

PLANNING AND SUSTAINABLE LAND USE COMMITTEE
Council of the County of Maui

MINUTES

October 8, 2020

Online Only Via BlueJeans

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly Takaya King
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez
Councilmember Yuki Lei K. Sugimura

EXCUSED: VOTING MEMBERS:
Councilmember Alice L. Lee

STAFF: Ana Lillis, Legislative Analyst
Alison Stewart, Legislative Analyst
Laksmi Abraham, Legislative Analyst
Wilton Leauanae, Legislative Analyst
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Kate Griffiths, Executive Assistant to Councilmember Kelly Takaya King
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez
Trinette Furtado, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
Jacky Takakura, Administrative Planning Officer, Department of Planning
Diego Sanchez Gomez, Planner, Department of Planning
Carolyn Cortez, Planner, Department of Planning
Paul Haake, Captain, Fire Prevention Bureau, Department of Fire and Public Safety

OTHERS: (2) additional attendees

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

CHAIR PALTIN: . . . (*gavel*). . . Will the Planning and Sustainable Land Use Committee meeting of October 8th come to order. The time is now 9:01 and if I can ask everyone if they would please silence their cell phones or any noise making devices at this time. My name is Tamara Paltin and I'll be your Chair for the Planning and Sustainable Land Use Committee. With me today I have our Vice-Chair for this Committee, Member Shane Sinenci, aloha kakahiaka.

VICE-CHAIR SINENCI: Aloha kakahiaka, Chair and hau'oli lā Pō'akolu.

CHAIR PALTIN: Oh, Planning and Sustainable Land Use switched with EDB. So we're Pō'ahā.

VICE-CHAIR SINENCI: Oh, so 'ae Pō'ahā. E kala mai.

CHAIR PALTIN: 'A'ole pilikia. I was kind of confused too. I felt like today was Wednesday as well. And with us we have, from under the virtual bridge, Councilmember Mike Molina in probably Makawao.

COUNCILMEMBER MOLINA: That's right. Aloha kakahiaka, Madam Chair. Yeah, just enjoying myself under the virtual bridge. It's a beautiful day in Makawao. Blessings to you, my colleagues and everyone else viewing in.

CHAIR PALTIN: Aloha. I love it when we have bridges and not walls. Next up from the island of Moloka'i we have Council Vice-Chair Keani Rawlins-Fernandez, aloha kakahiaka.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka mai Moloka'i nui ahina, Chair hau'oli Pō'ahā kākou.

CHAIR PALTIN: Aloha. Let's see, we also have, from South Maui, Councilmember Kelly King.

COUNCILMEMBER KING: Aloha, Chair. Aloha kakahiaka kākou. I was just looking at this bridge and thinking how ironic that in South Maui we're fighting for an underpass instead of the overpass to get to the high school.

CHAIR PALTIN: Awesome, awesome. And we also have Councilmember Yuki Lei Sugimura, looks like she's broadcasting out of Wailuku.

COUNCILMEMBER SUGIMURA: Yes. And I will tell you that now I know why there's such lush greenery in the back of you, Ms. Paltin. Because it is cloudy on West Maui mountains. And good morning, everybody, nice to see you.

CHAIR PALTIN: Good morning. And I didn't really check all my emails, but I didn't hear anything from Chair Lee, but she might be joining us. I'm not sure of the status. I'm sure she's probably busy with some Chair stuff. Our Non-Voting Members today are

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Riki Hokama and Tasha Kama, they're welcome to join us at any time. With us from Corporation Counsel we have Deputy Corp. Counsel Michael Hopper. From the Administration Department of Planning we have Director Michele McLean, Administrative Planning Officer Jacky Takakura, Flood Claim Planner Diego Sanchez and Planner Carolyn Cortez. From the Department of Fire and Public Safety we have Fire Prevention Bureau Captain Paul Haake and Captain Ryan Otsubo. And from the Department of Public Works we have Deputy Director Jordan Molina. Our Committee Staff for today, Committee Secretary Clarita Balala. Council Services Assistant Clerk Jean Pokipala. Legislative Analysts, we have quite a few; Ana Lillis, Alison Stewart, Laksmi Abraham, and Legislative Attorney Richard E. Mitchell. Today's agenda, we have three items. Kind of ambitious, I know, but it doesn't look like we have any testifiers signed up to testify, so we may get through it all. The first item will be PSLU-4, Maui County Repetitive Loss Properties Floodplain Management Plan Annual Status Report; PSLU-70, Fire Apparatus Access Roads for Accessory Dwellings; and PSLU-2, Agricultural Tourism. So last I checked we don't have anyone signed up to testify, which is kind of amazing. Is there anybody out there in the BlueJeans that wants to offer any kind of testimony at this time? I'm going to unmute everybody, if anyone wants to come forward and give some testimony, now's your chance. Going, going, gone. Okay. Wow, thanks, you guys, I don't have to read all this testifier information. Let's see, I don't believe we have any written testimony, but if there was written testimony, no objections, right, to receiving it?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. Awesome. Any objections to close public testimony at this time?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Wow, sailing right along. Okay. Members wishing to speak during today's meeting should say my name, raise their hand and ask to be recognized so I may call on you.

PSLU-4: MAUI COUNTY REPETITIVE LOSS PROPERTIES FLOODPLAIN MANAGEMENT PLAN ANNUAL STATUS REPORT (CC 17-105)

CHAIR PALTIN: We'll start off with PSLU-4, Maui County Repetitive Loss Properties Floodplain Management Plan Annual Status Report. And the Committee is in receipt of the following County Communication 17-105 from the Planning Director transmitting the following: Resolution 01-141, entitled, "ADOPTING THE COUNTY OF MAUI REPETITIVE LOSS PROPERTIES FLOODPLAIN MANAGEMENT PLAN." The resolution, adopted by the County Council on September 7th, 2001, formally adopts the Floodplain Management Plan in accordance with Section 46-11, Hawai'i Revised Statutes, and in accordance with the requirements of the National Flood Insurance Program Community Rating System. Section 10 of the Floodplain Management Plan provides that an annual implementation report be presented to the County Council. County of Maui Repetitive Loss Properties Floodplain Management Plan, 2016 update. County of Maui Repetitive Loss Properties Floodplain Management Plan Annual

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Evaluation Report, dated September 2016. There's also correspondence dated April 5th, 2019 from the Planning Director, transmitting the Annual Status Report of repetitive loss properties through calendar year 2018. So the Committee may receive an update from the Department of Planning on the implementation of the Repetitive Loss Properties Floodplain Management Plan. The Committee may also consider the filing of Communication 17-105 and other related action. So the reason I scheduled this is, you know, we didn't hear an update in 2019 and, you know, in the beginning part, I think the position was vacant. And then when it was filled, then I kind of got a little overwhelmed with items in my Committee, and so the time just got away from me. And so, you know, I didn't want to let it get away from me again in 2020 . . . (audio interference) . . .

COUNCILMEMBER KING: Chair, you're muted. You just got muted for some reason.

CHAIR PALTIN: Thanks. I just thought it was important, even if we're in drought right now, we're kind of going into the winter season so, you know, be prepared for anything. And at this time if I can ask the Planning Department, the Director or your designee, to proceed with opening comments and the presentation. The presentation is available on the agenda and Granicus for Member's information.

MS. MCLEAN: Thank you, Chair. Good morning, everyone. I'll just make some very brief introductory remarks. Chair, you read through the introduction very well. I just want to emphasize that Maui County is lucky to participate in the National Flood Insurance Program. I believe the presentation will go into more detail about that, but because of our participation, and because of the milestones that we have met, residents who have to have flood insurance get a discount on their premiums. And the...our local flood hazard ordinance is in Title 19, so it's part of the Zoning Code, that's part of the reason it's our responsibility. But it also allows us to administer that Code, along with the development process. And we're very lucky to actually have two certified floodplain managers on our staff. Diego is our newer certified floodplain manager, and we also have Carolyn Cortez, who has been a certified floodplain manager for a while. She's not the certified floodplain manager, the County has to have one person who's the designee, and that's Diego. But it's great to have Carolyn as well, just give us a little bit deeper bench because this is very important ordinance. A lot of time it is difficult for landowners to comply with it, but again, it's important to comply with it because of that discount in flood insurance premiums that everybody benefits from. And so with that, I will turn it over to Diego to give the presentation. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. Mr. Sanchez, are you ready for a presentation? We can't hear you at this time. It looks like you're unmuted, I don't know if it's the headphones... that's what we got here. Yeah, you're unmuted.

MR. SANCHEZ: Hello, can you hear me now?

CHAIR PALTIN: Yes, we can. Awesome.

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MR. SANCHEZ: Okay. Awesome. Great. Well, good morning, Chair Paltin, Vice-Chair Sinenci and Members of the Planning and Sustainable Land Use Committee. My name is Diego Sanchez, and I've been here with the Planning Department for a year and a half as the Floodplain Manager, Floodplain Administrator. I've been very fortunate to be in this position that, as was mentioned, it helps citizens be safe against flood risks, and also save money on their flood insurance. So I'm gonna go ahead and share my screen so I can present...one second...let's see...

CHAIR PALTIN: You were with Public Works before though, yeah?

MR. SANCHEZ: Department of Water Supply.

CHAIR PALTIN: Oh, Water Supply. Okay.

MR. SANCHEZ: Yeah.

CHAIR PALTIN: So...

MR. SANCHEZ: Can you see my screen now?

CHAIR PALTIN: We sure can.

MR. SANCHEZ: Okay. Great.

CHAIR PALTIN: I don't know if you want to make it in . . . yeah, there you go.

MR. SANCHEZ: Okay. Perfect. So...and since it's been about three years since this...the floodplain management annual status report has been presented, I thought I would start with just a brief summary of the NFIP, just to get us all on the same page explaining basic terminology because it can get kind of wordy with all of the technical lingo; review the community rating system, or CRS status; and the program requirements, which one of the requirements is this type of presentation to the Council; and present update on the repetitive loss information, that includes both regular repetitive loss properties and severe repetitive loss properties since 2017; and just present some general takeaways for floodplain management for our County. So a brief history of the National Flood Insurance program. In the late 60s, the Federal Government was dealing with a lot of different flood events and having to subsidize the reconstruction of different areas that were affected by flood damage. And so they...they weren't able to help enough of these communities, so they decided to create a flood insurance program so that communities that were at higher risk could invest money through flood insurance so they would have ways to build themselves back up in the event of a flood damage. Your average flood insurance policy nationwide costs about \$600 a year, and it's similar value here in Hawai'i. For properties in high risk areas though, it can cost more than \$10,000 a year. And even in a low...in a low-risk area, meaning your lowest risk within the flood zone, there's still a 25 percent chance of flooding during a 30-year mortgage. So it's a worthy investment to get flood insurance, even for properties that are not in the highest-risk category. And as we can

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see here on the right, over the years, more and more communities have joined to where practically any community in the U.S. that has some amount of flood risk is now part of the NFIP. The main way that people end up having to buy flood insurance is that in order to get a Federally backed mortgage, you need to have flood insurance. So lot of...unless you can pay cash on hand to buy your property, you're going to have to have flood insurance.

COUNCILMEMBER KING: Sorry, Chair. I'm sorry to interrupt you, Mr. Sanchez. There's...somebody's got some background talk...somebody's got their mic unmuted and there's some background talking that we can hear. I'm not...I don't know, am I the only one who hears that?

CHAIR PALTIN: I do hear some background talking. Is...Mr. Sanchez, are you in a cubicle with other people?

MR. SANCHEZ: I am, yes. I can--I think my coworker is two cubicles away, but it might be...that might be what you're hearing. But...

COUNCILMEMBER KING: I saw you with the headphones, so I didn't think it was you, but if it is, I guess there's nothing you can do about it. It's just a little distracting.

MR. SANCHEZ: Oh, okay. My apologies about that. Hopefully it's not too loud. But moving forward, we can see that water has many different...there's many reasons why we want to live close to the water, whether it's recreational, or commercial, or some other reason. As human beings, we've always developed close to the water, and that's why it's important to have these kinds of programs, especially here on our island where we have a vast amount of coast land and also riverine floodways. So what exactly is a flood zone? It's an area deemed to be within the impact zone of the 100-year flood. So basically through hydrological models, FEMA determines how likely it is that a particular part of our island is going to experience a 100-year flood. And a 100-year flood event is determined through historical data. Within the 100-year floodplain, there's a one percent chance of that kind of rain event happening in any given year. So it could happen five times in a single year, there would just be a small probability of that happening. Or it could...it could happen once in a thousand years. But in general, there's going to be a one percent chance that it occurs on any given year. There's different classifications for flood zones depending on type of flooding. You have coastal flooding, sheet flow, floodway overflow, and pooling. And fortunately, the DLNR has put together all of these maps available online through a digital flood insurance rate maps. And we have a tool for our State and...which the link is included. And so let's just take a quick look at that. Here we see one of our repetitive loss properties on the West Side, I believe. We see that it is in Zone X, the green zone. Zone X is technically outside of the FEMA defined 100-year flood zone, but they experience flooding. So what does this tell us? This tells us that the map is not reality, right, the map can only estimate what the flood risks are going to be. But with climate change, with the loss of...with the increase of sea levels and various other climatic factors, topographic factors, we have to remind citizens who are outside of the 100-year floodplain that they could still experience flooding. Fortunately, this

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property here, because they were close to the flood zone, they had invested in flood insurance, and they were able to get some remuneration for the damages they endured. So now we get more into the details of today's presentation, the community rating system and its requirements. So the CRS is a program that FEMA offers for communities that are part of the NFIP who want to establish higher standards so that the public can get further benefits or further discounts. In essence, it's a class structure, ten classes...the lower your class number, the more benefits. So if you're Class 1, that would be the highest amount of discount and benefits. As of today, there's only one county in the United States that's a Class 1 community. We are a Class 7 community, and we became a Class 7 community in 2017. Just as a side note, one of the reasons why this presentation also wasn't given since 2017 is that in 2017, FEMA changed some of the CRS requirements, and the annual floodplain management report is...was no longer required. So that's part of why the presentation hasn't been done yearly as in years past. Then the base flood elevations are the minimum elevation of which buildings must be built in order to avoid flooding. So generally, in a regular NFIP community you'd just have, like, seven feet, or a number that the map establishes. But if you're part of the CRS, you add some free board...you increase the elevation at which buildings must be constructed. Here on Maui County we have a free board of one, one foot. But if the base flood elevation is seven, citizens, developers must build at elevation eight, one foot above the standard requirement. So this lowers insurance rates Countywide to a 15 percent discount as a Class 7 community. So that is...over the years that's been millions of dollars of savings, and part of the...my role in essence is to make sure that we as a community are maintaining our status with FEMA through the CRS program and yearly audits, checking that everything is running smoothly. As part of those CRS requirements, we're asked to track repetitive loss properties. A repetitive loss property is any insurable building for which two or more claims exceeding \$1,000 were paid by the NFIP within a ten-year period. One thing to note here is that once you're a repetitive loss property, you always remain a repetitive loss property. So if you've suffered two or more claims in 1982 or '83 you're still going to be considered a repetitive loss property by FEMA, unless you mitigate and you do something to your building to change your flood risk. So since 1981 the NFIP has paid \$6.8 million to Maui County property owners. And the latest data that we have is from May 31st, 2018, and there has been no update since then. But we have 37 repetitive loss properties currently within our County. That places us as a Category B community, but that...the geographic details of that is that 23 of them are located in Kihei, 11 in West Maui, 2 in Wailuku, and 1 in Kahului. Out of all the total amount of money that has been paid in NFIP claims, which was 6.8 million, about 40 percent, 2.8 million, has been...has gone to these 37 properties, the repetitive loss properties. So we can see that these properties are at higher risk, and that's why they get placed into a special category. All 37 of these properties were not elevated when the damage occurred, meaning they were grandfathered in to the NFIP. They had already existed prior to 1981, and they had been built with no real thought about elevation or base level elevations because we were not part of the NFIP. So they suffered damage due to being older structures built lower to the ground. Three of those properties have been mitigated. So the severe repetitive loss properties are a subcategory, and this is any insurable building for which four or more claims of at least \$5,000 were paid within ten years, or received

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two claim payments exceeding the value of the property. So within the repetitive loss properties, you have this subcategory of properties that have endured even more damage. And we can see just from the...this is the national data, but that the NFIP policies...only .6 percent of the total policies are severe repetitive loss properties, but they take up 10.6 percent of payments. So there are properties that are at higher risk, and that could be due to various factors. Maybe they were built too low, maybe they were built close to various flood risks, it just depends on each situation. We only have three properties in Maui County that have been categorized as severe repetitive loss properties, there's two in Lahaina and one in Kihei. And \$568,000 has been paid to these properties across Maui County. So that's the summary of our latest data of 2018, and FEMA has not sent us any new data as far as new repetitive loss properties or severe repetitive loss properties. Because this is all data that deals with insurance companies and insurance payments, FEMA has to give us that, we don't have direct access to it. We get sent some encrypted data, essentially, that we can look at here as a department. So moving forward, some thoughts as looking at other communities and what they're doing and how we can increase the safety of our citizens. Avoiding entitling lands for residential and commercial development within known flood hazard zones, especially the ones that are...have higher risks. Implement stricter substantial improvement regulations. In essence, citizens who are currently non-compliant have a certain amount of leeway that they can get away with before they have to comply with current floodplain regulations. So we could implement a stricter regulation for that--less leeway. Encouraging agriculture open space, open land recreation within flood hazard zones is FEMA's optimal strategy, particularly in floodways or high-risk coast lines. That's always gonna be the best use of that land as far as keeping everyone safe. And as we develop away from the ocean, be aware of stream floodway hazards. Some of them are conveniently mapped in our flood hazard assessment tool, but because of how many rivers and streams we have on Maui many are not mapped, they're just in the Zone X, but they are still there. So we still have to have citizens be aware that there are many different smaller streams, smaller riverways that could potentially develop to be floodway hazards. So that's it. That's just the short summary over the last three years. And I thank you for your attention, and I'm open to any questions.

CHAIR PALTIN: Thank you so much, Mr. Sanchez. Do you mind finishing sharing the screen?

MR. SANCHEZ: Yep.

CHAIR PALTIN: Thank you. Members, at this time is there any questions for the presenter? I'll take Member King, then Member Molina, then Member Sinenci.

COUNCILMEMBER KING: Okay. Thank you. Thank you, Mr. Sanchez. That was really a great presentation, I really appreciate all that information. I do have a lot of questions, but I'm going to try to narrow it down because I'm sure other Members can fill in the gaps. We probably all have similar questions. But as far as repetitive loss properties, you talked about substantial improvement regulations. So the...are these...are these the regulations that once they get paid out they have to...they have to

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fix certain things and do some improvements before they can be eligible for a second payment?

MR. SANCHEZ: That...yeah, it does apply to that. Essentially the substantial improvement regulations says that you can only invest 50 percent of the value of your building over a span of ten years in improvements. So say if your building is worth \$1 million, and you want to do \$600,000 worth of improvements, you're going to have to mitigate it or, you know, make it compliant before FEMA is going to allow you...or we as a County are going to allow you to make those improvements. And so if a property endures damage that's over 50 percent of its value, then at that point, they're not going to be able to make those improvements to use that payment unless they actually mitigate the building. At which point, my understanding is that most people just demolish and just start over again if they're enduring that much damage.

COUNCILMEMBER KING: But do they...so are they allowed to continually keep getting paid for flood damage if they keep building in the same area? I mean, you know, I've kind of seen that happen in Malibu where the houses are sliding down the hill, they get FEMA money, they rebuild, slides down the hill again. I mean, how many times can we keep allowing people to do something that obviously isn't working?

MR. SANCHEZ: That's a great question. I believe it depends on their insurance and the agreement that they have. But there are limits, they have a limit of \$250,000 per structure. So you can only get paid out a certain amount of money. And once that money runs out, FEMA does have other hazard mitigation programs that are available to citizens where they can apply and get money to mitigate their own structures. But as far as citizens, most of the payments that they've been receiving are way less than \$250,000. And so they can keep getting smaller chunks, right, like \$30,000, \$45,000, and so they keep getting small chunks of money. And eventually, their policy is going to run out though, unless they perhaps get a second flood policy or increase their agreement with their insurance agency.

COUNCILMEMBER KING: Okay. Thank you for that answer. And then just, Chair, one follow-up question. Are you working with the Maui Emergency Management...we...you know, they did a presentation to the Climate Action Resilience Committee on, you know, our rating, our...what do you call it, it says the community rating system and being a seven and trying to get our number lower. So are you working...is Planning working with MEMA to make proposals that will make that happen, or take some kind of actions that you're going to be proposing to either the Administration or the Council?

MR. SANCHEZ: Yeah. So over this last year, I was part of the committee for the hazard mitigation plan, the update to the hazard mitigation plan with Anthony Joyce at MEMA. And we did discuss how to get us to a Class 6 to get further discounts. There are some requirements from FEMA, particularly updating our building code, which is on the Public Work side that we're trying to work with them and try and see when we can update our building code to the latest international building code, essentially. Because that's one of the requirements to get to Class 6. And we have a...our...every

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three years we have a FEMA agent come to Maui to do an in-person audit, in-person visit, ours is coming up November 17th. Due to COVID, the FEMA agent is not sure if they're going to be able to come in person, but part of the thing that we had been arranging is to meet with Rowena and the folks at Public Works to see how we can...how we can better work together as Planning and Public Works so that the flood program could get to a Category 6.

COUNCILMEMBER KING: Okay. So that was...that's great because I...what I heard in your presentation is that, that could be worth millions of dollars going from a seven to a six. So I think we would all support that.

MR. SANCHEZ: Yeah.

COUNCILMEMBER KING: All right. Thank you, Chair. I'll yield the floor, I'm sure other Members have...probably...well, will answer...will ask the rest of my questions. Thank you.

CHAIR PALTIN: Okay. Great. Thank you. Next we have Member Molina, followed by Member Sinenci, then Member Sugimura.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. And good morning, Mr. Sanchez. Thank you for that very good presentation, and for breaking it down into layperson's terms like you're somebody like myself and not very familiar with all the technical jargon. But my understanding is because of the Class B rating we have, that this report is no longer required by FEMA; am I correct? And I know that...

MR. SANCHEZ: Yes. Yes, in essence, once we got classified as Category B in 2017, the annual presentation to the PSLU and County Council was no longer required. But since this was a pending item from...like essentially, the last information never got presented, so this was kind of still pending. But I...I'm always glad to present, and in essence, like, I almost would love to present more to different, you know, committees or folks within the County just so that people can be more aware of the flood program. So I'm --

COUNCILMEMBER MOLINA: Okay.

MR. SANCHEZ: -- always glad to come back. We don't have any new data since 2018, so it's not like there's any breaking news over here, but it's still good to kind of just refresh everyone's awareness of the program and just get on the same page.

COUNCILMEMBER MOLINA: Okay. Keep it alive, right. So I guess is it the Department's intent just to keep track of it and on occasion come to the Council to do a presentation like this?

MR. SANCHEZ: Correct. Yeah. That's our intent, yeah.

COUNCILMEMBER MOLINA: Oh, okay. And my last question has to do with the mitigated

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properties. I guess we have three that are mitigated and 34 unmitigated. What will it take to get those 34 properties mitigated? I mean, is that all on the...solely on the property owner or Government funds? Are there Government funds out there to help with these mitigations?

MR. SANCHEZ: There are. There are mitigation programs that FEMA makes available. It's a case by case scenario. In some instances, these properties suffer just less than \$10,000 worth of damage because if you think about it, a repetitive loss property is two or more claims exceeding \$1,000, right. So some of these claims were, you know, within \$4 to \$5,000 worth of each claim. And so it might not be worth it for the property owner to invest, you know, \$100,000 to raise their building, or to have flood proofing installed if they've only suffered, you know, two or three, you know, incidents where they had to get paid less than, you know, \$2 or \$3,000. So it's a case-by-case scenario really.

COUNCILMEMBER MOLINA: Okay. Great. And I guess I can see if you have these properties that constantly are having these problems and putting in claims, it could affect our overall rating in the County too, yeah?

MR. SANCHEZ: Not necessarily because our rating is basically tied to the CRS program as long as we're meeting the CRS program requirements. And especially because these properties were lawfully built back prior to 1981. So it's not like --

COUNCILMEMBER MOLINA: Grandfathered in.

MR. SANCHEZ: -- we as a County allowed them to be built once we were enforcing a flood regulation. They've been grandfathered in. If we were allowing properties to be built in dangerous areas without proper flood mitigation, then that would, of course, compromise our standing with FEMA. But --

COUNCILMEMBER MOLINA: Okay.

MR. SANCHEZ: -- these are older buildings, and FEMA understands, and we just have to...the requirement is just to keep track of it. And every year we send them a letter with resources for how to mitigate, and we list the various FEMA programs, various information channels they can dig into, and it's up to the property owner to further explore that.

COUNCILMEMBER MOLINA: Well, great. Fantastic. Well, thank you for your responses and for the information. Thank you, Madam Chair.

MR. SANCHEZ: Thank you.

CHAIR PALTIN: Sure thing. Member Sinenci, followed by Member Sugimura.

VICE-CHAIR SINENCI: Mahalo, Chair. Mahalo, Mr. Sanchez for your presentation today. Just for clarification, to qualify as a repetitive loss property, you need to have two or

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more claims exceeding \$1,000 in a ten-year period, correct?

MR. SANCHEZ: Uh-huh. Correct.

VICE-CHAIR SINENCI: Okay. Because we were...we fielded some calls to the office that some people at the Iao Stream...like they needed...they were...needed to accrue, like, a certain amount to qualify for some assistance upwards of \$5,000 or something like that. Is there anything...does that include your program?

MR. SANCHEZ: I'm not...I'm not entirely sure...I'd have to look at those properties. I'm not sure if they're part of...if they have flood insurance or if they're sustained damage while not having flood insurance.

VICE-CHAIR SINENCI: Okay. Was there any of the properties along the Iao River that...that you know of that sustained any damages --

MR. SANCHEZ: Oh, yeah.

VICE-CHAIR SINENCI: -- during that flood? Yeah?

MR. SANCHEZ: Yeah. There's one that we're still dealing with right now on Wailuku River where...it's the Naganuma residence. They sustained awful damages. I mean, the riverway basically dug out like half of their backyard and their home, which was post on pier, was teeter-tottering on a precipice essentially. They were allowed by a special emergency proclamation to do a bunch of mitigation without even having to go through the flood permitting process. So right now we're kind of after the fact trying to keep track of all that. But I know theirs for a fact was heavily affected, and I'm sure there were other properties. I wasn't here in Planning when the flood event happened, but it was pretty damaging to some property owners. And my understanding is that not all of them had flood insurance because not all of the parts that were affected had been mapped in...into the floodway.

VICE-CHAIR SINENCI: Mahalo for you guy's support. And then my last question, Chair, was just...is there...do you guys have investigators, or you yourself go out to check the properties. I mean, is there any chance of any wrongdoing or anything like that? But just...is there a level of enforcement that is required during this whole process?

MR. SANCHEZ: Yeah. It's like a great question. We do have our inspectors here at ZAED that bring stuff to my attention whenever they're going out to inspect zoning violations. And we also get calls from the public reporting construction going on in their neighborhoods and things along that matter. We don't have a specific flood task force that's looking for flood violations per se. We mostly find out about them through our zoning inspectors and sometimes DSA building inspectors.

VICE-CHAIR SINENCI: Okay. Mahalo. Thank you, Chair.

CHAIR PALTIN: Thank you, Committee Vice-Chair Sinenci. Next up we have Member

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Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. This is very interesting and educational, I really appreciate this presentation. I want to say hello to Carolyn Cortez and her husband, yeah, nice to see you. I didn't realize you do this also, so my best to Conrado also. So Mr. Sanchez, I'm very interested in what you said about the Department of Public Works building codes to comply so that we can maybe work together to lower our...to Category 6. Is that an insurmountable, will it take years, or what do you see that needs to get done?

MR. SANCHEZ: Yeah. Last time I communicated with Public Works, they said they're planning to adopt the latest international building code. I believe it's 2021, I think that's when that's going to happen. And once that happens, there's a...an auditing process, it's called BCEGS essentially where our building would be...just like our flood program gets audited by an independent agency, an ISO accredited agency, in that same way the building code and building regulations would get audited through the BCEGS. So that's what's required to make it to Category 6. I believe Public Works is...they want to get there, it's just a matter of...takes time to update the building code. And not only that, if you make your building code more restrictive as this flood program...as the updated building codes would be, then you also have to keep in mind that you have to train your own staff to be able to look out for new things, right, and your building inspector will have to learn a whole new set of things to watch out for. Essentially what the new building code would do is place all of the flood ordinance within Public Works. So that would also mean me migrating to DSA, which has been in the works for a while. So...and so it can happen. I think this COVID year slowed down our talks a little bit, but we're...I'm hopeful.

COUNCILMEMBER SUGIMURA: Thank you. And my last question, Chair, if I could. So the 100-year flood, the Iao Valley, I think it was September...I think it was 2016.

CHAIR PALTIN: Yeah.

COUNCILMEMBER SUGIMURA: September 13, 2016. So did you see that coming? Or what was your...I still remember I was in a Maui Tropical Plantation building and the rain was just thundering down, it was fierce. I've never --

MR. SANCHEZ: Right.

COUNCILMEMBER SUGIMURA: -- seen anything like that or been in it, and it was hard to drive home. But did you see that coming? Is that part of what your job is, or it's only the after?

MR. SANCHEZ: Yeah. I was...I was still in college back then.

COUNCILMEMBER SUGIMURA: Oh, that's right.

MR. SANCHEZ: So I didn't even know what Iao Valley was back then, but I...even today, we

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don't necessarily can predict flood events or hurricanes or the Iao flooding. What we're given is a map from FEMA that has sort of expected flood patterns, expected flood elevations, but we've seen historically that this map is quite conservative. They don't make it as dramatic as potentially nature would actually be. So we do have some folks here in our current division who are working on incorporating sea level rise and climate change into GIS, trying to see like how would an actual flood event look like, considering that the data that FEMA's using is not the most updated data. Particularly with the Federal Government having controversial stances on climate change, which is a whole other conversation. The FEMA maps have been criticized for being too casual, like they don't really map out how dramatic flood events could be. And for example, in Canada, they regulate up to the 500-year...500-year flood event so they're even more...they're predicting a higher frequency of intense flood events because that's what the data is showing. So yeah, I'm not a climatologist or hydrologist, so I can't say I would have predicted any of this, but I do know that whenever I communicate with developers, I tell them as much as you can, build higher. Even if our regulation tells you just to build one foot higher, build 1.2 or 1.3 feet higher because you're not...you're building for the future, you're not building for the map which was developed years ago, you're building for what's to come. And there's other things, like in Kauai during their flood event on the North Shore, there was some properties that were built adequately high enough, but because of scouring, the post and pier...the dirt essentially and soil around the post and pier got washed out and they lost their property. So there's also...the developers can say oh, well, we built high enough, but are you secured enough, are you anchored enough, are you going deep down enough considering the type of soils that we have, which can be easily eroded and volcanic or sandy environment. There's a lot of things that we try to communicate to developers and try and tell them to be as careful as possible. It's monetary constraints that would have them build to the lowest possible requirement. But in my dream, FEMA would come out with newer, more accurate maps, and we'd have better data, but also the citizens might complain that it's too restrictive, right, so it's a balance.

COUNCILMEMBER SUGIMURA: Thank you very much. Thank you also, Carolyn. Thank you very much.

CHAIR PALTIN: Thank you, Member Sugimura. Member Rawlins-Fernandez, did you have any questions?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think I have just a couple questions that weren't asked. Mahalo, Mr. Sanchez and Ms. Cortez, for joining us today. So just to clarify, how is the property identified as a repetitive loss property? Is it through the homeowner disclosing that information to the County, or is it FEMA, you know, giving the County, some kind of a report?

MR. SANCHEZ: Yeah. No, it's a great question. In essence, the criteria is that the property...or actually, it's the building. That's another thing that I kind of have to remind myself that when we're talking about flood insurance it applies to a building, not to the property. And so in order to be a...we call it repetitive loss property, but is

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should be repetitive loss structure or building. But two or more claims exceeding \$1,000 by...would place a structure or a building as a...categorize it as a repetitive loss property. And so once that happens, that data exists in FEMA's database because they're the ones communicating with the flood insurance agencies, whether they're FEMA flood insurance or private flood insurance which is a growing market. And then that data gets summarized, and we get a pretty standard little spreadsheet with here's the different repetitive loss incidents or here's the difference [sic] claims that have been done over the last year. And we don't get to see all the details, we just get to see what property, how much was paid and we don't get to see, you know, pictures of or anything like that. It's a very...there's a lot of legalities associated with it. But yeah, we just get a very simple summary of it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for your response. And my second question is regarding the plan implementation. Is there implementation items that need to be funded by the Council, County? Or is it mostly just like code amendments?

MR. SANCHEZ: Great question. I'm caught a little bit off guard on that one.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry.

MR. SANCHEZ: Yeah, yeah, no, no, it's all good. I...I'm not exactly sure how to answer that...I...but I would suppose in...if Council wants to invest in more agriculture and open space, that would make me a happy camper. And as far as...yeah...as far as Code amendments, our flood code is tied to the CRS program, so we can't technically like make it fully our own, we're just... we're reinforcing...the County enforces the Federal regulations, right, so any amendments would have to be the ones that the CRS program or FEMA would advise us to do. So perhaps increasing our elevation requirements or increasing our substantial improvement regulations. But as far as what we can do locally...think just encouraging open space and agriculture and having folks develop farther away from the coastline.

COUNCILMEMBER RAWLINS-FERNANDEZ: So it sounds like Council has already been doing this unknowingly with encouraging development farther from the shoreline and with...we put...Member King put the Maalaea open space into this year's budget. So it sounds like we're already doing that.

MR. SANCHEZ: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: We're on board with that. Great.

MR. SANCHEZ: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. I had a few questions. I don't know if it's along the same lines of what Member Rawlins-Fernandez was asking, but recently we had a project that was building to the Maui County Code standard, which

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was the 50-year retention basin. And I was wondering, you know, with the climate change and like that, if we were to change the code for like a 100 or a 500-year standard for retention basins, would that help the rating at all?

MR. SANCHEZ: Good question. I haven't had to deal with retention basins yet. My assumption is that to improve the rating, we have to get more points through the CRS program, and right now we're at CRS 7. To get to the CRS 6, the jump in points is quite significant, and the only item that can get us there is the improvement in the building code. That's how it's been explained to me by FEMA essentially. It's sort of like once you get to seven that's the next big thing you have to do. And so I don't think that having larger retention basins would get us to a higher rating, but it could get us some more points and help us out. And --

CHAIR PALTIN: Okay.

MR. SANCHEZ: -- it's interesting because a lot of the flood ordinance applies to structures and buildings, not so much to landscape development. So I think we're pretty relaxed on what we allow the public to do with the landscape itself, it's the buildings that get regulated.

CHAIR PALTIN: So I guess a follow up on that. I was reading some of the items on Granicus from say 2017, Member Cochran when she was in, and Mr. Spence. And I noticed area number 2 Kahana Maui near Ka'opala gulch, I think I used to live in that house. And we did get flooded. And I didn't get a claim, but the landlords, I think they had way more damage, I just had some library books on the floor. But I think last year Public Works was able to dewater and desilt Kahana Nui Dam. And prior to that, I remember Tiny Town...that's probably not the real name, but a little bit further, but I think within the same Kahana Nui Dam area used to get flooded a lot, and this property that I used to live in got flooded a lot. And I just was wondering, you know, with the dewatering and desiltation of the sediment retention basin behind Kahana Nui Dam, do they...is it likely that those properties won't be flooded in the future now that that...I think the valve was not operational for about 20 years or something. So is there plans that...you know, these properties, is that considered a mitigation, or it has to be done on the actual property itself to be considered a mitigation.

MR. SANCHEZ: Yeah. No, that's a great observation because a lot of times it's the, the streamway maintenance that's going to affect how properties get damaged, right. I do know that for Kahana Stream just last month we...I worked with Public Works because they are doing cleanup all along the stream and in some areas...some of their gutters and areas around Kahana Stream were blocked. So I do have that project that already got approved, and so they're improving Kahana Stream. I...it would take a lot of hydrological modeling to see how exactly that's going to affect the properties around it, it's hard to make a promise or a prediction. But it...

CHAIR PALTIN: Or just wait till the next heavy rainfall.

MR. SANCHEZ: Yeah.

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CHAIR PALTIN: And see what happens.

MR. SANCHEZ: And see what happens, but it does really...as...if I were a property owner, it would make me think, wait...if Public Works owns these areas of the streamway, shouldn't they have some amount of responsibility to keep and maintain them clean and free of obstruction so that we don't have backup, right. And so the whole storm...storm and drainage management, I know Public Works has a whole new program with Michael Kehano I believe, the MS4 program, for just better managing all of our storm drainage because it's a huge issue. Sometimes it's not the, the rain itself it's the asphalt, the concrete, the infrastructure that we've built that creates buildup and hydrological buildup and [explosion sound].

CHAIR PALTIN: But the MS4 program, I believe it...doesn't it have its boundaries within the central area like...you know, sometimes I walk across the walking bridge for...from Napili Park subdivision to upper Napili Hau and that gulch, I'm just appalled. It looks like...I don't know if it's homeowners or what, but people are dumping all sorts of things in the gulch. There's pallets, there's barrels, there's all sorts of rubbish.

MR. SANCHEZ: Yeah.

CHAIR PALTIN: And like do we have an entity that is responsible for maintaining those types of areas?

MR. SANCHEZ: I know the MS4 program is in its pilot stage with just Kahului and Wailuku as its initial target area, just to prove that their work is going to be effective. I know they are looking to expand. As far as individual gulches or individual areas near streamways, I'm not sure who would be responsible for their maintenance or cleanup. I would assume it's Public Works since that's their infrastructure, those bridges.

CHAIR PALTIN: So it looks like Ms. Cortez...did you want to add?

MS. CORTEZ: Yes, Chair Paltin. So oftentimes the gulches are privately...well, not oftentimes, but sometimes the gulches are privately owned where the gulch is sort of like divided in half and each property owns that half. But also, as you said, there are some gulches under Public Works' purview, and they will go and do the maintenance for that. But unfortunately yes, there is like dumping from property owners sometime and...but yes, in some cases it is, you know, privately owned.

CHAIR PALTIN: So if it's privately owned, is there no responsibility on the landowner's part to keep it free of, you know, all that rubbish?

MS. CORTEZ: No. Yes, you're right.

CHAIR PALTIN: Because...

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CHAIR PALTIN: If it's privately owned, then it's the property owner's responsibility for maintaining that gulch and keeping it free of debris.

CHAIR PALTIN: And then would it be ZAED that enforces that?

MS. CORTEZ: Actually, it would be a civil matter, I think, between property owners. If it's private property because that...it's privately owned, so we don't really...yeah, we don't enforce that.

MS. MCLEAN: Chair?

CHAIR PALTIN: I mean, it's not...oh.

MS. MCLEAN: I would add that if we do find that there's a violation of the flood hazard ordinance, then that certainly is something we could enforce. So we would have to see the nature of the problem.

CHAIR PALTIN: Yeah.

MS. MCLEAN: And not so much . . . *(inaudible)* . . .

CHAIR PALTIN: It seems like it would be a safety hazard because if the rain should come down and all that debris blocks up, you know, with the debris and then it overflows onto the surrounding properties, it could be a detriment to the properties.

MS. MCLEAN: Right. And we are, as Diego mentioned, overlapping with Public Works a little bit here. I don't know...I'm not familiar enough with their...with the regulations that they enforce to know if...even if it is private property, is there some violation of County requirements that they might enforce for blocking a gulch, even if it's private. So that'd be something we need to get Public Works' input on.

CHAIR PALTIN: Okay. Thank you. Thank you, Ms. Cortez, I really...oh...go ahead.

MR. SANCHEZ: We also have State requirements from the Commission on Water Resources Management, CWRM. So as far as what you can do in streamways and waterways, I know they're...they heavily monitor different activities that go on, so there's State issues and Public Works issues. And also, like our...like Michele said, our flood ordinance does allow us to tell citizens to remove stuff from floodways, from riverways. And in the event that they've introduced man-made stuff into the riverway, as far as natural debris, that's a great question, I'm not sure how that would work.

CHAIR PALTIN: Okay. Thank you. Thank you very much. I appreciate the response. Thank you, Ms. Cortez for pronouncing my last name, that's the best pronunciation I ever heard right off the bat, thank you. Ms. King, you had a question?

COUNCILMEMBER KING: Thank you, Chair. And great pronunciation of my last name. Just kidding, it's pretty easy. I...again, I want to thank Ms. Cortez and Mr. Sanchez,

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and I want to also...Director McLean talked about overlap, and there's a lot of overlap here as far as our Committees as well. There's Land Use and Public Works and then, of course, Climate Action and Resilience. So first of all, I want to give you a standing offer to present to the Climate Action Committee anytime that you have pertinent information. But I also am hoping that this...we can bring this kind of a conversation and presentation into our community planning process as we go into the South Maui Community Plan because I think this is really important information for our citizens to know. And also, how the building codes affect the insurance issues. Because sometimes they just think of it as being in their way and not realizing there's a lot of benefits by implementing some of these policies on an economic way. And then lastly, I wanted to say...maybe correct Member Rawlins-Fernandez that we're not necessarily unknowing because she herself put money in the budget for a managed retreat plan. And so all of this, I think, is very purposeful, and I'm hoping that you can work with that too because we're looking for...we're looking towards Moloka'i to be an example for managed retreat for an island, and that's why we started...I think that's why Member Rawlins-Fernandez started with Moloka'i, thinking that that was something that we could target, knowing that Kaunakakai is largely under sea level, and that's going to be eminent if we don't start working on it. So I think a lot of what we're doing is purposeful, and want to recognize that that managed retreat budget item, and hoping that you guys can integrate all this stuff we're talking about here. Because this is...it's really inspiring, gives me hope that we're moving forward. So thank you.

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I just wanted to echo, yeah, that this Council knows what we're doing for sure, and that we're unknowingly helping with the mitigation plan, the flood management plan, that...that part. I didn't know about the plan's implementation items, so we're helping with that unintentionally. But in the big picture, we know exactly what we're doing, and the future that we're planning for. Mahalo, Chair.

CHAIR PALTIN: Thank you. And oh, Member Sinenci?

VICE-CHAIR SINENCI: Real quick, Chair. I just had a question for Ms. Cortez, Chair. If a private property owner is required to clean up...if they have land in the...or if they're obstructing runoff drainage areas?

MS. CORTEZ: So the flood ordinance does require that, like, those types of waterways and floodways be kept free of obstruction. So...but...and yeah, so it does. We...they're supposed to be kept free of obstruction.

VICE-CHAIR SINENCI: And private owners...private property owners are required to keep those free of debris?

MS. CORTEZ: It's difficult...we have a lot of people that ask, you know, for like natural kind of grasses or trees, how much enforcement we do on that. So what Director McLean said is that yeah, we work with Public Works. And while we have the flood code,

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Public Works also, I think, has the enforcement for drainage ways.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Hi, Chair. I just wanted to...since the conversation seems to be going this way, maybe not for full discussion because the agenda is on the floodplain ordinance. But Chapter 1212 of the Maui County Code deals with drainage ways specifically. It deals most particularly with prohibiting people from...from doing anything that causes runoff onto County Highways or blocks a public property. But that may be a section of interest to some of the Members. There's also issues with the County's MS4 program, that it's...I do know that it's looking at dealing with a list of discharge issues, which could also deal with some of these similar issues. That's mainly for the, you know, protecting the ocean, but could relate to some of these activities. So just a couple of notes, but right now, 1212 does cover drainage ways. Again, it's not the direct topic of this discussion, but I think, like Planning said, that sort of goes hand in hand with the flood ordinances deals with as well. This deals with different of an issue, but I think a related issue.

CHAIR PALTIN: Thank you, Mr. Hopper, I appreciate it. I'll look into that Chapter of the Code and come up with more questions. Nah, just joking. So Members, any further questions on this matter? No. Thank you so much, Mr. Hopper, Mr. Sanchez, Ms. Cortez and Director McLean. I'd like to ask the Member's preference, I can file it or I can defer it in case, you know, say we have big flood or something and we want to check back and see how things are going. Member King?

COUNCILMEMBER KING: Yes, Chair. So if we file it, are we just filing the report or...and then...can we file the report and then keep the subject matter open?

CHAIR PALTIN: Mr. Hopper, can we do that?

MR. HOPPER: This is something I'd like to defer to OCS, as they've been managing these items for the Committee. I can look into it and get back, but I think they may have a quicker answer for you.

MS. LILLIS: Yes, Chair.

CHAIR PALTIN: Okay. Ms. Lillis?

MS. LILLIS: Thank you. So the County Communication from the Planning Director transmitted the report. So if you filed it, you would be filing the report that was transmitted.

COUNCILMEMBER KING: Can we keep the subject matter open, and just defer that? Is there a way to do...kind of split the issue?

MS. LILLIS: That's not my understanding of what's available at this time, but another subject matter could be made available to the Council for consideration.

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COUNCILMEMBER KING: Okay, Chair. Maybe...maybe what we could do is file the report and then in the next Council meeting, refer this matter to PSLU, WIT and the CAR Committee, and just keep it in all three of our Committees for further reference. It might be...I think that would be good.

CHAIR PALTIN: That sounds like a good idea. Shall we decide now who will do the paperwork on that?

COUNCILMEMBER KING: I can do it if you want.

CHAIR PALTIN: Okay, awesome. All right. So Members, with no objections...

COUNCILMEMBER KING: Are you...do people just want to double check with Member Sugimura if she's willing...if she wants to be one of the Committees too.

COUNCILMEMBER SUGIMURA: Yes.

COUNCILMEMBER KING: Okay. We'll include all three.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Awesome. Okay. The Chair will entertain a motion to recommend the filing of County Communication 17-105.

COUNCILMEMBER KING: So moved.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR PALTIN: Moved by Member King, seconded by Member Rawlins-Fernandez. All in favor, raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: One, two, three, four, so we have five ayes and it looks like two excused. Motion passes.

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VOTE: **AYES:** **Chair Paltin, Vice-Chair Sinenci, and Councilmembers King, Molina, and Rawlins-Fernandez.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Lee and Sugimura.**

MOTION CARRIED.

ACTION: **Recommending FILING of communication.**

CHAIR PALTIN: Alright. Let's see, what time is it...10:05.

MS. MCLEAN: Chair, I just wanted to thank Diego and Carolyn again. This is tough work, and they do a great job. So thanks to them for their presentation and answering the questions.

CHAIR PALTIN: Thank you, for sure. I don't know, it kind of sounds like Public Works might...might be stealing Diego in the future. So Members, any preference? You guys want to take a quick ten-minute break? Looks like one of our Members already went on break. Okay. We'll be back at 10:15 then. . . .(gavel). . .

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

RECONVENE: **10:20 a.m.**

CHAIR PALTIN: . . .(gavel). . .

COUNCILMEMBER KING: Like that fist. That fist works pretty good.

CHAIR PALTIN: Will the Planning and Sustainable Land Use Committee meeting of October 8th return to order. The time is now 10:20.

PSLU-70: FIRE APPARATUS ACCESS ROADS FOR ACCESSORY DWELLINGS
(CC 20-421)

CHAIR PALTIN: So we're on to our next item on the agenda, PSLU-70, Fire Apparatus Access Roads for Accessory Dwellings, PSLU-70. The Committee is in receipt of County Communications 20-421 from the Planning Director, transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.35, MAUI COUNTY CODE, RELATING TO ACCESSORY DWELLINGS." The purpose of the proposed bill is to correct an inconsistency with the Fire Code regarding fire apparatus access roads to

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accessory dwellings. And so I scheduled this item, you know, housing is always a concern, and I guess some folks have been kept from building accessory dwelling units due to like the road width of 16 or 20 feet. And the Fire Department, the Fire Code has ways around it, but because they're restricted by Chapter 19, they can't use the ways that they have around it. This item has already gone through all three Planning Commissions. I think Lānaʻi and Molokaʻi passed it without amendment, and I believe there was an amendment at the Maui Planning Commission level. So, you know, in the hopes of allowing folks to do things and not hampering them unnecessarily, I figure it went through all the Planning Commissions and get it out there to the Council ASAP. If we can have some opening comments from Planning, followed by Fire and Public Safety, and then Public Works is the order I'd like to go. Director McLean, you on deck.

MS. MCLEAN: Thank you, Chair. Again, you did a great introduction. I would note that the bill that we called the Ohana Bill passed at the end of 2018, and that increased opportunities for accessory dwelling units, what we call ohanas, wanting to allow more opportunities for ohanas and make it easier. But there was some of the language that we left mostly as it was before we have since found out has made it difficult for Fire to sign off on some building permits where they feel like otherwise they could...they could approve them. So I will pass this along to Jacky, who can go through some of the procedural steps, and then I...this was really initiated by Fire's comments to us, so then getting their input would be great after that. So Jacky, do you want to add anything?

MS. TAKAKURA: Thank you, Chair Paltin and Vice-Chair Sinenci and Members. Hard to follow up after the Chair and the Director already explained things, but this is a very short bill and if the Department of Planning, working with the Departments of Fire and Public Safety and the Department of Public Works do revise this part of Title 19 regarding street width for fire apparatus access roads for accessory dwellings. Because the current language does not recognize the exceptions allowed in the Maui County Fire Code, so it's causing the Department of Fire and Public Safety to deny building permits when there may be other options available to allow the permit to be approved. Right now, the part...Chapter 19.35 includes these requirements, roadway width of 16 feet and then another minimum width of 20 feet required for roads. And so we'd like to take that out so that it simply refers to the Fire Code. And that way when the building permit goes to the Department of Fire and Public Safety, they're looking at their own rules for their own part of the permit, and then they can approve it. So it's not really necessary in Title 19. So that's basically it in a nutshell, is to revise Section 19.35.090.C so it simply refers to the Fire Code requirements instead of these specific standards for road widths. That's it actually. We do have the representatives from Fire and Public Safety and Public Works, and we do hope that you'll pass it so that accessory dwelling building permits can be approved. Thank you.

CHAIR PALTIN: Thank you, Ms. Takakura. Member King, question for Ms. Takakura or Ms. McLean?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Ms. Takakura. So

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it...would this...how does this apply to existing...you know, we're talking about new accessory dwellings, but how does it apply to existing buildings or housing?

MS. TAKAKURA: This would just be for the review of the building permits that are going through the process.

COUNCILMEMBER KING: Oh, okay. Okay. I was just wondering because we have that...this...this problem up in South Maui where the new senior affordable housing is going, this existing Hale Mahaolu. And then across the street, I've been...you know, I went and looked at it because we had complaints about not having accessibility up the road across the street, there's a...someone put a steel barrier there. And I had the Fire Department go out...you know, they went out and looked at it, and they said, you're right, it's blocking access, so...but this doesn't apply to anything that's existing, unfortunately? Okay, we need to look at that separately. All right, thank you. Thank you, Chair.

CHAIR PALTIN: Thank you.

MS. TAKAKURA: Thank you.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Question is more just related to housekeeping, if you will. The section of the Fire Code is 16.4OC.440. If this is the correct section, then would it be appropriate to reference that section in this proposed bill?

CHAIR PALTIN: Ms. Takakura?

MS. TAKAKURA: Right now, we just have it so that it meets the Fire Code requirements of the fire apparatus access --

COUNCILMEMBER MOLINA: Right.

MS. TAKAKURA: -- roads. I think we could...I'm not sure if Corporation Counsel could answer that.

CHAIR PALTIN: Oh, sorry. Mr. Hopper, any comment?

MR. HOPPER: Well, I don't know if you'd want to reference a specific section because the section might change in the future. I suppose you can and say as amended, but I'd defer to the Fire Department because the reference is general that says meets Fire Code requirements with respect to fire apparatus roads. So perhaps being more general might be effective because there might be changes to those requirements in the future. I mean, I know the Council sometimes is specific as to those items and could say this section as amended, but as those sections change in the Fire Code, you know, as they're updated over the years it can be confusing if you have specific Code

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references. So it may be preferred to keep it general...you could again talk to the Fire Department about that, but I think that's why it's general in the draft, is so that it can...it can be flexible if the Fire Code would change in the future.

COUNCILMEMBER MOLINA: Okay. Yeah, I can understand that point as well, so. Alright.

CHAIR PALTIN: Okay.

MS. MCLEAN: Chair, if I could...

CHAIR PALTIN: Yes.

MS. MCLEAN: If I could address Mr. Molina's comment as well as Ms. King's question.

CHAIR PALTIN: Director.

MS. MCLEAN: The point...what we found after the adoption of the Ohana Bill is that this particular section was so specific that it precluded some ohanas from being built. And the idea is that as long as Fire Code requirements are met, which is what this section is intended to do, then it should be okay. And...to Councilmember King's question, existing ohanas that had building permits were approved under the existing language, so they would be subject to that or to the new language. So if they were doing something that violated the requirements when they were built, then that is something that we could enforce, or Fire could enforce. So the new language applies to new building permits, but the prior language applied to existing ones that also had fire access requirements.

CHAIR PALTIN: Thank you. I think it might be helpful if we hear all the department's presentations and then open up to questions because maybe it might get...so I'm just going to ask Fire to present, and then Public Works, and then we can ask questions on all three departments or Corp. Counsel. Captain Haake, are you available for presentation or opening statement?

MR. HAAKE: We're here, and thank you, Chair, for the opportunity to speak. And thank you, Committee Members. Thank you, Michele and Jacky.

CHAIR PALTIN: Thank you.

MR. HAAKE: I think Jacky...

CHAIR PALTIN: I just unmuted your video. Can you unmute it on your end?

MR. HAAKE: Okay?

CHAIR PALTIN: It just is still black, but...okay, well, technical difficulties.

COUNCILMEMBER KING: Do you have your screen...do you have your camera covered up

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on your computer?

MR. HAAKE: No, I don't.

COUNCILMEMBER KING: Oh, okay. We're just seeing a black screen.

CHAIR PALTIN: Okay. Well, we can still proceed with opening statements or any presentation that you may have. I guess as long as we don't need to see it.

MR. HAAKE: Thank you, Chair. We didn't have anything to present, we were just here to answer any questions. I believe Michele and Jacky covered the reasons why they're seeking the change to Title 19. It was the fact that the section was specific about the road width being 20 feet wide, and if the road was not 20 feet wide, the road that served the parcel, then we'd have no other option but to deny the application. The applicant would not be afforded the options that are provided in the Fire Code to address situations where adequate access not be provided. The Fire Code, in regards to fire apparatus access, states that fire apparatus access roads need to be 20 feet in width. So the original language in the...in Title 19 was correct, but again, it didn't recognize the options that the Fire Code provides where 20 feet width cannot be provided. And that option would be to sprinkler or protect the structure with fire sprinklers. So if you did not have a 20 foot wide road that serviced your parcel, then an option for you would be to protect your home with fire sprinklers. With the current wording in the Title 19, the applicant would not have that option. And our only option on the application would be to deny it.

CHAIR PALTIN: Thank you so much, Captain Haake. If you wouldn't mind staying on the line we're going to have questions after all the presentations. At this time, is there Deputy Director Molina or someone from Public Works available for any opening comments? How's it going, Deputy Director Molina?

MR. MOLINA: Good morning, Chair Paltin, Members of the PSLU Committee. Jordan Molina with the Department of Public Works. I don't have anything prepared other than in your packet, I believe it's the very last page at this point. We had a memo transmitted to the Planning Department when this thing was at Commission. And just some housekeeping things because as you guys have heard, this is really a Fire Department protection. And so just as a housekeeping matter to...which I think represents the current bill before you was to just simplify the whole statement and requirement just to make it...you know, as it reads currently, lot must have access to a street that meets Fire Code requirements, fire apparatus access road. Yeah, so we support the amendment to help clean up the Code. Thank you.

CHAIR PALTIN: Thank you, Deputy Director Molina. If you wouldn't mind staying on the line as well. I'm going to open it up at this time to Members for any questions. If there's none, I can start off. And so this action that we're taking, it seems to take Public Works review out of the language. You're okay with not even reviewing things?

MR. MOLINA: Yeah. Because as I mentioned in my letter, we already have building code and

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subdivision code that addresses traffic needs for roadways. And so this is a redundant review and oversight --

CHAIR PALTIN: Okay.

MR. MOLINA: -- that's not needed.

CHAIR PALTIN: Okay. Awesome. My next question would be for Mr. Hopper. In the draft wording where shall is taken out and will is put in. At one point, we were using must, and I think in the first time you spoke, you said must. Is...is...there any substantive difference between using shall, will, or must, and is...I mean, are we aiming for any sort of consistency in the Code?

MR. HOPPER: I don't want to go too far into this because I know that there's a plain language effort that's being...that...being sent through here, so that we would be changing shall to using different wording. The only concern with changing shall to will or must is that it might be inconsistent with the other sections...like 19.35.090, you have an 080, 070, 060, and I wouldn't want somebody to look at that and say, you used shall in these earlier sections, but you used must or will in these other sections. I think my position is that there's not a substantive difference between the two. They're supposed to be mandatory, I think...I think shall is perfectly clear and mandatory as well, but I do understand that there's an effort to change that to use different language that's more friendly, and I don't think that's necessarily a problem. The only potential issue is if there's an inconsistency with the other sections of this section. So if you want to say will, that...that's fine. I think they're both intended to be mandatory and mean the same thing. The only potential issue is the internal inconsistency, and not something that would need to be addressed on sort of a broader level by going over every section of the Code and making a change or passing a section that says shall means the same thing as will means the same thing as must. You know, you could put that in a section, so. But I think yes, you can stick with will I think it's all right. You could keep it at shall, and I wouldn't see a problem with that either, to be honest because we've approved plenty of ordinances with that language as well. So I don't see a substantive difference there.

CHAIR PALTIN: Okay. Thank you. And then my last question would be for Captain Haake. If, you know, the width is okay with sprinklers, does the Fire Department or Public Works or anyone ensure that the sprinklers are functioning? I don't know if it's true or not, but there's rumors on the West Side of, you know, a certain contractor installing sprinklers with no piping to back it up. Is there any mechanism to ensure that the sprinklers are functioning?

MR. HAAKE: Thank you, Chair, for the question. When we approve a building permit with fire sprinklers, we are also tasked with inspection of the installation. So --

CHAIR PALTIN: Okay. Awesome.

MR. HAAKE: -- in . . . *(inaudible)*. . . you know, we do see that the sprinklers go in. And

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they're...

CHAIR PALTIN: And they're connected to pipes?

MR. HAAKE: Yes.

CHAIR PALTIN: Water pipes.

MR. HAAKE: And so.

CHAIR PALTIN: Okay.

MR. HAAKE: Yes. Yes, Chair. But then --

CHAIR PALTIN: Okay.

MR. HAAKE: -- on the maintenance part, for residences we do not go back or to private dwellings for that. So what happens after that we do not have control...in private dwellings.

CHAIR PALTIN: Okay. Thank you. That concludes my questions. Members, any questions? Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Mahalo, Chair. Yeah, just a follow up. So it looks like with the new changes under Item C...so my question is to the Public Works and to the Fire Department. So if an applicant either has the 20 feet of roadway, or he's going to be using the sprinkler system, is there an interagency communication, or the permit will go to all the different departments or...for approval?

MR. MOLINA: I'll jump on that one. Jordan with Public Works here. So typically, the process is anybody getting a building permit submits to Public Works through DSA. And DSA has this extensive matrix of who is the reviewing agency for what type of building or proposed construction is involved, and Fire's goes pretty much everyone. That would be the typical review.

VICE-CHAIR SINENCI: All right. Thank you. Mahalo, Chair.

CHAIR PALTIN: Thank you. Any further questions for any of our resource folks? No? Okay. I guess one further question from me, I'm sorry, I lied. Director McLean, do you...are you aware of what is the consistency between shall, will and must in other sections of 19.35?

MS. MCLEAN: No. This...I'm not quite sure when the...when the effort started to change, but I think Mr. Hopper noted the benefit of possibly stating somewhere in the Code that shall equals will equals must.

CHAIR PALTIN: Okay. I guess we'll get that going.

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MS. MCLEAN: Good to have it consistent, but it's such a massive code that doing it bit by bit is...is probably the...a better way to go.

CHAIR PALTIN: Okay. Yeah, I had thought we were on shall was the one, but then I did see some musts, so I'm not sure. Member Sugimura?

COUNCILMEMBER SUGIMURA: Let me un...wait, wait now. Okay. Thank you. I just wanted to...I know Jacky Takakura has been doing this kind of clean-up work, so I just wanted to thank her for her efforts to make our lives all more consistent and really better for the community. So thank you. And thank you, Jordan. Nice to have Jordan's talent in Public Works with all his years with Office of Council Services. So I just wanted to make note of that, so thank you. Thank you very much.

CHAIR PALTIN: Okay, Members. So is it pretty much like a consensus that we'll just add a section that says shall equals will equals must? Cheater version. Yeah.

MR. HOPPER: Wait. Wait, wait. No, no, I...

CHAIR PALTIN: Oh, yes, Mr. Hopper?

MR. HOPPER: Madam Chair, I think that's something to be done --

CHAIR PALTIN: Yeah.

MR. HOPPER: -- to the Code comprehensively. I wouldn't do that in just a section.

CHAIR PALTIN: Oh. Yeah.

MR. HOPPER: My suggestion was as a separate item because I know there's an ongoing effort to change piecemeal shall to must. And because of potential inconsistencies internally, it may be better as a separate item throughout the whole Code to look at making a change. I did check 19.35, the other sections of 19.35 still use shall, so you're being inconsistent there. And I...again, I would take the position that, that will means the same thing as shall in this case, but I don't necessarily see a reason to change from shall. And again, this is a...you know, this is not necessarily a discussion that I want to...that you as Council Members should have to spend your time on right now because it's...I would argue it's not a substantive difference, but I would just note that, that it's inconsistent through this section.

CHAIR PALTIN: Thank you, Mr. Hopper, for that clarification. I was...not meaning that we would do...take that up right at this moment, it was...I guess a polling for a future legislation. Thank you for clarifying that. But...okay. Well, in that case, Committee Members, the Chair will entertain a motion to recommend passage of proposed bill on first reading entitled, "A Bill for An Ordinance Amending Chapter 19.35, Maui County Code, Relating to Accessory Dwellings," incorporating any nonsubstantive revisions and filing of County Communication 20-421.

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VICE-CHAIR SINENCI: So moved.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR PALTIN: Moved by Vice-Chair Sinenci, seconded by Council Vice-Chair Rawlins-Fernandez. All...any discussion on the matter? I think we've kind of discussed it. All those in favor raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Any opposed? Measure passes six ayes, one excused. All right.

**VOTE: AYES: Chair Paltin, Vice-Chair Sinenci, and
 Councilmembers King, Molina, Rawlins-Fernandez,
 and Sugimura.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Lee.

MOTION CARRIED.

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

MS. MCLEAN: Thank you so much. We appreciate it.

MS. TAKAKURA: Thank you.

CHAIR PALTIN: Sure thing. No problem. Okay. Moving right along. We're making good time here.

PSLU-2: AGRICULTURAL TOURISM (CC 15-153)

CHAIR PALTIN: The last item on our agenda is PSLU-2, Agricultural Tourism. And the Committee is in receipt of the following: the County Communication 15-153 from former Councilmember Don Couch, relate...referring the matter relating to the Maui Island Plan, Chapter 4, Economic Development Relating to Tourism. Correspondence dated June 25th, 2018 from Councilmember Don Guzman transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO AGRICULTURAL TOURISM USES AND ACTIVITIES IN THE AGRICULTURAL DISTRICT." The purpose of the proposed bill is to establish

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procedures and requirements for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm or farming operation as defined in Section 165-2 Hawai'i Revised Statutes, implementing Section 205-2D11, 205-2D12 and 205-5 Hawai'i Revised Statutes. So the reason that I scheduled this item is I had a constituent request from Ms. Terese Wormser, I think...or Masters, I've heard different last names on e-mail versus Facebook, so it's a little confusing. But...and she wanted this item heard, and then when we looked into it a little bit more, it wasn't...it didn't exactly meet her intentions or ideas of what she thought agricultural tourism is. And then we looked into it a little bit more and all three Planning Commissions spoke out against the bill and, you know, in an effort to clear out like really old things in the master agenda, I just scheduled it, you know, I had...just...I had some e-mail exchanges with Terese and, you know, we kind of thought that it would be better to start over because, you know, if we amend the bill significantly, it would probably have to go back through Planning Commission review again. And so it's...I thought it would be better to just start with a clean slate. And so my recommendation off the bat would be filing it, but I definitely want to ask Planning for opening comments, and then have the discussion. So that's kind of my intention in scheduling this. Member King, did you have a process question or anything?

COUNCILMEMBER KING: Yeah, I just wanted to mention to you that yeah, there's a lot of detail in this and it was a little bit controversial, but it...another option might be...I mean, I support filing it, but another option might be to refer the subject matter to EACP because I think it's a conversation that needs to be had among the agricultural community. And that's kind of where they're a little more focused in the other Committee so, you know, maybe think about if Member Sinenci would take it up in his Committee. And start fresh like you were saying, just start clean and with, you know, the idea so we can get multiple input.

CHAIR PALTIN: Yeah. That was...that was kind of along the lines of the conversation that I had with Ms. Terese was to, you know, she sent us over some of her ideas, and I said, you know, this bill doesn't exactly jive with what she had intended, and whether she wanted to start fresh in this Committee or Member Sinenci's Committee, I left that to her discretion. But yeah, definitely not giving up on the idea as a whole. But it was pretty clear that the Planning Commission had...the various Planning Commissions had some serious concerns over it. So Director McLean, did you want to give any opening comments on the discussion?

MS. MCLEAN: Yes. Thank you, Chair. We're not opposed to filing the communication. An offshoot of this was a bill relating to commercial agricultural structures, and that did get adopted. And so...also, as we've seen how BNBs and STRHs have evolved on ag land, I think it would be good to take a fresh approach, knowing what's on the books now and what the needs are to support agriculture, knowing that some things have changed since this original proposal was introduced. So I support the filing and starting fresh.

CHAIR PALTIN: Thank you, Director McLean. Exactly kind of my point, like I think this was even before the Minatoya ordinance. It got started before the Minatoya ordinance had

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passed, and so at that time we didn't have the 5,000 or the 11,000 possibilities and whatnot. So it's...and it's definitely a different time right now, in this time of corona when we're rethinking how...how, you know, destination tourism looks like for Maui County. So I...I...I don't want to give up on the idea, but I do want to start with a fresh slate that reflects the current times and not be hindered by this past legislation that was not supported by any of the Planning Commissions. Because it seems like trying to fix something that didn't fit would have to go back through all the Planning Commissions anyway, so why not start clean. Members, any discussion or questions about the item? Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Mahalo, Chair, and yes, after looking at all of the Planning Commission's remarks, I think we're okay with filing it. I am a proponent on building on, you know, the work and the energy that was presented to us, but I think just having...you know, putting that aside and then working it new and then we'll go...we'll go and we can help and meet with some of the agriculture groups and start from there so . . . *(inaudible)*. . .

CHAIR PALTIN: Yeah.

VICE-CHAIR SINENCI: But mahalo, Member King, for proposing that. Thank you.

CHAIR PALTIN: Member King?

COUNCILMEMBER KING: I just wanted to move to file.

CHAIR PALTIN: Okay. Is there any further discussion before we do that? Member Sugimura?

COUNCILMEMBER KING: Need a second.

COUNCILMEMBER SUGIMURA: Oh, second.

CHAIR PALTIN: Second. Okay, move to file, second. Any...as the movant, do you have any discussion, Member King?

COUNCILMEMBER KING: No, just what was mentioned earlier. And I like the idea of moving the subject matter to the EACP so that that conversation can start with the ag and farming community and, you know, try to figure out what we all want, those of us who are farming, what works.

CHAIR PALTIN: Thank you, Member King. Member Sugimura, as the seconder, any comments?

COUNCILMEMBER SUGIMURA: I look forward to discussion because lot of the...lot of my community is very interested in this. So I would like to work with Mr. Sinenci as we move forward. Thank you.

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CHAIR PALTIN: Thank you, Member Sugimura. I guess, you know, my comments would just be that I understand that, you know, farmers need supplemental income in the types of ag that we have in the land class. For me, my personal preference is not to go the direction of short-term rentals because what is really needed is dwellings, you know, we talk so much about affordable housing and whatnot and the continuity of farming. And, you know, I know Mr. Russell had...Mr. Simon Russell, who's a farmer, talks about the great need for farmworker dwellings. And so, you know, if there's need for supplemental income for our small farmers, and there's need not to drive up the price of agriculture and rethink the way tourism goes, I'd like to move into the realm of affordable farmworker dwellings that can help and enable the continuity of farmers as they begin to age out of farming. The other thing, you know, I would like to kind of standardize and make it easier for agricultural tourism likes [sic], you know, a little bit similar to what either Ali'i Kula Lavender has done or, you know, the Kula Farms where you get to go and pick your own strawberries or your own pumpkins, and kind of streamline that kind of process where it can be like daytrips and the focus is on the real farming rather than the short-term rental. I, a little bit feel like, you know, short-term rental in the past was a lucrative industry, but we have so many opportunities for residents to have short-term rentals, whether it's the Minatoya list, whether it's hotels, whether it's timeshares. There's many options for that, and there's not as much options for affordable housing and, you know, I...either they would have to pay for somebody to change the sheets and upkeep and the hygiene standards daily, or they would do it themselves, thus taking away from their real farming enterprises. So that's just, you know, my two cents in the direction that I would like to see this go, but luckily for me, I am on the EACP Committee, so I'll also be part of the discussion. And I can reach out to Ms. Terese to forward the information that she sent me to Member Sinenci as well. I don't know if I'm supposed to direct forward it if it's something that we're gonna be voting on, but she can probably coordinate with you. So all those in favor of the filing of this motion...item...raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Measure passes, six ayes, and zero noes, one excused.

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APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:201008

Transcribed by: Cheryl von Kugler

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CERTIFICATION

I, Cheryl von Kugler, hereby certify that pages 1 through 35 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 4th day of November 2020, in Wailuku, Hawai'i

A handwritten signature in black ink, appearing to read "Cheryl von Kugler", written over a horizontal line.

Cheryl von Kugler