people are concerned about, but
4 they're not because it's so restrictive. There's no
5 farm that's just going to have just the laborer come
6 without any kids or any family. That doesn't make
7 any sense.

8 Especially now after the fire, we should be
9 opening up our doors for -- for a pivoting of our
10 economy or a pivoting of our workforce. People want
11 to work on the land. Look at the amount of interns
12 that are going through HFUU and the other internship
13 programs.

14 CHAIR PALI: Okay. Well, thank you.
15 Final opportunity for questions for Councilmember
16 Johnson. Seeing none, thank you.

17 COUNCILMEMBER JOHNSON: Mahalo.

18 CHAIR PALI: Okay. Bill Greenleaf -- yeah,
19 thanks for being here.

20 Bill Greenleaf, are you there? If you are,
21 unmute yourself and state your name for the record.
22 And you've got three minutes.

23 And if you are with us, Bill is the last
24 one signed up. So if you are someone who cannot use
25 the chat function and want to testify, you might have

1 an opportunity here in a few minutes.

2 Okay, Bill, go ahead.

3 MR. GREENLEAF: Okay, am I in?

4 CHAIR PALI: You are.

5 MR. GREENLEAF: Oh, great. Great. So in
6 my time working in agriculture, gentleman farmers has
7 been one of the larger, least productive
8 conversations. I don't think we've ever -- I don't
9 think there's ever been anybody fined on Maui. I
10 don't even know if there's a process for it, for
11 creating a farm plan, getting everything passed, and
12 then not doing it.

13 So I think the inspectors -- the inspectors
14 can use -- they've been able to use the -- the videos
15 that are taken of all the properties on Maui.
16 They've been able to use that for a while. And I
17 think that would be most effective to determine if
18 something's sketchy and they want to go out and have
19 a look at it.

20 So everything that you're dealing with the
21 gentleman farmers, I'm pretty sure it has to do with
22 the ag inspectors being -- coming out of TMK -- I
23 mean, or planning, either coming out of RPT or
24 planning.

25 When we started our farm, I applied for ag

1 taxes. I thought that was the thing to do. The
2 inspector came out, looked at what I was doing, said,
3 no, you don't get it. I said, why? He says, you
4 aren't doing row crops.

5 And I said, well, row crops on a 2-acre
6 property are not efficient, and there's a better way.
7 And he said, well, if you're not doing row crops,
8 you're not farming.

9 So I never even tried again. I've been
10 just paying my taxes and not worrying about it. So I
11 just don't see enough energy being put into the fact
12 that inspectors can solve this problem.

13 And I don't know if anybody's addressed
14 what would be the problem -- what would be the
15 penalty if you had already built your accessory units
16 and all your accessory permits, and you weren't
17 farming? I haven't heard that discussed, and I think
18 it should be.

19 The other thing I want to address is the
20 2-acre properties. There's a lot of them. I think
21 it ought to be a different scale than \$35,000
22 especially. I mean, it's -- it's a catch-22. The
23 first five or six years, we couldn't afford to do
24 anything like that. And now we're making 800 or 900
25 a week.

1 So we could afford to do more, and we could
2 get permitted, but we don't want to. We're -- we
3 have gone from using WWOOFers to local people to now
4 having regular workers. And I think that's the
5 progression of a lot of these things -- farms if we
6 don't have too many restrictions that trip them up
7 right from the beginning.

8 I remember going down to the planning
9 department and getting all the paperwork that I
10 needed to do for special use permits and stuff. I
11 just threw it away. I knew I'd never do it. It was
12 just too much. And then -- well, I guess that's it.

13 I really wanted to emphasize about the
14 inspecting, and I think that's going to be a lot
15 better if -- I mean, I think it's going to work if we
16 have the department of ag involved with the
17 inspecting, whether they're the chief inspector or
18 whether they're a help or advisor.

19 CHAIR PALI: Great. Thank you, Bill. Any
20 questions for Bill? Seeing none, thank you for your
21 testimony.

22 MR. GREENLEAF: Thanks for all your great
23 work, you guys. I really appreciate you sitting in
24 those chairs and hearing all this stuff. Thank you.

25 CHAIR PALI: Thanks, Bill. Paul Brown,

1 sorry, you were on the list, and I -- I missed you.

2 Paul Brown, if you are here, please unmute
3 yourself, and you've got -- state your name for the
4 record, and then your three minutes will begin.

5 MR. BROWN: Good afternoon. This is Paul
6 Brown. Thank you for letting me testify. First, I
7 want to apologize. I had my mic on earlier and
8 expressed frustration. That was not intended.

9 CHAIR PALI: Well, you didn't have to
10 tattletale on yourself.

11 MR. BROWN: That's okay. I'm an honest
12 guy. I take -- take the heat when I need it.

13 CHAIR PALI: All right. Appreciate that.

14 MR. BROWN: So I would like to just testify
15 on the 51 percent usable land using my property as an
16 example. It's three and a quarter acres; about
17 20 percent of it is in a gully.

18 And when we applied for a building permit
19 for our ohana -- we don't have a main house, so when
20 we applied for that building permit, we had to submit
21 the farm plan. And they did allow us to exclude that
22 20 percent which is in a gully.

23 I think that's the best way to do it is to
24 keep that just 51 percent of the overall rather than
25 trying to, you know, bring it down into minutiae. To

1 give an example, we shouldn't use that gully because,
2 you know, my neighbor just broke his leg falling into
3 the gully while trying to create firebreak just a
4 couple of weeks ago. So there is a reason for it.

5 So, anyways, that was that. I would like
6 to speak just on the gentleman farm thing. I could
7 very easily be, you know, put in that -- that
8 gentleman farm thing, if you just go by appearances
9 and my voice.

10 But I'm a guy that moved here 32 years ago.
11 I took a job bussing tables at Compadres restaurant
12 in Lahaina, worked my way up into being a manager.
13 I've worked for, you know, a salary. I've worked
14 hard. You know, I'm not a wealthy guy.

15 I just happened to be -- that I bought a
16 house at the right time, was able to then move that
17 up into getting onto land. And, again, you know, my
18 intent is not to be a gentleman farmer, to actually
19 actively farm this -- this property.

20 The last thing was with the farm worker
21 dwelling. I've got a friend that has an animal farm
22 in Launiupoko that is trying to get permission to do
23 a farm worker dwelling. And the planning department
24 just says, nope, we've never issued one; we probably
25 never will. And, you know, blah, blah, blah. And

1 they've made it just impossible for her to get
2 through.

3 So, hopefully, this can be regulated a
4 little bit better and can create opportunities for
5 people to do do exactly that. So that's it. Thank
6 you very much.

7 CHAIR PALI: Great. Thank you, Paul. Any
8 questions for Paul?

9 Vice Chair Thayer, go for it.

10 VICE CHAIR THAYER: Thank you, Chair. I
11 just want to clarify that I heard you correctly. You
12 said you're in support of keeping the 51 percent of
13 the overall lot is to be farmed versus 51 percent of
14 the usable area? Did I hear you correctly?

15 MR. BROWN: 51 percent of the usable area.
16 So if there are areas that are not usable, that they
17 can be excluded. And then the 51 percent calculated
18 on the remaining area, I feel that's better.

19 VICE CHAIR THAYER: Okay. Okay. Good.
20 Thank you.

21 MR. BROWN: Thank you.

22 CHAIR PALI: Great. Commissioners, any
23 other questions? All right. Seeing none, thanks,
24 Paul.

25 MR. BROWN: Thank you.

1 CHAIR PALI: Okay. Anyone else online or
2 in the galley that would like to testify, please
3 unmute yourself and introduce yourself. If you've
4 just joined us, we're on Item B2, and we're wrapping
5 up our public testimony section.

6 So if you do want to testify, I'll give you
7 a few more seconds, and please just unmute yourself
8 and say hello. Okay.

9 Seeing none, let the record show we will
10 close public testimony at 1:03. That's fast.
11 Let's -- let's call it 12:59. That looks like it's a
12 fast clock. Okay.

13 So public testimony is closed,
14 commissioners. We'll grab Greg, and we'll have him
15 back on the line. And keep in mind that this is your
16 time to ask all the questions to Greg now.

17 Greg is -- he works for the department.
18 He's the lead on this. He would be your most stable
19 resource for additional questions.

20 This one's a little bulkier than the last
21 one. We've got two -- I guess it would be accurate
22 to describe that there's two things we're going to
23 uncover. But I will let Greg highlight and summarize
24 and give the recommendation for these two items.

25 MR. PFOST: Sure. Thank you. Thank you,

1 Chair. In regards to the definition of "farm," the
2 department is recommending the Alternative 2
3 recommendation as that's in your packet.

4 And then in regards to the definition of
5 "farm labor dwelling," the department is not
6 recommending the bill as currently proposed because
7 we have concerns in regards to the potential abuses
8 that could happen of turning a farm laborer dwelling
9 into a -- into a transient use or a third farm
10 dwelling and potentially also with adding the size of
11 the family could increase the size and impact to
12 agricultural uses.

13 So that was generally the concerns that the
14 department has with the definition of "farm labor
15 dwelling."

16 CHAIR PALI: Great, thank you.
17 Commissioners, questions? I appreciate the slides
18 that you prepared, Greg.

19 Commissioner Deakos, yes, go for it. And
20 then Commissioner -- Vice Chair Thayer.

21 COMMISSIONER DEAKOS: So there was -- a few
22 people mentioned the determination of what is usable
23 and also the inspection. I guess, right now, as it's
24 worded, that's -- I don't know, it doesn't say the
25 planning director, but I presume that's who it's

1 referring to.

2 Is there -- is it even legal to bring in
3 the department of ag in those decisions?

4 MR. PFOST: Yeah. The term -- the term
5 "director" is intended to be the planning director.
6 And since it's in Title 19, director is actually
7 defined in Title 19 as being the planning director or
8 their representative.

9 So I suppose technically the planning
10 director could rely, third party, on the Director of
11 Agriculture to assist with that recommendation, I
12 assume. But, you know, obviously there needs to be
13 some -- the Department of Agriculture needs to opine
14 upon that because I'm not sure they have the staffing
15 to actually do this yet.

16 So there's a -- there's those kind of
17 issues that we'd have to deal with. But I'm not
18 saying that that's out of the question. That would
19 just be -- have to be something that would have to be
20 worked out. But, right now, it is intended to be
21 planning director or the director's representative is
22 the definition of that.

23 CHAIR PALI: Or anyone they appoint.

24 MR. PFOST: Yeah. It says says "director
25 or their representative" is how -- is how director is

1 defined. It is the planning director or their
2 representative.

3 CHAIR PALI: Thank you. Commissioner
4 Deakos, go ahead.

5 COMMISSIONER DEAKOS: The other question is
6 more along the inspectors. Who -- how are the
7 inspectors trained at this point? And who are they?

8 MR. PFOST: Well, I think there was a --
9 yeah, a lot of good questions raised on that and in
10 points. Our inspectors are not -- yeah, they're
11 not -- they're not farmers. They are inspectors
12 within our ZAED division that do enforcement or all
13 kinds of things here in Maui County.

14 We do have a process currently with ag uses
15 so that when -- to make sure that you are farming 51
16 percent. Once you build your first farm dwelling, we
17 do require you to sign a declaration, as one of the
18 speakers indicated, indicating that you're going to
19 comply with not only the county but the state in
20 doing your farming, which would mean 51 percent.

21 Any permit thereafter, we require you to
22 actually show what you're going to be farming and
23 where you're going to be farming. And we send an
24 inspector out there to make sure that you're doing
25 that.

1 So we won't issue a permit for a second
2 farm dwelling, or any other permits thereafter, until
3 we make sure that you're actually farming. That's
4 how we go about enforcement mechanism.

5 ACTING DIRECTOR SMITH: Yeah, if I could
6 also chime in. Greg, I'll sort of supplement your
7 comments as well.

8 Some of the information and testimony
9 submitted earlier today, you know, it was sort of
10 alluding that the inspectors are not sufficiently
11 trained for identifying plants, farming practices, and
12 so forth.

13 But the reality is what the inspectors
14 typically use when they inspect is the farm plan
15 itself. And so, you know, like any other development
16 project, you know, we request a site plan to be
17 submitted. It shows the property dimensions,
18 improvements, you know, setbacks identified.

19 And so really, when an inspector goes out
20 in the field, they are comparing what is on the
21 ground to what is on paper that was to be installed.

22 So, again, I can't really speak to what had
23 transpired in the past. It sounds like a few
24 individuals may have had not the best experience with
25 someone making a call on the property.

1 But, normally, the inspectors would be
2 going off of the previously approved farm plan or
3 site plan, and then just going out in the field and
4 verifying that was actually installed per plan.

5 Relative to reliance on Department of
6 Agriculture, again, they are a relatively new
7 department. They're still getting staffed up. And
8 so I do foresee, again, both departments
9 collaborating as time moves on.

10 And, you know, there is the potential of --
11 of inspectors for that other department potentially
12 taking on what our inspectors have historically done.
13 I -- I just can't speak to it right now since it's
14 still -- this is still evolving.

15 COMMISSIONER DEAKOS: Okay. Thank you for
16 that. If I could, just one last question.

17 CHAIR PALI: Yes, please.

18 COMMISSIONER DEAKOS: Maybe this for the
19 director, just -- it sounds like there has been some
20 modification based on interpretation of the lot of
21 what is usable? They've made adjustments. I assume
22 that was at the director level.

23 I'm just curious, how do they assess what
24 is usable ag? Is that required training? Or can
25 anybody pretty much identify what's usable?

1 ACTING DIRECTOR SMITH: Yeah. In many
2 municipalities, the definition in the code already
3 calls out things like steep slopes, wetlands,
4 floodplains, other habitat sensitive areas. It's
5 just you know, in this circumstance, that wasn't
6 precisely called out.

7 And so in the drafting of the the
8 amendments, we did have some discussion with the
9 Department of Agriculture, and they did chime in
10 on -- on their proposed changes. So it's -- it's not
11 like someone just arbitrarily makes a decision.

12 Normally, there would be some caveats on
13 what -- listening from the construction side of
14 things, what really would be -- you know, shouldn't
15 be considered an area that will rebuild. And then of
16 course, on the ag site, areas that we probably would
17 not want earth disturbance such as culturally
18 sensitive areas or areas that are prone to flooding.

19 So this, I believe, just provides a little
20 bit more clarity on what the director or the designee
21 should -- should ultimately be looking at, you know,
22 in making that determination. Hopefully that
23 answered your question.

24 COMMISSIONER DEAKOS: Yes. Thank you,
25 Director. Thank you, Chair.

1 CHAIR PALI: And (no audio) attached with
2 the documents and department's notes. There was the
3 department of ag letter, second to the last, and it
4 had really great comments and input so if you want to
5 refer to that as well.

6 Any other questions, commissioners? Vice
7 Chair, do you have questions for Greg or Director?

8 VICE CHAIR THAYER: Oh, my question was
9 going to be about the department of ag being able to
10 do the inspection for usability, so it was answered.

11 CHAIR PALI: Okay. Great.

12 Commissioner Thayer? I mean, sorry,
13 Commissioner Lindsey? Any questions?

14 COMMISSIONER LINDSEY: No questions. No.

15 CHAIR PALI: Okay. Okay. Commissioner
16 Thompson?

17 COMMISSIONER THOMPSON: No questions.

18 CHAIR PALI: Okay, I have a couple because
19 it's best to do the questions before we deliberate.
20 I just want to make sure that I understand the
21 Planning Department's recommendation. And, Greg, you
22 mentioned that it was under Alternative 2.

23 So it looks like, and I just want you to
24 validate how I'm interpreting this, that the
25 department is not big on changing it to 51 percent

1 usage -- because usage is sort of lucrative -- that
2 they -- it looks like they've put in:

3 "Farm" means a lot on
4 which the majority --

5 And the definition of "majority" is at
6 least 50 -- well, 51 percent. But I think you note
7 somewhere that it's actually just 50, so it doesn't
8 necessarily have to be 51. But you're proposing
9 51 percent of the area. And it kind of goes on. And
10 then it says:

11 If it's determined by the
12 director that more than
13 49 percent --

14 So it's not saying that if a person has
15 identified that there's 25 percent unusable that they
16 would come and ask for the director for sort of a
17 variance or an exception or what that might be. The
18 recommendation from the department is saying that the
19 property has to be more than 49 percent of the lot
20 that is not usable. And then in yellow, you guys
21 have your packet of the slides, it defines what "not
22 usable" is.

23 Am I interpreting the recommendation for
24 the department correctly?

25 MR. PFOST: Yes, that is correct. And the

1 reason why it's important that we looked at more than
2 49 percent, because right now, on your lot, you have
3 to farm at least 51 percent.

4 So if you had a gulch or something on your
5 property that took up 20 percent, well, that
6 remainder of 49 percent that we're not requiring you
7 to farm already takes into account any gulches or
8 steep slopes and so forth.

9 You understand what I'm saying?

10 CHAIR PALI: So you've already given them
11 margin for the unusable land.

12 MR. PFOST: Yes.

13 CHAIR PALI: That's what you're saying.
14 There's a margin.

15 MR. PFOST: Thank you. That's -- that's a
16 better way to say it. Yes, thank you. And -- and
17 in -- but when we -- when -- when there is unusable
18 area that is more than 49 percent, meaning that you
19 can no longer farm 51 percent, we do see some merit.

20 And so then, in those cases, when it's more
21 than 49 percent, then we will allow you to exclude
22 that area that's more than 49 percent and then farm
23 the remainder -- not 51 percent of what's leftover,
24 but the remainder. If you only farm 51 percent of
25 what the remainder is, then your -- your farming is

1 significantly smaller amounts of land than what -- if
2 you just farm the remainder.

3 CHAIR PALI: So obviously minus their home,
4 then the rest of the land should be planted, and that
5 person will not meet 51 percent. But under the code,
6 there's an allowance for that, so that they're not in
7 this weird, sort of illegal, against the code sort of
8 disposition.

9 MR. PFOST: Yes.

10 CHAIR PALI: And then the other question I
11 had was on the farm labor dwelling.

12 That's funny, it does say "gross sales,"
13 and my eyes went right over that. I was like, man, a
14 farmer could make 35,000 a year? That's -- that's
15 pretty great. Okay, so that's good.

16 What are you going to have -- and this -- I
17 know, we're thinking code, and now this is
18 enforcement. But is it feasible to write into the
19 code that the owner who decides to do the farm labor
20 dwelling, that they would -- are we doing -- are we
21 expecting declarations?

22 Once we deal with interns and seasonal, is
23 there going to be expectations on what that looks
24 like? And is there a way that if we decide we want
25 to help enforcement with the expectation that we

1 could require certain declarations to be filed from
2 the -- the owner or the farm owner?

3 MR. PFOST: I think that, you know,
4 hearing some of the testimony that -- you know, if --
5 if it indeed -- I mean, I don't think the department
6 has a problem with interns or apprentices working on
7 farms or having families on farms, I think it's a
8 matter of the combination together, and then the
9 potential abuse is what we're trying to guard
10 against.

11 So I think if -- if -- if the -- and I
12 apologize for not proposing everybody's definition.
13 Maybe the department should have sort of worked
14 towards that. We could have actually went with
15 something with a revised definition that would have
16 worked.

17 But perhaps maybe it -- maybe it is
18 something that is declarations of folks that are
19 actually these interns or apprentices that we are --
20 somehow I can have an inspector verify that they are
21 actually doing what they say they're doing, and it's
22 not just somebody taking advantage of the system. So
23 that's the main concern that we're having. So that
24 may be a potential way of doing it.

25 If the commission likes, they could

1 actually forward that comment, I think, to the
2 council, if that -- if the Commission's up to doing
3 that. Then that may be a comment that -- of getting
4 around or addressing this particular issue. I think
5 that would be appropriate.

6 CHAIR PALI: Okay, great. Yeah. I
7 appreciate the highlights of the department's
8 recommendation to not approve the changes and, like,
9 the explanation of where the vagueness is. Though,
10 if there's a way that we, as a commission, in our
11 comments can sort of address these vagueness by
12 making it a little bit more specific and tangible
13 with some teeth, I think that could provide
14 clarification in our recommendation.

15 Okay, we'll go one more round to make sure
16 there's -- yep, VP Thayer?

17 VICE CHAIR THAYER: Thank you. I just
18 want to clarify that I heard this correctly, that for
19 the calculation of the land area that's to be used
20 for farming is net of the dwellings and buildings, or
21 just net of the dwellings?

22 MR. PFOST: Just the dwellings. The -- the
23 actual buildings -- any ag-related buildings are okay
24 to be within that area. So that's part of your farm,
25 in other words. That's why ag buildings are not --

1 that's why ag buildings -- and, actually, farm labor
2 dwellings is considered an ag building -- are not
3 required to meet a certain size requirement or count
4 against your size of your lot because they're part of
5 the ag operation. So it's part of the whole ag lot.
6 Does that makes sense?

7 VICE CHAIR THAYER: Yeah. Yeah. And so,
8 like, thinking in terms of pictures here -- so for
9 your Alternative 2 definition, you have a lot, and
10 then you would minus out whatever might be in a
11 gulch, and you minus out whatever is dwellings, and
12 then whatever chunk of the remainder you have left.
13 You use 51 percent of that?

14 MR. PFOST: No, you use the remaining
15 amount; not 51 percent, but the remaining amount
16 to -- for ag uses.

17 VICE CHAIR THAYER: Okay. Okay.

18 MR. PFOST: Yeah. So -- and that's only --
19 and that's only applicable when it's over 49 percent
20 of unusable area.

21 VICE CHAIR THAYER: Okay. Otherwise, you
22 have your whole lot. It's all theoretically usable.
23 And then 51 percent of that has to be farmed.

24 MR. PFOST: Yes, that's correct.

25 VICE CHAIR THAYER: Okay. Okay. Got it.

1 Thank you.

2 CHAIR PALI: And just for discussion
3 purposes, even if it's not all usable, I think what
4 Greg mentioned was that's why they only make you farm
5 51 percent because they're sort of giving you this
6 grace that a lot of areas may not be farmable.

7 So there'll be -- they'll fall into the
8 49 percent, which still gives the owner ability to do
9 51 percent of farming. So I kind of like that, but.

10 MR. PFOST: Correct.

11 CHAIR PALI: Yes, Commissioner Thompson?

12 COMMISSIONER THOMPSON: What if the lot's
13 20 percent farmable?

14 CHAIR PALI: Well, then it would meet the
15 49 percent of unusable. You go in to the director,
16 and then they'd want you to farm the 20 percent
17 because that's all you can farm. Yeah.

18 I'm sorry. I'll let you talk, Greg.

19 MR. PFOST: That is correct. That's
20 exactly correct. Thank you.

21 CHAIR PALI: Okay. I feel like I can see
22 it. Okay.

23 Commissioner Deakos, go ahead.

24 COMMISSIONER DEAKOS: Well, just on the
25 same lines, I guess, if they're 48 percent unusable,

1 they have -- they have to farm almost 100 percent of
2 their --

3 CHAIR PALI: I'm going to let Greg answer
4 this one.

5 MR. PFOST: Yeah. That is -- that is
6 correct. Yeah, they would -- if they were at 40%
7 unusable, that means they still have 51 percent that
8 they would be able to farm, and so they're still
9 underneath the existing codes. So yes.

10 And the whole reason why we worded it that
11 way is we thought that that would be more consistent
12 with the policies of the General Plan to try and
13 preserve and protect agricultural uses. If you use
14 the code as proposed, then you would be doing
15 51 percent of what is remaining. And you can see we
16 have far less amount of agricultural land that you
17 would be actively farming than what we would be
18 proposing as a recommended change.

19 COMMISSIONER DEAKOS: And a rare situation
20 where that would happen. And maybe the -- the other,
21 you know, 52 percent that's left, if there were
22 issues with farming, that they could have somebody
23 inspect and say, okay, yeah, we're going to reduce
24 that because it's not realistic to have you farm this
25 entire lot, something like that.

1 MR. PFOST: I would think if you're
2 that -- I would think that if you're that close to
3 49 percent, you can find another -- a little bit more
4 to help you out into -- you know what I mean?
5 It's -- it's -- you know, it's subject to
6 interpretation.

7 That's why we actually put the director in
8 there. I didn't want to have -- you know, I wanted
9 to have somebody that actually makes a determination
10 on this. So that's why the director's in there,
11 albeit I understand the (no audio) from the
12 agricultural department that might be able to assist
13 in that, that -- I think that's a good point.

14 COMMISSIONER DEAKOS: Thank you. Thank
15 you, Chair.

16 CHAIR PALI: Commissioner Lindsey?

17 COMMISSIONER LINDSEY: No question, Chair.

18 CHAIR PALI: Okay. We're going to wrap up
19 the question session. So any other rounds -- while
20 you guys think through that, I really like oversight.
21 And I feel like when you get two people, especially
22 from two different departments, involved, it really
23 helps to collaborate and have oversight. One's
24 oversight -- you know, one's observing the other, and
25 usually two don't go hand-in-hand to do something bad

1 usually.

2 So what it -- what are the dangers? Or
3 what are the cons, Greg, or even Director Smith, of
4 including "at the discretion of planning director and
5 the ag director"? Is there any drawbacks to
6 recommending that to council?

7 ACTING DIRECTOR SMITH: Greg, while you
8 ponder it, I just think, from a practical
9 perspective -- I mean, let's say you've got someone
10 who is eager to move forward with their -- their
11 permitting and approvals. Again, you hate to have
12 them --

13 CHAIR PALI: Wait for one another.

14 ACTING DIRECTOR SMITH: -- wait for one
15 person versus the other. I mean, I think if there is
16 a question or a concern that the planning director
17 would have, by all means, we would -- we would reach
18 out to the other department.

19 But also, you know, looking at the
20 definition of what would be usable or not, you may
21 have a director for Department of Agriculture who
22 maybe isn't aware of, like, culturally sensitive
23 areas. Maybe they're strictly ag-focused. And so,
24 again, they're not going to have the entire expertise
25 either.

1 CHAIR PALI: Yeah. And the truth is, even
2 aside from the merits of everything, you know, we all
3 live in a very small community, and there's lots of
4 pressures from the people in the community. And I
5 feel like when you have two, you just -- it just
6 protects the two.

7 I mean, we've -- we've heard accusations
8 constantly from the public negatively against
9 directors and directors in the past. And I feel
10 like, you know, putting two like this could help
11 eliminate those pressures, and it looks like we're
12 being above reproach.

13 So although it might delay a teeny bit, I
14 feel like that might be something that would be very
15 beneficial.

16 ACTING DIRECTOR SMITH: Yeah. So whether
17 you would want to put in both departments or planning
18 director in consultation with the director of ag --

19 CHAIR PALI: Oh, I like that. I like that,
20 "consultation," but I would want two signatures, you
21 know what I'm saying? I'd want two signatures.

22 Is that -- what do you guys think about
23 something like that?

24 ACTING DIRECTOR SMITH: You know, just
25 from a practical standpoint, it's going to require a

1 little bit more coordination between the departments.

2 CHAIR PALI: Okay.

3 ACTING DIRECTOR SMITH: And again, we --
4 you know, you hear testimony where -- again, it could
5 be something from the department's perspective where
6 maybe someone made the wrong call. You know, we see
7 a full spectrum.

8 There's a farm plan that was being
9 submitted the last couple of months that I looked at,
10 and -- and what was depicted was this huge gulch.
11 And then when you actually went out and looked at the
12 terrain, it was a very gradual slope, very farmable.

13 CHAIR PALI: Okay.

14 ACTING DIRECTOR SMITH: So, again, there's
15 going to be some discretion by the departments -- or
16 the designees on -- just to gut-check what -- what
17 actually seems feasible.

18 We hear from a lot of small farmers, too.
19 People get very creative on small lots on difficult
20 terrain. We just don't want to make it so burdensome
21 that, again, ag will never happen. Both departments
22 wants the ag --

23 CHAIR PALI: Yeah.

24 ACTING DIRECTOR SMITH: -- happen to this
25 much extent that we can support it.

1 CHAIR PALI: Okay. Thank you. Okay.

2 Last round of questions. VP Thayer?

3 VICE CHAIR THAYER: I don't think I have
4 any more questions.

5 CHAIR PALI: Great. Thank you.

6 Commissioner Lindsey?

7 COMMISSIONER LINDSEY: (Shakes head side to
8 side).

9 CHAIR PALI: Commissioner Deakos?

10 COMMISSIONER DEAKOS: (Shakes head side to
11 side).

12 CHAIR PALI: Commissioner Thompson? Okay.
13 I have no further questions.

14 All right. We'll open the floor for a
15 motion. And it's gridlock, guys, so we'll see how
16 this goes.

17 Yes, Commissioner Deakos?

18 COMMISSIONER DEAKOS: Just a clarification
19 because all of this is lumped into one vote; right?
20 Do we need to go in to each one a little bit, just to
21 pick the right alternatives?

22 CHAIR PALI: Mr. Hopper, could we take the
23 definition of farm -- "farm labor dwelling" and the
24 definition of "farm," can we do them separately or do
25 we have to do them together?

1 MR. HOPPER: I think your action would be
2 in -- in one motion, but you could have different
3 recommendations for each part.

4 CHAIR PALI: Okay.

5 MR. HOPPER: And you could say, do XYZ with
6 this section, do a different thing with the other
7 section, et cetera.

8 CHAIR PALI: Okay. Very good. Okay. So
9 since -- I think farm -- wait. Which one's first?
10 Oh, farm -- farm labor dwelling is first. Okay.

11 So we can do farm -- farm labor dwelling
12 first.

13 So this is the big one because this one is
14 saying, are we going to include a tiny little word
15 called "usage" -- or "usable." Sorry, "usable." Are
16 we going to add it or are we not going to add it? Or
17 we don't do it; we're not the final authority.

18 We're just recommending, but are we going
19 to recommend to council that we agree that we should
20 add usable -- so 51 percent only of the usable spot?
21 Or should we keep it and take department's
22 recommendation? Or should we do nothing? Which
23 means leave code as is.

24 Yes, VP Thayer?

25 VICE CHAIR THAYER: I would go with a

1 motion to recommend the department's Alternative 2
2 definition of a farm.

3 CHAIR PALI: Okay. Do I have a second? If
4 not, I'll second. Okay, Lindsay is a second. All
5 right. You want to speak to it? Move on?

6 VICE CHAIR THAYER: Oh, sure. I would say
7 that this, I think, best achieves the compromise
8 across everything we've heard from all the testifiers
9 that -- you know, if you have a really challenging
10 piece of land to work with, that you shouldn't be
11 pressed to use portions of it that aren't (no audio)
12 because I know somebody who has an ag lot that most
13 of it is in gulch, but she's a beekeeper. So it
14 actually works for her that the bees have access to
15 all the wild gulch area.

16 But that being the case, I understand, you
17 know, what Autumn Ness brought up in her testimony,
18 that a lot of ag land is, like, really hard to use
19 lands; that it would be, you know, another challenge
20 to overcome for somebody to try and use 51 percent of
21 that area.

22 But, like I said, I think this
23 Alternative 2 gets at a compromise of, you know,
24 pushing farmers to maximize whatever land is usable
25 while giving allowance for portions that are not.

1 CHAIR PALI: Well said. Lindsey, do you
2 have any additional comments?

3 COMMISSIONER LINDSEY: (Shakes head side to
4 side).

5 CHAIR PALI: Okay. Comments on the floor.
6 Deakos and Thompson? Commissioner Deakos.

7 COMMISSIONER DEAKOS: Yeah. Thank you,
8 Chair. I liked what you suggested earlier about
9 having some oversight in that director's decision.

10 I don't know if that would be a friendly
11 amendment at this point where if it comes to the
12 point where there's determination of what the usable
13 lands are, there's -- you know, we've had other
14 situations where the director, not that we have any
15 concerns about this director, but there's a lot of
16 power, and if somebody leaned into the gentleman
17 estate side, they have a lot of power to decrease
18 that usable area.

19 So we wanted to avoid that potential
20 pitfall, especially with some of the testimony. So I
21 kind of like what you said about having some
22 department of ag oversight in the decision of what is
23 usable.

24 CHAIR PALI: Okay. So in this particular
25 language, it does say:

1 Subject to the approval of
2 the director.

3 So are you recommending a friendly
4 amendment to say that -- "subject to the approval of
5 the director," and, well, we should say, planning,
6 planning director -- and them taking counsel with the
7 department of ag? Or how would we word that?

8 What would you think the best way to word
9 that, Mr. Smith? In consultation with department of
10 ag, what do you think about that? Because I think
11 authority-wise -- I don't know, because they're such
12 a new department. I don't know where they land in
13 the authority.

14 So I don't know that ag would have a higher
15 authority particularly, but if we -- looping them in
16 that the director has to be in consultation with
17 them, then you -- we get the oversight. We get -- we
18 need -- yep.

19 So are you okay with that language, Deakos?

20 COMMISSIONER DEAKOS: Yeah, I would defer
21 to director or corp counsel about the language.

22 CHAIR PALI: Okay. He's putting some
23 language together. So, okay. Do you agree with that
24 addition, Vice Chair Thayer and Commissioner Lindsey?

25 Thumbs up?

1 VICE CHAIR THAYER: Yeah. I would say
2 yeah. Thank you for bringing that up. I actually
3 wrote that down to allow some way for the ag director
4 to weigh in on usability and feasibility.

5 I don't -- I'm wary of wordsmithing because
6 I think that's counsel's thing to do, but just to
7 give them the concept that we want consultation to
8 happen.

9 CHAIR PALI: Perfect. Okay. So
10 Mr. Smith's working on that. Great. Any other
11 discussion? Nope? Okay. Well, we'll take a roll
12 call vote, Director.

13 ACTING DIRECTOR SMITH: All right. Member
14 Thompson?

15 COMMISSIONER THOMPSON: Aye.

16 ACTING DIRECTOR SMITH: Member Deakos?

17 COMMISSIONER DEAKOS: (Gives thumbs up
18 gesture).

19 ACTING DIRECTOR SMITH: Thumbs up. His
20 mic's off.

21 Member Lindsey?

22 COMMISSIONER LINDSEY: Aye.

23 ACTING DIRECTOR SMITH: Vice Chair Thayer?

24 VICE CHAIR THAYER: (Inaudible.)

25 CHAIR PALI: Vice Chair Thayer?

1 ACTING DIRECTOR SMITH: Vice Chair Thayer?
2 You're supportive of it?

3 VICE CHAIR THAYER: Yeah, sorry. I said
4 "aye."

5 ACTING DIRECTOR SMITH: Oh, I'm sorry.

6 CHAIR PALI: Sorry. We didn't get you.

7 ACTING DIRECTOR SMITH: And, Chair?

8 CHAIR PALI: Yes, aye.

9 Okay. So the second part of this action
10 will be the definition of "farm labor dwelling."
11 This is a little meatier because there's a lot of,
12 like, requirements and expectations to meet the
13 definition of "farm labor dwelling."

14 So, if you guys have questions -- I think
15 we did questions on both already. Okay. So we'll
16 wait for a motion on that.

17 Oh, Vice Chair Thayer?

18 VICE CHAIR THAYER: Thank you. I would
19 make a motion to recommend approval of the amendment
20 as presented by council. Yeah.

21 CHAIR PALI: Second? Okay. Ashley is
22 seconding.

23 Comments?

24 VICE CHAIR THAYER: Hold on a second. On
25 the shelf over there. Sorry, my daughter just came

1 up for something for me.

2 My thoughts are that I think this was
3 written, hearing from the needs of farmers and
4 ranchers and, like, interns and apprentices, like, it
5 was brought up in testimony. They're kind of like
6 the gateway to getting into a space where you can
7 have, like, full-time employees.

8 But just like anything, I think you need,
9 like, a ladder to get up to that level, and this
10 would do that. And, like, conservation even is kind
11 of a similar thing where you have interns as part of
12 your field crew that allows you to have training and
13 build up your crew, but it's so hard to find them
14 because you can never find housing for people who are
15 paid very little.

16 And so this would be an avenue for a farm
17 to, one, get, you know, affordable labor; two, be
18 able to train up a workforce; three, be able to give,
19 hopefully, local people housing with their families
20 that so many people need. It's like a win-win
21 situation all around is my thoughts.

22 CHAIR PALI: Okay. Commissioner Lindsey,
23 any comment?

24 COMMISSIONER LINDSEY: There isn't
25 anything I need to add to that. Thank you.

1 CHAIR PALI: Okay. Commissioner Deakos or
2 Commissioner Thompson, anything? Any comments?

3 COMMISSIONER DEAKOS: Just for
4 clarification, I didn't think the department accepted
5 the full definition. I'm a little confused which --
6 which definition we're --

7 CHAIR PALI: Yeah. We're under the
8 definition of "farm labor dwelling." And if you go
9 to the slide packet, it's the second-to-the-last
10 page.

11 And, also, they point to looking at ag
12 department's response as well as someone else's
13 response. Yeah, the state -- the state and the ag
14 department chimed in.

15 So if you need a minute, I can give you a
16 minute because I've got a couple things.

17 COMMISSIONER DEAKOS: Yeah, if I could get
18 a minute. Thank you.

19 CHAIR PALI: Yeah. Okay. So I think for
20 discussion purposes, I would be open to supporting
21 this. However, I would want to include that if we're
22 going to keep interns and apprentices in, that the --
23 we would include in the code that the farm owner
24 would have to maintain records of written agreements
25 for all of the interns and apprentices.

1 And in the agreements, I would want to see
2 the expectation exchanged between the two in writing,
3 meaning how long are you going to stay? And in
4 exchange, how many hours are you going to work? At
5 minimal.

6 And then, also, with some kind of -- you
7 know, it's like a written agreement/contract that,
8 you know, if they do not perform, then they would be
9 removed from the premises.

10 I am also in the same sort of chord, really
11 trying to wrestle with the ag department's comment.
12 They're stating, without a pay-for-work requirement:

13 How will interns and
14 apprentices be
15 distinguishable from
16 visitors and others who
17 pay rather than to be paid
18 to work or learn on a farm
19 or ranch.

20 Did I -- yeah. Our concern is that
21 heightened if the farm or ranch consistently,
22 exclusively, or primarily of the agricultural land
23 conservation activities in any -- oh, that's a
24 different subject. So basically, they're saying,
25 like, just a pure exchange of labor and housing

1 versus actually just do a pay-for-work.

2 But I feel like if we did written
3 agreements -- because, to be honest, like, I don't
4 know that I'm necessarily opposed for people coming
5 here and working, assuming that we don't have labor
6 to work.

7 Now, we know we have labor to work, but I
8 do understand, as a business owner, the pressures of
9 finding the laborers to work. So there's -- I mean,
10 everywhere I go, I'm like, you know, workers needed,
11 workers needed, workers needed, you know. So
12 although we have the people to work for whatever
13 reason, there is a shortage of physical bodies.

14 And so I would hate for the farm to be --
15 like suffer because in this season -- and that's
16 what's beautiful about interns and seasonal. If we
17 do find local laborers that want to have more
18 long-term help, then our interns and seasonal, they
19 go away; we don't need them because now we can commit
20 to people here.

21 So if you would be open, Vice Chair, for
22 that friendly amendment to add in about the interns
23 and apprenticeship. And they would just have to have
24 it on file. They would maintain the records on file
25 so that if inspectors, for whatever reason, come up

1 for whatever reason, that they could just say, hey,
2 let me see what you got going on. That's one.

3 VICE CHAIR THAYER: Yeah. Thank you. And
4 that was why I asked that first testifier if they
5 have paperwork, and if they don't, if it -- if they
6 would be able to do that. So yes, I am in full
7 support of that. Thank you.

8 CHAIR PALI: Okay, great. And then, let's
9 see. So, internships, apprentice. I mean, I don't
10 know. We could also put language in there with
11 preference to residents if you guys want to. So
12 we're not excluding that. You know, we could tell
13 council that we do want to put emphasis on -- but I
14 feel like that's an automatic, but I don't know.
15 Okay.

16 And the only other issue I think was --
17 that's fine. Oh, the department of ag is stating
18 that we should exempt usage -- usages -- uses --
19 uses. People might call agricultural land
20 conservation activities such as improvement of air
21 quality or habitat restoration -- they're saying that
22 these should potentially be excluded.

23 Our concern is (indiscernible) am I reading
24 that correctly? And so they're letting us know that
25 we should consider calling that out? I don't want to

1 ignore that.

2 Can you -- can you clarify that, Greg?

3 MR. PFOST: Yeah. And this is the State
4 Department of Agriculture that made this comment.
5 And it was basically that -- yeah, they were looking
6 at -- the definition of "farm" includes -- says,
7 "agriculture" and "agricultural land conservation."

8 So when you actually -- and that's -- you
9 should be doing one of those two things on your farm;
10 right? So we have separate definition for
11 "agriculture," and we have a separate definition for
12 "agricultural land conservation."

13 And the definition for "agricultural land
14 conservation" includes doing things that promote air
15 quality. And I can't remember the other term that
16 they used -- habitat restoration -- as -- and so they
17 were concerned that a farm shouldn't be doing
18 agricultural land conservation for the pure fact of
19 just improving air quality.

20 So they didn't see the -- the jump from air
21 quality to actually doing a farm. And so they
22 couldn't make that -- that -- and so they're
23 recommending making a change to the definition of
24 "agricultural land conservation" to remove that from
25 there.

1 And that ties into the farm labor dwelling
2 because then they were concerned about interns or
3 apprentices working on a farm that is purely devoted
4 to improving air quality and not really doing
5 farming. So that -- that was kind of their
6 rational -- that's -- that's what they were thinking.

7 And that really goes to then really --
8 probably looking -- which probably is a separate
9 bill, looking at the definition of "agricultural land
10 conservation," and should that (no audio) --

11 CHAIR PALI: Okay. Well, unless you say,
12 Greg or Director Smith, that you've got a lot of
13 problems with people claiming air quality right now,
14 I think that we can leave that for the definition and
15 where the ordinance is, I feel comfortable to --

16 MR. PFOST: Yeah. I think that's a job for
17 now. I think they were making the jump, though, to
18 have the same kind of concerns, then, about interns
19 working air quality, and does that lead to -- you
20 know, that's -- that was their main concern. So I
21 think I'll leave it to another day, would be a good
22 decision.

23 CHAIR PALI: Great. Okay. I think that
24 was my only friendly amendment. Anybody else? Back
25 to Deakos.

1 Deakos, do you have?

2 COMMISSIONER DEAKOS: Yeah, just to follow
3 up on that. So the -- the idea that someone would be
4 farming just because they have vegetation that's
5 cleaning the air, I presume that was their concern,
6 but somehow, that wouldn't pass muster with the
7 planning department? Is that what you're saying?

8 MR. PFOST: Yeah. I think we would -- I'm
9 not sure the planning department's ever faced that
10 issue, but I think that would be a problem, you know,
11 to claim that that's -- that's what your ag -- that's
12 what your farm is, is improving air quality.

13 So I think that would be a problem. But I
14 think it is something that needs to be changed or
15 addressed later on.

16 CHAIR PALI: Specifically in our
17 conservation activities.

18 MR. PFOST: Yes.

19 COMMISSIONER DEAKOS: So if I go just to
20 the few things that are a part of this, I do think
21 that could be a loophole that people try to take
22 advantage. So I hope -- I would like to see that ag
23 land conservation be addressed.

24 I -- I have no problem with the part-time,
25 the interns, the apprenticeships, despite, you know,

1 it might be -- could be a way people would have used
2 it, it sounded like that was not a concern from the
3 farmers that people would be abusing these farm labor
4 dwellings.

5 And then what was the other one -- oh, I
6 think the last one was there was a lot of talk about
7 making it local. It certainly would address some of
8 the abuse if these were local laborers. You know, it
9 would be hard to bring people or your vacation rental
10 outside.

11 But I also, as a nonprofit, know how hard
12 it is to find folks. Maybe it's for a two-week
13 period, short periods. You know, you can't always
14 get -- so I'd hate to penalize farmers for -- you
15 know, some -- some like the WWOOFers, some don't.
16 So, I'm on the fence about that. That's -- that's
17 all I got.

18 CHAIR PALI: Okay. Commissioner Thompson?

19 COMMISSIONER THOMPSON: Thank you, Chair.
20 Nothing more to add.

21 CHAIR PALI: All right, last round. Any
22 other comments? Otherwise, we'll go to a vote.

23 Yes, Thayer?

24 VICE CHAIR THAYER: Thank you. To the
25 point about, you know, like encouraging the hiring of

1 Hawaii residents, I am -- I think I'm with
2 Commissioner Deakos on this in that I wouldn't want
3 to, like, penalize anyone. Because from what we've
4 heard, you know, it sounds like it's hard enough to
5 find anybody.

6 And so if there's a way to, say, like
7 incentivize hiring Hawaii-based but not penalize you
8 if you don't. And I don't know that that gets
9 written in here. Like maybe it's in, you know --

10 CHAIR PALI: Well, earlier -- Vice Chair
11 Thayer, earlier I made a comment that we could put in
12 there that we would recommend that they would
13 prefer -- like we'll give preference to the residents
14 for jobs first.

15 VICE CHAIR THAYER: Yeah.

16 CHAIR PALI: I think we can -- we
17 absolutely can recommend that to council, that
18 there's language in there for the farm owners that
19 there's preference to residents.

20 VICE CHAIR THAYER: Okay. Yeah. Yeah, if
21 that's possible, I'm open.

22 CHAIR PALI: Now, hopefully we can task
23 the ag department to start with these incentives;
24 right? Even grant money or whatever, to help them,
25 right, so it's a win-win.

1 Yes, Deakos?

2 COMMISSIONER DEAKOS: Thank you, Chair.
3 I -- probably realistically -- from an enforcement
4 side, you know, if these are quick turnovers and be
5 able to determine their residency, if they're real
6 and checking contracts. So it's probably a huge
7 challenge to try to enforce all that. But I
8 appreciate what we're trying to do.

9 CHAIR PALI: I feel like, as we've been --
10 or at least, I've been sitting here for over five
11 years, I feel like sometimes the intent we've already
12 seen in past cases gets lost when we just read code.

13 So I feel like if there's a way we can just
14 give a glimpse of what the intent was for the code in
15 the code without making it too wordy and writing
16 stories and essays, I feel like that's helpful for
17 the people that will be looking and seeing at this
18 after we've gone. All right.

19 Well, you guys ready for a vote?

20 Mr. Smith, is it too much to ask to sort of
21 recap what we're voting on right now?

22 ACTING DIRECTOR SMITH: All right. So
23 we've got the language in the bill right now. The
24 comments that came out that we can also transmit is,
25 again, basically the requirements of ensuring the

1 farm owner to maintain records or agreements,
2 including but not limited to hours of work for the
3 farm labor, which would include the insurance and so
4 forth; also giving preference to local residents for
5 the farm labor over people from off island and,
6 again, whether that results in another filing of
7 declarations and so forth.

8 CHAIR PALI: Since there's not really an
9 incentive attached yet, then I don't --

10 ACTING DIRECTOR SMITH: And as of right
11 now, we don't have an incentive but (Indiscernible.)

12 CHAIR PALI: And then the big part is that
13 we're -- she's -- the motion is adopting the
14 council's with this addition.

15 ACTING DIRECTOR SMITH: Yeah. So
16 initially, I had the adoption of the definition of
17 "farm labor" as proposed.

18 CHAIR PALI: I think she just went with the
19 regular --

20 COMMISSIONER THOMPSON: Is it number two,
21 or --

22 CHAIR PALI: The first one was number two.
23 The second one was just their recommendation with
24 some clarifications.

25 ACTING DIRECTOR SMITH: All right. It was

1 just Planning that had some concerns on, again, sort
2 of the enforcement end.

3 CHAIR PALI: Okay. Everybody understands
4 what we're voting on? All right. Go for it.

5 ACTING DIRECTOR SMITH: All right.
6 Thompson?

7 COMMISSIONER THOMPSON: Aye.

8 ACTING DIRECTOR SMITH: Deakos?

9 COMMISSIONER DEAKOS: Aye.

10 ACTING DIRECTOR SMITH: Lindsey?

11 COMMISSIONER LINDSEY: Aye.

12 ACTING DIRECTOR SMITH: Thayer?

13 VICE CHAIR THAYER: Aye.

14 ACTING DIRECTOR SMITH: And, Chair?

15 CHAIR PALI: Aye.

16 ACTING DIRECTOR SMITH: All right, motion
17 passes.

18 CHAIR PALI: I agree. Awesome. Good
19 work, you guys. Good conversations. Listen,
20 conversations are good. Teasing things out are good.
21 Changing your mind is okay, too. I love it. Thank
22 you for your commitment today.

23 We're going to just wrap it up by looking
24 at the exemptions report, the last section of our
25 agenda: Directors Report, the SMA Minor Report, and

MOANA M. LUTEY
County Clerk



RICHELLE M. THOMSON
Deputy County Clerk

OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

OFFICE OF THE MAYOR

23 OCT 23 4:03:03

RECEIVED

October 23, 2023

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Mayor Bissen:

Transmitted herewith is a certified copy of Resolution No. 23-220,
which was adopted by the Council of the County of Maui, State of Hawaii, on
October 20, 2023.

Respectfully,


MOANA M. LUTEY
County Clerk

/lks

Enclosure

Ag	<input checked="" type="checkbox"/>
Env Mgmt	<input type="checkbox"/>
Finance	<input type="checkbox"/>
Fire	<input type="checkbox"/>
Hsg & HC	<input type="checkbox"/>
Liquor	<input type="checkbox"/>
Parks & R	<input type="checkbox"/>
Personnel	<input type="checkbox"/>
Planning	<input checked="" type="checkbox"/>
Police	<input type="checkbox"/>
Prosecutors	<input type="checkbox"/>
Public W	<input type="checkbox"/>
Transp'n	<input type="checkbox"/>
Water S	<input type="checkbox"/>
Mgmt	<input type="checkbox"/>
Mayor	<input type="checkbox"/>
Budget	<input type="checkbox"/>

Resolution

No. 23-220

REFERRING TO THE LĀNA'I, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A
PROPOSED BILL TO AMEND THE DEFINITION
OF "FARM" AND "FARM LABOR DWELLING"

WHEREAS, the Council is considering a proposed bill to amend the definition of "farm" and "farm labor dwelling" in the Comprehensive Zoning Ordinances; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require the appropriate planning commissions must review proposed land use ordinances and amendments and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE DEFINITIONS OF 'FARM' AND 'FARM LABOR DWELLING' IN THE COMPREHENSIVE ZONING ORDINANCE," a copy of which is attached as Exhibit "1," to the Lāna'i Planning Commission, the Maui Planning Commission, and Molokai Planning Commission for appropriate action under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, for review and comment; and
2. That it respectfully requests the Lāna'i, Maui, and Molokai Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible;
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, the Lāna'i Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

Resolution No. 23-220

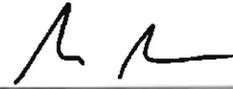
APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

paf:clm:23-266a

INTRODUCED BY:

A handwritten signature in black ink, consisting of a stylized 'G' followed by a cursive 'A' and 'B'.

GABE JOHNSON

ORDINANCE NO. _____

BILL NO. _____ (2023)

A BILL FOR AN ORDINANCE AMENDING THE DEFINITIONS OF “FARM” AND
“FARM LABOR DWELLING” IN THE COMPREHENSIVE ZONING ORDINANCE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 19.04.040, Maui County Code, is amended as follows:

1. By amending the definition of “farm” to read:

““Farm” means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation.”

2. By amending the definition of “farm labor dwelling” to read:

““Farm labor dwelling” means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture.] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands, under section 205-45.5, Hawaii Revised Statutes.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This Ordinance takes effect on approval.

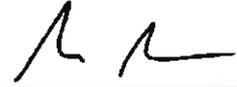
Exhibit “1”

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:clm:23-266b

INTRODUCED BY:



GABE JOHNSON

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 23-220, was adopted by the Council of the County of Maui, State of Hawaii, on the 20th day of October, 2023, by the following vote:

MEMBERS	Alice L. LEE Chair	Yuki Lei K. SUGIMURA Vice-Chair	Tom COOK	Gabriel JOHNSON	Natalie A. KAMA	Tamara A. M. PALTIN	Keani N. W. RAWLINS-FERNANDEZ	Shane M. SINENCI	Nohelani U'U-HODGINS
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye



COUNTY CLERK