

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

MINUTES

January 6, 2022

Online Via BlueJeans

CONVENE: 9:00 a.m.

PRESENT: Councilmember Tamara Paltin, Chair
Councilmember Kelly Takaya King, Vice-Chair (in 10:18 a.m.)
Councilmember Gabe Johnson, Member
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member (out 11:06 a.m.; in 11:09 a.m.)

EXCUSED: Councilmember Tasha Kama, Member

STAFF: Wilton Leauanae, Legislative Analyst
Alison Stewart, Legislative Analyst
Brittney Sunderland, Legislative Analyst
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary
Lenora Dineen, Council Services Assistant Clerk

Roxanne Morita, Executive Assistant to Councilmember Gabe Johnson
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Sarah Sexton, Executive Assistant to Councilmember Kelly Takaya King
Jordan Helle, Executive Assistant to Councilmember Yuki Lei K. Sugimura

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
Jacky Takakura, Administrative Planning Officer, Department of Planning
James Buika, Planner, Department of Planning

OTHERS: Raymond Cabebe, Vice-President, Chris Hart & Partners, Inc.
(6) additional attendees

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

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CHAIR PALTIN: . . . *(gavel)*. . . Aloha kakahiaka and welcome to the first Planning and Sustainable Land Use Committee meeting of the New Year. Our greeting today from Bhutan, India is kuzu zangpo la. And you can also do extra credit and say jen pa leg sho, which means welcome, if you want to get the extra two points on your assignment. All right. Well, it's 9:00, and will the Planning and Sustainable Land Use Committee meeting come to order. If everyone can please silence their cell phones or any noise making devices, that'll help our cause. This online meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. And it's also in accordance with the Governor's most recent emergency proclamation on Sunshine Law in-person meetings, which has suspended the use of in-person testimony and viewing locations due to the recent COVID-19 surge. Members, the revised Sunshine Law includes the following mandate. A board holding a remote meeting, pursuant to this Section, shall not be required to allow members of the public to join board Members in person at nonpublic locations where board Members are physically present, or to identify those locations in the notice required by Section 92-7 HRS, provided that at the meeting, each board Member shall state who, if anyone, is present at the nonpublic location with the Member. In accordance with the Sunshine Law, if you are at a nonpublic workspace, when your name is called, please identify by name who is present with you in the room, vehicle, or workspace. So my name is Tamara Paltin and I'll be your Chair for today. I'm broadcasting live and direct from the West Maui District Office. The surf has dropped considerably today. So lucky for us that we have to work. With me in my semi-public location is my EA Angela, who's more than six feet away. And I heard that Councilmember King was having some difficulty joining. I thought I saw her, but she might be in and out yet. So we'll come back to her. With us also we have Councilmember Gabe Johnson from the Island of Lānaʻi. Kuzu zangpo la.

COUNCILMEMBER JOHNSON: Oh, boy. Good morning, Chair. Good morning, Councilmembers. Kuzu zangpo la and jen pa leg sho to all of you. I am alone in my office on beautiful Lānaʻi in Lānaʻi City, and it's got that nice winter brisk chill in the morning. Ready for a great meeting. Aloha.

CHAIR PALTIN: Aloha. And excused this morning is Councilmember Tasha Kama. And with us also we have Chair Lee. Aloha kakahiaka, Hauʻoli Makahiki Hou, and kuzu zangpo la.

COUNCILMEMBER LEE: Good morning and kuzu zangpo la. That's from Bhutan, as you know. And then jen pa lo [*sic*] sho. Is that it? Jen pa lo [*sic*] sho?

CHAIR PALTIN: Jen pa leg sho.

COUNCILMEMBER LEE: What does that mean, Chair?

CHAIR PALTIN: Welcome.

COUNCILMEMBER LEE: Oh, okay. Great, yeah.

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CHAIR PALTIN: Welcome in Bhutan as well.

COUNCILMEMBER LEE: The kuzu word is actually hello. And yesterday we said droba dilay...droba dilay and that was good morning. So same country. We're still in the same country.

CHAIR PALTIN: Still in Bhutan.

COUNCILMEMBER LEE: I have no one here with me except my trusty, faithful little dog, who's always asking me for treats. And then no one else is here. Looking forward to the meeting. Thank you.

CHAIR PALTIN: Awesome. Please give Koa Lei Lee our love.

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: And with us from under the virtual bridge in Makawao we have Councilmember Mike Molina. Kuzu zangpo la.

COUNCILMEMBER MOLINA: Aloha, and kuzu zangpo la, and jen pa leg sho, Madam Chair, and my colleagues, and everyone else joining us for our PSLU meeting today. For the record, I'm transmitting live right from my residence here in Makawao, and my wife is getting closer to me each day. So we're only 20 feet away from each other. Aloha.

CHAIR PALTIN: Aloha. Everyone's going for the extra credit. That's a good sign. With us from the Island of Moloka'i we have Councilmember Rawlins-Fernandez. Kuzu zangpo la.

COUNCILMEMBER RAWLINS-FERNANDEZ: No pressure there. Aloha kakahiaka, Chair, mai Moloka'i Nui A Hina. I am at the Moloka'i District Office by myself. Kuzu zangpo la and jen pa leg sho.

CHAIR PALTIN: Jen pa leg sho. Okay. And from East Maui, we have Councilmember Shane Sinenci. Kuzu zangpo la.

COUNCILMEMBER SINENCI: Iorana, Chair. And kuzu zangpo la from Maui Hikina. I am broadcasting from my home in Hāna by myself. And jen pa leg sho.

CHAIR PALTIN: Jen pa leg sho. And last, but...well, I guess not last because we're still waiting for Member King, we have from jacaranda country, Councilmember Yuki Lei Sugimura. Kuzu zangpo la and jen pa leg sho.

COUNCILMEMBER SUGIMURA: Okay. We'll try that. Zulu lan po...lan po la, zen pa le cho [sic]. Is that right? Sounds a little bit Chinese too. Happy New Year, everybody, and thank you very much, Chair Lee. You always make the beginning of our meetings kind of fun and interesting. So thank you very much. I'm at home. I have still our son, who's leaving tomorrow. So they're both having breakfast, which I made for them before

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this meeting, which made me a little bit late for your meeting. And one day I'll make breakfast for all of you. I'm getting pretty good at that...being a mommy. Okay.

CHAIR PALTIN: Let's give her an A-plus for effort, folks. Okay, and moving right along, from the Administration we have Planning Director Michele McLean, Administrative Planning Officer Jacky Takakura, and Planner Jim Buika, as well as Deputy Corporation Counsel Michael Hopper. Another resource that we have is Raymond Cabebe, who is the VP for Chris Hart & Partners, Incorporated. Our Committee Staff today, we have Committee Secretary Clarita Balala; Legislative Analysts Wilton Leauanae, Alison Stewart, Brittney Sunderland; Legislative Attorney Richard Mitchell; and Assistant Clerk Lei Dineen. Today we have three items on the agenda: PSLU-31 Prohibiting Instruments of Conveyance from Restricting the Growing and Harvesting of Any Agricultural Crop or Product, that's PSLU-31. PSLU-30 is Lowering Maximum Building Heights in the B-2 Community Business District, B-3 Central Business District, and P-2 Public/Quasi-Public District. PSLU-13 is the Community Plan Amendment and Change in Zoning for the Kahana Sunset Condominium at 4909 Lower Honoapiilani Road (Lāhainā). So let's begin with public testimony. Let me see. Do we have anyone who wishes to give public testimony today? I don't see the signup list or anyone indicating that they wanted to give testimony. So if nobody wanted to give oral public testimony, I...I'll skip that part. So I guess open call for testimony at this time. Anyone wishing to give testimony, please indicate in the chat or unmute yourself and let us know. And if so then I'll read the public testimony portion of the notes. Give them a few seconds. Might've been caught off guard here. Richard and Nan? I'm not sure who that is. Do you guys want to give public testimony? Going once, public testimony, going twice. All right. Well, it seems as though nobody on the line would like to give public testimony at this time. Oh, Raymond Cabebe? If there's...this is the last call for public testimony. If anyone would like to give public testimony, please either unmute yourself and let us know, or indicate in the chat that you're here to give us public testimony. Seeing no one, Members, is there any objection to closing public oral testimony at this time?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: All right. Any objection to accepting written testimony into the record?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Great. Let's do that. I think there's just one public testimony. Okay, moving right along.

PSLU-31: PROHIBITING INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT (CC 21-371, MISC)

CHAIR PALTIN: So our first item on today's agenda is PSLU-31, Prohibiting Instruments of Conveyance from Restricting the Growing and Harvesting of Any Agricultural Crop or Product. And this is PSLU-31, and I just wanted to be clear with all the Members and

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the watching public. For PSLU-30 and 31, we will be invoking Section 8-8.6 of the County Charter, which is page 27 on your purple book, number 2. So that's adoption of General Plan and other land use ordinance. Number 2 specifically states, any revisions of the General Plan, zoning ordinance, or other land use ordinance may be proposed by the Council, and shall be reviewed by the appropriate Planning Commission as if prepared by the Planning Director. Any such revision shall be referred to the appropriate Planning Commission by resolution. If the Planning Commission disapproves the proposed revision or recommends a modification thereof not accepted by the Council, or fails to make its report within a period of the...of the 120 days after receipt of the referral, the Council may nevertheless pass such revision, but only by the affirmative vote of at least two-thirds of the Council's entire membership. So that's when we get to the Council. It needs five votes to pass out of Committee, but...the reason why I scheduled this is because, you know, we make these three, four-month calendars, and this was on the calendar. And I had expected to get it by now because I had watched the Planning Commission meeting. And I believe the documents are with the Mayor right now, and it just didn't get to us in time, I guess, you know, the holidays and whatnot. But I have no objection to incorporating revisions from the Planning Commission, and I do have Ms. Takakura and Director McLean. So we can just hear a summary from them, if Members would like, of what occurred at the Planning Commission. I was at the Maui Planning Commission, and I gave testimony on this item. These two items were kind of the reason that we got told by the Planning Department to hear items in Committee before we just send them to the Planning Commission. Because I thought it was pretty straightforward, but they didn't have the information of our discussion to inform the Planning Commissions about what was going on, even though...you know. So lessons learned, and we'll do better in the future. But I was...I was there to give testimony for this item, so I was able to kind of describe my reasonings. So on July 23rd, 2021, this item was to be referred to PSLU. The Resolution 21-113 was adopted to refer the bill to the Planning Commission. Proposed bill amends Chapter 19.29 to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product. The three Planning Commissions met. October 12th was Maui Planning Commission; October 13th was Moloka'i Planning Commission; and October 20th was Lāna'i Planning Commission. To date, the Committee has not received the report of the Commissions' finding and recommendation. And both of these bills, 30 and 31, I drafted after our discussions on the West Maui Community Plan, you know, about rural designations not having the same kind of protections to allow for agriculture that agricultural zoning does have. And you know, we did hear that rural zonings only came up within the last couple decades or so. And so, you know, it's all been ag before that. And with the pandemic, to me, it really highlighted the need to become more self-sustainable with supply chain shortages, emphasis on agriculture for self-sustainability. And that was my reasoning for introducing this and putting it on the agenda, you know, the need for people to be allowed to do agricultural production. What I did see during the Maui Planning Commission...one of the Commissioners mentioned that her brother, who lives in Makawao, was prohibited from farming. And I don't think he lived in a rural area, but it was pretty unfortunate. I think he wanted to do aquaponics or something. And so she had also informed the Commission that, you know, the...that this is kind of a good thing because we're so...I think we're about 2,000-something miles from the nearest

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continent. And so we need to make efforts to be more self-sustainable, I think. But anyway, Director McLean, did you want to make any comments about how things went through the Planning Commissions? And I believe there was like a slight amendment from the Maui Planning Commission that we can incorporate if you wanted to run down a little summary for us.

MS. MCLEAN: Yes. Thank you, Chair. And Happy New Year, everyone. I'm not going to go for the points or the extra credit. So just one thing on the timing of these issues. Whether Committee hears it first before sending it to us or not, we have this 120-day turnaround, which is a pretty tight timeline for us because when we receive it, we like to send it out for agency review. Sometimes there aren't that many agencies we want to comment, but even if it's just one or two, they usually get 30 days to comment. And if there are outstanding issues, then we do some back and forth with them. Then we have a 30-day public hearing notice requirement. So like right off the bat, that eats up 60 days. And then some of our Boards and Commissions--well, we're talking about Planning Commissions--meet only once a month, or they may have items already scheduled and there isn't room on that next agenda. So that timing gets tight. And then when we send it to you...and you've seen it both ways. Sometimes we send the package to you without the minutes and then follow up later with the minutes, other times we wait until we have the minutes. And that's what happened with the two items today. We were waiting to send it to you until we got the minutes. And those have been sent, but it was yesterday or the day before. So you haven't gotten those yet. So that's just kind of background on the timing and why it's really tight. Our Board and Commission Secretaries have been overwhelmed. We had a lot of really long meetings. So they're trying to get everything out, but it's been tough. So as the Chair said, the three Planning Commissions heard the item in October. They all recommended approval. With some modifications, the Department supports the measure as well. We did send the bill to Corporation Counsel for approval as to form and legality. And when I was reviewing this yesterday, there were some significant changes made to the version of the bill that Corp. Counsel signed. And I'm not so sure I agree with them. It seems to change the intent somewhat, but it's an interesting discussion point because the purpose and intent of the rural district...and I'm reading from the County Code here. The purpose of the rural districts is to implement the rules and policies...goals and policies in the Maui County General Plan and Community Plans to provide low density development which preserves the rural character of certain areas, to allow small scale agricultural uses and the keeping of animals, and to serve as a transition between residential and urban. So that small scale agricultural uses and keeping of animals is language that Corp. Counsel put into the revised bill that they signed. However...so again, it's saying small scale agricultural uses and the keeping of animals, but then the principal uses allowed in the rural district says growing and harvesting of any agricultural or agricultural crop or product. It doesn't say small scale. It doesn't reduce it in any way. So there's kind of a conflict between those two...or maybe not a conflict, but they just don't seem consistent with each other. So the Chair's bill went with the more permissive, any kind of agriculture. The Corp. Counsel bill went with the small scale approach. So I don't think you have the Corp. Counsel version in front of you, but we can certainly discuss it and obviously get Mr. Hopper's input along the way. So not a very brief introduction, but there you have it.

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CHAIR PALTIN: Thank you, Director McLean. And was the signed bill signed by Mr. Hopper?

MS. MCLEAN: No, it was signed by Stephanie Chen.

CHAIR PALTIN: Oh, okay. Okay. Maybe at this time, Members...any objection to having Mr. Hopper weigh in? And I also got a note from Member Sinenci that Councilmember King is watching on *Akakū*. Her browser is not accessing BlueJeans. So she's hearing what's going on. So that's good. And maybe she can text someone if she has a question. Is that allowed, Corp. Counsel? Oh, okay. Or de facto.

MR. HOPPER: You're talking about a Member...I don't think a Member should...can participate if they're...if they don't have the connectivity. I don't think they would be allowed to text things in to do that...to ask questions. I think they generally need to be on an audio or video connection.

CHAIR PALTIN: Oh, no call a friend allowed? Okay. Member Rawlins-Fernandez...

MR. HOPPER: For Member...

CHAIR PALTIN: Oh, we got all the lawyers chiming in. Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I disagree with Mr. Hopper. We do that all the time. A vote wouldn't be allowed, but questions are fine. As the Chair, I have taken questions from all of you, and said Member Paltin asked this question of Mr. Hopper, and then get the response. So I think it's fine.

CHAIR PALTIN: Okay. Do we want Mr. Mitchell to chime in as well? Because three lawyers and four opinions is the standard, I've heard.

MR. MITCHELL: Maybe I can thread the needle, Chair Paltin. Mr. Hopper is correct. Member King's participation as a Voting Member would not be appropriate under Sunshine Law if she doesn't have an audio-visual connection. But I'm threading the needle here, and I'm going to say that Vice-Chair Rawlins-Fernandez is also correct that the extent she wants to at least ask questions and have others discuss them, that's fine too.

CHAIR PALTIN: All righty. There you have it. Three lawyers, four opinions, perfect. Thank you, Mr. Mitchell. Thank you, Mr. Hopper. Thank you, Member Rawlins-Fernandez. Okay. Mr. Hopper --

MR. HOPPER: Yes.

CHAIR PALTIN: -- if...would you like to comment on Director McLean's comments about the signed version of the bill from Stephanie Chen, which is different and more narrow in scope than the original, which limits it to small scale farming and animals, when based on what Director McLean said, that wasn't the principal use of the zoning designation?

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MR. HOPPER: Yes. Although I want to find the Code section real quick and have the whole thing in front of me. But my understanding was that the reason that the...that that language is referenced is because that's part of the Maui County Code on...in the ag district itself. 19.29.020.A in the rural district describes the district and discusses that the purpose of the district, or one of the purposes is to allow small scale agricultural uses and the keeping of animals. So I think that's where that language came from. Again, that was not...I don't want to speak for others, you know, fully because there was a rather detailed review of both of these bills that went on in our office, and I don't have all of the details. But my understanding was that language was taken from 19.29, the rural district, which says this is the purpose of the district. And that's why that language was added in there.

CHAIR PALTIN: Okay. And can you clarify for us what the definition would be of small scale? Would it be under 10 acres, or under 15 acres? Oh, you're muted, Mr. Hopper, if you're talking to us.

MR. HOPPER: Sorry. I don't know if there is a Code section definition of that. I can double check that as well in Title 19.

CHAIR PALTIN: I wonder, because this would be applying to rural zoning of .5 acres up to 10 acres, if the small scale nature of it would be, you know, 10 acres or less, rather than like hundreds of acres.

MR. HOPPER: I mean, I think because rural district is...you know, the maximum...that size is ten acres, I think that could be a reasonable interpretation of it because you...the lot sizes would generally be...well, that's a minimum lot size too, though. So...

CHAIR PALTIN: Oh.

MR. HOPPER: Let's see. Yeah, I think...I think that's where that language comes from, but I think...let me double check the rural district as well. I think those are 19.29, district standards. Those are minimum lot areas. So you could have...suppose the Planning Department could clarify. You could have a rural lot that's larger than ten acres. I think ten acres is the minimum lot size in that case. But I wouldn't necessarily say that would be...that would be the limit on it.

CHAIR PALTIN: Okay. Thank you. I guess that leaves us with plenty to discuss. Members, any questions for either Director McLean...oh, our Committee Secretary said she has just got the bill, and we'd love for it to be uploaded at this time. So there you have it.

MR. MITCHELL: Chair Paltin, was that the official transmission from the Mayor's Office, or was that an email communication from Director McLean?

CHAIR PALTIN: I believe it's an email communication from Director McLean, but Clarita would know. Is that a problem, Mr. Mitchell?

MR. MITCHELL: I think...I think we're looking for the official transmission from the Mayor's

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Office to upload --

CHAIR PALTIN: Oh, okay.

MR. MITCHELL: -- not just the various communications about what is being considered.

CHAIR PALTIN: This is the signed copy of the bill. I guess in that case I'll read it to you, Members. The signed copy from Stephanie Chen states 19.29.045, and it retitles it. Instead of instruments of conveyance, it says private restrictions on small scale agricultural uses and the keeping of animals. Any private restriction in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances limiting or prohibiting small scale agricultural uses and the keeping of animals in any rural district is voidable. This section does not apply to any deed, agreement of sale, or other conveyance of land existing prior to the effective date of this ordinance establishing this section. Okay. I'll open it up to the Members for discussion or questions. The original bill that we had sent over should be on your Granicus at the bottom of the resolution.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR PALTIN: Member Sugimura, yes.

COUNCILMEMBER SUGIMURA: So you're...we're not allowed to use what Michele transmitted; is that right?

CHAIR PALTIN: We can use it because this is Committee, and during Committee we do make changes in the bill.

COUNCILMEMBER SUGIMURA: But we can't post it on Granicus? You can't post it on Granicus?

CHAIR PALTIN: Mr. Mitchell, can we post it on Granicus?

MR. MITCHELL: It isn't an official communication, but we can post it. But it isn't the report that we were waiting for from the Mayor's Office.

CHAIR PALTIN: But we can post it as an unofficial communication?

MR. MITCHELL: That's right.

CHAIR PALTIN: Okay. Yeah, and I believe Clarita is...said she would upload it. So it's not the report. It's an unofficial communication with a signed version of the bill that was originally transmitted, and it's different than what we transmitted. And I guess according to Director McLean, it's also different from what they had transmitted. Any further questions, Member Sugimura?

COUNCILMEMBER SUGIMURA: No.

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CHAIR PALTIN: Oh, okay.

COUNCILMEMBER SUGIMURA: But why don't we just wait for the official transmittal? How soon is it coming? And what difference does it make --

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: -- if it's going to say the same thing?

CHAIR PALTIN: The official transmittal, I believe, would have the minutes from the Planning Commission, and it would have the...probably the bill they sent before they got the signed version. The reason that we're not waiting is because I made the four-month calendar when we were told to make the four-month calendar, and this is what I had on for January 6th and, you know, just the timing of things. And I guess, you know, we can work off an unofficial transmittal. That's fine. It's just for Members to know that it's not the official transmittal, it's an unofficial transmittal. And so we're still invoking Charter Section 8-8.6. Director McLean.

MS. MCLEAN: Thank you, Chair. There are some occasions when we feel it's really important to have the report and to review the Commission's comments and minutes. The next item is an example of that. For this item, though, there really wasn't...there weren't any...there were, you know, minor recommended change. The big issue here, to me, is the difference between the two bills, and that wasn't the result of Commission discussion. So to me, if I may, it's really the discussion between the two versions and what those concepts are. The other thing I wanted to point out is while there isn't a definition of small scale agriculture, there is a definition of small scale animal keeping. And I mean, that's one term, small scale animal keeping. And the signed version of the bill doesn't explicitly use that term, but we would most likely interpret it to mean that term. And that's defined as the keeping of dogs, cats, birds, rabbits, fowl, and similar type animals for noncommercial and domestic use. This also includes the keeping, grazing, and raising of pigs, goats, chickens, horses, cows, sheep, and similar type animals for noncommercial and domestic use in the ag and rural districts. So even though this bill refers to that and says you can't have any covenants that restrict that, the ordinance still allows this broad...these broader types of agricultural uses. So you could say by the signed version you can't restrict small scale animal keeping, but it doesn't say anything about a prohibition on limiting those broader agricultural uses. So the bill itself doesn't amend the permitted uses in the rural district. Those larger ag uses are still allowed in the rural district. The signed bill just says you can't restrict small scale uses. And I think the Chair's intent was to say you can't restrict any uses. So that's just my read of the...of the two bills. Thank you, Chair.

CHAIR PALTIN: Thank you, Director, for keeping us focused and correctly interpreting what I had meant. Mr. Hopper, I see you have your hand up.

MR. HOPPER: I think I might be able to help with some of the clarification here. The rural district contains a few areas in principal uses and accessory uses where they list the

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more specific agricultural uses that are allowed. It's a little different than 19.30.A, which may allow a broader number of uses. So I think there's specific agricultural type uses allowed in 19.29. Specifically 19.29.030.2 talks about...as a permitted use, growing and harvesting any agricultural or agricultural crop or product subject to restrictions set forth in this Chapter, as well as the accessory use of the keeping of livestock, hogs, poultry and fowl, and game birds. I guess maybe this is more similar to the intent of the original bill, that...maybe if we can list this...those specific uses like are there, just to be clear that it's not any ag use, but it's these particular uses. And I think it's those sections, 19.29.030.A2, B2, and B5, which is agricultural stance. So maybe we can have a version of the bill that would...you know, because we don't want to be vague about what small scale agricultural uses are, I think 19.29 is sort of telling us what they think...what those are. So we could have that as a revised bill. I wanted to offer that. I did discuss with attorneys in our office that had looked at this, and I think they're fine with that. So we have that additional clarity.

CHAIR PALTIN: Okay, great. So basically, to say back to you what you were saying and summarize it is what's listed in the Code as allowed in rural district, we'd like to prevent these instruments of conveyance from preventing what's listed in the Code as allowed in this rural district; is that...

MR. HOPPER: Right, yeah. My...in general, private covenants can restrict uses that are allowed in County zoning because it's a private covenant. It's a private agreement among other parties, and the County would say, yes, you can do this. We're not going to restrict you from doing it, but the private covenant could still do that. This would be an exceptional case, you know, similar to...I think you're aware of what the State law does with...in the ag district with ag restrictions. It sounds like this is sort of intended to get at that in the rural district, and for the agricultural uses that are in the rural district, say that private covenants cannot prohibit the agricultural...those agricultural uses. And even though the uses listed in 19.29 may not be as broad as in 19.30A in the ag district, there are some agricultural uses allowed. And so I think listing those and saying that no private covenants can prohibit those is something that could be done for clarity if that's the intention.

CHAIR PALTIN: Thank you, Mr. Hopper. I mean, I'd love to go broader, but I'd also like a signed bill. So we'll take that into consideration. I'll take Member Sinenci, followed by Member Lee, followed by Member Johnson.

COUNCILMEMBER SINENCI: Mahalo, Chair. I guess my question was, it does say that restriction to any deed, agreement, or sale of other covenants. So this is just when you're selling the property; is that correct?

CHAIR PALTIN: Oh, also for things like, you know, CC&Rs, or if somebody's leasing out, not just when it's for sale. Like if somebody wants to lease their property to somebody else. Does that answer the question?

COUNCILMEMBER SINENCI: Okay. Yeah. And then does it include all types of deeds, or only specific property deeds?

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CHAIR PALTIN: Mr. Hopper may be better suited to answer that question for you.

MR. HOPPER: Yeah, I think...I think what it's dealing with is, you know, sort of any recorded restriction on property. Normally you would record that on the deeds. And so I think it's...it would be really any kind of...any kind of deed that you would use to convey a property. That's generally where you'd find covenants. You could record CC&Rs on a property, and you could also have them just contained in a deed. So sometimes if you deed a property to somebody, in that deed, you can say, you know, you'll have the right to use the property, except you can't do X, Y, and Z. So sometimes those covenants are in the deeds themselves. So I think that would apply to any type of conveyance. That's the intention anyway, is to restrict the ability to privately restrict those uses. And so yeah, I think that's the answer.

COUNCILMEMBER SINENCI: Mr. Hopper, like a quit claim deed...it would apply to a quit claim deed?

MR. HOPPER: Well, it's just saying that you could not add in a restriction like that. It would be unenforceable. It'd be voidable.

COUNCILMEMBER SINENCI: Oh.

MR. HOPPER: So yes. I mean, the deeds themselves...it's not really targeting the type of deed. It's targeting any types of restrictions that you'd place on the property through the deed. So you know, whatever kind of deed it is, if the deed would seek to add a restriction on the use of the property, that's what...that's what would be prohibited.

COUNCILMEMBER SINENCI: Okay. Thank you, Chair. I thought I saw Mr. Mitchell wanting to...

CHAIR PALTIN: Would you like to hear from Mr. Mitchell as well, Member Sinenci?

COUNCILMEMBER SINENCI: Sure.

CHAIR PALTIN: Okay. Mr. Mitchell?

MR. MITCHELL: Thank you, Chair. I was just following up with Member Sinenci's earlier question about a lease. And since we're sort of talking about both the agendized bill and the one that Member [sic] McLean sent by email about an hour or so ago, I thought it might be helpful to note that in the one that's agendized, there is a reference to the prohibition applying to leases, but in the version that was sent by Member [sic] McLean, the reference to lease has been deleted. So I just want to make sure we're clear on the record what we're talking about and which document we're looking at.

CHAIR PALTIN: Thank you, Mr. Mitchell. That's very helpful. Further...are you...does that satisfy your question? Okay.

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COUNCILMEMBER SINENCI: Thank you.

CHAIR PALTIN: Chair Lee.

COUNCILMEMBER LEE: Let's see. Okay. Chair, I was just...curious, what prompted you to propose this bill? I mean, was there a specific case that we should be aware of, or cases we should be aware of?

CHAIR PALTIN: So like I said in the opening, it was the discussions that we had during the West Maui Community Plan, specifically around plantation estates, where they said that they would not prohibit agriculture even if they got the rural designation. And so that prompted me to say I wouldn't want anybody to prohibit agriculture in a rural designation. Because rural is a newer designation, and prior to that it was agriculture. And you know, due to recent events with COVID, supply chain issues, you know, we're not banning plastic utensils on January 1st, and our distance from any continental land mass, that was what prompted me. It wasn't a specific issue, although, when I was watching the Maui Planning Commission, one of the Commissioners mentioned...I don't think her brother lived in a rural designation. He probably lived residential, and his homeowner's association prohibited him from doing aquaponics or something like that. And so you know, that's what prompted me to pursue this legislation, that we need to focus on self-sustainability, which a lot of time is ag. And we're doing all these agricultural grants. We have a Department of Agriculture. You know, it's something that we need to...I feel the direction we should be going is not prohibiting ag but encouraging self-sufficiency. Does that adequately address your question?

COUNCILMEMBER LEE: Yeah. Well, I do wonder about the priority of this. But anyway, the other thing is you mentioned you had scheduled this ahead of time, and that's why you were concerned that...but you know you can make changes to your schedule, right, so long as it's posted properly? Thanks, Chair. I...

CHAIR PALTIN: Yeah.

COUNCILMEMBER LEE: Okay. All right.

CHAIR PALTIN: I just thought by now we would've had it because October to January, but --

COUNCILMEMBER LEE: Okay. Thank you. Thank you.

CHAIR PALTIN: -- Corona and the holidays and everything.

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: Okay. Member Johnson, followed by Member Rawlins-Fernandez. And COVID staffing shortages too. I forgot to mention that. So can't go on what we expect. Member Johnson.

COUNCILMEMBER JOHNSON: Thank you, Chair. I guess this question would probably be

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for Mr. Hopper, any of our illustrious lawyers on board right...for today. But this is in regards to private...the prior private covenants. Like so why in the bill do we have it say that this section does not apply to any covenant or clause existing prior to the effective date of the ordinance establishing the section? Because you know...I'll give you a specific example. Back in the day on Lānaʻi, you know, we were a big farm community, and then now we're not. But there are covenants that say you can and you cannot...especially you cannot farm...have, you know, chickens on your land or in your house around...you know, around that area. So I'm wondering like is that a legal thing why we say...because it's prior? You know, that's where my question's leading, both of those.

CHAIR PALTIN: Mr. Hopper.

COUNCILMEMBER JOHNSON: Okay, Mr. Hopper.

MR. HOPPER: I think this is consistent with the State law, the HRS that deals with this in the ag district as well. The prior restrictions are prior preexisting contracts, and I think we'd have potential issues with trying to retroactively void those. So I think that's why the focus is generally going forward. Again, that's similar to the ag restrictions State law, and we do deal with that sometimes. If there's restrictions that were prior to that effective date, which I think was in...more recent than you'd think. I think it was in like...in the 2000s still was when that...the State law came in. So there's sometimes restrictions before that, that generally would not...that that would not affect. But we...I think that's the reason is that they're...you're dealing with preexisting contracts and looking at covenants in the future, and then we'd have potential legal issues with trying to enforce them retroactively with the...with those restrictions.

COUNCILMEMBER JOHNSON: So my follow-up question is when it comes to private covenants, they hold...they're legally sound? Like I'm not sure how it's...private covenants can tell...you know, they hold legal water? Is it...or is that just like, well, we would sure hope you wouldn't do that kind of thing, or is that pretty legally sound to say you must not?

MR. HOPPER: Private covenants is something that, to the extent we can, the County tries not to be involved in because they involve private contracts between parties. There's things that you cannot do through private covenants. For example--and this was done historically in the United States for a long time--you know, restrictions based on race, or religion, or other things like that. Those are no longer allowed. So you could not have private covenants that say, you know, you cannot sell people of a certain race or things like that.

COUNCILMEMBER JOHNSON: They redline it.

MR. HOPPER: But...yeah. I mean...but generally, private covenants can restrict, you know, if you have CC&Rs in any homeowners association, generally, you know, aesthetic issues, you know, keeping properties, you know...you know, of a certain standard like, you know, through agricultural review, and then maybe restrictions on uses that would be

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allowed. For example, you may be able to do...maybe you could do commercial uses in some neighborhoods, and the private covenants could say you cannot do commercial uses there. The County zoning could say you do commercial uses, but those private covenants could further restrict that, provided that they're...the...they're recorded on the property before you buy it. And so that's why you...when you...when you buy property you need to review the deed to see if there's any restrictions on use. Or there's processes for amending condominium documents and CC&Rs to do those restrictions. And so the owners would have to vote to place those restrictions on. And generally speaking, the County does not get involved in those private covenants. The State law, however, presumably saw the issue of agricultural restrictions as sort of hindering a State law purpose there. And so it did decide to have that restriction, which I think is considered...is consistent with the Right to Farm Act. So I think that the intention of the rural restrictions...or the rural...of this bill, which would allow ag in rural, is consistent with that. But generally speaking, private covenants are generally valid. There's some exceptions that they would not be. And generally, the County does not get involved in reviewing them. So if the County zoning allowed something, private covenants could restrict them, and then in addition, if private...if the County zoning prohibited something, just because private covenants allowed that use, that wouldn't supersede County zoning. So County zoning could still restrict a use, but say in a residential neighborhood the private covenants could say you can do vacation rentals. That doesn't mean that the County zoning is superseded. The County zoning would still apply to say you cannot do vacation rentals.

COUNCILMEMBER JOHNSON: I appreciate your examples. I'm just trying to stay laser focused on the bill here that says about farming. You know, like I get it where you're...you know, aesthetics might not change, but the situation of our farming, that certainly has changed. We don't have the large farmland...farms being farmed as of late. You know, it's been turned into land banking or whatever. But okay, I hear...I'm just trying to make it to the point that like...I just wanted to hear your response on the private covenants and how much they hold water. So thank you. Thank you, Chair. I have no further questions.

CHAIR PALTIN: Member Rawlins-Fernandez, followed by Member Molina.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, I have a question from Member King for Mr. Hopper. And her question is, how does this affect ag conservation district lands being sold? Would those be considered prior contracts? Mr. Hopper.

MR. HOPPER: Well, it...this applies rural...to rural only. So if you're talking about ag conservation lands that are in the agriculturally zoned district, then this particularly...particular bill wouldn't affect that. Because that...those...if those lands were already zoned agriculture, then this bill wouldn't affect that at all. They would already be subject to the State law that prohibits private covenants restricting ag uses. I don't know of any agricultural conservation lands that are in the rural districts. If there were, then this bill would make it illegal to put private covenants restricting ag use on those. But I would think most of the agricultural conservation lands would be...would be in...and I'm not quite sure what those are, but that sounds like those

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would mostly be in agriculturally zoned areas, which again, this bill wouldn't affect.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Hopper. And then Member King did have an additional question, but I'm waiting to see if Mr. Hopper's response to Member Johnson's question sufficiently addressed her question regarding CCRs. I have a question. I think it's for you, Member Paltin. The intent of the bill...okay. Since the intent of the bill is to assure landowners in rural districts the ability to farm and produce food, does your bill clearly make a difference between game birds that aren't used for food and egg-laying chickens that would be allowed?

CHAIR PALTIN: I don't think my bill does clearly make a difference. I don't know if game birds are considered ag, but it's...I guess, you know, from what Mr. Hopper was saying, it would follow the Code as to what is like principal uses for the area.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. Perhaps Mr. Hopper, would you be able to elaborate on whether the bill as drafted either...or revised, either by the Commission or Corporation Counsel, would prohibit private covenants from excluding or prohibiting the use or raising fighting chickens in the rural area?

CHAIR PALTIN: Mr. Hopper.

MR. HOPPER: Well, one of the outright permitted uses in...currently in the ag...in the...in the rural district...let me look. 19.29.030.B, an accessory use that's allowed in the rural district is the keeping of livestock, hogs, poultry and fowl, and game birds. So if the use is considered keeping those game birds and it's accessory to a permitted use, it would be allowed, and the private covenants could not restrict that. Now, fighting chickens is, I think, a different issue than keeping poultry. I think that's a bit different. And there may be State laws prohibiting that activity that are separate from this, but what's allowed under the ag district right now--and you know, I'll quote it again--is the keeping of livestock, hogs, poultry and fowl, and game birds. So if that's the use that's going on, this bill would make it so that private restrictions could not prohibit that, and that that use...that use is allowed as a use. Though, currently, it could be potentially restricted by private covenants, if this bill passes in the future, there could not be private covenants to prohibit basically raising chickens. Although fighting chickens and that activity I don't think is necessarily consistent with raising, but that's something we would need to maybe check with State on and...as well as the Planning Department.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Hopper. Aren't game birds fighting chickens? Are there other games that birds play in?

MR. HOPPER: Well, I...we can double check. I don't know if they mean something other than poultry. I mean, it's birds. So I don't...I don't know if by game they mean fighting. I think they may be talking about like pheasants and quail and things like that, but I'm not a...I'm not a ornithologist. So I would...I would need to check on that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, mahalo for that. I didn't...I didn't think about quail and pheasants as game birds, but I guess so, huh? Okay. So I guess that's

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the other games they participate in. Got it. Mahalo, Mr. Hopper. Mahalo, Chair.

CHAIR PALTIN: Maybe we'll see a proposed amendment to the Code from Member Rawlins-Fernandez in the future. Member Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Boy, the discussion of game birds and roosters brought back fond memories years ago when I was on the Council and that topic came up about rooster noise and all of that. We had a ton of people signed up for public testimony. I'll just leave it at that. So, whew, that's a real slippery one to deal with. But anyway, interesting discussion, Madam Chair. One question for you, and then a question for the Planning Director. So Madam Chair, for today's purposes, you want us...you're looking at us...having us consider the bill that was just transmitted this morning? And also, for Planning Director McLean--and I'm sorry if I missed it in your opening comments--your thoughts on, I guess, that you gave to us was just on the initial bill, or also on this bill that was just transmitted? I guess I'll start first with you, Madam Chair. The bill you're looking at having us consider today?

CHAIR PALTIN: So the bill that I transmitted was a starting point, and then we received unofficially the signed version from Director McLean, which was different from the Planning Commission. For me, I kind of did like Mr. Hopper's offer to include all the allowed uses and broaden it up a little bit more based on the Code. I thought that was kind of a good compromise between what I originally proposed and the signed version that was unofficially shared with us from Director McLean. You know, as you know, in Committee we can work on the bill and it doesn't look like what was originally proposed. So I think that would be okay. So that would be my intention is to do a little bit further work from the signed version along the lines of what Mr. Hopper recommended about 19.29.030.A2, B2, and B5, and see if we can get the lease back in or find out why lease was taken out. So I hope that sufficiently answers your question.

COUNCILMEMBER MOLINA: Yeah, okay. So basically today you're looking at, you know, working Mr. Hopper's...working on Mr. Hopper's version, but not passing it out until maybe further review along the way?

CHAIR PALTIN: Oh, I was thinking this one could be passed out. The next one maybe just discussed, because --

COUNCILMEMBER MOLINA: Okay.

CHAIR PALTIN: -- you know, the Planning Commissions in general agreed with it and --

COUNCILMEMBER MOLINA: Okay.

CHAIR PALTIN: -- like that. So that was kind of my intention is to --

COUNCILMEMBER MOLINA: Okay.

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CHAIR PALTIN: -- work on it, get to a place where we feel comfortable, and then take a vote for this one. The next one, like Director McLean said, maybe we should...we can discuss it a little, but we should wait for the report. And I'll just listen to her because, you know, she knows what she's talking about most of the time.

COUNCILMEMBER MOLINA: Okay, thank you. And I guess if...Director McLean, if you wanted to add further comments on this?

MS. MCLEAN: I hope this is one of the most of the times. Yeah, we don't have any objections to moving forward today. My initial not so brief comments were that there are two versions of the bill that really have a different scope. And so I was just trying to point those out and to explain what I thought the intent was of both of those. So the Commission was...the Commissions were supportive of the original version. Jacky might...I might ask Jacky to jump in because there was a particular tweak that was recommended. So she should offer that up, and then whatever other changes were discussed with Corp. Counsel. So I was just pointing out that there was a signed bill that did vary the scope, and it would be important for the Council to understand where those changes came from before a decision is made.

COUNCILMEMBER MOLINA: Okay. Thank you very much for your comments, Director. Thank you, Madam Chair.

CHAIR PALTIN: Okay. Ms. Takakura, did you want to point out that one little tweak that came I believe from...was it Commissioner Pali?

MS. TAKAKURA: Thank you, Chair Paltin. First off, I need to apologize. There's construction next door. So there's...might be some banging. So what the Planning Commissions had reviewed was just a little bit of revision based on the Planning Department Staff. And what we had proposed was that any deed, lease, agreement of sale, mortgage, or other instrument of conveyance interpreted to contain any covenant or clause that restricts, directly or indirectly, the growing and harvesting of any agricultural crop or product on lands within the...and it's got the RU.0...0.5 RU-1, RU-5, RU-10, shall be considered invalid and not enforceable. That's what the Department had proposed, and that's what the Planning Commissions had reviewed and approved. The only revision was that...take out the word considered so that it would simply be, shall be invalid and not enforceable. And then we had that same part that the resolution had about the section not applying to existing covenants or clauses prior to this change. So that's what we had sent to the Planning...I mean, to Corporation Counsel. And the reason is because it's important, that part about invalid and not enforceable, because the Planning Department does review CC&Rs when lots are subdivided, but then after that, if a CC&R or document is changed, we are not notified. So we do not know. You know, a developer could change a document, you know, the very next day once . . . *(inaudible)*. . . By having that simply say invalid and not enforceable it means that even if we don't get to see . . . *(inaudible)*. . . that's what the . . . *(inaudible)*. . .

CHAIR PALTIN: Thank you, Ms. Takakura. I guess it is a little bit of a moot point, being that Corporation Counsel amended the Planning Commission's version based on legalities,

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but thank you so much. Members, anybody need a round two? Member Molina.

COUNCILMEMBER MOLINA: Yeah, Madam Chair, not so much a round two, but has there been any outreach with the farming organizations? Just because, you know, we've heard it many times. Farmers out...at this time of morning, they're working. And for whatever reason, sometimes they're not, you know, maybe up to speed on getting information about proposed legislative changes as it relates to agriculture. So I'm not sure if there's a way to do an outreach to make sure that, for example, the Maui Farm Bureau or Hawai'i, what, Labors...Farming...Farmers Union and other entities to make sure that they hear it. So that way, come...you know, Council, when it gets to first reading at Council, we have concerns from any of these groups and get, oh, you know, we may have been unaware and...so just to make sure all of our, you know, tracks are covered in terms of making sure that folks who do this for a living, they're notified, because who knows. It may have some impacts. But anyway, just to be safe. Just a suggestion, Madam Chair. Thank you.

CHAIR PALTIN: Yeah, yeah, we can certainly do that before first reading. And this would be kind of a protective legislation, you know? It wouldn't be invoked, really, unless somebody is being restricted from farming and they want to farm. But you're right, they would need to know about it in order to invoke it, you know. Member Lee.

COUNCILMEMBER LEE: Chair, is this bill applicable to selling property, or also leasing property?

CHAIR PALTIN: That was a good question. The original one had lease as well as selling, but I guess the signed version that came back from Corp. Counsel took out lease. You want to ask that question for Mr. Hopper?

COUNCILMEMBER LEE: Yeah. Mr. Hopper?

CHAIR PALTIN: Mr. Hopper, are you still...

MR. HOPPER: I'm trying to double check on the reasoning for that change. I can also check quickly the ag district, which has similar restrictions, to see what language we use there. I can...I can let you know in a moment. Thank you.

CHAIR PALTIN: Okay, great.

COUNCILMEMBER LEE: Because I was wondering about...you know, a lot of properties are leased to farmers, and even our own ag park I'm sure has a bunch of restrictions. So it may not apply to the existing ag park, but maybe the new one might have to comply with this. I'm not sure. And I was wondering if we could get some comments from, I guess, OED on this.

CHAIR PALTIN: Okay, but it's...isn't the ag park on ag land?

COUNCILMEMBER LEE: Yeah, I assume so.

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CHAIR PALTIN: So this bill doesn't apply to that.

COUNCILMEMBER LEE: Okay. Only rural properties?

CHAIR PALTIN: Correct.

COUNCILMEMBER LEE: Okay. All right. Then no need for OED's comments.

CHAIR PALTIN: Okay. Director McLean, did you want to weigh in on Member Lee's concern, or is it...

MS. MCLEAN: Yes, and what Mr. Hopper just said. So in the County agricultural district, County Code Section 19.30.A.040.G says no deed, lease, agreement of sale, mortgage, or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter. And also, just FYI, when we received the resolution, we circulated it to the State Office of Planning and Sustainable Development for comment, and they did not have any comments. So they would be the agency...if there was any sort of conflict with State law, for example, they would comment on that. Thank you, Chair.

COUNCILMEMBER LEE: Thank you.

CHAIR PALTIN: Thanks. This would be one of those most times. Member Sinenci.

COUNCILMEMBER SINENCI: Yeah, just a clarification for the Director on small scale. Was there a definition, again, or maybe it was Mr. Hopper that had defined...

CHAIR PALTIN: Director McLean.

MS. MCLEAN: There isn't a definition for small scale agriculture. There is a definition for small scale animal keeping.

COUNCILMEMBER SINENCI: And that...

MS. MCLEAN: That definition is more for domestic and noncommercial use.

COUNCILMEMBER SINENCI: Okay. All right. Thank you. Thank you, Chair.

CHAIR PALTIN: If I could just follow up to Member Sinenci's question, do you...do you think we need to create a definition for small scale agriculture, Director McLean?

MS. MCLEAN: If the use of the term is going to have a regulatory effect, like if it's listed as a specific permitted use, meaning that agricultural activity's going to be curtailed in some way, then I think it would be useful to have a definition of small scale agriculture the

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same way there is a definition for small scale animal keeping.

CHAIR PALTIN: Okay. And you don't have anything ready to go? You would recommend maybe reaching out to the farmers unions and the Farm Bureau and like that for what a definition of small scale agriculture would be?

MS. MCLEAN: Yeah, if it's going to be regulatory. And that would mean amending the rural district now, where the permitted uses say agriculture without any restriction, really. So if it's going to be proposed to amend the rural district to say, oh, only small scale agriculture is allowed, then yes, we would look for there to be a definition of small scale agriculture.

CHAIR PALTIN: Okay, but small scale is already in the Code for rural, but there's no definition. So either way we should get it, huh?

MS. MCLEAN: Well, small scale agriculture is used just in the purpose and intent section. In the list of permitted uses in the rural district, it just says agriculture. So that...you know, there's sort of the inconsistency where it said, oh, the purpose of rural is to have small scale agriculture, but then the permitted uses just say agriculture.

CHAIR PALTIN: Hmm. Okay. I did see Mr. Hopper flash up. Mr. Hopper, did you want to contribute to this?

MR. HOPPER: Well, just as far as the definition, I don't think we need...if we're going to go with...for this particular bill with just listing the uses that are allowed in 19.29, I think those uses that are listed are kind of assumed to be, for purposes of the rural district, the small scale uses. It doesn't list every use allowed in 19.30.A. So I think if we list the growing and harvesting of any agricultural or agricultural crop or product, subject to restrictions set forth in this chapter, as well as keeping of livestock, poultry and fowl, and game birds, and agricultural stands, which are the three types of uses that are allowed now in the rural district, I think that we don't need to separately come up with the small scale agricultural definition if...for the purposes of this bill, which would prohibit restricting uses that are...the ag uses that are already allowed in the rural district. If the Council wanted to separately come up with small scale agriculture and use that as a regulatory definition in other sections, including this one, it could do that. But I think if you want to go forward with this bill and just restrict the ability to prohibit uses that are ag uses already allowed, then we can just take the uses that are already allowed, list those, and say that you cannot restrict those. And I think that would be the simplest way.

CHAIR PALTIN: Yeah, I agree, and I like that proposal. Members, discussion on that? Okay. Mr. Hopper, did you find out about the lease situation, why that was removed?

MR. HOPPER: I don't know the background of that. I don't think there's a problem with having leases restricted. I think that that's similar language, as Director McLean said, and I did double check that as well, in 19.30.A. So if you wanted to model this after that, which deals with ag restrictions, I think you can include leases as something that cannot

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be restricted.

CHAIR PALTIN: Yes. I would love to model it after the ag one, and instead of put small scale agriculture, I would like to put the uses allowed in A2, B2, and B5, and say that private covenants could not restrict those uses...those agricultural uses. Members, any discussion on that? Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I'm sorry. Will you repeat what section of Title 19 we're referring to? 19.2?

CHAIR PALTIN: Oh, sure, yeah, sorry. It's 19.29.030.A2, B2, and B5. And I can flip to that section and read it for you folks if that would help.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, please. I'm also looking it up as well, but yeah. Thank you.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: If you...oh, you're literally flipping through the binder with the ordinances. Oh, okay. Okay. And then when I find the link, I can share it in the chat, and then everyone can look at it.

CHAIR PALTIN: Old school and new school, got it. Okay. So 19.29.030.A2 is growing and harvesting of any agricultural or agricultural crop or product, subject to restrictions set forth in this chapter. B2 is the keeping of livestock, hogs, poultry and fowl, and game birds. And B5 is stands, like I guess agricultural stands, for the purpose of displaying and selling agricultural, floriculture, or farming products, if such products have been produced or grown on the premises, subject to the standards in Section 19.29.020. Goods produced off premises are expressly prohibited. Oh, and there it is in writing in the chat. And so A is principal uses, and B stands for accessory uses. Digital version. Yes, Chair Lee.

COUNCILMEMBER LEE: I just want to make a comment. You know, I understand that the purpose of what you're trying to do is a good purpose. However, sometimes it's hard to predict and anticipate all the possible circumstances, all the possible animals, all the possible ag uses that people can come up with that would actually be a nuisance to their neighbors. So that's all I would caution you about is, you know, if I was in the rural district...I mean, although there is a definition for small scale animals, I mean, what if I have a small scale elephant or something? I mean, you know, and...or when it comes to certain products, agricultural products that require huge, humungous equipment or something...I mean...so we have to be careful how you handle this because it's impossible to anticipate. A lot of people are not considerate, you know, of their neighbors, and common sense should dictate whether you have a particular animal or a particular ag use. So I just want to say that sometimes it's hard to predict what exactly you're covering because you're not ever going to cover everything. I mean, whatever you cover, somebody else is going to think of something else. Okay, thanks.

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CHAIR PALTIN: Thank you. And from that and the earlier discussion, I think I'm getting that Members may feel more comfortable leaving game birds off, where game birds would still be allowed, but a CC&R could restrict it or something. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think Chair Lee brings up a very important point, and even more so why we should define a small scale animal keep. The threat of a small scale elephant farm, you know, is dangerous to our community. So we need to define that. Just kidding, Chair Lee. No, but I hear the point. So I think like working on definitions will be important so that we understand what it is that we intend, so the intention is very clear. I also see Member King. So I can stop talking if you would like to recognize her.

CHAIR PALTIN: Kuzu zangpo la, Member King, and jen pa leg sho.

VICE-CHAIR KING: Okay. Kuzu len...oh, my gosh, I'm not going to try that. Just aloha kakahiaka, everyone.

CHAIR PALTIN: Welcome, welcome.

VICE-CHAIR KING: Thanks. I think...I think we're back on. It was a BlueJeans issue, I guess, because it was just in our office, and nobody...we have Macs and PCs. Nobody could get on. But I do have a question after Member Rawlins-Fernandez finishes. And thank you for asking my earlier question.

CHAIR PALTIN: Okay. Go ahead, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Paltin. And you're very welcome, Member King. I'm happy...always happy to help. I did see Mr. Hopper flash his video on while I was making my comments regarding definitions and...

CHAIR PALTIN: Oh, maybe that's because there is a definition for small scale animals already.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, there is, but there isn't for ag...for small scale ag, as we were discussing earlier. But I guess like one of the things is agriculture includes animal keeping. So I guess by defining small scale animal keep, we're pulling that out of small scale agriculture. Is that what we do when we define something that...like agriculture includes the production of produce, but also the pasturing and raising of animals, right, agriculture broadly speaking. And so if we're going to...

CHAIR PALTIN: Yeah. Maybe that includes like non-edible stuff as well.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right, like growing flowers and stuff. So I guess in...like I think I probably wouldn't want to take action on this bill today just so that we can kind of, you know, mull it over a little bit more to really clarify what it is that we're trying to protect, prohibit, and promote with this...with this bill so that we...as Chair Lee mentioned in her comments, that we're not inadvertently, you know, stopping something that we would want to encourage, but we are, you know...you know, helping

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neighbors be good neighbors to their neighbors. Okay, mahalo, Chair.

CHAIR PALTIN: Okay. Member King, followed by Member Molina.

VICE-CHAIR KING: Thank you, Chair. Yeah, I echo Member Rawlins-Fernandez. I think we should get some more input from the general farming community about this bill before we move forward. I do have a concern about adding leases because--and maybe people haven't thought about this, but--if you own a piece of property and you're leasing it out for five or ten years, you wouldn't necessarily want someone to put a grove of trees on it that were going to last for 30 or 40 years. You know, if the...if the lease ended, what are you going to do if you wanted to try to lease it out to someone to grow something else? So there's all these other issues to be considered, and you know, I think we need to bring the ag community in to talk about what the concerns would be. That's my...most of my input. Thank you.

CHAIR PALTIN: Member Lee.

COUNCILMEMBER LEE: I was going to say the same thing because...same as what Member King and Member Molina mentioned earlier. Yeah, it would be good to have input from the people who actually do this for a living. And they probably have a more practical perspective than we do because they...you know, they do this every day. So if we could have their input, that would be great.

CHAIR PALTIN: Okay. Well, this likely won't pass this term then. And the real threat, to me, is the gentleman farmers that are restricting folks from doing ag in rural lands, but the will of the Committee and whatnot. Go ahead, Member Sugimura.

COUNCILMEMBER SUGIMURA: So I was going to...I was going to say what Member Lee said, which Mr. Molina initially brought up. So I'm hearing...I'm hearing us kind of, you know, saying the same thing. And my question to you is, why would it not come up until ending of this term? I'm just curious.

CHAIR PALTIN: Well, with the months out planning, I have other priorities. Today was the day to take up this priority, and I have other priorities that overtake this that I need to finish before this term.

COUNCILMEMBER SUGIMURA: Okay, fine. Thank you. So you're sticking with your calendar and...but I agree. I would like to, you know, have this discussed more. I have a Kula Ag Park...sorry, Kula Community Association meeting coming up next week, and I would like to bring this up, but maybe there's no rush then if you're not planning on taking it up again for a while.

CHAIR PALTIN: Member Sinenci.

COUNCILMEMBER SINENCI: I know...I just wanted to add that our Committee will be bringing up more agriculture. So we could bring this up at a future Department of Agriculture meeting as well.

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CHAIR PALTIN: Okay. Is that an option, Mr. Mitchell, to transfer this over to Member Sinenci's Committee?

MR. MITCHELL: Thank you for the question, Chair Paltin. I see heads nodding from the other Councilmembers. I'm not sure of the process there. So let me just double check with...it looks like Member Rawlins-Fernandez knows the process.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, Mr. Mitchell. Yeah, so in our...the resolution that we passed that outlines the kuleana and jurisdiction of each Committee, you know, we lay out what each Committee would take up. We...there is a lot of overlap with subject matters. And so we often...it's up to us as a body how we would like to refer items, particularly when there's shared subject matter. So if there aren't any objections by this body, our Council rules and our, you know, Committee assignments...or Committee jurisdiction are really just guides for us to follow so that we have, you know, procedural order. But I don't have any objection to this item being sent to the APT Committee. So if the APT Chair is wanting and willing to take it up so that PSLU can take up other matters...mahalo, Chair.

CHAIR PALTIN: Chair Lee.

COUNCILMEMBER LEE: Yeah. I don't believe you have the...I don't know what the word is, not authority, but...to send your...this item directly to APT, but what we can do is have the Council discharge this matter, yeah, from you, take it from you, and at the same...at the same Council meeting, refer it to APT. That's what I'm thinking.

CHAIR PALTIN: Okay.

COUNCILMEMBER LEE: So it can be done fairly quickly.

CHAIR PALTIN: Let's do that. How do we do that? Like...

COUNCILMEMBER LEE: Well, we'll take care of it. The Council...the Council Staff will take care of it.

CHAIR PALTIN: Okay.

COUNCILMEMBER LEE: You're going to discharge it, yeah? And we'll work with your Staff in order to accomplish that.

CHAIR PALTIN: My recommendation at this time would be to discharge this to the APT Committee.

COUNCILMEMBER LEE: To the Council.

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CHAIR PALTIN: To the Council.

COUNCILMEMBER LEE: You discharge it to the Council, yeah.

VICE-CHAIR KING: So moved.

CHAIR PALTIN: Okay. It's been moved by Committee Vice-Chair King and seconded by Member Johnson to discharge this item to the full Council to then reassign it. All those...or any discussion? Member Rawlins-Fernandez, followed by Member Sinenci.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think if we take action in Committee, we would have to generate a Committee report, which would take longer, and then we'd have to post that Committee report to a Council meeting. So the...I think the procedural action is to defer the item, and then you would just post the item to the Council agenda. And then when it gets to Council agenda, we would discharge it from Committee. And then we could refer it to APT Committee when it gets to Council. So you would discharge it at Council, and then you would refer it then.

CHAIR PALTIN: Okay. So my discussion on that would be it's not going to make it for this Friday, obviously, and the benefit of having a Committee report would preserve the discussion that we had today to carry on like things that were concerns and stuff. Wouldn't we want to have that be passed on to the APT Committee? Because I know I forget what we talk about sometimes, and then it's nice to have a little summary without going through the 50-page minutes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Chair, for your response to my comments. So as you know, our Committee reports are very brief. They don't detail our discussion. That is under your authority, of course, as the Committee Chair, to include more detail to summarize what we discussed here in PSLU before it goes to APT. And perhaps the minutes of this meeting, this section, the discussion of this section, the verbatim minutes, if you wanted to have that follow, maybe that would be better. But if in your Committee report you include details of the...of the questions that were raised, and the concerns, and the recommendations, then it would have the value that you're speaking to. Otherwise, the Committee reports are very...they don't include those kinds of details unless you, as the Chair, put them in. Okay. Mahalo, Chair.

CHAIR PALTIN: I think it was Chair...or Vice-Chair King, followed by Chair Lee, and then maybe Member Sinenci. I'm not sure.

VICE-CHAIR KING: Yeah, I was just going to say that I think...I think that's a good idea that you had, Chair. And we have plenty of time to get that Committee report before the...onto the next Council agenda, which is the 21st. So you know, having that discharge come from the Committee I think probably would even save a little time at the Council meeting. So you know, I'm...either way you want to do it, but I think we can move ahead with it. I actually...I actually personally think when I get my Committee reports to sign that they're extremely detailed, almost too detailed. So maybe that's...maybe I have to go make a direction to my Staff to make it a little less detailed,

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but they seem to include all the comments. So anyway, that's what I'm signing when I sign the Committee reports. That's all.

CHAIR PALTIN: Okay. Chair Lee, followed by Member Sinenci.

COUNCILMEMBER LEE: The simplest thing to do is defer this matter temporarily for now, and skip over to the next item because we've...you allocated an hour for this and we've already hit an hour and a half. So rather than us go around in circles talking about procedure, let's have our Staff in the meantime work out the...our Council Staff and your Committee Staff work out the most...the quickest, most efficient, and proper procedure to get this out of this Committee onto the Council, and then from the Council onto APT, okay. So while we're talking about the next item, Staff can be working on the actual procedure that would work the best for everybody concerned. That's my suggestion.

CHAIR PALTIN: All right. Member Sinenci.

COUNCILMEMBER SINENCI: Yeah, just for clarification, Member Paltin is also on the APT Committee. So we're just lending support, giving her that extra time to get this through as well. Thank you.

COUNCILMEMBER LEE: I think that was a great idea, Member Sinenci. Good idea.

CHAIR PALTIN: Yes. Thank you, Member Sinenci. Okay. We got a motion on the floor. Did people still want to vote on that or no?

COUNCILMEMBER MOLINA: Defer.

COUNCILMEMBER LEE: I'd rather not because...let's have the Staff work out the actual procedure. And then you...then you can vote on it after we finish the next item.

CHAIR PALTIN: Oh, you mean table it for now, or like what you...

COUNCILMEMBER LEE: Yeah, just temporarily until they have a chance to talk.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER LEE: Rather than us continuing to talk about this.

CHAIR PALTIN: Okay. So would the makers of the motion need to withdraw that then? Yes.

VICE-CHAIR KING: We can just leave it on the table until we figure out the best...then if we want to go ahead with...this way we already have a motion. We can just vote on it.

CHAIR PALTIN: Okay. We'll leave it on the table for now if that's agreeable to everyone, and we'll go on to the next one.

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**PSLU-30: LOWERING MAXIMUM BUILDING HEIGHTS IN THE B-2
COMMUNITY BUSINESS DISTRICT, B-3 CENTRAL BUSINESS
DISTRICT, AND P-2 PUBLIC/QUASI-PUBLIC DISTRICT (CC 21-370,
MISC)**

CHAIR PALTIN: So the next one we were planning on deferring, but we can just...we can give you a little precursor onto that. The next one is PSLU-30 Lowering Maximum Building Heights in the B-2 Community Business District, B-3 Central Business District, and P-2 Public/Quasi-Public District. So the reason that I introduced this one...and this was the one that Director McLean was telling us, you know, you got to hear it in Committee before we send it to the Planning Commission. Because I guess the only comment I made was we didn't want Maui to turn into Waikiki, and you know, the building heights of Waikiki are like 130 to 250 feet or something along those lines. And really, like I said at the very beginning, these bills came out of our discussion on the West Maui Community Plan. And if you recall and...we had a...quite a long discussion about the new community plan designation, and that also came up from Mr. Perez and Mr. Mayer when we passed it at first and second reading. For West Maui, we have some business zoning like right here in the SMA. And I guess, you know, what we ultimately decided for the community plan was some wording about the scale of the surrounding buildings, you know, like if employment center or small town center would allow for all these different types of zoning--and some of the zoning is really tall--that the character and the scale and design of the nearby should be taken into effect [sic]. So then my thought process was, well, let's just limit the heights, but my narrow view was only of West Maui, and there's business districts all over the place. The business district is intended to like kind of, I guess, promote density. There were comments made during the Planning Commission about, you know, sometimes when you grow it's either up or...up or out, and we don't want to promote sprawl. There was also comments made like, you know, in the SMA area, the Planning Commission can decide on a case by case basis. And so they didn't want to give up that right. So some of the changes...and it might be...so I was going to just file this, but then Director McLean said that they did recommend some changes, like for Sections 19.18.050 and 19.20.050, language regarding pertinent equipment such as antenna and vent pipes should be revised to limit them to no more than ten feet above the building roof from which it extends and other things like that. So I'm comfortable deferring this, but Director McLean, did you want to make any statements on this before they get the Commission...the official Commission report and can review it themselves?

MS. MCLEAN: Thank you, Chair. It's up to you how you want to proceed today. Jacky does have one of her wonderful presentations, but we can save that for the next time in the interest of time. So it's up to you whether you want to see that now or just wait. But the Commissions did have some amendments, and then the Department also took advantage of the process to propose some clarifications that we thought were important to make. So we will be...we have...it hasn't gotten to the Committee yet, but we have transmitted a revised proposed bill and the meeting minutes. So I appreciate your willingness to defer this. And so yeah, up to you whether you want to see the presentation today or save it for a future meeting.

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CHAIR PALTIN: Personally, I'd love to see a presentation. I love Jacky's presentations. But Member Molina, let's see what he has to say.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Oh, yeah, a presentation. I demand answers to every question we asked from Director McLean. I know we drive her crazy. So...but no. Madam Chair, in the interest of time, I have a couple of maybe requests for information. And Director doesn't have to, you know, answer the questions today. But I guess the information I would...maybe under your signature, Madam Chair, if the Department can tell us if they know of any buildings that are higher than the proposed lower heights within the various districts, and if they can shoot some examples in their written response. And if there are any currently properties pulling permits to build at the current heights in the districts the Council is considering lowering. So if that kind of information could be provided to us in writing, you know, whatever the latest information they can provide, that would be fine. And certainly we don't need to have those questions answered today, at least for me. So if you'd consider that, Madam Chair, under your signature. Thank you.

CHAIR PALTIN: Sure, we can totally do that. I know the State building probably at the old Wailuku Post Office parking lot is probably one of them, but we can do that. Any objections to watching the PowerPoint right now, just to get an idea of...and then we can come back to this? Unless Members wanted to vote today, but I think, you know, just getting a precursor, a little foreshadowing, and then we can draft the transmittal and get that information for whenever it is, the next time this gets scheduled.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. Ms. Takakura, we'd love to see your presentation.

MS. TAKAKURA: Thank you, Chair. Thank you, Members. So it's a short presentation. And so I will share screen.

CHAIR PALTIN: Awesome.

MS. TAKAKURA: Can I get a thumbs up, you can see the blue and white? Now, what we're talking about today are three of the chapters in the Maui County Code, 19.18, 19.20, and 19.31, B-2, B-3, and Public/Quasi-Public districts. So we took the resolution to the Planning Commissions and, as mentioned, you'll see the transmission...transmittal from the Mayor's Office, you know, soon because we took it over yesterday. But the proposal, if you can remember from the resolution, was that the maximum heights be lowered to 45 feet for these three zoning districts. So this is what we shared with the Planning Commissions, and in a nutshell, this is what they came back with. So in the middle column, you can see what the Maui Planning Commission response was, that they did not support the proposed change. They supported sticking with the status quo for a number of reasons. As Committee Chair had mentioned, you know, we would like to, if possible, expand up versus expanding out. Now, for Moloka'i and Lāna'i, did want to see what the Planning Commissions felt for their islands because those are a little bit

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different...well, actually quite different from Maui. And so for the Island of Moloka'i, they proposed actually a lower height of 35 feet for all of those zoning districts. And for Lāna'i they proposed...they agreed with the resolution's proposal of 45 feet. Let me just get into the zoning districts real quickly so we know what it is we're talking about. So this is B-2, the business community zoning, and you can see the red dots. They're kind of all over the Island, West Maui, Central, Kihei, a little bit Upcountry, and even a couple of parcels out in Hāna. And this zoning district is for providing goods and services for the community, and dwelling units are allowed if they're located above or below the first floor of a permitted use. So these are going to be the zoning districts where you would see apartments, and possibly affordable housing, that would be close to jobs and close to services. Next slide is Moloka'i. There are four parcels owned by two different owners, Liliuokalani Trust and...actually three owners. One used to be the...I guess it's a auto store, and the other one is the Maui Realty. And I was able to get ahold of three...or two of the three property owners, and they were in agreement with the proposal to . . .(inaudible). . . 35 feet. There is no B-2 on the Island of Lāna'i. Okay. So B-3 is where...well, normally where you would be if you were meeting in person, the County Building, which is one of those, as Member Molina had asked, that is taller than the proposal. I believe the County Building's greater than 144 feet. So that would be an exception, but the other buildings that are in this B-3 district, the State Building and the courthouse. Multi-family dwellings are permitted in this zoning district, but you can see we don't really have much of this B-3. So this is B...P-2, Public/Quasi-Public, and you can see we have Saint Anthony here, and Saint Theresa here. And then recently rezoned was...I think it was Hale Makua in Kahului. Those are the areas that are P-2, and dwelling units are not permitted in this zoning district. So as Director McLean had mentioned, because we are looking at these three chapters, we decided to take advantage of this opportunity and make some other changes that we thought would be good to help make these chapters...kind of little fixes to help make them consistent with the other chapters and kind of fix some potential problems. So there's just four proposals that we have here. The first one is about these...the heights of the things that are on top of buildings, you know, like antennas or vent pipes. We propose to limit them to no more than ten feet above the roof from which it extends. Because right now, the way it's worded is you could have a really tall thing on top of a short building as long as it doesn't exceed the height...like to just say it can be no more than ten feet above. For the Public/Quasi-Public, we had it...the only difference is that we are including among these other things, like antenna and vent pipe, we're including steeples. So if a church wanted to have a steeple that is more than ten feet, they could go to the BVA and get a variance if they wanted to, but the proposal is that they would be limited like these other things on top of rooftops. Existing things that are taller would be considered nonconforming and...meaning that they could stay. The other thing we're proposing for the three is that these accessory structures, like mailboxes and boundary walls, there's no height limit. So we'd like to limit them to eight feet--and that's consistent with what we have in some other zones--so that they don't, you know, look really tall. Not limited right now. So this one is a little bit of a...it's kind of a mathematical fix for the P-1 and P-2, Public and Quasi-Public, and that's regarding the lot width. The lot width, according to the Code, it's the diameter of the largest circle that can be inscribed within the lot lines. So if you can envision...say you take a lot that...you know, imagine it's a square lot. The circle that fits inside that square is the lot width. If you remember math

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from intermediate school, area equals length times width. So if we have these lot widths like you see here, like say 200 feet, we wouldn't be able to have a square lot because the minimum lot area here would have to be 200 times 200 because we're looking at a diameter here. So the math doesn't work. So what we'd like to propose is fixing that to something smaller so that...otherwise you end up with these really narrow lots. So by having it...the minimum lot width a little bit smaller, it gives property owners a little bit more flexibility, and gives them more developable space. So this is just kind of something to fix the math that somehow got into the Code that's there now. And then these are just some other minor revisions to the setbacks for the Public and Quasi-Public, just kind of moving them around so that for P-1, the side and rear would be 10, and only the front would be 15 because right now it's the front and the rear that's 15, proposing that the rear can...the rear setback can be a little bit smaller. And then for P-2, similar, just reducing the setback for the front, and then saying that the rear can be the same as the side. And that gives people a little bit more space for development, but it's still a big setback. So it shouldn't be much of a...it shouldn't be a problem, but it just gives people more flexibility for developable area. And then the last thing that we're proposing for all three is making it clear that existing structures are not affected, that things that were built, you know, based on the Code at the time would be nonconforming, and those are okay to continue as is. So that's it in a nutshell, and we can cover it again when you...after you get the transmittal if you want. I'll stop sharing and answer your questions. Director McLean can help too.

CHAIR PALTIN: That was a fabulous presentation, Ms. Takakura. You know how we enjoy those pictures and words together. We love it. So Members, any questions so far? I did not watch the Lānaʻi and Molokaʻi Planning Commission meetings. So that was new information, and a lot of love for Lānaʻi over there and Molokaʻi. So sorry I missed watching those. Member King.

VICE-CHAIR KING: Thank you, Chair. Two questions. One is did...are these revisions coming out of the consultation we've been having on Chapter 19, you know, to revise Chapter 19? Were these recommendations made by that consultant?

MS. TAKAKURA: Thank you, Member King. So we are working on the Title 19 rewrite, and we are making sure that they are aware of our proposed changes so that whatever they end up with gets incorporated.

VICE-CHAIR KING: I was just wondering if they were...yeah, I was just wondering if they were recommended by the consultant, but it sounds like not. But you're working...you're making these recommendations and working in tandem with the consultant. And the other question I had was if...you know, since we're working on the South Maui Community Plan right now, if the South Maui Community Plan decides it doesn't want any more buildings 144 feet and that goes into the community plan, then would that supersede the...this change in ordinance?

CHAIR PALTIN: Would that be for Director McLean or Mr. Hopper?

VICE-CHAIR KING: Well, maybe Director McLean, since she popped up.

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MS. MCLEAN: If there is that kind of language in the community plan, any new construction...because of the layout of South Maui, almost all new construction would be within the SMA, and an SMA permit would be needed to construct a structure like that. And so we'd have to find consistency with the use and the zoning in the community plan. So it would most likely be binding on that kind of development.

VICE-CHAIR KING: Okay.

MS. MCLEAN: I can't think of a situation in South Maui where it wouldn't get out, unless it's, you know, outside of the SMA. Then it might not be binding, but that would be under the Council's control in a change of zoning to the B-2 district, or any of these districts.

VICE-CHAIR KING: Okay. Well, Hale Liloa...was Hale Liloa in the SMA?

MS. MCLEAN: Yes.

VICE-CHAIR KING: Okay. Because that was kind of one example where, you know, the community didn't want it to be four stories.

MS. MCLEAN: Right.

VICE-CHAIR KING: And they actually...working together, they took it down. They took the top story off of that. So it's...there's just so much...you know, as we build more and more, we can't continue these height...these tall buildings because it's just blocking everybody's view and it's, you know, causing a lot of...causing a lot of havoc when we have these storms...storm events and stuff. So I'm anticipating there may be some community plan restrictions after we get done with this review, but thank you for that answer. Thank you, Chair.

CHAIR PALTIN: Any further questions for the Department? I was thinking maybe in addition to Member Molina's questions, which...let me just restate them so that we get them correctly. Member Molina, your question is, are there any buildings in these proposed zonings that are currently higher than the proposed number? That's the first question. And are there any permits in place to build higher than the current proposed number; is that correct?

COUNCILMEMBER MOLINA: Yeah, correct. And you know, Madam Chair, sometimes when information leaks out that the Council's thinking of doing this, then sometimes you get a flood of permits or permit requests to the Department. So it's more of a question of just curiosity. Thank you.

CHAIR PALTIN: And maybe we could also ask for the list of parcels where they...where they are, the B-2, B-3, and P-2.

COUNCILMEMBER MOLINA: Yeah, that would be fine.

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CHAIR PALTIN: Do our...do our due diligence based on the answers. So pending the answers to the questions on a transmittal that we will send out following this meeting, any further questions or any objection to deferring until we get the answers to those questions?

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: TK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: Okay. So I guess then the plan would be to defer. I guess, you know, in the future, we can do different heights for different islands if that's what's wanted. Maybe we should also check in because if at the Council we have two-thirds vote, we can go against the Planning Commission recommendation. So I would imagine we would want to follow Moloka'i and Lāna'i's recommendation for their islands, but we can take that up when we come back to this item. And at the time when we come back when we have all the information, it should go fairly quickly. So we can squeeze it in somewhere. So with no objection, this item will be deferred. And you guys have been working so hard, I think you deserve a little break. Shall we come back in ten minutes at 11:05?

COUNCILMEMBER MOLINA: No objections.

CHAIR PALTIN: All right. Here we go. We'll be back in...

VICE-CHAIR KING: I'm afraid if I log out, I might not be able to get back on.

CHAIR PALTIN: Don't log out. Okay, 11:05. Here we go. . . .(gavel). . .

RECESS: 10:55 a.m.

RECONVENE: 11:06 a.m.

CHAIR PALTIN: . . .(gavel). . . Thank you. Will the Planning and Sustainable Land Use Committee return to order. The time is now 11:07.

**PSLU-31: PROHIBITING INSTRUMENTS OF CONVEYANCE FROM
RESTRICTING THE GROWING AND HARVESTING OF ANY
AGRICULTURAL CROP OR PRODUCT** (CC 21-371, MISC)

CHAIR PALTIN: And we have received instruction on how to handle PSLU-31. So the recommendation is that PSLU would move to refer PSLU-31 to APT. So the pending discharge motion should be withdrawn. The new motion would generate a Committee report that would summarize the issues and...where the recommendation would be refer PSLU-31 to APT. Then it would be agendized at the next appropriate Council meeting, where the Council would consider the recommendations, discharge the Committee from work on PSLU-31, and refer the entire file/matter to APT. But at this time, I don't see Member Johnson, but I know...

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COUNCILMEMBER RAWLINS-FERNANDEZ: He's on.

CHAIR PALTIN: Oh, he's on. Oh, okay. He's not on my screen, but I see him on the TV. So if Member King and Member Johnson would withdraw the motion to discharge and somebody would make a new motion to refer.

COUNCILMEMBER JOHNSON: Withdraw my second, Chair.

VICE-CHAIR KING: I will withdraw my motion to discharge, and move to refer the item to APT.

COUNCILMEMBER JOHNSON: And I second that.

CHAIR PALTIN: Okay. It's been withdrawn, the discharge motion, by Member King and Member Johnson. And then a new motion to refer has been made by Member King and seconded by Member Johnson to refer PSLU-31 to APT. Any discussion, Members? Seeing none. All those in favor of the motion, raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR PALTIN: That's seven ayes with two excused...would be Member Kama and Member Sugimura.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Kama and Sugimura.

MOTION CARRIED.

ACTION: REFER PSLU-31 TO APT COMMITTEE.

CHAIR PALTIN: Okay. So motion passes, and we'll move on to the next item.

**PSLU-13: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR
THE KAHANA SUNSET CONDOMINIUM AT 4909 LOWER
HONOAPIILANI ROAD (LAHAINA) (CC 16-39)**

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CHAIR PALTIN: The next item is PSLU-13, and this also has been a longstanding issue that we are over the deadline on. PSLU-13 is Community Plan Amendment and Change in Zoning for the Kahana Sunset Condominium at 4909 Lower Honoapiʻilani Road in Lāhainā. The Committee is in receipt of County Communication 16-39 from the Planning Director, transmitting proposed bills to grant land use entitlements for property in Lāhainā, Maui, Hawaiʻi for the Kahana Sunset condominium. Correspondence dated August 29th, 2018 from the Department of the Corporation Counsel, transmitting the following: A revised proposed bill entitled, "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII, AND IDENTIFIED AS TAX MAP KEY (2) 4-3-003:015, FOR THE KAHANA SUNSET AOA." The revised proposed bill incorporates Community Plan Map CP-822 as an exhibit and makes other nonsubstantive revisions. B, a revised proposed bill entitled, "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO H-M HOTEL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII, AND IDENTIFIED AS TAX MAP KEY (2) 4-3-003:015, FOR THE KAHANA SUNSET AOA." The revised proposed bill incorporates Land Zoning Map L-871 as an exhibit and makes other nonsubstantive revisions. 3, correspondence dated September 5th, 2018, from the Deputy Planning Director, transmitting a proposed condition relating to creating a shoreline retreat plan, as approved by the Department of Planning, to guide the construction of new and replacement units. The Committee may consider whether to recommend passage of the revised proposed bill at first reading, with or without further revisions. The Committee may also consider the filing of County Communication 16-39 and other related action. So in the effort to clean out these old items, the 180-day deadline it says was August 24th, 2016. I don't know if that's correct, though, because...well, we're way past...years past the deadline, let's just put it that way. So trying to, you know, clear out these old items. I didn't want to schedule this before we finished our review of the West Maui Community Plan, even though we're so far the deadline, but now that we have finished our review, I thought it was appropriate to try and clean out these ones that are past the Charter deadline. I did want to note that I believe the Planning Department made a recommendation to the Community Plan Advisory Committee to go ahead and change the community plan designations for a number of these--I don't know if they're call condotels or whatever--and that the Community Plan Advisory Committee rejected that recommendation. I don't recall seeing Kahana Sunset come before the West Maui Community Plan, and maybe they can explain why as this process goes on. But we do have some resources. We have, obviously, Director McLean; we have Jim Buika, a Planner; and Raymond Cabebe, the Vice-President of Chris Hart & Partners, Incorporated, and consultant for Kahana Sunset. If there are no objections at this time, I would like to designate Mr. Cabebe as a resource person in accordance with Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Thank you. At this time, I'd just like to have a little opening comments from Director McLean. If Members recall, all of us, except for Member Johnson, did do a site

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visit at Kahana Sunset, I think in 2019. And you know...so that Building F over to the side, I think it's kind of...I think it's condemned at the moment. It's a little bit falling in the water. And then we saw that gated public shoreline that goes off into the rocks at the south edge of the property. But then we didn't really have a chance to take it up until now. So Director McLean, any opening comments on this item?

MS. MCLEAN: Yes. Thank you, Chair. First, just one housekeeping item. The bills that were originally transmitted...or the bill that was originally transmitted for the community plan amendment calls for a community plan amendment from single family to hotel. If the Council moves forward with this change, that would need to be changed to residential because that is the new community plan designation. So that's just a...you know, a minor housekeeping thing. As those indicate, the property is currently zoned R-3 Residential in this community plan, Residential. It's a multi-family construction that falls under the short-term occupancy allowance that applies mostly to the apartment districts, but it also applies to the residential districts in certain cases, such as this one. Chair, you're correct that we did recommend to the CPAC that they consider a hotel designation for a number of those properties, the so-called Minatoya properties, and they rejected that outright, pretty plainly. So we did not continue to pursue that. In a case like this, one of the reasons it's challenging is because of Building F, that with the existing entitlements...if they wanted to, for example, do managed retreat of Building F, the existing entitlements would prevent them from doing similar type of construction someplace else because of...because they're in the SMA, and because of the need for building permits. So just real briefly on Building F, that's the one that's most makai on the southern side of the property. It's 12 units that is effectively built on top of the seawall that's failing. The units themselves have cracks. Kahana Sunset themselves closed off those units. They haven't been occupied for more than a year. We have been in long-term discussions with them on options for Building F. There are limitations to what they can do because of the changes to State law that prevent new seawalls from being constructed. The Department's inclination at this time is to not allow repairs and reconstruction of the seawall and the units, but that's an active discussion that we're having with Kahana Sunset, as well as Corporation Counsel, on how to proceed with that. So that's all I have to say as introductory comments. Thank you, Chair.

CHAIR PALTIN: Thank you so much, Director. And I just wanted to clarify for the Members that the Community Plan Advisory Committee didn't actively change it from single family to residential. That was a change in the community plan designation where we no longer have single family or multi-family designations; we just have residential. So it was a not specific to this property change, but a broad change in the community plan designations. Is that a fair assessment, Director McLean?

MS. MCLEAN: Yes. We call that, when we translate it from existing designations to the new ones, without proactively making changes, that everything that had been single family was translated to residential.

CHAIR PALTIN: Oh, translated. Okay, great. Okay. So Members, before we hear anything from Mr. Cabebe, did you have any questions for Director McLean or Mr. Buika? Member Molina.

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COUNCILMEMBER MOLINA: Thank you, Madam Chair. For Director McLean, say if the change in zoning today were to file it, would the Kahana Sunset be able to continue the vacation rental use without the use expiring?

MS. MCLEAN: Yes, they could continue the use in the existing structures.

COUNCILMEMBER MOLINA: Okay. And would Kahana Sunset's new designation of, say the hotel zoning, count as a new vacation rental prohibited under the hotel moratorium, assuming that moves forward?

MS. MCLEAN: That's a great question. I don't think it would because it wouldn't be allowing additional units.

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

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, I wonder if Mr. Buika, who has closely followed a lot of activity on the shoreline, may want to, you know, make a statement. I think he was with us at the site visit too, but I just thought he might want to...

CHAIR PALTIN: Did you want to hear from Mr. Buika, Member Sugimura? Okay.

COUNCILMEMBER SUGIMURA: Yeah, about the project and, you know, if he has some broader sort of perspectives that he would like to share.

CHAIR PALTIN: Okay. Member Buika...or Mr. Buika?

MR. BUIKA: Morning, Chair, Member Sugimura, and Chair Lee. Thanks for bumping this up early in the year. I think it is really important to pass these, the community plan amendment change and the zoning change, in support of what Director McLean said. What it does is it does not hinder Kahana Sunset at all. What it does is it provides them additional opportunities for planning on their...on their parcel into the future. Because it is a large four-and-a-half acre parcel, there is lots of common space. The future of two of the buildings on the shoreline will have a limited lifespan, others with advancing coastal erosion and sea level rise. There's no doubt about it. So how much longer we continue to repair them is in negotiation. So it was a unanimous recommendation from the Maui Planning Commission under a larger variance project where we did a lot of shoreline work, moving things mauka and repairing Building A and Building F, the two along the shoreline. And they did unanimously recommend the change of zoning in the community plan as it is in front of you today. So the Planning Department does support the change. It doesn't hinder Kahana Sunset any; it provides them with additional opportunity, and provides realistic options for them in light of the continuing coastal erosion that is occurring throughout...this is Keonenui Bay. It's had quite a bit of damage up and down the coast in this entire bay. It's not only this parcel. So I personally asked the Planner on this project to support this change in zoning and

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change in community plan amendment. Thank you.

COUNCILMEMBER SUGIMURA: Thank you, Mr. Buika.

CHAIR PALTIN: Mr. Buika, and I just wanted to clarify, this was the Planning Commission in 2016 that . . .*(inaudible)*. . .

MR. BUIKA: It was a...it was actually before that. I think it came to you in 2016. It was...the Planning Commission decision is...was on May 24th, 2014, where they recommended a change in zoning in the community plan amendment. So it goes...it goes all the way back to 2014.

CHAIR PALTIN: Okay, 2014 Planning Commission...

MR. BUIKA: May 24th, yeah.

CHAIR PALTIN: Okay. All right. Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah. So you know, based upon what Mr. Buika just said about 2014, 2016, then, and the Council taking a long time taking action, is that part of the response, or is that part of why the buildings are closed down now and the condition it's in, or is it not connected?

MR. BUIKA: No, it's...

CHAIR PALTIN: I would say it's not connected. I think under Mr. Carroll's care of this, there might have had...got to like a point where they were ready to take action and the AOA, maybe they didn't know who to sign off on maybe the unilateral agreement or something. I'm not sure. Maybe Mr. Cabebe would be better suited to give us a rundown from his perspective of the history of this. Mr. Cabebe?

MR. CABEBE: Oh, thank you, Chair. And good morning, Committee Members, and Happy New Year. Yeah, it was...in 2016, the Land Use Committee under Bob Carroll approved the change in zoning and conditional...community plan amendment. And the AOA was trying to execute a unilateral agreement, and the AOA president at the time executed it, and there was a question from Corp. Counsel on whether he had the authority to do that or not. And so that kind of continued on for a year or two, and then that's when the Council took it up again in 2018. So yeah, it was a question of authority for the UA, and I think that was answered, but due to the time that it took to...you know, to do that, Council decided to hear the action again, and also because I think Planning had proposed a new condition. So I think that was the reason why it was brought back to the Committee in 2018.

CHAIR PALTIN: Does that satisfy your question, Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, it really does. Yeah, I'm glad...I'm glad to hear the history. Thank you.

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CHAIR PALTIN: Okay. Great, great. So I did have some possible questions my Staff did help me come up with...unless other Members have questions prepared or...I don't want to hog the mike. Anyone have any other questions? Member King.

VICE-CHAIR KING: Thank you, Chair. The one thing I was...I was wondering...maybe Director McLean can answer this. Is this similar...is this the reason why it was single family and it wasn't when they...I mean, they've had this use for a long time. Was this an error in the mapping and the designation when they started building that resort up there? Because I know that same thing happened in South Maui with the Maui Oceanfront Inn, where they...when they developed that whole Wailea area, and they started designating some of those properties hotels that were operating that way, and they stopped just short of the Maui Oceanfront. So I was told that they forgot to change that last one over, and that's why we went through that whole changing over from single family. So is this sort of the same thing that happened up in Kahana?

MS. MCLEAN: That's a great question, and I really don't know the answer. I assume at the time that this kind of development was permitted by R-3 zoning, otherwise I don't know how it could've been built. And the community plan designation probably just accompanied that zoning when community plan...when a community plan was first created, and then it was just carried through over subsequent community plan updates. Jim and Raymond just popped up. So they might have more background on it because I haven't looked into that. So I don't know.

VICE-CHAIR KING: Oh. Then maybe Jim knows.

CHAIR PALTIN: Mr. Buika?

MR. BUIKA: Yeah, my notes have that it's...it actually had a variance in 1968 to develop the project. Maybe Raymond can...we could have a discussion, or Raymond, do you have any...can you concur on that? But I think it was allowed, even though it was single...that entire row, all those parcels there are single family up and down that bay. So this is a four-and-a-half acre parcel that's a single family. So I guess it...

VICE-CHAIR KING: So it still has single family on either side of it then?

MR. BUIKA: Yes. The entire bay is single family.

VICE-CHAIR KING: And have they...okay. That's kind of...that's kind of what I was curious about because have they weighed in on this zoning change, the folks that have single family parcels on either side of it?

MR. BUIKA: I don't know. I think the properties have changed hands, and it is what it is. The...during the Maui Planning Commission in 2014, there were 41 testimonies from the...there is a subdivision mauka of the lower road above. So the property has a lot of elevation to it. So then you have the lower road and makai it goes down to the shoreline. Mauka, it goes up very quickly, and it's the Napili Kai...I don't know the...I forget the

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name of the subdivision back there. They were worried about their views. If this thing went to hotel, it potentially could be built higher. So there is a limit to three stories or 45 feet plus roof amenities here as a condition. So it wouldn't change. It would change the zoning, but not the height. It...there would be a condition to keep the height as is. So...

VICE-CHAIR KING: So that condition would carry over? Even if we change the zoning, that condition stays?

MR. BUIKA: Well, the...yeah, the condition was recommended for the unanimous approval to pass it on...from the Maui Planning Commission to pass it on to the Council for the change in zoning, to hold that...

VICE-CHAIR KING: Oh, okay. So it couldn't...oh, okay, even beyond the moratorium, it couldn't expand in height or capacity?

MR. BUIKA: Yes.

VICE-CHAIR KING: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: And I live above...I can walk through shortcuts about 10 to 15 minutes to this property. And just for a point of reference--I know we did the site visit, but--the Door of Faith Kahana Church is just to the north of it. I don't know if you guys are familiar with that Maui Jim house where the wall failed and it fell into the ocean...is just to the south of it. I think the Schweitzer's have a property to the south. The condos mauka that Mr. Buika has called...I think it's called Napili Villas.

MR. BUIKA: Yeah. Thank you.

CHAIR PALTIN: And so that's kind of the area. Did you want to hear from Mr. Cabebe as well, Ms. King, too, or Mr. Buika answered?

VICE-CHAIR KING: No, I think that...I think that answers my question. Thank you.

CHAIR PALTIN: Okay. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Can I ask Corporation Counsel a question? I guess Mr. Hopper.

CHAIR PALTIN: Sure, Mr. Hopper.

COUNCILMEMBER MOLINA: Yeah. Mr. Hopper, if Council granted a change in zoning to hotel, would it be lawful for the Council then to place a condition of zoning to phase out TVR use of the property?

MR. HOPPER: I...Chair, I don't think so. For one thing, the variance granted in 1968 would run with the land. Generally, we would not nowadays be advising the BVA to grant

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variances, use variances, because those are generally disfavored. It's kind of giving a change in zoning by the BVA, so...but in 1968, those things happened occasionally. I don't think we'd recommend them anymore. But having said that, if they've got a use variance, I think they'd have the use to do that. I think it also would be odd to allow a change in zoning to hotel, and then say you cannot do hotel use anymore over time. I think as far as limiting units and things like that, particularly because of this moratorium, I'm thinking maybe at least for the moratorium period, you could put a condition or somehow other clarify that this change in zoning is not to allow any new units. It shouldn't be construed like a discretionary permit to add units, at least until the moratorium period ends. Although they'd still need to get SMA permits for that, and that...those wouldn't be allowed anyway. But as far as phasing out TVR use, I think that might be difficult if you're changing the zoning to hotel and...because you have an existing variance in this particular case.

COUNCILMEMBER MOLINA: Okay. All right. Thank you very much, Mr. Hopper. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Anyone else have any...Member Sinenci.

COUNCILMEMBER SINENCI: Chair, just clarification for Mr. Hopper. He means the hotel moratorium that we'll be addressing tomorrow, yeah?

CHAIR PALTIN: I believe so.

COUNCILMEMBER SINENCI: Okay. All right. Okay, thanks.

CHAIR PALTIN: Okay. All right. I do have a list if nobody else has any questions. Okay, no one else. All right. Here we go. Condition number 3 states applicant to minimize risk of structures failing and becoming loose rocks and rubble. How will the applicant accomplish this, particularly for Buildings A and F, which are closest to the ocean? In 2012, it says reconstruct retaining wall. I'm wondering the current condition of the retaining wall and the estimated life expectancy remaining. 2013, repair wall and construct stairs for shoreline access path. The wall...were the wall and/or the stairs completed? Steps to beach are complete. Handrails are already installed. Will fence around MECO transformer. Gates will lock and be locked at night and opened in the morning. Expected to take 10 to 12 weeks to complete. The construction initiated by July 2017, was a time extension filed and what's the new date of initiation? What is the status of the filtration measure to separate petroleum products and other contaminants? Those would be the questions. I'm not sure if it would be for Mr. Cabebe or Mr. Buika.

MR. BUIKA: Well, I can...I can probably take the easy ones, and I'll give the hard ones to Raymond most likely. But those are all...those are all...those are all conditions from the Maui Planning Commission major...the variance that was given there. The first one about...that is a standard condition on every variance, the one on the loose rock and rubble falling into the ocean. There has not been...for this property, fortunately, there has not been loose rock or rubble in the ocean. It is a...the reference is to the front

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seawall out front, in front of Building F, and I guess in front of Building A also, but they are well constructed kind of uniform mortar boulders, concrete, at this point. So they are undermined. The problem is this big, massive concrete, again, is undermined. But that's no problem, and we meet...met that condition. That's a standard condition of every variance, one out of five. The life expectancy of the 2013 wall...I mean, I'm...I can't tell what the life expectancy is. It's needed continual maintenance. It is undermined again. So the wall is intact, but the ocean keeps going underneath it. So...no matter how deep they dig and try to reinforce it. So the life expectancy is not too long at this point unless they go all the way to bedrock, which is 25 feet deep. And that would constitute a new seawall, really, building a concrete barrier all the way down to bedrock. And then again, who knows, with the ocean forces on that wall, how long it would last. It's questionable. And were the walls and stairs complete...there was a structural wall...there was a...Kahana Sunset has been very cooperative all the way back since 2007, working closely with the Planning Department. Thank you, Kahana Sunset, for always having a good relationship with us and working with the Planning Department. They did voluntarily...as part of the variance in 2014, they spent a lot of money constructing a major shoreline access into Keonenui Bay for the first time. It is a formal shoreline access that has gone down there. And it was constructed very well, all the way down to the ocean with hand railings and steps, but...so that was completed, and there were...there had to be some structural engineering involved in that. So it got expensive. But at this point, the beach is gone. The last time I was out there on November 2, we had a high tide and very large waves. So getting down there to inspect the stairs where they go to the ocean was impossible. And during high tides and large waves, the waves run up that staircase pretty substantially. So limiting the access to the...that shoreline access staircase to daylight hours, in my mind, seems pretty practical at this point because it, you know, could be dangerous at night without proper lighting there. So I do not know the condition at the base of the staircase from my last visit. And I don't know if there were any other questions. There may have been one after the condition of the 2017 staircase, Chair Paltin. I didn't write it down. Was there one more?

CHAIR PALTIN: Yeah, but I was...before I ask that one, I was wondering if you could clarify. When you say undermining, is that like sinkholes cropping up behind of the wall? Is that what you mean by undermining?

MR. BUIKA: In this case, it's...the seawall is not what we think of as a thin seawall, some sort of backing, a lanai behind it and then the building. What has happened is they have excavated behind the seawall, they added in major boulders, they shock graded it in...so basically this thing is a major concrete monolith, three dimensional concrete monolith. So there's no ability for sinkholes to form. It's pure concrete. So what is happening is the seawall, again, is...it's...there's cavities underneath the base of the seawall. So there's a gap between the ocean, the shoreline, and the bottom of the seawall. It just keeps getting lower, and lower, and lower. And the Building F is probably cracking. I'm not a structural engineer, but we did discuss it with the structural engineers...probably cracking because there are sinkholes underneath Building F to some unknown extent that is...that is causing the building to move slightly and to manifest in every one of the 12 two-story townhouse units some cracking in the...in the drywall, pretty uniform

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around. So that's why I think it's been closed down since July of 2020. So this...so the failure is the ocean going underneath the big seawall out front, and then it's going underneath the building to some unknown extent. You know, we...it's impossible to know because it's all covered in concrete. So we don't know. It's hanging in there, and they do want to potentially stabilize the building and the seawall. So that's kind of what we mean at this point. There's no availability for sinkholes. But next door on the Schweitzer property that you referred to, there's an amphitheater of concrete stairs that have been totally undermined, and the seawall connected to those stairs, that have...the stairs have cracked in half. I don't know if you've been out there, Tamara, but it's like the ocean is 20 feet beyond it, and it's...so the...and the Building F, which is right there-- I know you don't all have the same perspective I do--but it's being flanked. It potentially is being flanked from the next property onto Building F also. So that's the situation as far as the sinkholes or failure at that point.

CHAIR PALTIN: And then I guess the other question was from page 85, project specific conditions. What is the status on the appropriate filtration measures to separate petroleum products and other potential contaminants incorporated into the drainage plan?

MR. BUIKA: I think they're in place and complete. A major, major part of that variance and the...that major permit was to improve the entire drainage system and runoff from lower Honoapi'ilani Road. The runoff from the road goes through all of these properties because there's no curbs, gutters, sidewalks, et cetera. So all the runoff goes through these properties, and this was a major effort by a civil engineer to completely overhaul, reconstruct, and improve the drainage system so that the water was collected properly and filtered properly. I have not personally been out there to inspect the petroleum filters, but I assume they were installed properly with the project, as part of the project, because it was a major part of the project.

CHAIR PALTIN: Okay. Mr. Cabebe, did you have anything to add to Mr. Buika's answers? Like, I mean, I guess...what are the plans should the property get this change in zoning for Building A and F, I guess...seems like an obvious question?

MR. CABEBE: Yeah. Thank you, Chair. The only thing I wanted to add...I think Jim touched on the drainage improvements that were included in that 2012 approval. And it's actually a 36-inch drain line that runs right through the property. And you know, it takes...as Jim said, it takes runoff from the road and also from properties makai of the...mauka of the road from that retention basin up there, overflow from the retention basin. And it's...you know, it's major water. And it was...it was leaking. And so they took out the whole thing and replaced it with something new. And they put all the filtration on their property. You know, they weren't able to...you know, they can't control the filtration upstream. And that was a major undertaking. They decided to do that rather than allow the County to do it, and they thought it would be more efficient if they did it themselves. So that was the story behind that. And for the buildings...at this time, Building A is very stable. There was some work done on it a few years ago. And for Building F, it's not habitable right now, as Jim said, and they have plans in. They...they're using Brandt Engineering, which is a structural engineering firm from

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O‘ahu, and they've come up with plans for...to repair Building F in place. And so those plans have gone to the State, as well to the Army Corps of Engineers. So they're getting close to, you know, getting approval for the State. And once that happens, Army Corps will approve, and hopefully the County will approve following that. So that's the plan for right now. And they are looking, you know, in the future...you know, but they're not sure how this plan is going to...you know, the life...the lifespan of that plan, but that's something they just have to work through. And they have to...anything they do on that property has to get approval of, you know, all 79 owners. So it's kind of difficult thing to, you know, come up with work. And another side note, there's a member of the board or...yeah, member of the board that is working on some kind of mitigation measures for the whole bay of Keonenui Bay, working with the other owners trying to do something offshore. They may have talked to Jim a little bit about that too, and I know they've been talking to the State. So that's another thing that's...you know, that's happening right now. So hopefully, all of those things together, you know, will help to improve the bay, for one; and number two is to, you know, help the owners to be able to do some kind of...some form of managed retreat, which is...you know, managed retreat itself, of course, a very complex matter. So that's something that they're still working on. Thank you, Chair.

CHAIR PALTIN: Thank you, Mr. Cabebe. Yes, that gentleman reached out to me. And just to share with the Members, he's trying to build an artificial offshore reef with some sort of metal with electric current going through the metal so that the metal doesn't rust, or something like that. And it would be like the framework for the coral in the hopes that the coral would grow onto it. It's not T-groins, it's like an artificial reef with hopes that it would like be a framework for reef to grow on to create sort of, I guess, like a barrier reef. But when I spoke to him, he had a long ways to go in terms of permitting with other entities other than the County, like the State and the Federal. Okay. So that answers a lot of my questions. Members, any further questions? Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. And mahalo, Mr. Buika and Mr. Cabebe. I just had a question about...should any work be done in...near the shoreline or in the surf, does that require a specialized...can any construction company go into the...or would they need a specialized permit to do any work along the shoreline or within the shore?

CHAIR PALTIN: Is that...

MR. BUIKA: The answer is yes. Yes. At this point, I mean, the options here are beach nourishment, but the short-term options here for any work that would be done on Building A or Building F require some sort of a cofferdam, which would be basically a sand bag barrier out in front of the seawall that would allow...would allow equipment down in front of the seawall on the beach at the ocean's edge there. So that's part of the permitting process that would involve the Corps of Engineers, the State of Hawai'i Department of Health, and the County. So as soon as you get down here on the shoreline, the permitting jurisdictional boundaries get real complex, and they're all stove piped, and they take forever, and it's costly and time consuming. And it's tough when you're working in this environment when you have emergency situations such as a

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compromised building, right. You know, they want to do the work immediately and...but to get authorizations to do these things takes a long time. So hopefully that answers your question, yeah.

COUNCILMEMBER SINENCI: Do we find that it limits a lot of the companies that can do that type of work?

MR. BUIKA: Yes, there are very few, very limited companies who can do the kind of work. We only have a few here on Maui, and that's...you know, that's something we need to address with the whole next generation Coastal Zone Managers program to build our competency and capacity here locally in the islands to manage our own shorelines. But don't get me started on that whole subject, but we definitely need to look to the future to build our capacity. But there are people who can do it, but it's a tricky business for sure, very delicate too. Yeah, thanks.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR PALTIN: I just thought of something if no one else had a question at this point. I mean, it was being said that we should pursue this change in zoning so that managed retreat could be pursued. On a four-acre property, there's place for this to move back to, and that there isn't restrictions from the moratorium because it would be replacing existing units, but Mr. Cabebe said that talks are in place to restore the building where it is. So I just was wondering, why is the change in zoning needed if that's not the plan, to retreat? I don't know if that's for Director McLean or Mr. Cabebe.

MS. MCLEAN: Well, as I...as I said before...well, we'd have to take a look at the variance and what the variance specifically entitles. I don't know if the variance entitles the use, or if it entitles the type of development. If the variance weren't in place, if they had...the relocation of Building F would be limited to single family homes, and would not be allowed to do vacation rental use. But if the variance allows, for example, multi-family type construction then, you know, a similar type of structure to Building F could be built someplace else even under the existing entitlement.

CHAIR PALTIN: So what is the need for the change in zoning?

MS. MCLEAN: My understanding of the need--and Mr. Cabebe can confirm this or elaborate--is because of SMA requirements for consistency. If they need an SMA major for any of the dwelling units to find consistency to allow the vacation rental use and the type of construction to proceed, the changes would be needed. But Mr. Cabebe can elaborate. Because relying on a variance is just not as solid as having entitlements.

CHAIR PALTIN: Mr. Cabebe, would you agree with Ms. McLean's statement that you want...as to the reason why you're pursuing this change in zoning?

MR. CABEBE: Yes, that's...consistency is a part of it. The other part of it is to give...like Jim had indicated that this gives options to the...to the property owners to...you know, if at some point, you know, where Building F and possibly Building A become...you know,

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it's...would...it would be unable...they would be unable to repair those in some kind of, you know, solid fashion, they would still have the option to rebuild somewhere else on the property. So that's...that would give them that option and...it's just to expand their options as far as, you know, retreating from the shoreline in that sense.

CHAIR PALTIN: I guess my last question--I know we're almost at the end of our time here--is, I imagine you folks were aware that we were going through the West Maui Community Plan update process. Did anyone from Kahana Sunset, their 79 owners, participate in the process? Because my recollection was the Department did recommend this change in community plan to the CPAC, and they rejected it. And I mean, as much as possible, I try to follow the CPAC recommendations so that . . . *(timer sounds)*. . . folks don't feel like they're wasting their time there, you know what I mean? Was there any effort to participate in the West Maui Community Plan update process?

MR. CABEBE: Chair, we were aware of the Planning Department's intention to bring it before CPAC. So the Association did not authorize us to do any kind of participation with that, so I'm not sure what their thought was. Maybe they thought that the Planning Department's recommendation would be something that would be strong enough to...for the CPAC to do the change, and apparently it was not. So that was not something we participated in, no.

CHAIR PALTIN: Okay. All right. Well, Members, we're coming up to 12:00. I don't want to hold you into your lunch break. But if folks, in reviewing the materials on Granicus, come up with any questions, do feel free to send them to the Committee, and we will try to put together a transmittal for more information before we bring this back again to the Committee. Personally, I'm not inclined to go against what my Community Plan Advisory Committee has stated, but it looks like we do need to do a little bit more research, maybe also into what the original variance stated and what...so we can...we can do a transmittal on what the original variance of 1968 stated, and take it from there. Unless...anyone has any additional questions, please get them to...oh, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Sorry. If we...if we have additional questions, send it to Committee Staff. Was that what you were going to say? Okay.

CHAIR PALTIN: That was...yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to add to what you just stated regarding the variance, that I'd like information on why the landowners went the variance route and not a change in zoning back in the late...or the '60s...so why that route was chosen. If the Council at the time did not support a change in zoning at that time, and that's why the landowners needed to get a variance or...you know, just the history of that, like what originally happened and why are we here trying to resolve this issue, you know? Oh, it looks like Mr. Cabebe might have a response for that. Mahalo, Chair.

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CHAIR PALTIN: Mr. Cabebe?

MR. CABEBE: Yeah, thanks for the question. Yeah, we do have a copy of the variance and some of the actions that were taken during that time. We can send that to the Chair if that's what she wants. Basically, it was...they did apply for a change in zoning, and it was not recommended at the time, but I mean, as you can see, it was...you know, the hotel use amongst all that residential use. And so the option was to do a variance, and the thought behind the variance was that there was an apartment zoning ordinance coming up, and they were going to do the change in zoning to an apartment use actually. The apartment uses at that time would allow for short-term rentals as well. So...but they were...so they did the variance, and they were waiting for the change in...or the adoption of the apartment ordinance, which it...which did happen, but then they did not follow up with a change in zoning. So they just sat there with the variance all these years. But that's kind of the history behind that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that additional insights and information, Mr. Cabebe. And I'm wondering if, you know, the Council in the '60s didn't recommend that change in zoning because of the problem that we're now dealing with today. And it's unfortunate that the Board of Variance has served as a way to circumvent the Council in a lot of ways. And so...yeah, here we are so to deal with this situation now. I support the leanings of the Chair and her inclinations. So mahalo, Chair.

CHAIR PALTIN: So if there's no objections, at this time, I'll...my recommendation would be to defer this item, get a copy of the variance from Mr. Cabebe, and post that to Granicus.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: TK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: Member Sugimura, did you have an additional question that you wanted us to get information on before we come up to...okay.

COUNCILMEMBER SUGIMURA: Yeah, I have a question for you. So based upon what you've shared earlier in today's agenda, that you have a full calendar, just for the...Mr. Cabebe and his clients and Mr. Buika, who's been working on this for years, just wondering what kind of time schedule you have to bring it up again.

CHAIR PALTIN: Oh, the next meeting because, you know, I got to prioritize the Charter deadline items. I don't want to come back in seven years again and pick it up. The other one wasn't a Charter deadline...the other two weren't Charter deadlines. So that's my goal is as best as I can to meet...well, not meet the deadlines because we're about five years behind deadline but, you know, as best as possible. So the next agenda, the plan is Kahana Sunset again and DHHL, but I'll let DHHL go first. So knowing that, questions, if you have any that you want to follow up on, please get them to the Committee as soon as possible. And then we'll...I guess we don't need a transmittal for the variance because Mr. Cabebe will send that to us. But if you have any questions

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that need to be transmitted, please get them to me before the beginning of next week to give Staff adequate time. Yes, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I don't...if it's accessible, I would love to also see the meeting minutes where the Council at that time denied the request for a change in zoning.

CHAIR PALTIN: Okay. We'll try see if we can get that, the 1968 --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: -- whenever that was. Okay. All right. And any further questions for transmittal, please get them to me by Monday so that Staff can work on that for the next agenda meeting. All right. You guys worked so hard. I'm sorry we didn't pass any legislation out and we deferred or referred all items. Some days you can pass five items out; some days you got zero. That's the way the cookie crumbles. But important work nonetheless, and if there's...this concludes today's Planning and Sustainable Land Use Committee meeting. Thank you much...very much, everyone. The time is now 12:06. Sorry I went six minutes into your lunch break. And four of us may be back this afternoon, or three. So we'll see you then. Everybody else, go do something fun. This meeting is now adjourned, 12:06. . . .(gavel). . .

ADJOURN: 12:06 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

pslu:min:220106:bc

Transcribed by: Brenda Clark

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CERTIFICATION

I, Brenda Clark, hereby certify that pages 1 through 49 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 21st day of January 2022, in Wailuku, Hawai'i



Brenda Clark