

**HOUSING AND LAND USE COMMITTEE**  
Council of the County of Maui

**MINUTES**

**May 15, 2024**

**Online via Teams Link**

**CONVENE:** 9:02 a.m.

**PRESENT:** Councilmember Tasha Kama, Chair  
Councilmember Tom Cook, Vice-Chair  
Councilmember Gabe Johnson, Member  
Councilmember Alice L. Lee, Member  
Councilmember Tamara Paltin, Member  
Councilmember Keani N.W. Rawlins-Fernandez, Member  
Councilmember Shane M. Sinenci, Member  
Councilmember Yuki Lei K. Sugimura, Member  
Councilmember Nohelani U‘u-Hodgins, Member (In 9:20 a.m.)

**STAFF:** Paige Greco, Legislative Analyst  
Ellen McKinley, Legislative Analyst  
Carla Nakata, Legislative Attorney  
Richard Mitchell, Legislative Attorney  
Pauline Martins, Senior Committee Secretary  
Jennifer Yamashita, Committee Secretary  
Lenora Dinneen, Council Services Assistant Clerk

**Additional Staff:**

Executive Assistants to Councilmember Kama

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Executive Assistant to Councilmember Paltin

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Roxanne Morita, Council Aide, Lāna‘i Residency Area Office

Mavis Oliveira-Medeiros, Council Aide, East Maui Residency Area Office

Bill Snipes, Council Aide, South Maui Residency Area Office

Jade Rojas-Letisi, Council Aide, Makawao-Ha‘ikū-Pā‘ia Residency Area Office

**ADMIN.:** Kristin Tarnstrom, Deputy Corporation Counsel, Department of the Corporation Counsel  
Chris Nahulu Nunokawa, Deputy Corporation Counsel, Department of the Corporation Counsel  
Gregory Pfost, Administrative Planning Officer, Zoning Administration and Enforcement Division, Department of Planning  
Rogerene “Kali” Arce, Director, Department of Agriculture

**OTHERS:** Steve Allen  
Tracy Stice  
Laura Stice  
Jerry Weaver, Jr.  
Zhantell Lindo  
Jasee Law  
Seth Weaver  
Plus (4) other people

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

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CHAIR KAMA: . . .*(gavel)*. . . Will the Housing and Land Use Committee meeting of May 15th, 2024, come to order. It is now 9:02 a.m. I am Tasha Kama, Chair of the Housing and Land Use Committee. This online meeting is being conducted in accordance with the Sunshine Law. Members, when your name is called, if you’re not with me in the Council Chamber, please identify by name who, if anyone, is in your workspace with you today, and minors do not need to be identified. Any questions,

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Members, before we continue? Thank you. So, good morning, aloha kakahiaka, and ulaakut to you, Committee Vice-Chair Tom Cook.

VICE-CHAIR COOK: Aloha kakahiaka, and good morning.

CHAIR KAMA: So, again, to Council Chair Alice Lee, ulaakut, and so, tell us what it means and where it's from.

COUNCILMEMBER LEE: Yes. Ulaakut, Chair. So, if you're this weekend traveling to Alaska, and you're stopping over going to France, so when you land in Alaska, you say ulaakut to everyone there, and then when you move on...fly on to gay Paris, then you say oh là là.

CHAIR KAMA: Okay. Okay. So, you want to land in ulaakut land --

COUNCILMEMBER LEE: Yeah.

CHAIR KAMA: -- or oh là là land? Okay.

COUNCILMEMBER LEE: Well, anyplace land.

CHAIR KAMA: Yeah, you just want to land. Okay. Oh, want to say aloha kakahiaka and ulaakut to Council Vice-Chair Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Okay. I got to say aloha. You say any land, right?

CHAIR KAMA: Yeah, any land.

COUNCILMEMBER SUGIMURA: So, ulaakut, oh là là, aloha. And Alice Lee, thank you very much for always making us laugh as we start our busy...busy meeting. Thanks.

CHAIR KAMA: Okay. That was wonderful. And so, we're going to go and say aloha kakahiaka and ulaakut to our Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: Aloha kakahiaka and ohayo gozaimasu.

CHAIR KAMA: Oh, that's a good one too. Okay. So, let's continue on to hear what Mr. Johnson is going to welcome us with this morning. Ulaakut, aloha kakahiaka. What?

COUNCILMEMBER JOHNSON: There's so many options on the table. Ulaakut, Chair, Councilmembers, community members. There's no testifiers at the Lāna'i District Office, and I'm here and ready to work. Mahalo.

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CHAIR KAMA: Okay. So, we're going to continue on with Councilmember Keani Rawlins-Fernandez. Ulaakut, aloha kakahiaka.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair, mai Moloka'i Nui a Hina. I'm at the Moloka'i District Office, alone on my side of the office, and we currently have no testifiers here.

CHAIR KAMA: Thank you. We also have Councilmember Shane Sinenci. Aloha, Shane. Are you there? I see your camera's not on. Okay. We'll come back to Member Sinenci.

COUNCILMEMBER SINENCI: Chair --

CHAIR KAMA: Oh, yes. Yes.

COUNCILMEMBER SINENCI: -- aloha.

CHAIR KAMA: Oh, aloha.

COUNCILMEMBER SINENCI: Aloha.

CHAIR KAMA: Okay. We hear you, but I don't see you...but I know you're there.

COUNCILMEMBER SINENCI: Aloha kakahiaka kākou, and ulaakut. Here at my home office, I'm here by myself. No testifiers in Hāna. And yoi tabi o.

CHAIR KAMA: Oh, maika'i. And so, we have Councilmember Nohe U'u-Hodgins. Good morning. I don't see you on camera either. Does anyone see her? But if not, we'll excuse her for now and welcome her when she actually arrives. We also have with us this morning from the Department of Planning Gregory Pfost. Aloha and good morning. Thank you for being here. And we have...yes?

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

CHAIR KAMA: Yes, she did say hello. Yeah. She said aloha. Thank you, though. We also have with us from the Department of Agriculture the Director, Kali Arce. Good morning. We also have from the Department of Corporation Counsel Mr. Nahulu Nunokawa, aloha kakahiaka. And we have with us our Committee Staff, Ellen McKinley, our Legislative Analyst. Good morning.

MS. MCKINLEY: Good morning, Chair. Good morning, Members.

CHAIR KAMA: And then we also have with us Jarret Pascual, our other Legislative Analyst... no, we have Paige Greco. Welcome.

MS. GRECO: Good morning, Chair. Good morning, Members.

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CHAIR KAMA: Nice surprises this morning. And we have with our Senior Committee Secretary, welcome this morning, Ms. Pauline Martins. And then we have our Committee Secretary, Jennifer Yamashita. Thank you for being here this morning, Jennifer. And then we have our Legislative Attorney, Carla Nakata. I know you're online, Carla. Good morning.

MS. NAKATA: Good morning, Chair and Members.

CHAIR KAMA: And then we have our Assistant Clerk, Ms. Lei Dinneen, who's always out there in the lobby taking testifiers. So, please see the last page of the agenda for information on meeting connectivity. So, thank you, Members, for attending today's HLU meeting. I personally want to thank each and every one of you for the long hours that you have spent in your thoughtful deliberations, your difficult decisions, and efforts made to attend our budget process meetings. Polling for extra meetings so as to complete our work in a timely manner, all the while balancing your participation in the National Association of Counties conferences and committee meetings, the Western International Regional [sic] conferences and committee meetings, the Hawai'i State Association of Counties, submitting and attending testimonies to our State legislators, responding to your constituents, caring for your families, your Staff, and especially yourself. This is truly a labor of love coming from part-time Councilmembers. And as a full-time caregiver to a special needs adult, I'm grateful and proud of the work that we have all done, so let's continue to work for the good of all of Maui County.

**HLU-30: BILL 71 (2024), AMENDING SECTION 19.30A.050, MAUI COUNTY CODE, RELATING TO THE SIZE OF FARM DWELLINGS IN THE AGRICULTURAL DISTRICT**

CHAIR KAMA: And now, Members, today we have only one item on the agenda today, and that item is HLU-30, Amending Section 19.30A.050 of the Maui County Code, Relating to the Size of a Farm Dwellings in the Agricultural District. So, in accordance with the Sunshine Law, testimony can occur at the beginning of the meeting but cannot be limited to the start of the meeting. As we only have one item on the agenda today, we will only be taking testimony after the presentation. So, Committee Members, I will now proceed with our first and only agenda item, and we're going to begin with an opening presentation from Mr. Pfof. Mr. Pfof, will you proceed?

MR. PFOF: Yes. Thank you, Chair, Members of the Council. The item before you is a proposed bill for an ordinance to increase the size of a second farm dwelling from 1,000 square feet to 1,500 square feet. Next slide, please. The Council may recall that it's...it's reviewed this matter a couple of times before. Back in March of 2023, the ADEPT Committee actually reviewed this and forwarded a resolution to the Council, and then in September of 2023, the Council adopted the resolution, then forwarding this bill to the planning commissions. The item was then heard by the three planning

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commissions of Lānaʻi, Molokaʻi, and Maui on the dates as shown on the slide here. Next slide, please. I'd like to real briefly go over agricultural land use and the importance of retaining and encouraging agricultural lands in the County and how imperative that is to the County. As identified within the Maui...the Maui Island Plan and the Countywide Policy Plan, on this slide here, I've noted some of the slides that are, I think, important and relevant to maintaining agricultural lands and encouraging the preservation of agricultural lands in Maui County. Next slide here. And importantly, when we look at the General Plan and the policies associated with agricultural lands, we also have the implementation of those policies, and that's through Chapter 19.30A, the Agricultural Zoning District. And here, I identified the purpose and intent of the Agricultural District. As you can see, the purpose and intent also looks at preserving and protecting agricultural resources as an important aspect of...of...of Maui County, and there...therefore, implements those policies of the General Plan. Next slide, please. The...the Zoning Code in the Agricultural District also takes that further, like all of our zoning codes and issues...or identifies the principle uses, accessory uses, and special uses that are allowed in the district. In particular, in the Agricultural District, you can see that the principle uses are all agricultural related. It's only the accessory uses that identify development activity, which are, and I've highlighted the area--which are incidental and subordinate to, are customarily used in conjunction with a permitted principle use. So, this really shows you that the Zoning Code implements the General Plan by identifying that the principal uses in Agricultural Zoning District are agricultural-related. It's only the development activity that's secondary to that. Next slide, please. Within the Zoning Code it also, in the Agricultural District also identifies various development standards, such as the minimum lot area of two acres for an ag lot. It also identifies setbacks, lot widths, building height limits, and so forth. Importantly, the...the...actually third bullet point you see here is the maximum developable area, which is one of the development standards and it's 10 percent of the total lot area. And this applies to farm dwellings with which we're talking about today. So, both farm dwellings, the first and second farm dwelling combined, cannot exceed 10 percent of the lot area of the lot. The next slide, please. Additionally, State law also references farm dwellings. However, State law does not regulate the size of farm dwellings, the County does. It specifies that farm dwellings are accessory to farms, and farm dwellings are considered single-family residences, which is similar to what our Zoning Code establishes as well. Next slide, please. So, I'd like to just real quick, I...I hear this often, and some people get confused between what a farm dwelling is and a farm labor dwelling. There is a difference between the two. And today, we're talking about farm dwellings, not farm labor dwellings. We talked about that a couple of meetings ago. We discussed the definition of farm labor dwelling. But a farm dwelling is considered a single-family residence. There's no occupancy restrictions to it. A farm labor dwelling, on the other hand, is occupancy for agricultural employees and now, and their families, as we just adopted a recent change in that definition. Regarding farm dwellings, which is what we're talking today, you're allowed up to two farm dwellings permitted on a lot, provided that the farm dwelling is located and used in connection with the farm. And what that means is that you have to have at least 51 percent of the lot area where the farm and farm dwelling are located must be used for active

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agricultural use. So, if you're not doing active agricultural use on your farm, you should not be having a farm dwelling. You may have a farm labor dwelling because that's associated with your farming activity, but not a farm dwelling. The...and as I mentioned, the total maximum developable area of all farm dwellings cannot exceed 10 percent of the total lot area, and one of the two farm dwellings cannot exceed 1,000 square feet, which is the subject of the change. Next slide, please. The proposed ordinance amendment today is shown in the top portion of this slide, and basically, it is increasing the allowable second farm dwelling from 1,000 square...square feet to 1,500 square feet on the Islands of Lānaʻi and Maui. On the Islands [sic] of Molokaʻi, the...the Planning Commission recommended that the farm dwelling stay as currently approved, which is the second farm dwelling could be no larger than 1,000 square feet. So, that doesn't change for the Islands [sic] of Molokaʻi. That change was requested by the Planning Commission and is referenced in the revised bill before you, Bill 71. So, when the Planning Department reviewed this matter, what we do, we look at the General Plan, first of all, to make sure what are...what are the policies that govern agricultural use and is what is being proposed inconsistent with those policies. And that's what we evaluated, and...and specifically, those policies that I noted earlier, as well as the intent and purpose of the Zoning Code. So, specifically, will there be an impact to agricultural resources is what we're mainly concerned with. Next slide, please. With this particular bill, the Planning Department recommendation was to support the proposed bill. The Planning Department felt the increase in the size by 500 square feet of a second farm dwelling will not significantly impact agricultural...agricultural uses, and the main reason for that is because we still have the requirement for the total developable area of these farm dwellings at 10 percent. So, that Code is not changing. So, it...just increasing it by 500 square-foot, we didn't think that that was a significant increase. And I've provided an example in this slide where I've given an example of a two-acre lot, which was roughly around 87,000 square feet, would allow for, under the 10 percent rule, an 8,700 square foot farm dwelling and second farm dwelling combined in this total square footage. The current Code in this...in this example would provide for a 1,000 second farm dwelling, and up to a 7,700 square foot main farm dwelling. And the proposed Code amendment would simply increase the size of the second farm dwelling to 1,500 square feet, and then the main dwelling reduced by 500 square feet to 7,200 square feet. So, we didn't see a significant change in that, and therefore, that's why we felt that we could support that, specifically because the 10 percent rule is still in place. We also felt that the change is consistent with the Maui Code's intent to keep second farm dwelling as more of an incidental to the main farm dwelling or a smaller size. The Code amendment still does that by restricting the size to 1,500 square feet. Next slide, please. As I mentioned, the Planning Department reviewed...took this matter to the three planning commissions. The Lānaʻi Planning Commission held two meetings on the subject and recommended approval of the proposed bill. As I mentioned, the Molokaʻi Planning Commission recommended approval with the amendment to exempt Molokaʻi from this requirement and still retain the existing one...second farm dwelling at 1,000 square feet. The Maui Planning Commission recommended...or wanted to forward a few comments to the Council and also an amendment to the bill. The commission commented that the Council should consider the impacts of the bill on

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those properties that are currently and proposed to be CPR'd. The commission also wanted the Council to consider if the bill will increase gentleman estates or lead to an increase in non-ag uses and encourage the Department to increase training, inspection, and enforcement measures to address gentleman estates. The commission also recommended that this apply to Maui Island because they are the Maui Planning Commission, so they left it up to what the other islands would like to do. And their recommendation was an amendment to the bill. They recommend approval of the bill but amended to remove the 10 percent developable area cap on the combined size of both farm dwellings and add a specific size cap of a maximum of 5,000 to 7,500 square feet. They really couldn't come up with an exact number. They started with 5,000 and ended with, well, somewhere between 5,000 and 7,500 was their recommendation. So, that concludes my presentation, and I'm available for any questions that you may have. Thank you.

COUNCILMEMBER PALTIN: Chair? Is it okay to ask a couple clarifying questions, not discussion, before...or no?

CHAIR KAMA: If you...we should wait until after testimony.

COUNCILMEMBER PALTIN: Okay.

CHAIR KAMA: And we get into the weeds sometimes without actually going there, and then we all get...end up going down the rabbit's hole. Okay.

COUNCILMEMBER PALTIN: Sure.

CHAIR KAMA: But thank you. Thank you, Mr. Pfof, for that presentation. So, Director Arce, do you have any opening remarks or comments?

MS. ARCE: Thank you. Aloha, everybody. The Department had made comments earlier this year, and we were in support of the ordinance change. We agree with Planning Commission that it...Planning Department that it won't make any impact to agricultural resources. Thank you.

CHAIR KAMA: Thank you very much, Director Arce. Okay. So, Members, please hold your questions until the Administration and after testimony has been closed. So, Mr. Nunokawa, do you have any opening remarks?

MR. NUNOKAWA: I didn't have any opening remarks.

CHAIR KAMA: Okay.

MR. NUNOKAWA: We also have Deputy Corporation Counsel Kristin Tarnstrom. I'm not sure if she has any remarks.



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CHAIR KAMA: Ms. Tarnstrom?

MS. TARNSTROM: Thank you, Chair. I don't have any opening remarks --

CHAIR KAMA: Okay. Thank you.

MS. TARNSTROM: -- for the Committee.

CHAIR KAMA: Thank you. Okay. So, I'm going to proceed with public testimony, Members. So, for Microsoft Teams participants, please use the raise-hand button to indicate that you wish to testify. If you're attending this meeting by telephone, star-five will raise your virtual hand. Staff will put your name on the testifier's list in the order hands are raised. Please keep your audio and video muted until you are called to testify. Written testimony is encouraged and can be submitted via the eComment link at [maucounty.us/agendas](http://maucounty.us/agendas). Oral testimony is limited to three minutes per item. When you reach the two-minute mark, you will hear an audible notice. If you are still testifying when the notice sounds, please complete your testimony within the remaining minute. When testifying, we ask that you state your full name for the record. Anonymous testimony is also accepted. Decorum will be maintained throughout this meeting. Violation of decorum may result in being removed from the Chamber or the online meeting. And you can also view the meeting on *Akakū* Channel 53, Facebook Live, or [maucounty.us/agendas](http://maucounty.us/agendas). Thank you for your cooperation. So, Staff, would you please call up the first testifier.

MS. MCKINLEY: Chair, the first testifier is Steve Allen, to be followed by Tracy Stice.

**. . . BEGIN PUBLIC TESTIMONY . . .**

MR. ALLEN: No swearing in?

CHAIR KAMA: Good morning, Mr. Allen.

MR. ALLEN: Good morning. On this bill presented, I understand the intent, and I agree with most of the intent. I think it's a little bit mistaken, and I've read as much as I can about the Maui Planning Commission. And I understand that it appears in this...Bill Number 71, at the bottom of the page, it says that the 5,000 square feet is recommended by the Maui Planning Commission. But I think that's a little misleading because, as it was just stated, on the January 29th, 2024, meeting with the Planning Commission on bullet point number four, they took consideration to make it 7,500 feet maximum capacity between the two houses. I certainly 100 percent agree that they should increase the 1,000 foot to 1,500 feet. And I'll start with this...multiple concerns I have is...is that specifically, a cumulative total of 5,000 feet is just tax foolish and shortsighted. I'd like to have the approval of the 1,500 feet for the accessory dwelling, or the second...second dwelling. 1,500 is a three-bedroom home, 1,000 feet is a two-bedroom home. Let's

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make sure we have housing here for people and for family. I really...it feels like it's retribution, and the mistakenly applied term, "gentleman estate," which references multiple times, and I can understand that Councilmember Paltin seeing the gentleman farms built along Launiupoko Mauka in her drives here all the time, but...and its extravagances. I get it. I see it myself. \$350 a foot is a low construction rate right now. A 7,500 foot house...excuse me, a 6,000-foot house, if you allow the 7,500 feet, is \$2,250,000. I don't know about you, but I can't do that, I don't know many people that can. Cut that number in half for a 3,500-foot house, and it's still a whole lot of money for somebody. So, you're going to have gentleman farmers come in with their money, I...I get it, and...and they're going to pay tax rates. The continual reference to using the ag land for sustainability is just a false concept. . . .(timer sounds). . . Two, four, six acres, I don't care if it's ten acres, is never going to be commercially farmed. These lots were approved years ago...years and years ago, a lot of these subdivisions. They didn't have farming in the process then in their minds, or they wouldn't have approved it the way they did, and it remains a fallacy now. I have a six...six-acre agricultural lot myself. I didn't buy it for speculation purposes, I wanted the ag land, I wanted the space. It came with a 5/8ths meter. The approval of that property came with 700 lots of the same size, all with 5/8ths meters. If that doesn't prove that farming was never conceptualized, then I don't know what is because you cannot farm. It should have been an inch-and-a-half meter for any kind of agricultural uses, and they're not there, they're never going to be there for us. Now, not only do we have that lot now, it's six acres, when I bought that lot, my tax rate was Agricultural. From 2019 to 2024, my tax rate has increased 618 percent for the designation. I can't farm it, I don't have the water, nor do I want to. But if I did, I couldn't farm it because . . .(timer sounds). . . the deer will eat everything, and you guys control the deer, in essence. Mahi Pono bought 41,000 acres, you want to have sustainability, work with them. You have...

CHAIR KAMA: Please complete your testimony, Mr. Allen. Please complete. Your three minutes are up, so can you just wrap it up?

MR. ALLEN: So, finish? Oh, well, you know, my position simply is that let's use this Federal money, work with Mahi Pono, get the EMI ditch fixed, and of all things, let's get rid of Maui Electric here with their problems coming up. Let's co-op like Kaua'i did. Let's make our own electricity. Let me put PV on my ag lots. Let the other guys put PV on their ag lots. Let's work sustainability that's logical. I cannot sell my electricity to Maui Electric, there's no money in it, 20-year investment return, not going to do it. So, there's ways to progress, but it's not to choke people with money. And the tax rates you're throwing away by limiting these houses, most of those people with that kind of money are going to be non-occupied, and you're going to way, way increase your tax rate. Maybe you can lower mine.

CHAIR KAMA: Okay. Thank you.

MR. ALLEN: Thank you.

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CHAIR KAMA: Thank you. Before we ask Members' questions, I'd like to say good morning and ulaakut to Councilmember Nohe U'u-Hodgins.

COUNCILMEMBER U'U-HODGINS: Good morning, Chair. Good morning, everyone.

CHAIR KAMA: Thank you. Members, questions? I saw Chair Lee and I saw Vice-Chair Sugimura.

COUNCILMEMBER LEE: Good morning, Steve. You mentioned that you can't do anything on your land. What's wrong with the land?

MR. ALLEN: On...on developing my land?

COUNCILMEMBER LEE: Yeah, you said the six acres you have, you can't farm it?

MR. ALLEN: No. Because, one, we all know we had droughts and droughts and droughts. So, I'm Upcountry, and I can't...and it's 5/8ths meter. I mean, you know, I'm a plumber. 5/8ths meter is 20 gallons a minute. I mean, you can't farm with that. And you can't store it because that's against the rules of the...of the Water Department, you know...

COUNCILMEMBER LEE: Okay. So, that answers that question. So, the other question I have for you is, why did your taxes go up so high? You went from one classification to another?

MR. ALLEN: Yeah, when I questioned the Tax Department--and I'll try not to laugh about this--they said, Mr. Allen, your agricultural zoning is off because we're looking at it from the satellite, and it's all brown, and I can see you're not growing anything. And I said you must live somewhere else than Upcountry because we've had a drought for two years, and it's not just brown, it's black. So, yes. And the...and the few animals I had on there, we got rid of them. So, that's why I lost my agriculture rate. Now the...the whole six acres at residential.

COUNCILMEMBER LEE: And you have a house on it?

MR. ALLEN: I have one 1,000-foot house. Now, I don't consider myself low-income, but I can't build a 3,500-foot house, I can't build a 6,000-foot house, and I wouldn't mind doing it. But at the same time, you know, I bought that land so I could have open space around me. And I appreciate the ag land on...designations on Maui, but it's a fallacy to think that people bought these lands so they could go out and farm them.

COUNCILMEMBER LEE: Okay. Thank you. Thank you.

CHAIR KAMA: Member Sugimura, you had a question for our testifier?

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COUNCILMEMBER SUGIMURA: Yeah. Thank you very much for testifying. Very interesting, a lot of different topics, all in a little over three minutes. But...so, you support the bill from 1,000 to 1,500...

MR. ALLEN: I support the bill at 7,500 cumulative.

COUNCILMEMBER SUGIMURA: Oh, so you want a cap?

MR. ALLEN: Yeah. I just think it's silly to choke off the investor from...and let's just face it and agree to it, you know. I'm going to reverse this one section. I firmly believe and what we're heading towards with...with Governor Green and then with Mayor Bissen's attack on rental properties. Get those things back into housing so I have employee housing, my people can buy houses and have a starter homes for small condominiums and get to a house. I completely...let's use that. Let's...down the road there's going to be housing available if we can beat this in court. But why choke off investors for the large-scale tax...you know, they'll pay taxes. This happened on Moloka'i, right? They shut down Lā'au Point, and the...and the one side didn't want it, the other side said let's let these guys build houses here and take their taxes. In the meantime, we get to support those other two islands because their lack of tax revenue. You guys all know how much debt they occur [*sic*] and we have to cover them from our tax base here.

COUNCILMEMBER SUGIMURA: Thank you. Thank you.

MR. ALLEN: Yes.

CHAIR KAMA: Member Paltin, a question?

COUNCILMEMBER PALTIN: Thank you. I just wanted to clarify what you had said about your six acres and the large increase. Are you...it's owner-occupied?

MR. ALLEN: Yes.

COUNCILMEMBER PALTIN: And so, they're not taxing it as Agriculture because you don't have agriculture, they're taxing it as owner-occupied only?

MR. ALLEN: Yeah. So, I get the deduction as owner-occupied, but that still has an increase from my prior tax base of 618 percent.

COUNCILMEMBER PALTIN: Okay.

COUNCILMEMBER SUGIMURA: Because it's ag.

COUNCILMEMBER PALTIN: Because it's not classified as agriculture because you don't have agriculture going on?

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MR. ALLEN: That's correct. And I...and I've challenged it, and they want me to have chickens and pigs.

COUNCILMEMBER PALTIN: And you can't do that because you don't have enough water, or you don't want to?

MR. ALLEN: No, and I'm not here to take care of animals. I'm...I'm gone a couple days a week off-island. I don't even have a dog on six acres.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR KAMA: Member Johnson?

COUNCILMEMBER JOHNSON: Thank you, Chair. Mr. Allen, yes? Question, have you heard or applied for the grant that allows for deer fencing from the County grant?

MR. ALLEN: Minimum 40 acres.

COUNCILMEMBER JOHNSON: Okay. So, have you...have you...do you have any fencing on your...on your land?

MR. ALLEN: Yes, I do. I have...I have a legal height fence, which they call hog wire.

COUNCILMEMBER JOHNSON: Yeah. How...how tall is your fence?

MR. ALLEN: It's five feet tall...well, it's...with the...with the barbwire topping, it's five feet.

COUNCILMEMBER JOHNSON: And deer are still getting in at five feet? I...I would assume so, yeah? They...

MR. ALLEN: Well, if you want to sit down and watch, you can see 40 of them jump across the fence . . .*(inaudible)* . . .

COUNCILMEMBER JOHNSON: No, I live on Lānaʻi, I...I get it. Yeah. We got plenty of deer that can jump over a five-foot fence, so...

MR. ALLEN: Yeah. So, I could put a hundred grand into a fence so I can grow \$20,000 of vegetables and not make any money on my regular occupation.

COUNCILMEMBER JOHNSON: So, the other...the other question I have is, have you tried any drought-resistant plants?

MR. ALLEN: No. And honestly, I was very clear about this, I bought that land wanting to be in open space and appreciating agricultural zoning. I know it wasn't going to change. I

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can't afford to farm. That place wasn't cheap. It's not going to get any cheaper. I got to work, I can't afford to farm, and there's no help.

COUNCILMEMBER JOHNSON: I...I understand that there...you know, we do have micro-grants for farmers. There are...you know, some of the farming industry is really so heavily subsidized. Again, I'm a farmer myself. But the other thing is, is...okay, so you...you don't have any intentions of farming, you bought ag land, and you...you're feeling that the...because you're getting owner-occupied, it's just not enough for your taxes. I guess today's comment, or today's discussion, is about increasing the...the homes on...the size of the homes on your lot, and you say you only have one...one home at 1,000 square feet; is that correct?

MR. ALLEN: Yes, it is. And it's only for other --

COUNCILMEMBER JOHNSON: Do you plan...if...if...

MR. ALLEN: -- for other people.

COUNCILMEMBER JOHNSON: Okay. If you...if this bill passes, do you plan to build a second home?

MR. ALLEN: I plan on building a second home anyway, and I'm never --

COUNCILMEMBER JOHNSON: That 1,000...

MR. ALLEN: -- going to build it to that...to that capacity, I just I won't be able to afford to do that. But I...I...but my position here is that it's prejudiced to restrict the size because you're affecting your tax base, and that tax base affects my . . . *(inaudible)*. . .

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

CHAIR KAMA: You're welcome. Any other Members have questions? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Allen. Your comments about Moloka'i was kind of offensive, so I...and Lāna'i were kind of offensive, so I'd encourage you to, you know, restrain yourself a little bit in speaking about islands you may not have a lot of knowledge about. My question for you is regarding your tax classification for your property. What classification is it?

MR. ALLEN: Residential.

COUNCILMEMBER PALTIN: Owner-occupied.

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COUNCILMEMBER RAWLINS-FERNANDEZ: We don't have residential. We have owner-occupied, nonowner-occupied for agriculture.

MR. ALLEN: Well, then...then it's owner-occupied nonagricultural because they took my agricultural tax rate away.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo.

MR. ALLEN: They don't know how to classify that. I guess it's that whole thing about just pay your bill, and that's what I've been doing.

CHAIR KAMA: Member...Member Rawlins-Fernandez --

MR. ALLEN: She got real cold.

CHAIR KAMA: -- can you hear us?

MR. ALLEN: She's frozen, huh?

CHAIR KAMA: You look like you're frozen. I think she's frozen.

COUNCILMEMBER PALTIN: I had a question.

CHAIR KAMA: Does she look frozen to you all?

COUNCILMEMBER PALTIN: Yeah, she looks frozen.

CHAIR KAMA: But Member Paltin, you're alive. So, why don't...why don't we go to you --

COUNCILMEMBER PALTIN: Okay.

CHAIR KAMA: -- and then we'll go back to Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Maybe she has to log out and log back in. I just wanted to clarify that you said your tax rate went up like 600 percent since 2018, but it looks like it's 50 percent of what it was in 2018?

MR. ALLEN: Well, the calculator I use was \$442, I think, in 2018 and '19, and it's \$2,600 now.

COUNCILMEMBER PALTIN: Yeah.

MR. ALLEN: You want to do the division --

COUNCILMEMBER PALTIN: 20...2,200 now.

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MR. ALLEN: -- on that, that's 618 percent.

COUNCILMEMBER PALTIN: But in 2018, it was 5,431?

MR. ALLEN: Yeah. You know what? That was a sheer mistake on my part. I see where they went, and they hacked it down because I only researched that . . . *(inaudible)*. . . I go, how did I ever have to get that bill? And I was surprised. What happened was is that in 2018 or so, I developed a trust instead of my own individual ownership. And so the property was reviewed again, and then they had another tax rate. At that point, they had me isolate the house, so we made a 10,000-foot section where the house is, and I paid residential on that, and then the rest was ag. And then from that point, the whole place went...well, I'll call it residential, I guess I'm...I'm using the wrong term.

COUNCILMEMBER PALTIN: Okay. So, it looks like for three years you weren't ag, three years you were ag, and then now you're just owner-occupied. . . *(inaudible)*. . .

MR. ALLEN: Yeah, it's three years of...of that...you know, this...2024 is what I based the 618 on because I had the six-month charge. It's...it was, I think, 608 percent or something on 2023, and I think it's gone up \$300 or so is what...if I recall it correctly.

COUNCILMEMBER PALTIN: Yeah, I see 2019, it's more, but if you're looking at 2018 it's 50 percent. So, I mean, it just depends on your reference.

MR. ALLEN: And, you know, not one moment did I come in here to complain about the taxes. I came in here to complain about the lack of collecting taxes by restricting growth.

COUNCILMEMBER PALTIN: Got it. Got it.

MR. ALLEN: I never came in here...and I didn't come in here and say hey, listen, I don't know why I can't have three two-acre ag lots with five more homes on it to provide more housing for people and the cumulative farming because each person will do their own...probably garden like we do. We have a 1,000-foot garden. We produce a lot of our own vegetables, our own herbs, and we don't have to go to the store nearly as much. If I had three two-acre ag lots, we did not...we do not break the ag appreciation that I have. You'd have five more housing units to house five more families and to me --

COUNCILMEMBER PALTIN: So, the...a CPR --

MR. ALLEN: -- that's a positive use of the land.

COUNCILMEMBER PALTIN: -- you're talking about, or like you would subdivide your six acres into...



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MR. ALLEN: Oh, yeah, but that's not going to happen. I mean, you know, let's face it, where's the water meters coming from?

COUNCILMEMBER PALTIN: Got it. Okay. Thank you.

CHAIR KAMA: Thank you, Member Paltin. Member Rawlins-Fernandez, are you back with us? I don't see her either. Okay. I just have a quest...a clarifying question. So, you mentioned earlier in your testimony that you have a 5/8th water meter.

MR. ALLEN: A five what?

CHAIR KAMA: Is that what you said? A 5/8th inch water meter?

MR. ALLEN: That's...that's the standard residential water meter in --

CHAIR KAMA: Right.

MR. ALLEN: -- a Maui County Water Supply.

CHAIR KAMA: Right. But is that what you have on your property?

MR. ALLEN: That's...that's correct.

CHAIR KAMA: Okay. And you're saying that you can't farm with a 5/8th water meter?

MR. ALLEN: It's not enough water supply, and...and what do you do when you're supposed to isolate your water bill to...for your residential use and, your ag use, and the quantity of water? Now, if you want to go into this detail, I'll tell you what I have done. I'm a plumbing contractor. When I bought this property, I threw in a two-inch main and an inch-and-a-half main. Both...one is designated in my...in my paperwork, has nothing to do with the . . . (*inaudible*). . . is an ag...ag meter because I was hoping to farm. I really wanted to grow peppers. I was...when I bought the property, I had people tell me, you know, peppers grow pretty good up here, and they're kind of bug-resistant. And I thought, shoot, you know what? Nice, spicy peppers, we have all this wonderful chef...special chefs and Asian cuisine and Pacific Rim, and I thought, you know, let's do that. And I talked to some people about it, and I had to go to work and take care of my bills. But it's still been a concept, and you know, there are a lot of rocks in the ground too. So, that takes a lot of equipment and investment, and at some point in time, you're supposed to have a return on your investment. If you're going to work, you're supposed to make money. Other than that, you go to the beach, hang out, and have fun.

CHAIR KAMA: Right. Okay. Well, thank you. Thank you so much. Any other questions, Members, for our testifier? If not, thank you so very much, Mr. Allen.

MR. ALLEN: Well, thank you for your time today.

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CHAIR KAMA: Staff, our next testifier, please?

MS. MCKINLEY: Chair, the next testifier is Tracy Stice, to be followed by Jerry Weaver, Jr.

MR. STICE: Good...good morning.

CHAIR KAMA: Good morning.

MR. STICE: Thank you for allowing us to testify, Chair Kama.

CHAIR KAMA: Yes.

MR. STICE: This is my wife, Laura.

CHAIR KAMA: Hi, Laura.

MR. STICE: If...if you have questions for her later on, I...is it...I hope it's okay that she can answer questions, too, because we couldn't sign up as a couple to testify. We're Tracy and Laura Stice, and we own property at 470 Ulumalu Road in Ha'ikū, and we've been there since 1978. We bought it as a bare, old pineapple field with nothing growing on it, not one tree, and a little 500 square foot cottage. We're still there. We've been living there since '78. All three of our children, Jeremy, Brianna, and Chloe, were actually born on the property, and it's always been their home. We've worked and farmed this for years and years and years. Supplemented the soil, brought it up, planted fruit trees, and about ten years ago, we planted a full acre of ti leaves on the property, and we actually have been the largest ti leaf producer on Maui for the last ten years. We mostly supply to Kula Produce and a couple others, but we've also donated endless ti leaves to endless events. Probably many of you are aware of that. Two years ago, in June 2022, we submitted an application, building permit number B-2022-0717, to construct a farm accessory dwelling on this property. This is a necessary step for us, given our age and our deteriorating physical condition. I'm 72, Laura is 69. We both have arthritis, and stairs hurt. We want to build a one-level, roll-in, roll-out old-folks home so that we don't have to end up at Hale Makua or Roselani, and be able to be...live the last years of our lives on the farm. Our two...our current house is a two-story . . .*(timer sounds)*. . . and our intention is to give it to our daughter and her family. They have a couple children, and they need more space. We can live with a lot less space now that all the kids are raised. We're hopeful that in the near future, we're going to be granted the permit to build this much-needed house. What we want to do is to build a one-story house that's fully accessible, wide doors, and someday, we...hopefully, if this bill passes, may be able to have another 500 square feet to allow a caretaker a place to live. And as you all know, you can't hire somebody for \$25 an hour and expect that they can afford rent on Maui. So, it would allow somebody to be in. And how does this tie into farming? Well, we're not going to be farming many more years because how many farmers are farming at 80? Not a whole lot. The...the key thing is, our...our plans are

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in place, we hope to have a permit any day, and this will allow us in the future as we need it to allow some additional living space for a caretaker to live on the property. . . .(timer sounds). . . I guess we're time up here?

CHAIR KAMA: Yes. Time is...

MR. STICE: Please pass this bill --

CHAIR KAMA: Thank you.

MR. STICE: -- for us, and for all the other people that need additional living area on their farm property. Thank you.

CHAIR KAMA: Members, questions for our testifier? Member Paltin?

COUNCILMEMBER PALTIN: Thank you for your testimony. My...my husband wanted to try farm ti leaves, too, if he ever gets his DHHL ag lot, which doesn't seem hopeful. But I was wondering, your daughter doesn't want to just continue the ti leaves?

MR. STICE: I...I don't hear very well, so...

COUNCILMEMBER PALTIN: Oh, sorry. Does your daughter not want to continue the ti leaf farming?

MR. STICE: Oh, I'm certain she will.

COUNCILMEMBER PALTIN: Oh.

MR. STICE: There's a lot of caveats that go with that because she's a police officer and works...is full-time, so she doesn't have much time to do it. And the other thing is, we just sold the big farm in Māliko Bay to the Kimokeo Foundation. So, our production is just going to be what we have remaining at our house. And we don't plan to commercially farm anymore, it'll just be the donation spot for all the hālaus.

COUNCILMEMBER PALTIN: Okay. And then when you...just for my own personal knowledge, when you sell the ti leaves, you guys wash them down, or you sell them as is?

MR. STICE: Do we do what?

UNIDENTIFIED SPEAKER: Wash...

COUNCILMEMBER PALTIN: Wash each leaf?

CHAIR KAMA: You wipe it down?

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MR. STICE: No, we don't. We...we did the farm...I did the food safety certification so that the wholesalers would accept them, and they did not require that we wash them. They don't touch the ground. They go from picking into a plastic bin to a sterilized table where they're packed, and then put back in a plastic bin with a lid, and then delivered. So...but no, they're not washed by intent because then I'm liable for it if I don't wash them properly.

COUNCILMEMBER PALTIN: Thank you so much. I've always wanted to know that.

CHAIR KAMA: You will grow your ti leaves, Member Paltin.

COUNCILMEMBER PALTIN: We got all around our house so, you know, but we use them --

CHAIR KAMA: Yes.

COUNCILMEMBER PALTIN: -- for personal use.

CHAIR KAMA: They're the donators to all your hālaus for ti leaves. Thank you for that. Member Sugimura, you had a question?

COUNCILMEMBER SUGIMURA: Yeah, they also donated to the UH game. So, when I coordinated in my previous life, UH game, I would go to his house, I know exactly the beautiful ti leaves that they have, and they donated...it looked like 10 zillion ti leaves. And it was so beautiful, you know, as...as...as you see on TV, and that's what you created. So, not only to hālaus, but thank you very much for helping University of Hawai'i and supporting the community in many ways. But I think, Tracy and Laura, you are exactly why I want this bill to pass with just simple...I call it my simple bill, 1,000 to 5...1,500 square feet, adding on 500 more square feet allowable for the second farm dwelling. So, thanks for sharing your life, and thank you very much for being a big part of our community. Thank you.

CHAIR KAMA: Members, any other questions? Member Rawlins-Fernandez, are you with us? Oh, okay. You froze earlier when our previous testifier...

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm alive again.

CHAIR KAMA: Okay. Okay. Stay with us. Just breathe. Thank you. Any other testify...questions for our testifiers? If not, thank you so very much for being here.

MS. STICE: Mahalo.

CHAIR KAMA: We appreciate you.

MR. STICE: Thank you.

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CHAIR KAMA: Thank you. Staff?

MS. MCKINLEY: Chair, the next testifier is Jerry Weaver, Jr., to be followed by Zhantell Lindo.

MR. J. WEAVER: Good morning. Aloha. Thank you for allowing me to testify this morning. I been following the bill ever since Councilmember Sugimura introduced it. Totally support it. We have a three-acre agricultural parcel with...as of presently, a 1,500 square foot house. We have an extended family that's growing, and we need to build a second structure. And to do that, the economies of scale, 1,500 square feet, works for us, and that's what we have in place and plan. So, it'll be like...on a three-acre parcel, it would be 3,000 square foot total. I support the bill as originally proposed. There are other provisions in the Code, as the Planning Department's indicated, that address maximum lot coverage on farm dwellings, farm labor dwellings. They've given you a great amount of data to look at that. So, I'm in here today in support of the bill as originally proposed.

CHAIR KAMA: Thank you. Members, any questions for our testifier? Seeing none. Thank you so much, Mr. Weaver. Staff?

MS. MCKINLEY: Chair, the next testifier is Zhantell Lindo, and there is no one else signed up currently. If you would like to testify, please raise your hand on Teams. If you're on the phone, you hit star-five to raise your hand.

CHAIR KAMA: Good morning, Ms. Lindo.

MS. LINDO: Good morning. Aloha, Councilmembers. My favorite peeps. Thank you so much for allowing me this opportunity to testify. I am the Chair of the Moloka'i Planning Commission, but I'm testifying on my own time, and I just wanted to kind of shed some light. I think a lot of times, people just think Moloka'i want to be exempt from all the rules, but we really did deliberate a lot on this. And so, for the sake of discussion, I wanted to bring up some key points that we discussed in hopes that maybe it will help clarify and tighten up some things that might be missing. One of the things we deliberated on was how the...the lack of information that we could find that gave justification for a water increase to those agricultural lots, for a potable water increase, when we have so many moratoriums on water in different areas, like in Mana'e, Kalae, and other places on our island. It was hard for us to justify why families who have subdivided cannot share a water meter with less than 15...you know, 1,500 square feet of housing, but you could put accessory dwellings on a property that was originally only intended for one single-family dwelling home. The other part that we deliberated over a long time was, we know that Fire weighed in and said, you know, that they...they didn't have anything too concerning, but I think it's...a lot of times it's looking at individual housing structures design, and maybe even just parcels. What we looked at is--for Moloka'i, at least--is what is the available capacity of our emergency services, and with the increase of bodies and density, can our current Fire Department handle that kind of...and...and people will say, well, it's just a few hundred, or 1,000 square feet, or

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whatever, but when we talk about fuel load, that makes a big difference in the way that we both fight fire and that we look at mitigation purposes. In the west side of our island and on the east...so on the east side, we have water moratorium for meters. On the west side, DHHL has...also have a moratorium for water meters, and on the west side of Kaluakoi, we have limited water resource. Much of Moloka'i Ranch's hydrants don't even work. So, when we make policies like this to give advantages to those parcels without first determining that our safety protocols and our resource and utility infrastructure and all those things are in place to...to...to properly address these things, I think it's premature. I love the idea because, you know, we get family ag lands, and I going be old too someday, not now, but...and...and I want to be able to have one caretaker there. We dealing with that in our own families. And so, I can see the benefit of wanting to expand. I...I just think that there's more work that needs to be done prior to, or we always are putting the cart in front of the horse, and then we end up with other really heavy legal and emergency . . .(timer sounds). . . and all kinds of issues that we haven't really thought out well before we move stuff like this forward. So, I...I just really appreciate though this thought, and...and I do...and I think Moloka'i wanted to be respectful that we recognize that other districts in Maui are really different from ourselves. And so, to be respectful to Maui, we did just say except for Moloka'i so that we could allow our 'ohana on Maui and Lāna'i to make their own determination. But mahalo.

CHAIR KAMA: Thank you for sharing that. Members, any questions for our testifier? Okay. Seeing none. Thank you so much, Ms. Lindo. Staff, last call.

MS. MCKINLEY: Chair, the next testifier is someone calling in with the last four digits 8120.

CHAIR KAMA: Phone number 8120?

MS. MCKINLEY: To unmute, please press star-six. Go ahead, please.

MS. GRECO: Chair, the individual seems to be unmuted on both our end and theirs. Would you like us to do a final call?

CHAIR KAMA: Please.

MS. GRECO: Okay. If there's anybody else that's joining us online or in person...

CHAIR KAMA: I see Jasee coming down.

MS. GRECO: I see...

CHAIR KAMA: So, we'll let Jasee go, and then we'll go back.

MS. GRECO: Okay.

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MR. LAW: Jasee Law, Kula uka, Waiakoa ahupua'a. I'm glad to make myself useful for the other testifier so I'll stall you a little bit until they can get . . .*(inaudible)*. . .

UNIDENTIFIED SPEAKER: Hello?

MR. LAW: . . .*(inaudible)*. . . Go ahead, bro.

MR. S. WEAVER: Okay.

CHAIR KAMA: Is that your testimony?

MR. S. WEAVER: Is it my time to testify?

CHAIR KAMA: Are you phone number 8120? Yes.

MR. S. WEAVER: Correct.

CHAIR KAMA: Yes. Go ahead.

MR. S. WEAVER: Okay. Mahalo for the opportunity. Seth Weaver calling. I appreciate the opportunity to testify. I'm calling..I'm calling in support of this bill without the suggested amendment proposed by Councilmember Paltin. I believe that farming is an important district or sector in our community and it should be supported, and one way to support that is through facilitating multigenerational housing to support those farms on ag land. Allowing a denser farm with a family unit contained within those borders allows for a more economic farming opportunity that should be supported, and I believe is supported by a majority of the Members on this Council. I think that allowing 500 square feet more towards the current allowance of 1,000 square feet would accommodate such a venture. I personally have a farm up in Upcountry, Kula. . . .*(inaudible)*. . . so palm trees with the hopes of starting some sort of farmers market or contributing to the farmers markets in the near future. And so, allowing this provision with the limited capacity of water would be a small increase in the . . .*(inaudible)*. . . of housing in this community, which is so desperately needed. Again, I think that we should not allow a cap to be put on the total square footage just because it would target those very few individuals who do have the capability to build large houses on...on ag land. But again, that's not the majority of people. And I think that by . . .*(timer sounds)*. . . focusing on those people, it does a disservice to the majority. So, I'd appreciate your support of this current bill without the amendment to allow an increase of 500 square feet to the secondary farm dwelling. Mahalo.

CHAIR KAMA: Thank you, Mr. Weaver. Members, do we have any questions for our testifier? Seeing none. Thank you so very much. Staff?

MR. S. WEAVER: Thank you.

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MS. MCKINLEY: Chair, there's currently no one else signed up to testify. If you would like to testify, please come up to the podium or unmute yourself or raise your hand on Teams by pressing star-five if you're on the phone, pressing the hand icon if you're on the Teams app. Chair, seeing no one.

CHAIR KAMA: So, Jasee's there. So, he's back for the rest of his two-and-a-half minutes. Thank you. Go ahead, Mr. Law, you may continue.

MR. LAW: I get a whole two-and-a-half minutes with you guys?

CHAIR KAMA: Well, because you used 30 in the beginning.

MR. LAW: I'm just kidding.

CHAIR KAMA: Okay.

MR. LAW: Jasee --

CHAIR KAMA: But thank you very much.

MR. LAW: -- Law again from Kula uka, Waiakoa ahupua'a. The Hawaiian word of the day is--thank you, Dawn, from the Hāna Office for translating it into 'Ōlelo--is farm is mahi'ai, M-A-H-A'-A-I [sic]. Good morning, Chair Kama. Good to see you up there in the catbird seat again. I was just trying to like encourage you guys with...I seen the farm thing. I don't really know too much about farms, but I am trying to get a job at a farm. But up on the mountain it's kind of tough because you got to walk uphill either going home from work or going to work, so...but I have a bicycle now, so I can...I can arrange it if in case anybody hears anybody that needs any help. And...but part-time, though, because I'm getting old. And speaking of bicycles, if anybody has an extra bicycle, someone in the Council Services' Office got theirs stolen, so they need a bicycle for their family member to get to work. Thank you for your time.

CHAIR KAMA: Members, questions for our testifier? If you want to farm, maybe you should ask Mr. Stice if you can go work on his farm.

MR. LAW: . . .(inaudible). . .

CHAIR KAMA: No, it's the gentleman in the front of you. Thank you. It's just a suggestion if he has the desire. Staff?

MS. MCKINLEY: Chair, there's currently no one else signed up to testify. If you would like to testify, approach the podium. If you're on Teams, raise your hand. If you're on the phone, you can do that by doing star-five or raising your hand with pressing the hand icon.



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CHAIR KAMA: Okay.

MS. MCKINLEY: Chair, seeing no one.

CHAIR KAMA: Okay. Very good. So, Members, seeing as how there are no more individuals wishing to testify, without objection, I will now close oral testimony. And as a reminder, written testimony will continue to be accepted into the record. No objections, Members?

COUNCILMEMBERS: No objections.

**. . . END PUBLIC TESTIMONY . . .**

CHAIR KAMA: Thank you. We'll now proceed with discussing the first item and only item on our agenda. So, Members, I will now call upon you for questions you may have for our presenter or...and/or the Administration. So, I will ask the Staff to set a three-minute timer for each Member so that all Members can get their questions asked and answered. And if we need a few rounds to do that, we can do that too. So, I'm going to begin with our Committee Vice-Chair, Mr. Cook. Any questions for our Administration?

VICE-CHAIR COOK: Yeah. Thank you, Chair. My question for the Planning Department. So, Bill 71 increases the second...the farm dwelling from 1,000 to 1,500 square feet. Does this change the 10 percent of the area?

MR. PFOST: No, that still remains.

VICE-CHAIR COOK: Okay. Thank you. That's my only question.

CHAIR KAMA: Okay. I heard Chair. Okay. Well, we'll continue. Member U'u-Hodgins, do you have any questions for our testify...for our...our Administration?

COUNCILMEMBER U'U-HODGINS: Sure. Thank you, Chair. And I'm sorry I missed your presentation, so please let me know if you have answered it, and I can ask you later. But for an accessory dwelling or an accessory use, what is the procedure for somebody to get that permitted?

CHAIR KAMA: Mr. Pfoست?

MR. PFOST: Thank you for the question. I guess on...within the Ag District, accessory dwelling units --

COUNCILMEMBER U'U-HODGINS: Yes.

MR. PFOST: -- are not permitted. So, you have...two types of dwelling units that are permitted is the main farm dwelling and a second farm dwelling. So, it's not called an accessory

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dwelling unit. So, within our Code, we have a separate section that deals with accessory dwelling units and has specific requirements, and those are primarily for the Residential R-1, R-2, and R-3 zones. So, it's a...they're...we're talking about two separate things. But if you're talking about the second farm dwelling --

COUNCILMEMBER U'U-HODGINS: Yeah.

MR. PFOST: -- in...in...in the agricultural zoning district, basically, you would need to submit an application to the Building Division, and then it is reviewed by the Planning Department. At that time, we do ensure that you are actually doing active ag use on your property. With the first dwelling, we actually require you to sign a declaration that you're going to comply with Code and State law regarding agricultural use on your property. You understand what those Code requirements are. And so, you'd file a declaration and sign that declaration. It's every permit after...thereafter, which would be the second dwelling that you're talking about that we actually do an inspection to verify that you're actually doing active ag use before we issue that permit.

COUNCILMEMBER U'U-HODGINS: Okay. And if somebody wanted to do their 1,500 square foot house if this bill passes, or currently a 1,000 square foot house and then--because that's what they can afford--and then do their larger main farm dwelling later, how does that process work?

MR. PFOST: Their first dwelling that they would do, simply all they'd need to do is file the declaration. We do not actually...and the declaration assumes that they're doing active ag use because in order to have a dwelling on an ag property, you're supposed to be doing 51 percent ag use. So, all we require is that they file the declaration, even if that first structure is 1,000 square foot or 1,500 square feet. The second structure then, whatever that would be in size, that one, therefore, could be higher, or more than 1,500 square feet. We would then require the inspection to occur on that to make sure they're doing active ag use on the main farm dwelling.

COUNCILMEMBER U'U-HODGINS: Do you guys still do a farm plan, or is it just the ag declaration?

MR. PFOST: It's just the ag declaration. Yeah.

COUNCILMEMBER U'U-HODGINS: Okay. And how is that working out?

MR. PFOST: I...I know...it's...I think the interesting part is more the...the building permits after the first one. The declaration is...is easy to do for a property, you know, they just sign a piece of paper indicating that they agree to comply with law, right?

COUNCILMEMBER U'U-HODGINS: Sure.

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MR. PFOST: It's the second dwelling where we actually do the inspection. Now, that's the difficult part to implement because we have to go out, we have to assume that there's...we have to look to see if there's 51 percent. We don't actually have a plan that actually calculates that specifically. We have an inspector that goes out. Our inspectors are not farmers. They're not ag folks . . .*(timer sounds)*. . . so it's the...you also look at the definition of agriculture, it's pretty broad. So, it allows a property owner a wide discretion of what they can plant on their property. So, it's...I think that's probably the more difficult part of the enforcement action, so to speak, on ensuring that people are actually doing active ag use.

COUNCILMEMBER U'U-HODGINS: So, for lack of a better word, you guys just eyeball that they're doing 51 percent?

MR. PFOST: For lack of a better term, yeah, it's...it's pretty much that. You can kind of tell, I think, for...and in talking to some of the Staff that go out there and look at them, you can walk a property and kind of go yeah, this...they're actually doing farming here. The difficult ones are the ones that are actually trying to do something different that perhaps isn't what you would typically think as farming, and so, then it becomes like okay, what are you doing, what's it for, and a lot of series of other questions. So --

COUNCILMEMBER U'U-HODGINS: Okay. Thank you.

MR. PFOST: -- it is a difficult process.

COUNCILMEMBER U'U-HODGINS: Thank you. Thank you, Chair.

CHAIR KAMA: You're welcome. So, let's go to Chair Lee.

COUNCILMEMBER LEE: Actually, I'm ready to vote. Thank you.

CHAIR KAMA: Oh, okay. Let's go to Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, I want to thank you, Mr. Pfof, for your presentations, you know, that you spend a lot of time to educate us and the community. So, thank you very much, first of all. So, I...basically as I said, the testifier Tracy Stice and Laura Stice, they are exactly why I wanted to change this for 1,000 to 1,500 square feet for the second farming dwelling. And you answered, actually, questions that could have come up with your presentation, and I'm glad to hear that the Department of Agriculture supports that; is that correct? Yeah. And ready to vote.

CHAIR KAMA: Okay. Let's go down to Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Before my time starts, I just wanted to disclaimer, I got plenty questions, so I might cut you off when I get the answer. But my

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first clarification was, you said there was a minimum two-acre lot size, and if it's less than that, then they're exempted from that 10 percent, right?

MR. PFOST: No, I don't believe so. They still need to...still need to comply with the 10 percent.

COUNCILMEMBER PALTIN: Even if it's like a 750 square foot or less?

MR. PFOST: Yes. Yes, because it's a...the 10 percent requirement is under the development standards in the Ag District, and it specifically says...

COUNCILMEMBER PALTIN: I thought there was a substandard lot size part of the Code where they're exempted from that. Does Corp. Counsel know?

MR. PFOST: There is a...there is a substandard lot size under the Code which refers to setbacks and other items related to...let me...let me look at that real quick. At least I wasn't aware of that but I have the Code here, so let me see if I can find out.

COUNCILMEMBER PALTIN: Okay. And then I think this also came up in the previous term, but it never made it to the Planning Commission because Member Sugimura withdrew it when I was chairing Planning and Sustainable Land Use. The other question I had was, is it possible, like you know, I guess Upcountry folks are testifying they don't necessarily have a problem with fake farmers, but in West Maui, it is a big concern within my community. Would it be possible to have the amendment apply only to West Maui then? For Corp. Counsel? Because we do have a big problem with that, and it's not something that...

CHAIR KAMA: Mr. Nunokawa, you want to answer her question while Mr. Pfoست is looking for the information? Oh, Tarnstrom. Ms. Tarnstrom, did you want to respond to that?

MR. NUNOKAWA: I...I think that...correct me if I'm wrong, but I think that our feeling is that the addition of any cap anywhere would require a larger discussion, probably in executive session, to go over all of the concerns.

COUNCILMEMBER PALTIN: You really like executive session, don't you?

CHAIR KAMA: No, well, we don't have to, right?

COUNCILMEMBER PALTIN: So, I guess, you know, we have folks in West Maui that have a 7,500 square feet plus houses, and they're...they're not really doing farming, you know. At...at one time, the farming that was required was to grow Cook Pines in the easements. And, you know, the...the reason why these go is because this is our ag lands, you know, we're not focusing infrastructure in ag lands, we're not focusing all the things that are in Residential. If somebody wants to have a 7,500 square foot house, they can do it in Residential. But...and...and we're making our laws for our residents, not for off-island people that are coming to invest and then thus drive up the cost of ag

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land for real farmers. The other question I had was, since the Planning Commission discussed 5,000, 7,500 square foot cap, as well as the repealing of the 10 percent, is that something that we could take action on because it had been discussed? And I guess that's for Corp. Counsel. And the other question is, if that was then their recommendation to cap it at either 5 or 7,500 and repeal it, would we need six votes to pass it as is, and going against their recommendation for Maui Island? And it seems the first testifier wouldn't be able to build a second farm . . .(timer sounds). . . dwelling because he's not farming 51 percent. So, those would be my questions.

COUNCILMEMBER SUGIMURA: Oh, he's not farming.

MS. TARNSTROM: Thank you, Chair. Thank you, Councilmember Paltin. May I answer?

CHAIR KAMA: Yeah.

MS. TARNSTROM: Okay. The two questions posed, one, can you take action on a cap because it was discussed at the Maui Planning Commission; is that the question?

COUNCILMEMBER PALTIN: As well as their discussion on repealing the 10 percent portion of it. Since they discussed it, that's usually the precursor of us being able to take action. And from what Mr. Pfof's presentation, they did discuss it and, in fact, recommend it.

MS. TARNSTROM: I think I...as a preliminary matter, I do agree with...with Nahulu that discussing a cap in a broad sense should be discussed in executive session so we can give you candid advice on our opinions about liabilities on that. But to your question for the procedure, I believe since...if it applies to just the Island of Maui, and the Maui Planning Commission has made that recommendation, that would not need to be sent back to the Maui Planning Commission for a review. And as to your second question, if you do not follow that recommendation from the Planning Commission, it's my understanding that you would need a two-thirds vote at Council to pass it, but not out of this Committee.

COUNCILMEMBER PALTIN: Oh, okay. Thank you for that clarification. And...and the first testifier, if he's not farming, would not be able to build a second farm dwelling?

MS. TARNSTROM: Thank you, Chair. That's a better question for Mr. Pfof, but it's my understanding that's what he said. So, yeah.

COUNCILMEMBER PALTIN: Sorry.

CHAIR KAMA: Okay.

COUNCILMEMBER PALTIN: Getting used to the name.

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MR. PFOST: So, yeah, the...the first...the first speaker that...when the first speaker or whoever that property owner is, wanting to build a second dwelling, they would need to do active ag use on their property. That's the...that's the issue that we would be looking at from the Planning Department. And I think the gentleman indicated that he doesn't want to farm his property, so he would have a problem...we would have a problem issuing a permit for a second dwelling on the property.

COUNCILMEMBER PALTIN: Got it. Thank you.

MR. PFOST: If I may, to answer your first question, I apologize. The...the first question, you are correct that the 10 percent does not apply for substandard lots, which would mean less than two acres. So, that is...you are correct on that.

COUNCILMEMBER PALTIN: I'm not going to go to law school, though.

CHAIR KAMA: Are you done, Member Paltin?

COUNCILMEMBER PALTIN: Yes. Thank you, Chair, for indulging me.

CHAIR KAMA: Oh. Oh, I thought you had a slew of them. Okay. Member Johnson?

COUNCILMEMBER JOHNSON: Thank you, Chair. Good afternoon, everyone. Thank you for joining us. Mr. Pfoست, what happens when the farm is no longer active? Does it turn into owner-occupied? Can...can the aging farmers sublease to younger farmers or someone who will do the work?

MR. PFOST: I'm sure that they could sublease to other...other farmers that would do the work. I'm...I'm not astute on the property tax issues here in Maui County --

COUNCILMEMBER JOHNSON: Okay.

MR. PFOST: -- so I couldn't answer the first part of your question.

COUNCILMEMBER JOHNSON: Okay. Some of the...some of the slides mentioned the concern that we have, a duty almost...not almost, a duty we have to make sure the ag values are low. Can you speak on the...what does it do to the values of the lands by adding another 500 square feet?

MR. PFOST: So, that...that's a good question. The Lāna'i Planning Commission also had the similar question on that, on...on what is the impact or the economic value impact. We did work with the Department of Finance and...and the Real Property Tax Division in looking at what the assessed value would be of seeing a 500 square foot addition compared to 1,000 to 1,500 square feet. The change was very incremental --

COUNCILMEMBER JOHNSON: Okay.

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MR. PFOST: -- and so, we did not feel that there was an economic impact --

COUNCILMEMBER JOHNSON: Thank you for that clarification.

MR. PFOST: -- as a result of the decision.

COUNCILMEMBER JOHNSON: You're using these...this term that I want to clarify on. You said filing a declaration that you're going to farm. Is that different than a dedication?

MR. PFOST: Yes, I think that would be different than a dedication. As far as I'm aware, a dedication typically is something that's often recorded on your...your property, which the declaration is not. So, it's a filing of the declaration that you...at least that I'm aware of that it's not...that it's basically you're signing and attesting to, and we maintain that on file. And that...that you are going to farm in accordance with...with law.

COUNCILMEMBER JOHNSON: For declaration?

MR. PFOST: Declaration.

COUNCILMEMBER JOHNSON: Okay.

MR. PFOST: Not a dedication, or not a...anything that's being recorded on your property or anything like that. It's just a declaration.

COUNCILMEMBER JOHNSON: Okay.

MR. PFOST: So, you're signing a statement that you agree to the State law and...and County law.

COUNCILMEMBER JOHNSON: Thank you for that clarification. Thank you, Chair. I have no further questions.

CHAIR KAMA: Thank you. Okay. We're going to continue on with...okay. Member Rawlins-Fernandez, are you with us? Do you have any questions?

COUNCILMEMBER RAWLINS-FERNANDEZ: I think I'm with you. Am I with you?

CHAIR KAMA: Okay. Just making sure. So still.

COUNCILMEMBER RAWLINS-FERNANDEZ: . . .*(laughing)*. . . Okay. Aloha, Mr. Pfo. Mahalo for being with us today. I have, I guess, a couple of clarifying questions regarding the number of houses that would be allowed. So, I just wanted to make sure I'm understanding this correctly. So, there would be a main dwelling, up to two farm dwellings if 51 percent of the property is in ag, active ag. Up to two farm worker

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dwelling for farm workers. So, that would be a total of up to five houses on less than 10 percent of a property? No? Okay. Please tell me what it is.

MR. PFOST: Sure. It's...it's a little bit more nuanced than that. You're allowed up to two...two farm dwellings, so the main farm dwelling and a second farm dwelling. So, those are the two dwellings that are not restricted to any type of occupancy except for, you can't do short-term rental in those. So, it's just the main dwelling and the...and the second farm dwelling. And today, we're talking about increasing the size of the second farm dwelling from 1,000 to 1,500 square feet. In addition to that, you are allowed farm labor dwellings, and you're allowed one farm labor dwelling per every five acres of property, ag property, that you have. And so, that's the addition. And that's all.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, right. Okay. But that's still less than...and...and still on less than 10 percent of the property?

MR. PFOST: Actually, it's a little bit --

COUNCILMEMBER RAWLINS-FERNANDEZ: No?

MR. PFOST: -- more nuanced even than that. The...the...the farm dwelling...so, the first...the main farm dwelling--we call it the main farm dwelling, it's not actually called that in Code, but--and the second farm dwelling, those that have no occupancy restriction are required to comply with the 10 percent of lot area. The farm labor dwelling is not because the farm labor dwelling is associated with the agricultural activity that's occurring on the property. Similar to like a barn does not have to comply with the 10 percent, a farm labor dwelling does not have to. Anything that services the actual ag production or ag work is not actually counted towards the 10 percent, only the farm dwelling and the second farm dwelling.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And then as far as like the...oh, and then I'm not sure if I can hear the timer, so just let me know, Chair, if --

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- the timer went off.

CHAIR KAMA: I haven't heard it yet.

COUNCILMEMBER RAWLINS-FERNANDEZ: So...and in regards to the 10 percent of the property, the position of the...the dwellings. So, like on DHHL ag lots, it...it has to all be in the 5 acres that you choose on the 40-acre ag lot, and it can't be, you know, like in the four corners of your, you know, rectangular-shaped ag lot, right. So...

CHAIR KAMA: Contiguous.



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COUNCILMEMBER RAWLINS-FERNANDEZ: But the 10 percent...okay. Okay. That...that's the contiguous...does the 10 percent have to be contiguous?

MR. PFOST: No. The...the...the 10 percent...and it's interesting, it's 10 percent developable area, and there's a definition for developable area, which is the total area in square feet of all enclosed living areas of the dwelling units. So, the only thing that counts towards the 10 percent is in the enclosed . . .*(timer sounds)*. . . living area of the two dwelling units. And so, those dwelling units can be separated, we just need to make sure that the total square footage of both of those dwelling units does not exceed 10 percent of the lot area.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I think I got it now. Okay. So, then, after all these dwellings are built, if active ag stops, then the houses remain. And if agriculture never happens again on a property with five or more houses on it, then they just score lots of houses. It's almost like a subdivision.

MR. PFOST: I...

COUNCILMEMBER RAWLINS-FERNANDEZ: There's...there's no rule for them to continue active ag, even with farm labor dwellings, if they stop farming or being in active ag.

MR. PFOST: That is correct in that we do not have an enforcement mechanism after they build their units and...and they, for some...some...somewhere down the path, you decide not to do ag anymore. We're not going to obviously kick them off their property or make them remove the structure. So, there's no enforcement mechanism to that other than the aspect that before they need to pull a building permit for something else on their property, we would then have the ability to make sure that they're doing active ag use. So, yeah, if you never had to pull a building permit for the rest of your structure's history, and...and you don't want to do ag use, yes, that could happen. There is not an enforcement mechanism to deal with that.

CHAIR KAMA: So, Member Rawlins-Fernandez...

COUNCILMEMBER RAWLINS-FERNANDEZ: The...is...is the Planning Department or anyone...

CHAIR KAMA: Member Fernandez, we're going to come back to you because the bell did ring. So...but hang on, everybody --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I have...

CHAIR KAMA: -- else is going to have another round. Do you have to leave?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, Chair?

CHAIR KAMA: Yeah.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. I...I'm going to be heading to the airport, so I'm going to jump on my phone --

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- for the meeting. But I just had like one last question.

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Would...would you or the Members mind if I --

CHAIR KAMA: I don't mind --

COUNCILMEMBER RAWLINS-FERNANDEZ: -- just a last --

CHAIR KAMA: -- if the Members don't mind.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- follow-up question?

CHAIR KAMA: Go ahead. Yeah, go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair. Mahalo, Members. So, that my final question was just if the Planning Department or any other department has any concerns about this essentially kind of becoming like a loophole for building almost like a subdivision, you know, like if you can build like one farm dwelling for every five active ag acres, and then when you stop and if it's never active ag again and there's no rule on the positioning of the housing, that it could just be scattered on a property. Is...is anyone concerned about that?

MR. PFOST: I think the...you know, the...the Code has been to allow...it currently allows the...two...two farm dwellings, as well as a farm labor dwelling. So, in regards to this particular bill, all that we looked at was the potential increase of the second farm dwelling and what impacts that may or may not have, and we felt that we could support just that insubstantial increase of 500 square feet. I think you're looking at...or what you're speaking to maybe is a broader policy issue that the Council may want to consider on how do we ensure that we continuously have active ag use in the County of Maui, even when property owners do decide to no longer do ag use. So, I think it's a broader policy issue. I think it...it is concerning because yeah, it...it could...people could just build and not do active ag later on, but I think that's a broader policy issue that the Council may want to take up at a later date, be my opinion.

CHAIR KAMA: Thank you.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair.

CHAIR KAMA: You're welcome. Okay.

COUNCILMEMBER SINENCI: Chair?

CHAIR KAMA: Let's continue...yes? . . .*(inaudible)*. . .

COUNCILMEMBER SINENCI: Yeah, thank you.

CHAIR KAMA: Member Sinenci?

COUNCILMEMBER SINENCI: Yeah, just following up. So, you mentioned one farm dwelling per five acres, so you wouldn't...a farmer wouldn't qualify for a second farm dwelling if you had less than five acres?

MR. PFOST: No, I'm...I'm sorry, let me...let me repeat how this works. It's...it's actually for your first and second farm dwellings, you're not limited on the size of your lot, on your acreage. It's when you want to do a farm labor dwelling that accommodates labor, that's when you can only do one farm labor dwelling per five acres. So, you're always allowed --

COUNCILMEMBER SINENCI: Okay.

MR. PFOST: -- to do the first and second farm dwelling on your property, it's just the farm labor dwelling is only if you have at least five acres.

COUNCILMEMBER SINENCI: Okay. Thank you, Mr. Pfof, for that. And then, was Bill 71 sent to the Hāna Advisory Committee for review?

MR. PFOST: No, it...

COUNCILMEMBER SINENCI: And if not, could...could it be before second reading?

MR. PFOST: No, it was not. What would have to happen, and this has occurred before, it's...it's really the Planning Commission that determines whether or not bills go to the Hāna Advisory Committee. They did not direct that to occur, so it did not happen. If the Council wanted to direct the Planning Commission to do so, then I could take this before the Planning Commission with a recommendation from the Council. We could then go to Hāna Advisory. We'd have to go back to the Planning Commission, and then we'd have to come back to Council. So, it would be a little bit of a time...time to do all of that, but it's still within the realm to do so.

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COUNCILMEMBER SINENCI: Okay. Thank you. Yeah, because we do have a lot of farm properties in Hāna, and I would want those farmers to kind of weigh in on this bill. Okay. Thank you. Thank you, Chair.

CHAIR KAMA: You're welcome. Members, any other Members have questions? We can go round two. Yes, Member Cook?

VICE-CHAIR COOK: Thank you, Chair. The mechanism to follow up with whether someone's doing ag or not, if...if they...if they have an active farm and they stop farming, then how does that work with their...their taxes? Like they would shift to owner-occupied or nonowner-occupied, they wouldn't get a tax...a tax benefit, like our first testifier. So, is that one of the enforcement mechanisms as far as if you're not farming, you don't get the benefit of the taxes?

MR. PFOST: And I...I apologize. I'm not that familiar with the tax structure here. I...I know the different tax classifications. I assume that is the case because the first speaker actually kind of laid that out pretty well is what I think is...is occurring. So, in essence, that might be somewhat of an enforcement mechanism...not within Planning Department, of course, but...and I can't speak for the Real Property Tax Division on what they do, but I assume...it sounds that...that...correct.

VICE-CHAIR COOK: Chair, my next question for the Planner...Planning. When someone has ag property, and they're submitting for a building permit for their farm dwelling or the second farm dwelling, does water availability...is that part of the review at all?

MR. PFOST: Yes, it is. Actually, that is reviewed by...so there's many departments that are actually reviewing for building permits, not just the Planning Department, but that would also be reviewed by Water, Fire, and Building, of course.

VICE-CHAIR COOK: But I...but specifically for the Planning Department, if someone...if they're reviewing ag use, do they have any type of matrix of how much water would be necessary to actually be able to farm?

MR. PFOST: Not within the Planning Department.

VICE-CHAIR COOK: Okay. Thank you. So, that's...I don't have any more clarifying questions. We're going to have discussion about this afterwards?

CHAIR KAMA: Yeah.

VICE-CHAIR COOK: Okay. Thank you.

CHAIR KAMA: After all the questions are asked, then you can all talk among yourselves what you folks think about what you all heard. So, any other questions, Members, for our...yes, Member Paltin?

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COUNCILMEMBER PALTIN: I think my question would be for Corp. Counsel. So, to go in alignment, or try to go in alignment with the recommendations of the Planning Commission, I put an ASF on the cap, but I didn't include on it the repealing of the 10 percent. So, would I just audible say that if I'm trying to align with the Maui Planning Commission's recommendation?

MS. TARNSTROM: Thank you, Chair.

CHAIR KAMA: Go ahead.

MS. TARNSTROM: Thank you, Councilmember. I would defer to the Office of Council Services on how to address the Council Rules, and how to proceed with amendments on the floor or by writing.

COUNCILMEMBER PALTIN: Okay. So, Ms. Nakata, maybe?

CHAIR KAMA: Yeah.

COUNCILMEMBER PALTIN: If you're available.

CHAIR KAMA: Carla, are you here?

MS. NAKATA: Yes. Thank you, Chair. Thank you, Councilmember Paltin. My understanding is that Planning, in its Department report, indicated how it would implement when those two provisions coexist. So, perhaps Mr. Pfof might be able to opine on that question.

COUNCILMEMBER PALTIN: Oh, okay. I guess my question is for Mr. Pfof...Pfof. Pfof...Pfof.

CHAIR KAMA: Pfof as in...

MR. PFOF: Post.

COUNCILMEMBER PALTIN: Post.

MR. PFOF: Yeah. The F is silent in...in the last name. Thank you. Yeah, the...the...so, they're in two separate sections within the Agricultural District, and what we would...what we would consider, if the 10 percent did stay, is whatever is the restricted...more restrictive. So, we would look at 10 percent or 5,000 if it was 5,000 square feet, and so, you couldn't have more than 5,000. They are in separate sections. So, I'm not sure you necessarily need to remove the 10 percent requirement. It's interesting because if you had a minimum...to your point earlier, and your question earlier where substandard lots actually do not have to comply with the 10 percent. So,

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if we're talking about a minimum two-acre lot and an ag lot which would have to require the 10 percent, well, that's 8,700 square feet, which already exceeds your 5,000. So, really, in essence, the 10...if the 5,000 square foot limitation would be put into place, the 10 percent really becomes --

COUNCILMEMBER PALTIN: Obsolete.

MR. PFOST: Yeah, obsolete, really. So, we could remove it or keep it in, but it...it becomes obsolete, really, with the...

COUNCILMEMBER PALTIN: I feel like it's cleaner to remove it, and I...I feel like whoever the Council was that imposed that rule had no real concept of math. Because like, you know, if you had 100-acre lot, are you going to have a 10-acre house or something? You know, it doesn't...it doesn't make sense. And I know majority of us local people can't afford a ten-acre house, but we got, you know, what is the guy's name, Ellison living on island, we got, you know, Oprah and all of that, and...and I feel like our laws should reflect our residents and our...our desire of community. And that ag land is something that we need to do ag on. So, I...I...I would feel more comfortable just repealing that section so there's no confusion. Like Member Sugimura says, you know, keep it simple, and...and be in alignment with the recommendation.

MR. PFOST: I agree, it would be cleaner if we removed that section . . .*(timer sounds)*. . . since it would be obsolete.

COUNCILMEMBER PALTIN: Okay.

MS. NAKATA: Chair? Oh.

CHAIR KAMA: Yes.

MS. NAKATA: Chair Kama, if I --

CHAIR KAMA: Yes.

MS. NAKATA: -- may.

CHAIR KAMA: Yeah.

MS. NAKATA: If the body is considering a removal of the 10 percent cap, that section was not technically a part of the bill that was forwarded to the Maui Planning Commission. So, I'm not clear that it would be within the scope of what's before you today. There may be a mechanism to impose...or to clarify that within this particular section. The 10 percent cap is under 19.30A.030, not a part of today's bill. However, you may want to consider some kind of clarifying language in...within this particular section that's being amended. Thank you, Chair.

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COUNCILMEMBER PALTIN: Oh, Ms. Nakata, if we could clarify, even if they discussed it, it's still not something that's allowed legally?

MS. NAKATA: I think it would be a close call. Because that may have impacts on other provisions than Title 19, and perhaps Mr. Pfof would be able to comment on that. I think what may be more prudent is, if you're looking at trying to address that 10 percent, to include it within Section 19.30A.050, which is the bill before you today. Thank you, Chair.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR KAMA: Thank you. Oh, Member U'u-Hodgins, yes.

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

CHAIR KAMA: Well, I was asked...well, everybody went once, and if they wanted to go twice, people were just raising their hands.

COUNCILMEMBER U'U-HODGINS: Okay. Thank you, Chair. Out of curiosity, do we have an understanding on how many nonconforming ag lot sizes do we...do we have? Like if the minimum is two, do we know how many we have that don't meet that minimum requirement?

MR. PFOST: I am sorry, I don't have that information.

COUNCILMEMBER U'U-HODGINS: Okay. Maybe like Real Property Tax. I have a question. So, if somebody has an existing house on, let's say, three acres of ag, their main farm dwelling is already at the cap at...at 5,000 square feet, and they have a legal and approved 1,000 square foot second farm labor dwelling, and they...and they do ag, and they wanted to get a building permit for something. Would they be able to...do they have to make any alterations to their existing house?

MR. PFOST: So...I'm sorry, maybe I didn't understand. You're...you're saying that they have an existing main dwelling...

COUNCILMEMBER U'U-HODGINS: Let's say that it's at...let's take the cap into consideration at --

MR. PFOST: Sure.

COUNCILMEMBER U'U-HODGINS: -- 5,000 square feet. Their house is 5,000 square feet. They have a 1,000 square foot second farm dwelling, and they came in for a permit for whatever, and they're doing ag. Let's say they have to renovate their house or whatever, their kitchen is ugly. What do they have to do to ensure that they are within the

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current laws? Do they have to break down 1,000 square feet of their existing main dwelling?

MR. PFOST: No. So, the...the structures would be what's determined as nonconforming. So, if they're nonconforming, you can modify and...modify in the sense of improving your structure--putting a new roof on, redoing your kitchen--as you mentioned. You wouldn't be able to add on to your structure because it's nonconforming to the maximum size requirement, but we would allow you to do...pull permits for maintenance on your property, that wouldn't be a problem.

COUNCILMEMBER U'U-HODGINS: We're going to have an existing nonconforming structure.

MR. PFOST: Yes, you would have that. You would have...yes. In other words putting a cap may put some properties into a nonconforming situation.

COUNCILMEMBER U'U-HODGINS: Okay. Okay. Thank you.

CHAIR KAMA: Any other questions, Members, for our Administrators and our...okay. Very good. Okay. Discussion. So, let's start with Member Cook, since you...

VICE-CHAIR COOK: Thank you, Chair. I'm supportive of the bill as is. I'm sensitive and aware to the gentleman estate issue and the...basically, I think the County has created that over the years because building on ag land was the path of least resistance for people to be able to build. Not having...the County not supplying water and being actually supportive of and enabling people to farm is something that I think that we, the Council, can work on from now on to basically...if we're going to have requirements and we really want ag, and we do really want ag, is to focus and develop the water supply so that people can farm. Having said that, I feel--and I have this, if anybody wants to see it, my office could pass it out--I did a chart for nonowner-occupied residents, which would be someone who has...if it's just basically an ag...ten-acre ag lot...and they...and I'm looking at my district in Mākena. Okay. I recognize that West Maui and East Maui, the definition of agricultural land is extremely varied. You have land that's basically ranch land, it's lava, shallow soil. You add water it turns green, and it's great, but it isn't...it isn't prime ag land. West Maui has a lot of land that is farmable. If...and I'm looking at...I'm looking at this basically as tax revenue...high...high impact tax revenue. If someone has a \$10 million house in this category, and then the property's 8 million--so it's \$18 million--the taxes per year would be \$232,870, in ten years it would be \$2,328,000. In ten years, tax revenue, that one house could build about a 2 million gallon water storage tank. I'm just...I want the...I'm hoping that the Council can kind of put into perspective our need for tax revenue, the impact...

CHAIR KAMA: . . .*(inaudible)*. . . the water.

VICE-CHAIR COOK: Hmm?



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CHAIR KAMA: So, we can build the water.

VICE-CHAIR COOK: Pardon?

CHAIR KAMA: So, we can drill for water. That's what we need the revenue for?

VICE-CHAIR COOK: I can't hear you.

CHAIR KAMA: Are you saying that we need these revenues --

VICE-CHAIR COOK: Yes. So...

CHAIR KAMA: -- that you're talking about so we can develop more water source?

VICE-CHAIR COOK: Well, just in general for our infrastructure. So, the impact of having someone have a large home, I think we need to take this into consideration when we're doing this cap and the land use. And so, I...I just want to broaden the conversation and bring to the table when we limit it to 5,000 square feet and eliminate the 10 percent rule, what are we eliminating potentially in our income. And in my district . . . *(timer sounds)* . . . in South Maui, it will be a substantial decrease in revenue over the next 15 years. And I think that that would be a detriment and a disservice to the community as a whole, considering everything that we've had, and with the TVRs and everything, for us to be conscious and aware of the fact where is our tax revenue going to come from, what is the impact to the community from accommodating that. And so, I'm not supportive of eliminating the 10 percent. I am supportive of addressing the...that people aren't building on quality farm land and not farming it. And I think that we as a community and the Council can develop policies, whether it's supporting co-ops and supporting other things to help people farm. If someone's rich and they have a piece of property, and it's to their benefit to enable people to farm, then we could be part of that solution. So, that's my comment.

CHAIR KAMA: Thank you. Members, any other discussion on this item? Member Paltin.

COUNCILMEMBER PALTIN: I'd like to move to go into executive session to find out about applying the cap just for West Maui. We have water issues, we have fake farm issues, and if no other district is supportive, then I'm...I'm okay with applying it just to West Maui because we have a big fake farmer problem--Launiupoko, Plantation Estates, Honolua Ridge, and so on and so forth.

CHAIR KAMA: So, is that your motion, Member Paltin?

COUNCILMEMBER PALTIN: That's my motion.

CHAIR KAMA: Is there a...

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VICE-CHAIR COOK: Second.

CHAIR KAMA: Okay. So, it's been moved by Member Paltin, seconded by Member Cook, to go into executive session. So, do we need a roll call...just take a poll...take a vote, right? Okay. Oh.

MS. NAKATA: Excuse me, Chair.

CHAIR KAMA: Yes, go ahead.

MS. NAKATA: Oh. Excuse me. I...I understand there's a motion to go into --

CHAIR KAMA: Yeah.

MS. NAKATA: -- executive session that's been --

CHAIR KAMA: Yeah.

MS. NAKATA: -- made.

CHAIR KAMA: Yes.

MS. NAKATA: I'm not sure if it's yet been seconded. However --

CHAIR KAMA: It was.

MS. NAKATA: -- Staff is aware...okay.

CHAIR KAMA: Yeah.

MS. NAKATA: Staff is aware that there is a memo --

CHAIR KAMA: A memo.

MS. NAKATA: -- from the Director concerning certain legal issues --

CHAIR KAMA: Yes.

MS. NAKATA: -- that have been raised by the --

CHAIR KAMA: Yes.

MS. NAKATA: -- Department of the Corporation Counsel.

CHAIR KAMA: Yeah.

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MS. NAKATA: It is not specific to West Maui, but the Director has made it a public document.

CHAIR KAMA: Uh-huh.

MS. NAKATA: So, I'm not sure if Chair would like to --

CHAIR KAMA: I can pass that out.

MS. NAKATA: -- have that memo distributed --

CHAIR KAMA: Yeah.

MS. NAKATA: -- and allow the Members an opportunity to review it.

CHAIR KAMA: Yeah, we're going to pass it out now.

COUNCILMEMBER LEE: Can we have a recess?

UNIDENTIFIED SPEAKER: Yeah, Chair.

CHAIR KAMA: Yeah. So, this...yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: It is time for a recess. So...

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry, Chair.

CHAIR KAMA: I hear Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Before we recess...

CHAIR KAMA: Yes. So, let's take a ten-minute recess.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, Keani.

CHAIR KAMA: It is now 10:38 --

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, Chair?

CHAIR KAMA: -- I'm going to take a ten-minute recess so you can --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

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CHAIR KAMA: -- read the documents, and then we'll reconvene and then continue.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair? Before you recess...Chair?

CHAIR KAMA: Yes. Yes, Member...yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Can I ask a quick question before we recess?

CHAIR KAMA: Sure.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. So, I...I hear Carla advising us on reading the document that was made public. Can we --

CHAIR KAMA: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- confirm that what Mister...or Deputy Corp. Counsel Nahulu was speaking to is the same thing? So, I'm understanding that Ms. Nakata is inferring that it may be the same thing, which would make going into executive session unnecessary. Is...is that a correct assumption?

CHAIR KAMA: Mr. Nahulu?

MR. NUNOKAWA: I am currently looking at the memo. I hadn't seen it before, but it...

CHAIR KAMA: Yeah, we just got it now.

MR. NUNOKAWA: Initial look over it, it looks like it probably addresses most of the same issues that would come up if it gets applied to the West Side.

MS. TARNSTROM: Chair, if I may?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mr. Nunokawa, so as...when we reconvene from our recess after you've had time to also review that document, will you please advise us if executive session would still be necessary under what you...in...in response to some of the...the recommendations you wanted to...or some of the things that you would want us to be advised of.

MR. NUNOKAWA: Sure. Yeah. I think that we can do that.

CHAIR KAMA: So, Members, it is now --

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha.

CHAIR KAMA: -- 10:40, and we're going to take a ten-minute recess. We'll reconvene at 10:50. HLU is now in recess. . . .(gavel). . .

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**RECESS:** 10:41 a.m.

**RECONVENE:** 10:52 a.m.

CHAIR KAMA: . . .(*gavel*). . . Will the HLU Committee meeting of May 15, 2024 please come back to order? It is now 10:52 a.m. Okay. So, Members, we left off with Member Paltin's motion to go into exec session, seconded by Member Tom Cook. And then we distributed a memo...the memo from David Raatz. And so, now that Corp. Counsel has had an opportunity to at least review it, and hopefully we all did too, so I'd like to ask Corp. Counsel, either Ms. Tarnstrom or Mr. Nunokawa, after reading our memo, is it necessary, to go into exec session?

MS. TARNSTROM: Thank you, Chair. I'll take this. It is. We have a...a slightly different opinion than...or at least we have a conflict with the Office of Council Services' opinion, which we were just provided, but no time to review very closely. So, we would still go into executive session.

CHAIR KAMA: Okay. Okay. So...so, Members, but do you have any additional questions or comments for...for Corp. Counsel or Carla in open session before we consider entering into exec session? But at this time I'd like to ask...Carla, could you please summarize what we...David sent us to...to...sent to all of us in the memo?

MS. NAKATA: Thank you, Chair and Members. I believe Director Raatz is available online --

CHAIR KAMA: Oh, okay.

MS. NAKATA: -- to comment further on his memo. And Staff would just clarify that if it is your intention to go into an executive meeting, if part of the motion could please state the basis, which I believe would be 92-5(a)(4) to consult with Counsel on the rights, liabilities, duties, powers of the Committee. But in any event, Director Raatz is available to summarize. Thank you.

CHAIR KAMA: Okay. Thank you. Oh, Mr. Raatz? Oh, there you are.

MR. RAATZ: Thank you, Chair Kama, and Members. So, in essence, our memo first provides some background on regulatory takings, and that's the legal theory that when the Government regulates land in such a way that it's akin to taking possession of property, then just compensation is required under the Constitution. There's three legal theories under regulatory takings doctrine, they're all named after cases. Two of them are considered per se takings. If you have those scenarios, then there's just compensation that has to be paid. The first theory is *Loretto*. That's when there's a physical invasion of property. In that case, there was a regulation that required cable company access to private property to install cable boxes. That was a physical invasion. That was a per se taking. Then there's the *Lucas* case. That's the theory that when the regulation

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deprives the landowner of all economically viable use of a property, then you have a per se taking, and the Government has to pay compensation. That was the theory at play in the *Leone* case that some Councilmembers may remember, that...that arose out of South...South Maui, which Corporation Counsel secured a victory for the County in a five-to-zero decision at the State Supreme Court. Neither of those theories would seem to apply to Bill 71's ASF, that would establish a cumulative size limit for the two farm dwellings. There's no requirement of a physical invasion, and we don't see a scenario where any landowner would lose all economically viable use of the property. So, that leaves us with the third and final theory of regulatory takings, the *Penn Central* case...or the *Penn Central* test, which is a very fact-specific case and fact-specific theory. It's not one of the theories that would allow for a per se takings where compensation is required based on very specific facts. There's a requirement for an ad hoc factual inquiry whenever there's a *Penn Central* case brought. And typically, a *Penn Central* case would be brought by an individual landowner regarding an individualized land use decision. So, a generally applicable zoning ordinance such as what you have before you, and under any of the scenarios that have been presented, either Bill 71 in its original form or its amended form, would be a generally applicable zoning ordinance that...that doesn't target any specific landowner to bear a disproportionate or unfair burden. Just quickly, because we laid it out in the memo, there's three elements that are looked at in the *Penn Central* test. First is the economic impact of the regulation on the claimant, and our review of the case law shows that on that factor, for the landowner to have a viable claim, you have to show a near-catastrophic diminution in property value, 50 percent or more. There's cases where even a 92.5 percent loss in property value was not sufficient to satisfy that first factor. The second factor is the extent to which the regulation has interfered with distinct investment-backed expectations. So, if you're investing in property based on certain expectations, and then the Government, in an unreasonable way, defies those expectations, then you might be able to satisfy that part of the *Penn Central* test. But the cases tell us that...that again, generally applicable ordinances are to be expected, especially in agricultural land, for instance, which is heavily regulated in this State under our State Constitution, State statutes, County General Plan, County Code. All...all owners of agricultural-zoned land are aware that regulation is going to happen for...for their property. So, the change in a size limitation for...for structures, for instance, is...is a very normal and routine type of...of Government regulation that would not be something that would defy a landowner's reasonable investment-backed expectations. And then the final action...or excuse me, the final...the third and final factor in the *Penn Central* test is looking at the character of the governmental action. And again, if it's an unusual type of action, or something that targets a specific landowner or a very small class of landowners, then that might tend to show a taking. But if it's the type of, once again, generally applicable zoning ordinance that is designed to promote the public good, and merely makes adjustments of a routine nature to different residents' rights and responsibilities, that does not rise to the level of a taking. So, we think what we have...what you have before you is a very important and challenging policy decision, but we would not recommend that you get distracted by legal issues, which we don't see as viable. Thank you, Chair.

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CHAIR KAMA: Thank you, Mr. Raatz. So, I'm going to ask you the same question that I asked Corp. Counsel. Is it necessary for us to go into executive session?

MR. RAATZ: Thank you, Chair. That...executive session is a policy decision for the body. We have guidance from the State Supreme Court which applies to Sunshine Law. They...they pointed out a couple of things. That it is discretionary, you're never obligated to go into executive session. They say because the Sunshine Law has a principle favoring openness and in deliberations, that whenever a body does go into executive session, you should carefully consider whether it is actually necessary. I don't think that it's necessary in this case. We frequently advise the body on takings issues. It's...the...the attachment to my memo provided some of that advice in a public document from a few years ago. Nothing I've said is secret in any way. The...the analysis all comes from published judicial opinions. I...I don't think OCS would have anything different to say to you in executive session than we have to say in open session. So, I...I...I don't see a need, but it's the body's call. Thank you, Chair.

CHAIR KAMA: Okay. Thank you very much. Okay. So, Members, do you folks have any additional questions or comments for either Corp. Counsel or for our OCS Counsel in open session before we go in? I saw a . . . *(inaudible)*. . . and...okay. Chair Lee?

COUNCILMEMBER LEE: I'll ask Corp. Counsel, Ms. Tarnstrom.

CHAIR KAMA: Tarnstrom?

MS. TARNSTROM: Thank you, Chair Lee. Thank you, Chair Kama. Corporation Counsel hasn't had any time to digest this memorandum by the Office of Council Services, and we have a general sense of...that we would like to advise you on liabilities that our office identifies. We cannot do that in open session because that would be against the County's interest for your lawyer to put liabilities on the record. So, I recommend you going into executive session so we can communicate our concerns, but it's up to the body.

COUNCILMEMBER LEE: Can you tell me if that...if there is a...there's a specific case pending that you're concerned about, or just in general?

MS. TARNSTROM: In general.

COUNCILMEMBER LEE: In general.

MS. TARNSTROM: Thank you, Chair.

COUNCILMEMBER LEE: Okay.

CHAIR KAMA: Okay. Is that it, Miss...okay.

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COUNCILMEMBER LEE: I guess so.

CHAIR KAMA: Member Sugimura...

COUNCILMEMBER LEE: I thought this was a simple bill.

CHAIR KAMA: Okay. So, we continue with our simple bill. Member Sugimura, did you have any questions in open session?

COUNCILMEMBER SUGIMURA: I guess we're hearing that we're...we need to go into exec session from our attorneys, so take the vote, I guess.

CHAIR KAMA: Member Paltin? Questions?

COUNCILMEMBER PALTIN: I...I would like to just know what their concerns are so we can make an informed decision. I think that, you know, changes that we make in ag lands is similar to changes made when you consider it as part of the whole, I guess, would be my discussion. You know, like every change that we make has an effect that we can't always address because everything has to go through the Planning Commission. And apparently, even though they discussed various sections of the bill, Corp. Counsel doesn't feel comfortable with us taking actions on a section that wasn't exactly in the bill. So, similar to like Member Johnson, when he changed the definition of farm to useable, feasible, accessible, we didn't change that requirement that the five acres apply to the useable, feasible, accessible, which would be a logical change in my mind, but we...we have to--and I have a PAF in on it, I don't know why it's taking so long--but to go to the Planning Commission again. And so, I think similar to the death of a thousand cuts, we need to take a...a broad view and...and take it all in. Maybe South Maui or other places Upcountry are okay with a proliferation of fake farms that raise the price of ag land to astronomical amounts, and make it more difficult for our...our true farmers to do farming. West Maui has had enough.

CHAIR KAMA: Okay. Thank you. Member Johnson, any comments? No?

COUNCILMEMBER JOHNSON: Well, as far as Corp. Counsel's advice to go into executive session, it's 11:05, I think if we can move this along and do that. I just...we've had so much litigation in this County, I'm...I'm...I'm ready to just do this, just to be on the safe side. Thank you, Chair.

CHAIR KAMA: Member Cook?

VICE-CHAIR COOK: I'm willing to go into executive session. I think the...the public appreciates the more things we can do transparently. This is going to affect a lot of people. The conversation and the discussion is meaningful and appropriate, but by the same token, not listening to legal advice is foolish, so I'm going to go into executive session I guess.



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COUNCILMEMBER PALTIN: Sorry.

CHAIR KAMA: Yes.

COUNCILMEMBER PALTIN: Chair, point of information. I guess Member Rawlins-Fernandez is on her phone, and she's asking if her mic and video could be unmuted.

CHAIR KAMA: Oh. Okay. She's next.

COUNCILMEMBER LEE: Chair?

CHAIR KAMA: Yes. Yes, Member...

COUNCILMEMBER LEE: Just wanted to remind everybody we need six votes. Yeah.

CHAIR KAMA: Yeah.

COUNCILMEMBER LEE: Okay.

CHAIR KAMA: Okay.

COUNCILMEMBER LEE: I mean, may as well.

CHAIR KAMA: Thank you. Yeah, I was...I was going to read that as we continued on. But Member Rawlins-Fernandez, you're...you're unmuted.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair...and mahalo, Member Paltin, for alerting Staff to enable my mic and camera. I...I...I wanted to ask a point of clarification. I'm supportive of going into the executive session to understand all the...all legal implications of the proposal. I...I think it...it is prudent of us to stop treating Maui like...with like one general rule, just as like Moloka'i asked to be exempted because there are different problems in different districts, and we can't deny that. And by enabling one thing in one district, we're causing greater problems in another district. So, you know, I want to be able to tailor our...our laws to not do more harm, you know, when trying to do good somewhere else. So, my...my question is regarding the legal analysis that Director Raatz provided in open session, I missed that part, I was checking in. Why was that done in open session?

CHAIR KAMA: Director Raatz?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, could...could you hear me? Oh, okay.

CHAIR KAMA: Yes.

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COUNCILMEMBER RAWLINS-FERNANDEZ: You heard my question?

CHAIR KAMA: Yes, I did.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo.

MR. RAATZ: Thank you, Chair Kama and Councilmember Rawlins-Fernandez. The analysis and advice in the memo is really no different in substance to what we've frequently advised the Council in public documents over multiple Council terms. So, didn't see a basis to consider it a privileged document. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director Raatz. And was...I mean was it also appropriate for that document to provide a legal analysis in our open session materials?

CHAIR KAMA: Mr. Raatz?

MR. RAATZ: . . .*(inaudible)*. . . Chair and Councilmember. Yeah, we...we regard this as a public document that's now part of the...the Committee's record on this item.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, wait. The question was whether...I don't know if it would be . . .*(inaudible)*. . . be for someone else like . . .*(inaudible)*. . .

CHAIR KAMA: We can't hear you.

COUNCILMEMBER RAWLINS-FERNANDEZ: . . .*(inaudible)*. . .

CHAIR KAMA: Speak louder, please. Yeah. She's at the airport. Member Rawlins-Fernandez...I think she's looking for a quiet place.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. I'm trying to find a quiet place at the airport --

CHAIR KAMA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- . . .*(inaudible)*. . . So, my question, it just...you know, when providing a legal analysis to the Council, it's generally done in...in closed session, so I was asking...and it doesn't have to be responded...the response doesn't have to be from Director Raatz, it can also be from Corp. Counsel, the appropriateness of providing that legal analysis in open session document.

CHAIR KAMA: So, did you want Corp. Counsel to respond to that question too?

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure. Because Director Raatz already did.

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CHAIR KAMA: Okay. Corp. Counsel?

MS. TARNSTROM: Thank you, Councilmember, Chair. I wouldn't want to opine on what Mr. Raatz's duties are to this Council. Our office feels more comfortable providing...

COUNCILMEMBER RAWLINS-FERNANDEZ: No, no, that's...that's not my question. My question is about the public document. So, the document that was transmitted to us from the Planning Department with a legal analysis that Director Raatz was responding to. Generally, that type of analysis is done in closed session. So, I was just wondering about the appropriateness of that document being in open session materials.

MS. TARNSTROM: Thank you, Councilmember. I...I don't feel comfortable making a statement on that, if that's okay with you. Thank you.

CHAIR KAMA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, that's...that's okay with me. I...I...that's why I'm supportive of going into closed session because I'd like to hear a response to that question. Mahalo.

CHAIR KAMA: Okay. So, Members, if you have no more questions that we could ask in open session, we do have an...a motion on the floor to convene an executive meeting in accordance with Section 92-5(a)(4) of the Hawai'i Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. An affirmation vote of two-thirds of the voting Members present provided by the affirmative vote constitutes a majority of the Members to which the board is entitled is needed to convene. So, there are nine of us, so we need six to go into executive session, which is two-thirds. Okay. So, the motion's made by Member Paltin and was seconded by Member Cook to go into executive session for HLU-30. There are no further discussions, I know, because we just said it. And so, I think we need to take a roll-call vote; is that right? Okay.

COUNCILMEMBER LEE: I think a hand vote is fine.

CHAIR KAMA: You do?

COUNCILMEMBER LEE: Yeah, hand vote.

CHAIR KAMA: Okay. Is...all those in favor of going to exec session?

**COUNCILMEMBERS VOICED AYE.**

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CHAIR KAMA: Okay. One...two...three...four...five...six...I see Shane, seven, I see Keani, eight, and I'm nine. Okay. So, it has been moved and seconded that all in favor, so we are going into exec session.

**VOTE:           AYES:   Chair Kama, Vice-Chair Cook, and Councilmembers Johnson, Lee, Paltin, Rawlins-Fernandez, Sinenci, Sugimura, U'u-Hodgins.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   None.**

**MOTION CARRIED.**

**ACTION:   APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR KAMA: So, for the record...

MR. RAATZ: Chair? Chair?

CHAIR KAMA: Yes.

MR. RAATZ: Oh, I'm sorry. You're probably...you're probably about to go through the process. I just...before we recess the open session, wanted to make clear that we announce in open session that's required by the new Sunshine Law that names and titles of everyone who will be in executive session.

CHAIR KAMA: Yes. So, for the record --

MR. RAATZ: Thank you.

CHAIR KAMA: -- the following personnel will be attending the executive meeting. All Councilmembers --

MS. GRECO: Excuse me, Chair.

CHAIR KAMA: -- who are here --

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MS. GRECO: I'm sorry.

CHAIR KAMA: -- in attendance...yes.

MS. GRECO: I'm sorry, this is Staff. I just want to confirm, as you go down --

CHAIR KAMA: Yeah.

MS. GRECO: -- the line, if you can, for the Members joining remotely --

CHAIR KAMA: Yes.

MS. GRECO: -- if you can ask them to please confirm that they're in a private location where no others can hear the discussion that will be taking place during...during executive session.

CHAIR KAMA: Okay. So, you want to do that after we get in, or...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

MS. GRECO: If you can ask the Members when you go down, the Members that are remote.

CHAIR KAMA: Okay. We can do that. Okay. So, all Members in attendance will be myself, Committee Chair Tasha Kama, Committee Vice-Chair Tom Cook, Council Chair Alice Lee, Council Vice-Chair Yuki Lei Sugimura, Councilmember Gabe Johnson, Councilmember Tamara Paltin. Councilmember Keani Rawlins-Fernandez, because you are not with us, I don't know how you're going to guarantee you are in a secure location.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I'm going to go in my vehicle.

CHAIR KAMA: Oh, okay. When is your plane?

COUNCILMEMBER RAWLINS-FERNANDEZ: . . . *(inaudible)*. . . myself, and it's --

CHAIR KAMA: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- . . . *(inaudible)*. . . location, but I don't remember that being part of the rules.

CHAIR KAMA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Is that something new that we have to do before going into executive session?

CHAIR KAMA: Is that...is that the rule? Is that the new rule?

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COUNCILMEMBER RAWLINS-FERNANDEZ: We didn't do that before. We would get into --

CHAIR KAMA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- executive session, and then we would disclose that information --

CHAIR KAMA: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- in executive session --

CHAIR KAMA: Right.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- that we're in a secure area alone.

CHAIR KAMA: Right.

COUNCILMEMBER RAWLINS-FERNANDEZ: And...and I'll be in a secure area alone until we board.

CHAIR KAMA: But Remi is going to respond to that.

MR. MITCHELL: Thank you, Chair. We've asked for that information because the public will have no way of knowing who we admit into executive session and whether they are in a secure location because the way we do it now is literally just a press of a button. So, we're asking that the Members, if they're not in the Chambers, if they could announce it before we move the...the Members into the executive session so that everyone knows they're in a secure location. Thank you, Chair.

CHAIR KAMA: Thank you --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo.

CHAIR KAMA: -- Mr. Mitchell. Okay. And I think I left off with Councilmember Shane Sinenci. Are you in a secure location, sir?

COUNCILMEMBER SINENCI: Yes, Chair. I'm locked in my home office. I'm here by myself, no one else here.

CHAIR KAMA: Okay. Thank you. And also, Councilmember Nohe U'u-Hodgins will be here in the Chamber with us. From the Office of Council Services, we'll have Richard Mitchell, our Legislative Attorney; David Raatz, Director of OCS; Pauline Martins, our Senior Committee Secretary. And may I please ask...

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MS. GRECO: Chair, I'm sorry. One more OCS Staff member, that's Jennifer Yamashita, also Committee Secretary.

CHAIR KAMA: Oh, that's right. Jennifer Yamashita, our Committee Secretary. Yes. Somebody needs to take those notes for us. So...but I could please ask Corp. Counsel to state who from your Department of the Corporation Counsel or the Administration will be in exec session and your titles, please? Ms. Tarnstrom?

MS. TARNSTROM: Thank you, Chair. I'll be in executive session, Kristin Tarnstrom, Deputy Corporation Counsel, along with Nahulu Nunokawa, also a Deputy Corporation Counsel.

CHAIR KAMA: Okay. Thank you. Okay. So, at this time, I'm going to call for a ten-minute recess. It is now 11:16, and we'll reconvene at 11:26. HLU Committee meeting is now in recess to prepare to go into executive session. . . .(gavel). . .

**RECESS:** 11:17 a.m.

**RECONVENE:** 12:05 p.m.

CHAIR KAMA: . . .(gavel). . . The HLU Committee meeting of May 15th, 2024, will now reconvene. It is 12:05 a.m. [sic]. We do have a 1:30 BFED meeting this afternoon, Members. So, for the next ten minutes is all up to you. So, I think maybe if we wanted to, and to be able to expedite moving, is for someone to please make the motion for Bill 71, and then we'll have questions or discussions and...

COUNCILMEMBER PALTIN: So moved.

VICE-CHAIR COOK: Second.

CHAIR KAMA: Okay. It's been moved...

MR. MITCHELL: Chair, before we go into --

CHAIR KAMA: Yes.

MR. MITCHELL: -- the motion, I need to...

CHAIR KAMA: Oh, go ahead. Yeah.

MR. MITCHELL: Okay.

CHAIR KAMA: Do your summary.

MR. MITCHELL: Okay.

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CHAIR KAMA: I'm so sorry.

MR. MITCHELL: No problems. In accordance with Act 19 (2023), the body discussed Bill 71 (2024) and proposed amendments to the bill. There were a couple of...three items that were initially discussed that are better for open session. Those were a discussion on the creation of an enforcement division within the Planning Department to address what I will refer to in a nongender-exclusive way as luxury estates or fake farms. There was also discussion on the impacts of the Federal Farm Bill and then the role of private water on luxury estates versus County water. And other than that, there were no other discussion topics, Chair.

CHAIR KAMA: Oh, thank you so much. I was just so excited to keep on moving on, and then Member Paltin got even more excited by making the motion. And who seconded? Oh, and Mr. Cook seconded it all before we had our summary report. Okay. Discussion. Member Paltin?

COUNCILMEMBER PALTIN: Thank you.

CHAIR KAMA: . . .*(inaudible)*. . . yes.

COUNCILMEMBER PALTIN: I move to amend the motion with the ASF that's posted.

CHAIR KAMA: Is there a second to the amendment of the ASF that is posted? No amendment. Okay. It lacks for...for a second. So, Members, we're right back to the original motion, correct? So, all those in favor of the original motion, which was to...let me read this for you. "A BILL FOR AN ORDINANCE AMENDING SECTION 19.30A.050, MAUI COUNTY CODE, RELATING TO THE SIZE OF FARM DWELLINGS IN THE AGRICULTURAL DISTRICT." And that is what the motion is that Member Paltin moved and Member Cook seconded. Okay. Can we just...yes, Member Sugimura?

COUNCILMEMBER SUGIMURA: Just for clarification.

CHAIR KAMA: Yes.

COUNCILMEMBER SUGIMURA: So, the amended bill, ASF, didn't get a second and failed.

CHAIR KAMA: Yes.

COUNCILMEMBER SUGIMURA: So, what we have on the floor, just for --

CHAIR KAMA: Is the original.

COUNCILMEMBER SUGIMURA: -- the public's information is the original bill's --



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CHAIR KAMA: Yes.

COUNCILMEMBER SUGIMURA: -- 1,000 to 1,500 square feet --

CHAIR KAMA: Correct.

COUNCILMEMBER SUGIMURA: -- Bill 71, not amended. Okay.

CHAIR KAMA: Yes. Thank you for that. Any other discussion?

COUNCILMEMBER LEE: No, I'm just asking if we need a roll call. Do we?

CHAIR KAMA: I don't think so.

COUNCILMEMBER LEE: Okay.

CHAIR KAMA: I think it was clear to us. Member Paltin?

COUNCILMEMBER PALTIN: Before we vote, I just had one additional question, I guess --

CHAIR KAMA: Okay.

COUNCILMEMBER PALTIN: -- that could be asked in open session to Corp. Counsel. For ag land especially, we get...said that by the ag working group that we shouldn't craft laws...

MS. GRECO: Excuse me, Members. I'm sorry. We're having issue with the sound if we could do a five-minute recess to get that figured out. No has been able to hear us that's not in the Chamber.

CHAIR KAMA: Oh. Oh, so sorry. Okay. Members, it is now 12:09, we're going to take a...does that...well, I'd like to say 3 and come back at 5, but I'm afraid to say 5 and come back in 12.

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . . 12:15 that's . . .*(inaudible)*. . .

CHAIR KAMA: No, no, no, I'm not doing that. It's not my fault. It's all you going into exec session.

COUNCILMEMBER SUGIMURA: We'll get there . . .*(inaudible)*. . .

CHAIR KAMA: Anyway, it is 12:09, recess until 12: --

COUNCILMEMBER SUGIMURA: 15.

CHAIR KAMA: -- 14.

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COUNCILMEMBER SUGIMURA: Oh, 14.

CHAIR KAMA: 14. HLU is now in recess. . . .(gavel). . .

**RECESS:** 12:09 p.m.

**RECONVENE:** 12:20 p.m.

CHAIR KAMA: . . .(gavel). . . The HLU Committee meeting will now reconvene. It is now 12:20 p.m. So, Members, we left off with the vote. So, what we're going to be doing is recommending passage...we're taking the vote to recommend passage on first reading of Bill 71. So, can we just do a voice vote? Keani's on the line, and so is Shane. So, I see heads nodding in the Chamber, so I'm going to count those nods as yes votes. That's six, plus myself is seven. Member...I see your hand, Shane --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: -- and...yes, Member Keani Rawlins? I guess your hand is on the . . .(inaudible). . .

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm sorry, will you repeat that motion?

CHAIR KAMA: It's to recommend...

COUNCILMEMBER RAWLINS-FERNANDEZ: . . .(inaudible). . .

CHAIR KAMA: -- to...

COUNCILMEMBER RAWLINS-FERNANDEZ: No, wait. Yeah, my question is, are we voting? Okay. Got it.

CHAIR KAMA: Yes. To pass Bill 71.

COUNCILMEMBER JOHNSON: Chair, I have discussion.

COUNCILMEMBER RAWLINS-FERNANDEZ: Motion to amend.

CHAIR KAMA: The amendment...

COUNCILMEMBER RAWLINS-FERNANDEZ: Because that...that...the motion to amend by Member Paltin and seconded by Member Cook, was that disposed of?

COUNCILMEMBER PALTIN: No, I didn't get a second for the amendment, so --

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CHAIR KAMA: So, we're voting on the main.

COUNCILMEMBER PALTIN: -- it died.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, Member...Chair...Chair Kama said Member Cook seconded it.

COUNCILMEMBER PALTIN: That was to go into executive session.

COUNCILMEMBER RAWLINS-FERNANDEZ: For executive session.

CHAIR KAMA: That was to go into exec session.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I see.

CHAIR KAMA: Okay. So, I think...

COUNCILMEMBER RAWLINS-FERNANDEZ: When...I'm sorry. I'm trying really hard to . . .*(inaudible)*. . .

CHAIR KAMA: So, I think when you were on your flight, Member Rawlins-Fernandez, we...and after --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR KAMA: -- the discussion that we had during our session, that the Members realized that to pass Bill 71 out first, and we'll work on all the other things that impacted the amendment, and Member Paltin was okay with that. So...so, the vote at...that we're doing right now is to be able to recommend passage of Bill 71. And so, we...we're voting, and then Member Johnson had a question...or a discussion. Oh, I'm sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, thanks for that recap.

CHAIR KAMA: So sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: I...I really appreciate it.

CHAIR KAMA: Thank you.

COUNCILMEMBER JOHNSON: Thank you, Chair.

CHAIR KAMA: Yeah.

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COUNCILMEMBER JOHNSON: For discussion, I will support this bill because we are in a housing crisis. I don't...I think of some folks and some of the testifiers were good examples of that who --

CHAIR KAMA: Yeah.

COUNCILMEMBER JOHNSON: -- who were farmers and are trying to farm actively, and we don't want to cast a wide enough net to catch them. We want to catch the fish who are taking advantage of the system. I...I think this problem that we're trying to address with Councilmember Paltin's amendment is, there should be some nuance involved so that we can find the folks that are abusing our systems. With all the complicated problems, there is nuance involved, and I...I...I...that's why I think this bill I'll support because --

CHAIR KAMA: Thank you.

COUNCILMEMBER JOHNSON: -- there are simple folks out there who are just trying to farm and do the right thing. And a little extra room --

CHAIR KAMA: Thank you.

COUNCILMEMBER JOHNSON: -- for...for their...themselves and their family is a good idea. Thank you, Chair.

CHAIR KAMA: Thank you, Member Johnson. So, can we just all say "aye" for the second time so I can just say nine, including the discussion with Member Johnson?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry.

CHAIR KAMA: So, I see nine hands, nine "ayes," the motion passes. So, this continues --

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: -- to go on...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KAMA: Yes. Member...

COUNCILMEMBER RAWLINS-FERNANDEZ: I didn't vote "aye." I wasn't voting "aye."

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CHAIR KAMA: Oh, I'm sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: I...I was trying to get your attention.

CHAIR KAMA: Okay. Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm sorry.

CHAIR KAMA: Okay. So, it's eight...so it's eight "ayes," and one opposed...is that what you're saying, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR KAMA: Okay. Thank you. Thank you for that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair...Chair, you know, in response to Member Johnson's comments, like I...I...I...no one like that is doing, you know, like the kind of farming that, you know, we're trying for--except for the...the folks who did ti leaves--but the farming that we're trying to help, like I...I...I didn't hear it in testimony. But I'm happy to support Moloka'i Planning Commission's recommendation to exempt Moloka'i --

CHAIR KAMA: Absolutely.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- from this bill.

CHAIR KAMA: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I'm voting no. And I'm...I'm alone in my vehicle --

CHAIR KAMA: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- for the record.

CHAIR KAMA: Appreciate that. So, the vote is eight "aye," one "nay," Member Rawlins-Fernandez; is that correct?

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**VOTE: AYES: Chair Kama, Vice-Chair Cook, and Councilmembers Johnson, Lee, Paltin, Sinenci, Sugimura, and U‘u-Hodgins.**

**NOES: Councilmember Rawlins-Fernandez.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: FIRST READING OF BILL 71 (2024).**

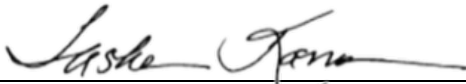
CHAIR KAMA: Okay. The simple bill is now passing at 12:25 p.m. Members, there’s no other business before the Committee, and the HLU Committee meeting of May 15th, 2024, is now adjourned.

COUNCILMEMBER SUGIMURA: Thank you, Members.

CHAIR KAMA: . . .*(gavel)*. . .

**ADJOURN:** 12:25 p.m.

APPROVED:



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TASHA KAMA, Chair  
Housing and Land Use Committee

hlu:min:240515:ds

Transcribed by: Daniel Schoenbeck

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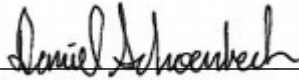
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CERTIFICATION

I, Daniel Schoenbeck, hereby certify that pages 1 through 62 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 28th day of June 2024, in Wailuku, Hawai'i

A handwritten signature in cursive script, reading "Daniel Schoenbeck", is written over a horizontal line.

Daniel Schoenbeck