

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Council of the County of Maui

MINUTES

August 03, 2022

Online via BlueJeans

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Kelly Takaya King, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Gabe Johnson
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Tamara Paltin
Councilmember Yuki Lei K. Sugimura

STAFF:

Brittney Sunderland, Legislative Analyst
Wilton Leauanae, Legislative Analyst
Shelly Espeleta, Supervising Legislative Analyst
Jocelyn Moniz, Committee Secretary
Stacey Vinoray, Committee Secretary
James Forrest, Legislative Attorney
David Raatz, Deputy Director
Jean Pokipala, Council Services Assistant Clerk

Anabelle Hernandez, Council Aide, Makawao-Ha'ikū-Pā'ia District Office
Angela Lucero, Executive Assistant to Councilmember Paltin
Axel Beers, Executive Assistant to Councilmember King
Christian Balagso, Council Aide, West Maui District Office
Daniel K. Kanahele, Council Aide, South Maui District Office
Denise Fernandez, Council Aide, Lānaʻi District Office
Ellen McKinley, Executive Assistant to Councilmember King
Jade Rojas-Letisi, Executive Assistant to Councilmember Molina
Jordan Helle, Executive Assistant to Councilmember Sugimura
Kainoa Kaumeheiwa-Rego, Executive Assistant to Councilmember
Rawlins-Fernandez
Kate Griffiths, Executive Assistant to Councilmember Johnson
Laura McDowell, Executive Assistant to Councilmember Paltin
Mavis Oliveira-Medeiros, Council Aide, East Maui District Office
Miki Yokouchi, Executive Assistant to Councilmember Sugimura
Roxanne Morita, Executive Assistant to Councilmember Johnson
Sarah Sexton, Executive Assistant to Councilmember King
Sarah Pajimola, Executive Assistant to Councilmember
Rawlins-Fernandez

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Zhantell Lindo, Council Aide, Molokaʻi District Office

ADMIN.: Keola Whittaker, Deputy Corporation Counsel, Department of the
Corporation Counsel
Jacky Takakura, Deputy Director, Department of Planning
Pamela Eaton, Planning Program Administrator, Long Range Planning
Division, Department of Planning
Jordan Molina, Director, Department of Public Works

OTHERS: David Dorn
Charlene Schulenburg
Mike Moran
Mike Reyes
Robin Knox
Lucienne de Naie
Clare Apana
Brandi Corpuz
Cody Tuivaiti (Koko)
Additional attendees (5)

PRESS: *Akakū: Maui Community Television, Inc.*
Kehau Cerizo, Maui Now

CHAIR KING: . . .*(gavel)*. . . Can everybody hear that? Will the Climate Action, Resilience, and Environment Committee please come to order? I'm Kelly Takaya King, your Chair for today. And we have...looks like a full complement of all of our Committee Members. So thank you all for being here, and being here on time, even early. For...first things first. Please, all folks on this call, silence your cell phones or any other noise-making devices. And we'll read the disclaimer. And also, please bear with myself and other Councilmembers as we...we're working through these new Sunshine Laws. And so if it seems like things are changing almost weekly on how we...how we explain the Sunshine Law, it's because everybody's still figuring it out. So the Sunshine Law...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 or at nonpublic locations where board members are physically present, or to identify those locations in the notice required by Section 92 . . .*(inaudible)*. . . 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. Please see the last page of the agenda for information on meeting connectivity. Okay. Next we'll go to roll call. And I'll go ahead and start with our Chair Alice Lee, who has our daily greeting. Aloha kakahiaka.

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COUNCILMEMBER LEE: Aloha, Chair. The greeting is from the Indian Nation, and it is háu. Háu to all of our colleagues, and public, and everyone participating today. Good morning.

CHAIR KING: Okay.

COUNCILMEMBER LEE: I'm here alone in my workspace.

CHAIR KING: Okay. Háu. And next we'll go to our Committee Vice-Chair, all the way from East Maui, Shane Sinenci. Háu and aloha kakahiaka.

VICE-CHAIR SINENCI: Háu, Chair. And hau'oli la koa kolu (*phonetic*) kākou, mai Maui Hikina. We are here at our temporary dates at the Hāna Museum, and I'm here with my District Staff Mavis Medeiros and Dawn Lono.

CHAIR KING: Okay. Thank...

VICE-CHAIR SINENCI: Currently there are no testifiers.

CHAIR KING: Thank you for that. And just to clarify, that's not the museum behind you?

VICE-CHAIR SINENCI: No.

CHAIR KING: Okay. All right. Next we'll go to Councilmember Gabe Johnson from Lāna'i. Háu and aloha kakahiaka.

COUNCILMEMBER JOHNSON: Háu, Chair. Háu, Councilmembers and community Members. I am home alone in my house on Lāna'i, and there are no testifiers at the Lāna'i District Office. Mahalo.

CHAIR KING: Okay. Mahalo for that. Next we'll go to Councilmember Mike Molina. I don't see your virtual bridge, but it looks like you're in the Pā'ia Office. Háu and aloha kakahiaka.

COUNCILMEMBER MOLINA: All right. You got that right, Madam Chair. Háu and aloha to you, and my fellow colleagues, and everyone else joining us for our CARE meeting today. I am transmitting from the Pā'ia District Office over here at Heritage Hall, and I'm accompanied by District Office Specialist Jade Rojas-Letisi. And we have no testifiers here. Aloha.

CHAIR KING: All right. Thank you very much. All right. Next we'll go out to West Maui. Councilmember Tamara Paltin, háu and aloha kakahiaka.

COUNCILMEMBER PALTIN: Aloha kakahiaka...aloha kakahiaka kākou, and háu to everyone out there. Broadcasting live and direct from the Lāhainā District Office. I have with me

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my EA Angela Lucero and District Office Staff Christian Balagso, and we have no testifiers at this time. Thank you.

CHAIR KING: Okay. Mahalo, Member Paltin. And last, but certainly not least, we have Councilmember Yuki Lei Sugimura from Upcountry under the...what are those called again? Jacarandas? Háu and aloha kakahiaka.

COUNCILMEMBER SUGIMURA: Yeah, these are beautiful jacarandas from the Kula Park actually. Good morning, everybody. Háu. And I'm here in Kula looking forward to a productive meeting. Thank you.

CHAIR KING: All right. Thank you for being here. We have no Non-Voting Members, although Members Tasha Kama and Keani Rawlins-Fernandez are welcome to join. And from the Administration today, Members, we have Deputy Director Jacky Takakura from the Department of Planning--Michele McLean is out of town--and Jordan Molina, Director from the Department of Public Works. Our Committee Staff today is Brittney Sunderland, Legislative Analyst, back from her vacation, and Wilton Leauanae, Legislative Analyst. And thank you so much for filling in for Brittney, Wilton, while she was gone, and for being here still. Jocelyn Moniz, our Committee Secretary; James Forrest, our Legislative Attorney; and Jean Pokipala, Council Services Assistant Clerk. Thank you all for being here. Okay, Members, we have one item on today's agenda, CARE 55, Bill 91 (2022) Wetlands Restoration and Protection. I'll also be introducing an ASF that amends Bill 91 to incorporate information received during a recent collaborative meeting with the Department of Planning, including pertinent recommendations from a further review of the Planning Commission's comments. Include...it includes input from wetlands experts in the public, and incorporates technical revisions to clarify the following: the bill's intent, permitted uses, nonconformities, and legal existing uses; the deadline for the Planning Director to prepare a wetlands map; and that wetland boundaries will be determined by the presence of two or more of the three wetland indicators listed in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, and the 2012 regional supplement to the Corps of Engineers Wetland Delineation Manual called Hawai'i and Pacific Islands Region. The ASF was posted with the meeting notice and agenda last Thursday, and is the version of the bill intended to be discussed today. Okay. Let's begin with public testimony. Oral testimony via phone, teleconference, or in the Mayor's conference room will be accepted. Just to remind the public, the Mayor's conference room is being used as our live...our live site today because the Chambers is being occupied by...I believe it's the County Clerk elections process, Chair? Okay. In accordance with the newly revised Sunshine Law, a person has the right to testify at the beginning of the meeting or before an item is discussed by the Committee. The Chair will receive oral testimony for agenda items at the beginning of the meeting and as the item is called up on the agenda. Though, for today, folks, we only have one item. So if you decide to testify before the item, you can testify at the beginning. If you decide...you also have the opportunity to wait until the Chair's initial overview of Bill 91 and the extensive process it took to this point. And then if you want...when we call on you to testify, if you want

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to wait until after this review, you can do your testimony after. When testifiers...so the Chair will receive oral testimony for agenda items at the beginning of the meeting and as the item is called up on the agenda. When testifiers sign up to testify, please let Staff know whether you wish to testify at the beginning of the meeting or after the Chair's review. Otherwise, Staff will assume the testifier will testify at the beginning of the meeting. And just to let you know, folks, we can do presentations like the one I'll do today, but we cannot deliberate before testimony. So we have to close testimony before the Committee gets into deliberations. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link, and it's noted on today's agenda. And if you wanted to provide audio testimony, you should have participated via phone conference by dialing 1-408-915-6290 and entering meeting code 470 076 045, also noted on today's agenda. Written testimony is also encouraged. Instructions on how to submit testimony can be found at mauicounty.us/testify. And I'm not sure if that...is that working, Brittney? Because I got the information that mauicounty.us was having some network issues.

MS. SUNDERLAND: I believe it's just an issue with the livestreaming video.

CHAIR KING: Okay. So you can still log into that. All right. Moving on to oral testimony, oral testimony is limited to three minutes. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying, please state your name. If you are testifying on behalf of an organization or are a paid lobbyist, please inform the Committee. Please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chat with other testifiers. If you are here to provide testimony, please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you are done testifying, you will be asked to disconnect from the call. However, you are welcome to continue to view the remainder of the meeting on *Akakū* Channel 53, Facebook Live via the Maui County Council page, or in the Council Chambers...I'm sorry, today it would be in the Mayor's lounge. Participants who wish to view the meeting only without providing testimony, please also disconnect at this time and instead view the meeting on *Akakū* Channel 53, BlueJeans, or Facebook Live. Only Councilmembers, Staff, and designated resource personnel will be connected to the video conference meeting once testimony concludes. So I'd like to remind Committee Members, Administration, and the public to please be patient if we run into technological issues. And at this point, we'll...if there are no objections, we'll proceed with oral testimony.

COUNCILMEMBERS: No objections.

. . . BEGIN PUBLIC TESTIMONY . . .

CHAIR KING: Okay. Staff has been monitoring people joining today's meeting by phone, video, and in the Mayor's lounge. We'll do our best to take up each person in an orderly fashion. Mr. Leauanae will be calling and timing testifiers today. So Mr. Leauanae, can

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we call the first testifier?

MR. LEAUANAE: Thank you, Chair. First testifier is David Dorn, followed by Charlene Schulenburg.

MR. DORN: Hello, CARE Committee Members. Hāu. My name is David Dorn, at home with my wife, and I support Bill 91. I submitted a detailed, written technical testimony to you all. So my testimony today is a summary highlighting certain things that need our specific attention. My background today is the County's drainage map for South Maui, and the blue dots are wetlands that we are currently using for our drainage system. Most of them are on private land. I think the top two are already designated as stormwater retention basins. And to get a bit of an idea, especially here in South Maui, how the County is heavily reliant already on wetlands, and these are what the County designates them as on their map, just from the Kihei Drainage Master Plan 2016. Protection of wetlands' natural drainage infrastructure is essential for the County to maintain its current drainage system. For example, the current drainage system already uses the free services that wetlands provide. Wetlands connect to the drainage ways, to the stormwater system, and vice versa. However, up until now, wetland services have been taken for granted, and now they are about to disappear. If we lose any more wetlands, we will also lose their services, and our stormwater drainage system will degrade and ultimately fail. Ultimately, the County does not own...unfortunately, the County does not own these wetlands or the land in our gulches and drainage ways. So if we do not act now, a decline and collapse in our drainage system is inevitable. Wetlands provide many benefits, but from a purely hydrological standpoint, wetlands are already heavily used as the drainage system. And of course, we need to protect our drainage ways, gulches and streams, and floodplains, and our wetlands. Saving our wetlands is essential for our safety, and for the control of flooding and stormwater damage that storms can bring. Maui County drainage maps designate and name many areas wetlands...as wetlands, but these named wetlands are not designated as wetlands by the Army Corps of Engineers. But it does not matter. Our new wetlands bill will recognize and protect these wetlands beyond the limitations of the Army Corps of Engineers system. I recently brought to the attention of the County that the...and the Department of Public Works that the Maui zoning map does not have our most critical gulches and drainage ways designated on it. This means that these areas are not currently protected from development, and can be sold or developed over time. This would be a disaster for our coastal residents and people living in floodplains and low lying . . . *(inaudible)* . . . The County will need to make large investments in the future. The current drainage plan calls for the acquisition of lands and drainage infrastructure. So the County should already be buying back the drainage ways, floodways, gulches, streams, and wetlands, getting conservation easements, and gaining back control of our watershed infrastructure. Wetlands, too, are far superior to any manmade stormwater infrastructure, as they are biomechanical filters of stormwater and they function as the kidneys of our watershed. Saving one acre of natural wetland has the same value as creating three acres of mitigation wetland afterwards. And many wetlands are unique and cannot be replaced, so the best thing we can do is preserve what we have now. This

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wetlands bill is necessary because it recognizes the different services that wetlands provide, but significantly, it values the hydrology of a wetland. This definition will help us to recognize and protect our wetland systems, and save our watershed from irreparable harm. When we protect our wetlands, we are protecting an essential part of our stormwater system, and in turn we are protecting our communities, our environment, and our future. . . .(timer sounds). . . Please pass this bill. Thank you.

CHAIR KING: Excellent timing. Thank you very much, Mr. Dorn. Any questions for our testifier? Thank you for providing that map behind you too. That's really helpful. Okay. Well, no...seeing no questions, we'll move on to our next testifier.

MR. LEAUANAE: Next testifier is Charlene Schulenburg, followed by Mike Moran.

MS. SCHULENBURG: Aloha. This is Charlene Schulenburg. Can you hear me?

CHAIR KING: Yes, we can. We can't see you.

MS. SCHULENBURG: Hi. I know. I still am having trouble with this video thing. I'm going to have to get a new computer. Thank you, everybody, and thank you for the CARE Committee, and David Dorn did a wonderful job of setting all of this up. Just as a reminder, if you don't know, I'm one of the cofounders of the Save the Wetlands Hui, along with Vernon Kalani Kau (*phonetic*). And of course, Robin Knox served as our...as our manager for the project. And David Dorn himself provided a lot of the overhead, aerial footage that was provided in the Save the Wetlands bill...excuse me, Save the Wetlands grant that we were so lucky to have gotten because of all of you. Thank you again. That is extremely informational material that needs to get out, and the reason for that is because it is the most current information. And it will provide excellent mapping starts for the Planning Department to use as guidelines going forward. As we've seen, the community is not in favor of building in the wetlands, especially with the East Waipu'ilani project that just got turned down. You know, it is imperative that we save every acre that is left. I know that Kelly King has mentioned in the past the fact that we started with over 200 acres, and we have probably less than 20 acres left. So we have lost 90 percent of our wetlands. And this is why we're having the flooding. This is why we're having the mud...the mud flows. This is why we're having the brown water effects when we have large rains. So we're really in a dire situation, and this bill will help us tremendously to start to protect any further, you know...from any further development in some of these areas, like the gulches, like the streams. So you guys have already, you know, heard this. You know it. I'm just here to reconfirm that we're on the right track, and I want to just thank you all so, so much for recognizing the needs of South Maui right now with regards to this. But this will help the Planning Department in just so many ways. There...there's just a lot of, you know, valuable information here. I know Robin Knox will be coming up shortly, and she's really the expert. I'm just kind of the cheerleader in the background putting...pulling all of this together, and really want to, you know, thank you all for recognizing this, and bringing this up, and providing this wording that will make a huge difference. Big mahalo to all of you.

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CHAIR KING: Okay. Mahalo, Char. And let's see if there's any questions for our testifier. I miss not having you in person with all of your graphics and your photographs.

MS. SCHULENBURG: I know. I've really got to do a better job here. I think I could've done it on my other computer. I did last time. But the...my...for some reason, my main computer just won't release the video and the graphics and stuff, but thank you all.

CHAIR KING: Okay. Thank you for your testimony. And we'll move on to our next testifier, Mr. Leauanae.

MR. LEAUANAE: Next testifier is Mike Moran, followed by Mike Reyes.

MR. MORAN: Aloha, Committee Chair King and Committee Members. Mike Moran for the Kihei Community Association. Excuse...I have a bit of a frog in my throat, and I've used this line before, but fear not. It's not a Coqui frog. So we're...we have nothing to fear. Thank you for...Chair King, thank you for making that allowance. We did read over that ASF to see what changes were made, and we feel it was reasonable mitigation of the original action. So we are continuing to be in full support of this. As has been stated before...and we go back to the...to the beginning of this century when we spoke to a past Mayor and talked about all the building in the...in the muliwai and the wetlands. And he probably got a bit tired of our incessant comments and finally said, nobody is going to tear down those buildings and bring it back to the natural state. Well, I guess the ocean didn't hear him because eventually, that sure is what is going to happen. So we can't immediately go back and replace all that was lost, but at least let's stop doing more harm. And that's what you're doing here, trying to preserve what little bit we have left, and start the process of going back to what that natural system that Mother Nature had put in with forest Upcountry, clear rivers running down into the muliwai, which cleared out the water, and then let fresh water go into the ocean as was . . . *(inaudible)*. . . And yes, and we still see the efforts to continue to build not only that one project that we were most appreciative that you did turn down and know the challenge, that you get beat up for turning down a workforce project. But we don't want to punish our low income people. So again, my time is up. I will thank you once again for doing this. And we are in full support at KCA. Mahalo.

CHAIR KING: Mahalo, Mike. Committee Members, any questions for our testifier? If not, I'll thank you again for your testimony.

MR. MORAN: A hui hou.

CHAIR KING: And appreciate all that KCA does.

MR. MORAN: Thank you.

CHAIR KING: Aloha. All right. Next testifier. Looks like it's Michael Reyes. Mike, do you...did

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you want to testify now, or did you want to wait until after the...

MR. REYES: Yeah, I can wait until after.

CHAIR KING: Okay. We'll put you on . . . *(inaudible)*. . . Looks like Robin Knox has asked to testify after as well. And so the next testifier, Mr. Leauanae.

MR. LEAUANAE: Next testifier is Lucienne de Naie, *(audio interference)* by Clare.

MS. DE NAIE: Aloha.

CHAIR KING: Aloha, Lucienne.

MS. DE NAIE: Good morning.

CHAIR KING: Do you want to testify now?

MS. DE NAIE: Good morning, Chair King. Good morning, Committee Members. My name is Lucienne de Naie, and I am testifying on behalf of the Sierra Club Maui group. We are in strong support of moving forward on this bill. I can just speak personally. I think it was 15 years ago I served on the General Plan Advisory Committee, and we sincerely discussed the policies that are in the Maui Island Plan to protect our wetlands. There's a whole section on protecting natural resources, and wetlands takes up several pages of it. And all the policies in the world do not do us any good unless we have an actual mechanism for identifying what is really functioning as a wetland, having a definition that works here for Maui, and also having a...kind of a...an overall picture when projects come up to know that they are going to be displacing wetlands. And this is what this bill seeks to do. Of course, we also really need the mechanism to buy back these lands, or to buy conservation easements on them, or in just some way, just say look, these are not the appropriate places to develop. They're providing green infrastructure, as Mr. Dorn says. And the more that we fill them in, the worse that the flooding happens. There's some exciting things happening mauka. Maui Nui Marine Resource Council has some funding to work with the Upcountry ranches and try to stop some of the water that cascades down through our natural kahawai, our gulches, but we need to work at both ends of the equation. So I understand that one of the hang-ups here is that 180 days is considered unrealistic time to produce the wetland report. I totally sympathize. The Planning Department is extremely overworked and understaffed, but is it possible that there's a solution through just having a consultant create that plan for the Department? Could it be that it's an expedited thing, like an emergency order or something? I just think we need to get creative. Because after 15 years of talking about this, and even longer if you go back to the Kihei Committee Plan, it's like the time for action is now. So thank you all. These storms will not quit, and our high tides will not quit. And we really need to protect our lands and our properties and our local residents and their businesses, and not put them at risk of flooding. So mahalo for your work, and please move this forward.

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CHAIR KING: Okay. Mahalo, Lucienne. And I agree with you. Probably the time for action was ten years ago or earlier, but we're at...we are at where we're at right now. So let's...any questions for our testifier, Committee Members? Seeing none. Thank you so much again for being here and for your support.

MS. DE NAIE: . . .*(inaudible)*. . .

CHAIR KING: And we'll move on to the next testifier.

MR. LEAUANAE: Next testifier, Chair, signed up is Clare. No one else is signed up at this time for the beginning of the meeting.

CHAIR KING: Aloha, Clare. Did you wish to testify now, or did you want to wait until after the overview and comments from the Departments?

MS. DE NAIE: She says she's trying to wait until after.

CHAIR KING: Okay. Okay, we'll put you on after the presentations. That's fine. All right. Thank you. Any other testifiers at this time? Okay.

**ITEM CARE-55: BILL 91 (2022), RELATING TO WETLANDS RESTORATION
AND PROTECTION (CARE-55)**

CHAIR KING: Well, we are...we'll keep testimony open, and we'll proceed with our one item on the agenda, Bill 91 (2022) Relating to Wetlands Restoration and Protection, CARE 55. Okay, folks. We have no other testifiers at this time. So I will go on to my opening remarks. *(audio interference)* Titles 2...somebody's...Stacey Vinoray, that sounds like you're...you need to mute yourself. There we go. We'll be discussing "A BILL FOR AN ORDINANCE AMENDING TITLES 2, 18, 19, AND 20, MAUI COUNTY CODE, RELATING TO WETLANDS RESTORATION AND PROTECTION." As a quick recap, this item was previously discussed on September 1, 2021, and September 29, 2021, in which the Committee extensively discussed how to best define wetlands and provide legislative clarity to the bill. Most recently, the Committee discussed this item on June 29, 2022, where we received presentations from wetland experts Scott Fisher, Ph.D., Chief Conservation Officer, Hawai'i Land Trust; Cody Nemet Tuivaiti, Project Manager...Project and Field Manager for 'Āina Kukoa *(phonetic)*; and Robin Knox, President for Water Quality Consulting, Inc. and Project Manager for Save the Wetland Hui. After a robust conversation, Bill 91 was deferred at that time for further collaboration with the Planning Department on language for successful implementation and enforcement. OCS has worked with your Chair in a highly collaborative effort on this bill with Corporation Counsel, the Administration, and most particularly the Planning Department, to incorporate community concerns, clarify definitions, and

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expand input, including extensive recommendations from the Planning Commissions. Recommendations from the Department of Public Works were also included, although an original letter from the Committee to the Department in August of 2021 requesting comments was not responded to. I think it was later that Director Dagdag-Andaya came to a Committee meeting and had these recommendations: adding a permitted uses section, changing specifically requested language to clarify ambiguity, and amending language in Chapters 18 and 20 that the previous Public Works Director reported corrected in their concerns. Bill 91's purpose is to conserve and protect sensitive ecosystems and ecosystem functions and values, mitigate climate change, and work toward building environmental resilience by establishing requirements to map and protect wetlands. Guidance and justification for the County to protect and restore wetlands can be seen throughout the Countywide Policy Plan, Maui Island Plan, Lānaʻi Island Community Plan, and Molokaʻi Island Community Plan. However, the Maui County Code does not currently include any established policy to do so, nor do existing State statutes. The National Association of Counties also recommends the enactment of wetlands ordinances, as many wetlands are not protected under Federal laws and instead fall under the responsibility of local government. Joining us today from the community, we have wetland experts Cody Nemet Tuivaiti, Project and Field Manager, 'Āina Kū'oko'a; Robin Knox, Water Quality Consulting, Inc. and Project Manager for Save the Wetland Hui; and Michael Reyes, Senior Ecologist, Maui Environmental Consulting. Joining us from the Administration, we have Jordan Molina, Director, Department of Public Works; and a representative from the Planning...actually Deputy Director of Planning Jacky Takakura, as Director Michele McLean is out of town. They will be providing comments, and will be available to answer any questions Members may have relating to the proposed legislation. So at this time, I think we can go to...and correct me if I'm wrong, Mr. Forrest, but I think we can go to comments from the Planning Department and Public Works, and then open it back up for public testimony. Is that the proper procedure? Okay. And Members, I was also told you can ask...we can ask...if you...if anybody's got any burning clarifying questions of Planning or DPW, you can ask those before we go back to public testimony. So at this point, we'll see if Ms. Takakura is on. And if you have any comments at this time, no pressure on you, but thank you for being here.

MS. TAKAKURA: Thank you, *(audio interference)* Committee Chair King. Is there an echo? Can everyone hear me okay?

CHAIR KING: Yeah, we can hear you. Yeah, there was a weird sound in the beginning, but you're fine.

MS. TAKAKURA: Thank you for including us in this. So the Department supports wetlands restoration and protection. Thank you for allowing us to gather comments from the Planning Commissions and EPA and the State. I do have a few comments and concerns regarding the proposed bill, Bill 91, before you. Should I go over them now? Is that okay, Chair King?

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CHAIR KING: Is that with the ASF?

MS. TAKAKURA: Yes.

CHAIR KING: Okay. Let's...does everybody have that version in front of them? There should have been distributed the redlined version of that bill, which was...which was done after our meeting with the Planning Director, Deputy Director, and Erin Derrington from Planning. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I guess my clarifying question is...so we got the transmittal from Ms. Takakura dated like July 29th, and it has attached the version of the bill that came out of the Planning Commissions. I'm not sure if that one was signed by Corp. Counsel or not, first question. And then the second question...I do see the ASF transmitted by your office, but I don't think that it's a redlined version because it doesn't highlight the differences between the...what came out of the Planning Commissions and what the ASF is. So it...I don't know what you mean by the redlined version.

CHAIR KING: Yeah, it was just...it was actually...was actually just distributed. So it's uploaded now. If we...let's see. Forrest, did we distribute that to all of the Members individually as well? It's basically the same thing that's posted, but it's the redlined version so you could see all the changes that were made.

MR. FORREST: Yes. Thank you, Chair. It was just distributed like minutes ago. The ASF was posted for the meeting, but the redline was just distributed when the meeting started.

CHAIR KING: Okay. And then you can see on my...on my copy, it's blue and...the changes are in blue and red. So I...

COUNCILMEMBER PALTIN: How was it distributed, via email or uploaded to Granicus? Because I don't see it on Granicus yet.

CHAIR KING: Okay. I think it was...I got a note that it was uploaded. Forrest, did we distribute it both ways so that Ms. Takakura could take a look at it? Maybe you could use the redlined version to go through.

MR. FORREST: Thank you, Chair. Yes, we uploaded it, and I believe we're in the process of emailing it as we speak. And it does take time to show up on Granicus for the Members.

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: I'm refreshing my screen, but I'm not seeing the redlined version. But maybe...Ms. Takakura, was the July 29th correspondence, was that signed off by Corp. Counsel?

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MS. TAKAKURA: Thank you, Member Paltin. So in order to get the bill back to you folks as quickly as possible, we didn't go through that process of getting the signature, but we had been working with them as we were...because they were in attendance at the commission meetings. And so we were incorporating their fixes and their comments in there. But yeah, we kind of had to skip that step because...just because of the timing.

CHAIR KING: But Ms. Takakura, you were...you had attached to that the previous version, not the one that was posted for this meeting.

MS. TAKAKURA: Yes, Chair King. So the one we had that I attached for...on the correspondence dated the 29th is the one that has all the edits from the commissions, our conversations with Corp. Counsel, the comments from EPA and the State.

CHAIR KING: Okay.

MS. TAKAKURA: And so that's what I compared with this ASF one that was available online. And I have page numbers based on the ASF version.

CHAIR KING: Okay.

MS. TAKAKURA: If you wanted to go just look at that one, I can...have the page numbers and stuff in my notes.

CHAIR KING: Based on the new version?

MS. TAKAKURA: Yes, based on the ASF version, yes, that was there...been there for...

CHAIR KING: Okay. So if you want to just kind of go through and give your presentation, go through now that we have...does everybody have the redlined ASF? Member Molina.

COUNCILMEMBER MOLINA: Yeah, Madam Chair. I'm glad Member Paltin brought this up because, you know, I...can I ask why we're just getting this now, you know, the redlined version? Shouldn't we at least...the Members...Committee Members get at least 24 hours in advance to give us a chance to kind of review so we can make a fully informed decision? So what was the reason for we're just getting it now? We're halfway...you know, half an hour the meeting's been in progress, and we're only getting it now and not giving us enough time to kind of review the redlined version.

CHAIR KING: Well, the ASF is basically the changed version. So this morning, OCS thought you might want to see an actual redlined version that has...that shows what was put in and what was taken out. And we just came up with that this morning.

COUNCILMEMBER MOLINA: Well, I think just for future consideration, you know, at least 24 hours in advance, because you know, some of us like to take a look at everything

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thoroughly. So anyway, that's just my comments because it's difficult to make a decision when we get this right in the meeting, you know?

CHAIR KING: I appreciate that.

COUNCILMEMBER MOLINA: That's all I had to say.

CHAIR KING: I appreciate that, but they don't normally post the redlined version. They normally post the ASF. So that...if you had looked at the ASF, which was posted a week ago, then you would've seen the version that we're working off of today.

COUNCILMEMBER MOLINA: Yeah, but some of us like to see the redlined version --

CHAIR KING: Right. I was...

COUNCILMEMBER MOLINA: -- before right in the meeting...before the meeting. But thank you.

CHAIR KING: I was told by OCS they don't normally post the redlined version. So...Member Paltin.

COUNCILMEMBER PALTIN: I did...I do have the email of the redlined version. I'm not sure of what it's redlined off of. Like just looking, comparing the first page of what I received as the redline and the first page from Ms. Takakura, it brackets out restoration and protection Titles 2, 18, 19, 20 of the Maui County Code. And in this redline version, I don't see any redline. So I'm not sure...I mean, that's a difference, and the differences are supposed to be colored out, right?

CHAIR KING: Well, this would be the difference...the...if you look at the...if you look at the posted ASF from a week ago...

COUNCILMEMBER PALTIN: Uh-huh.

CHAIR KING: The new version that we're looking at. So what we're showing you is why...what we did...how we got to that version. Because we had a meeting with Planning, with the Director and the Deputy Director and Erin Derrington from Planning, who's a wetlands expert, and we went through all of the concerns. And these are the changes that we made based on the concerns that were voiced at that meeting by Director McLean. So I'm not sure what...so then when I got the letter from Ms. Takakura, it had the previous version posted with it...with that letter...attached to that letter, which is not the version that we're working off of today. So at the last meeting that we had on this...on this bill, we heard from the Director that there were concerns, and we decided to...you know, to defer the bill, have a meeting directly with Planning Department to go over all their concerns, which we've done. And so what you're seeing in this redlined version that you're just getting from OCS--who tells me again we don't post redlined versions--that

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this is sort of a step by step look at the exact changes that were made to get to the ASF that we're going to be discussing today.

COUNCILMEMBER PALTIN: I guess a little bit my confusion is that those 2021 dates that you referred to is before we sent it over to the Planning Commission. And then the Planning Department took it through the three various Planning Commissions, and then they came out with what is in the correspondence from Ms. Takakura dated July 29th. And so I was...I'm not clear...my understanding, I thought, was that we're comparing what came out of the Planning Commissions with your ASF, but in looking at the redlined version of your ASF, some of the things that are different from what came out of the Planning Commission and your ASF are not redlined.

CHAIR KING: Well, because we had made changes in the previous Committee meeting based on...remember, we had that discussion of the Planning Commissions' input. And so we made some initial changes, but then there were more concerns that the Planning Director had. So we decided to defer it, go back to the table with them, and this is...this current version is a combination of the input from the Planning Commissions and direct input from the Director and Deputy Director of Planning.

COUNCILMEMBER PALTIN: Okay. I'll print it out and try to evaluate it. Thank you.

CHAIR KING: Okay. So we had extensive discussion on the input from the Planning Commissions at the last meeting. And then we had the subsequent meeting with Planning Department. So what...if you...do you have the ASF on you, Ms. Takakura? You want to go through the ASF and...

MS. TAKAKURA: So Committee Chair King, I have the ASF version that doesn't have any redlines on it, the one that was posted last week. Is that okay to use as a reference?

CHAIR KING: Yeah, that's fine.

MS. TAKAKURA: Mine are just minor concerns because...just a few lingering things. So on the ASF version, I'm looking at the page numbers at the bottom of each page. So I'm on page 3, where it's Section 19.47.010, Establishment.

CHAIR KING: Right.

MS. TAKAKURA: Everybody on that page? Yeah. So we have concerns about applying two zoning districts to a parcel. I understand that this is done in...I guess in some other places, but I don't know that we are ready for applying two zoning districts to a parcel. I think this will cause confusion for the public and for Staff. I prefer an overlay, similar to the Special Management Area and the Flood Hazard Zones. I also want to remind everybody that, you know, we have several overlays in the works. We have the Cultural Resources Overlay, we have this one, and then someday, there might be a Well Head Protection Overlay. Those all end up being additional zoning districts that might be very

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confusing. So at this point in time, yeah, I don't know about having parcels being subject to two zoning districts at the same time.

CHAIR KING: Okay. I think that was something that I thought we had talked about with the Director and worked out.

MS. TAKAKURA: Yeah, we did talk about it.

CHAIR KING: Overlay on top of, you know, the...whatever the original zoning district, but this...

MS. TAKAKURA: Yeah.

CHAIR KING: It's going to be similar to the cultural overlay.

MS. TAKAKURA: Yes, overlay as compared to an additional zoning district.

CHAIR KING: Okay. And I'm not going to...I'm not going to invite deliberations at this point because we still have open testimony. So if you want to go through your concerns...

MS. TAKAKURA: Yeah. Can I go to the next one then, Chair? Okay. So the next one is on page 4, under the part about report. The Director must produce or cause to be produced a report by a qualified scientific professional. I thought we had agreed that we were going to use the term environmental professional, not scientific. But that's where I left off in terms of the participation was the term environmental professional instead of scientific professional.

CHAIR KING: Okay. Was there a reason that you preferred environmental?

MS. TAKAKURA: Because...well, that actually came from testimony that, you know, maybe a civil engineer might be considered...might not be considered scientific, but might be the more appropriate type of profession to do something like this. So I guess environmental was more encompassing because it could include scientific professionals too.

CHAIR KING: Okay.

MS. TAKAKURA: But it doesn't limit them. So I think that was the reason for putting the environmental profession on that. Page 5...page 5, 19.47.030(B)(11)...boy, it sounds like Bingo, doesn't it? B-11. Okay. Anyways, I digress. Proposed protective buffers...so this is the one about the buffers. We have a minimum requirement of 50 feet. And in our recommendation we had a maximum buffer of 200 feet, but I don't see the maximum in here. And I don't know if there was a reason for not including maximum buffer, but --

CHAIR KING: Okay, that's...

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MS. TAKAKURA: -- in the bill that we had proposed, we had included a maximum of 200 feet.

CHAIR KING: 200 feet. Okay.

MS. TAKAKURA: Yeah.

CHAIR KING: I don't remember it coming up in our meeting, but that's probably not that difficult to fix.

MS. TAKAKURA: Yeah. Moving on to page 7, and this is the part about the mapping...mapping A, within 180 days. So I am very concerned that the Department may or may not be able to prepare a map within 180 days. You know that we have a lot going on, and we are very short-staffed. So I don't want us to set up...be set up for failure. So if that could please be longer. I think in our proposal, we had said a year. That would be better just to help us get the time. Especially the first time around, it's going to take some time.

CHAIR KING: Okay.

MS. TAKAKURA: Yeah.

CHAIR KING: And that would be...that you feel like you would need that much time, even if you were hiring a professional to do the mapping?

MS. TAKAKURA: I think to be safe...of course we would want to expedite it too because this is so important, but it would just give us a little bit more wiggle room.

CHAIR KING: Okay. Yeah, there's a process to hiring as well. So it's...

MS. TAKAKURA: Yes.

CHAIR KING: Yeah.

MS. TAKAKURA: Also on page 7, 19.47.070(C), the Director must initiate changes to zoning as needed to ensure wetlands depicted in the map are placed in the Wetlands Overlay District. Now, for some reason the Department had recommended deleting this. This is in here, and I'm not sure...you know, typically for changes of zoning, we don't often initiate them for commercial properties. And I'm not sure if that's why we had proposed not including this one. Yeah, in our proposal, we didn't have this item C.

CHAIR KING: Okay. Yeah, I don't remember that coming up in our meeting, but we can take a look at that.

MS. TAKAKURA: Only a few more. Okay, page 8. And this is the part...Chapter 2.82, 32.040(J)(2). Okay. So that's kind of at the top of the page, (J)(2). The language we

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proposed is just very different than what's in here. So I don't know if there's reasoning. And I'm not really familiar with how, you know, eminent domain and those kind of things work, but I just wanted to point out that (J)(2) is very different from what we had proposed.

CHAIR KING: Okay. Do you have wording for what you proposed? You want to put it in the chat or...

MS. TAKAKURA: Yeah, I can do that. I will do that. So I'll...okay. Also on page 8, same thing. (J)(2) item C. Item C, the areas of marine water, we should clearly limit this to if within County jurisdiction. Because there is a line, and it's not always clear, that some is County, and then some is State. So we want to make it clear that we can do what's in the County jurisdiction.

CHAIR KING: And that's under letter C?

MS. TAKAKURA: Yes.

CHAIR KING: Okay.

MS. TAKAKURA: Areas of marine water.

CHAIR KING: Okay. So you don't think that's understood that we only have authority over our...

MS. TAKAKURA: I've seen that become debated.

CHAIR KING: Okay, great.

MS. TAKAKURA: So if we can make it...the clearer, the better.

CHAIR KING: So areas of marine water within County jurisdiction.

MS. TAKAKURA: Yes, within County jurisdiction, yes. The next one is on page 9, and that's the same part, (J)(2)(i.vii), which is 8, shoreline or stream bank anchoring or stabilization. And just a comment that for some reason, our proposal does not include the term anchoring. Not sure if that...that's significant or not.

CHAIR KING: Shoreline or stream bank...

MS. TAKAKURA: Yeah, we just said stabilization.

CHAIR KING: Oh, so...okay. I'll make a note of that. We can ask what that means.

COUNCILMEMBER SUGIMURA: Chair, can you repeat that...or could Jacky repeat that,

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please?

CHAIR KING: She said it's number i.vii [sic] under letter i, where it says shoreline or stream bank anchoring or stabilization. And so their suggestion was just to say shoreline stabilization, or shoreline or steam...stream bank stabilization. Okay.

MS. TAKAKURA: Correct.

CHAIR KING: So just to delete anchoring.

MS. TAKAKURA: Okay to move on to page 12? On page 12, you can see that underlined portion, U, Wetlands Overlay District. We had just proposed that it simply be Wetlands Overlay, period, not Wetlands Overlay District. And that's that same concern I mentioned about having two zoning districts, making it clear that it's an overlay, and not an additional district.

CHAIR KING: Okay. Wetlands Overlay.

MS. TAKAKURA: And only one more.

CHAIR KING: Okay.

MS. TAKAKURA: Page 13, Section 10, it says that the Department of Planning must adopt administrative rules. I think may is better, because if the rules are not necessary...I mean, they would...if they're necessary, then we should adopt them, but if the chapter is clear enough that we don't need administrative rules, you know, it might not make sense to adopt them. But I believe if we think we need administrative rules, we would adopt them.

CHAIR KING: Okay.

MS. TAKAKURA: But not every zoning chapter has administrative rules. Some of them...

CHAIR KING: So can I...can I go back just to the last one on the...on page 12, where you said --

MS. TAKAKURA: Yes.

CHAIR KING: -- that you would eliminate the word district? Because I'm looking at the list of other districts, and those aren't really zoning districts either.

MS. TAKAKURA: They are.

CHAIR KING: Like Kihei Research and Technology Park District?

MS. TAKAKURA: Yes.

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CHAIR KING: Maui Technology Park.

MS. TAKAKURA: Yes.

CHAIR KING: So those are actual --

MS. TAKAKURA: Yes.

CHAIR KING: -- districts?

MS. TAKAKURA: Um-hum, yes.

CHAIR KING: Urban Reserve District, Maui Historic Districts, Project Districts. Okay. So you wanted to eliminate the word district. Okay. Okay.

MS. TAKAKURA: And then that last one for Section 10, that we may adopt administrative rules.

CHAIR KING: Okay.

MS. TAKAKURA: So a lot of the changes that we did discuss were included. That's why there were not that many here. And I really thank you for including us in this process.

CHAIR KING: Okay. Well, I appreciate you going over the new version and giving us some of these other things. They seem small, but I know that they make a big difference to the Planning Department. So any questions just of clarification? And Ms. Takakura will be with us as a resource too. Chair Lee. Chair Lee, you're muted.

COUNCILMEMBER LEE: I was on my email. Anyway, Ms. Takakura, thank you for your explanation. Why would we include wetland overlay under districts? Even though you're eliminating the word district, it sort of doesn't fit there because only districts are listed there.

MS. TAKAKURA: Chair Lee, I agree with you that, yes, it's odd...kind of odd here, yes.

COUNCILMEMBER LEE: Okay, thank you.

MS. TAKAKURA: Just having it listed as kind of a . . . *(inaudible)*. . . We didn't have it on there in our proposal.

COUNCILMEMBER LEE: Thank you. Thank you, Chair.

CHAIR KING: Okay. Thank you for that clarifying question. Member Sinenci.

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VICE-CHAIR SINENCI: Yeah. Thank you, Chair. Mahalo, Ms. Takakura. Can you go back to number 1? My apologies. I missed that one.

MS. TAKAKURA: Mr. Sinenci, so you mean my first comment?

VICE-CHAIR SINENCI: Yeah, the first amendment, where was that?

MS. TAKAKURA: So yeah, in looking at page...it's the bottom of page 3, the top of page 4 of the ASF about the establishment. So if you think about zoning districts, like say agricultural district or residential or rural, that is the zoning district for that parcel, and that spells out the permitted and nonpermitted uses. And as you know, that...like within a parcel, some of it might...you know, it could be in the Special Management Area or the flood zone. That doesn't really...it's not an additional zoning district, whereas the...I think this proposes to make the wetlands be an additional zoning district on top of, say ag or residential or rural. And, you know, that's just very, very different from how we currently administer the zoning code. So that's what my concern is as to this whole new concept of having two zoning districts . . . *(inaudible)* . . . parcel. So we'd like it to simply be an overlay, kind of like the Special Management Area.

VICE-CHAIR SINENCI: You're proposing to delete that entire...that section, is that what it is?

MS. TAKAKURA: Well, to clearly delete the word district.

VICE-CHAIR SINENCI: Okay, thank you. Chair, you...you're muted.

COUNCILMEMBER JOHNSON: Chair, you're muted.

CHAIR KING: Okay. Sorry about that. I actually didn't even mute myself. I think someone muted me. Thank you for that clarifying question, and thank you, Ms. Takakura, for getting those comments in. And then next we'll go to see if there are any comments by the Director of Public Works. Jordan Molina, are you on? Is somebody on from Public Works? I see Public Works on, but I don't see anybody coming on the screen. So if...we'll have them around as a resource so that we can move on. If there's no objections, we'll go ahead and move on and finish testimony. We...those are the...our basically presentations. And we'll go back, Mr. Leauanae, to the testifiers who wished to testify after.

MR. LEAUANAE: Chair, the testifier is Mike Reyes, followed by Robin Knox.

CHAIR KING: Aloha, Mr. Reyes.

MR. REYES: Aloha, Councilmembers. Thank you for having me today. I've kind of been following the many iterations of the bill. And I am obviously very supportive of protecting of our wetland resources. As testifiers mentioned earlier, in certain parts of Maui, especially South Maui, we have lost many of our wetlands, certainly within the urban

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corridor of Kihei, Wailea, Makena. I've tried to make sure that the process for mapping these wetlands is scientific, and that it adheres to...that it's repeatable, that it can be done by different people over long periods of time. And I'm happy to answer any questions that the Councilmembers have today. And I believe that we can protect our wetland resources in Maui County. I also just want to point out that, you know, these wetlands are home to many of our endangered aquatic birds, and they are important habitat. So they're not just an important resource for us, they're an important resource for the wildlife that exists in Hawai'i. And so with that, I'll be available to answer any questions as needed.

CHAIR KING: Okay, great. Thank you so much. We have a...first I want to ask the Members if you're okay with...if there are no objections, we'll ask Mr. Reyes to be a resource when we get to...

COUNCILMEMBERS: No objections.

CHAIR KING: Okay. Thank you. And do you have a burning question, Member Sugimura?

COUNCILMEMBER SUGIMURA: I just would like to know what he meant by repeatable? He can talk about it, you know, when we...when we want to bring him in as a resource, but he said that in his testimony.

CHAIR KING: Yeah, that's fine. You want to go ahead and explain that, Mr. Reyes?

MR. REYES: Sure. I think we had worked on...when these wetlands are mapped, and they're already currently being mapped using the Army Corps of Engineers 1987 Wetlands Delineation method. And I think that we've, in this bill, made it more restrictive, in that the Army Corps uses the three indicators of a wetland, which are an abundance of aquatic vegetation, hydrated soils, and evidence of hydrology. And I think the community has said that that's not really far enough. It doesn't take it far enough to protect our wetlands. And so in this bill, we say we're still going to use that very same scientific method, but only require two of the three indicators of a wetland be present, which would end up with a much larger wetland footprint in many cases. Because our wetlands are so degraded, they may only show two of the three wetland indicators. And so this bill...and that method ensures that no matter who's delineating the wetlands, that they're using the same approach and the same wetland delineation method. And I guess that's what I was...what I meant when I said repeatable by different entities over long periods of time.

CHAIR KING: Okay. Does that answer your question?

COUNCILMEMBER SUGIMURA: Yeah. Thank you.

CHAIR KING: Great. Thank you. Thank you for the question. Right now, Members, I just got a text from Member Molina. I don't see him on. He's having a little bit of network issues.

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Does anybody see him on?

UNIDENTIFIED SPEAKER: Huh-uh.

CHAIR KING: And you can't...

COUNCILMEMBER SUGIMURA: *Akakū* is...

CHAIR KING: *Akakū* is down too?

COUNCILMEMBER SUGIMURA: *Akakū* is down.

CHAIR KING: Okay. Maybe at this point we can take a five-minute break and see if they can get back on. And...

COUNCILMEMBER PALTIN: They're just back on. *Akakū* just came back on.

CHAIR KING: *Akakū* is back on. Let's see if Mr. Molina comes back on. Is there somebody from Mr. Molina's office that maybe can let us know what's going on? Okay. I'm texting him and asking him if he wants us to break, and I'm not getting an answer yet. But let me see. I hope he's not going to start having those issues like I had with my District Office. Member Sugimura.

COUNCILMEMBER SUGIMURA: So I got a text saying that video through website also not working. 54 and 55 are working. Channels...I'm sorry.

CHAIR KING: Wait, I'm sorry, what...I don't...54 and 55 Channels?

COUNCILMEMBER SUGIMURA: Channels 54 and 55 are working. 53, I don't know, is not, according to this text. And video through website also not working. Might want to check.

CHAIR KING: We knew the video wasn't working. That's why...that's why I talked about at the beginning of the meeting that the...our website streaming was not working today. So we were driving people to BlueJeans. But right now I think...is...Member Paltin, are you watching Channel 53? Is that what's on...back on? So it looks like Channel 53 is working.

COUNCILMEMBER SUGIMURA: Okay, good.

CHAIR KING: I'm going to...if everyone's okay, I'm going to maybe take a five-minute break, and we'll give...or let's just...I hate to do this with testifiers hanging on. You know what, let's go ahead and take the last two testifiers if we can. And I'm getting texts from Member Molina that says he's still trying to get back on. I'll give...I'll give Ms. Knox, who is the next testifier, the option of waiting. Do you want to wait until after a five-

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minute break and see if we can get Member Molina on, or do you want to do your testimony?

MS. KNOX: I would rather wait. I'd like the full Council to hear my...or the full Committee to hear my testimony.

CHAIR KING: Okay. If there are no objections, then, we'll take a five-minute break. Let's break until ten after, 10 oh 10...or 10:10, and then see if we can get Member Molina back on.

COUNCILMEMBERS: No objections.

CHAIR KING: All right. Thank you, everybody. These are those technical difficulties that we're asking for patience with. All right. We're...the Climate Action, Resilience, and Environment Committee is now in recess at 10:04. . . .*(gavel)*. . .

RECESS: 10:04 a.m.

RECONVENE: 10:12 a.m.

CHAIR KING: . . .*(gavel)*. . . Will the Climate Action, Resilience, and Environment Committee please reconvene? It is 10:12, and we have all Members with us again. So thank you for working through your issues, Mr. Molina. Good to have you back. And we are in the middle of public testimony. Next we have Robin Knox. Next to present...or testimony...testifier. Knox? There you are.

MS. KNOX: Hi. Thank you, Chair. So I do support what the Planning Department was saying about an overlay instead of zoning. And then I recommend the following changes. On page 3, Section 2, in 19.04.040, Definitions of protective buffer, add the word biological. So it should read, to avoid significant negative biological, physical, or chemical impact. On Section 3, page 4, I do support the language that was in the original Bill 91 posted, not the AFS, regarding the qualified environmental professional. And I would like to clarify my comment that a QEP, a qualified environmental professional, can include engineers, but not all engineers are qualified environmental professionals. So the idea is the environmental part is important. We don't want to exclude engineers, but we don't want to include engineers that are not environmental professionals. So that's just clarifying what Planning said.

CHAIR KING: Okay. So you would support changing it to qualified environmental professional?

MS. KNOX: Yes, yes.

CHAIR KING: Okay.

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MS. KNOX: Yes. And then on same page, item (B)(3), add native species, such that the last line reads, existing native, rare, threatened, or endangered species. Moving to page 5, add the word groundwater...oh, I'm sorry.

CHAIR KING: Okay. Slow down a little bit. So...

MS. KNOX: Okay. I'm just...if I had more than three minutes, then...I mean, I was trying to get them all in just by mention, then follow up...

CHAIR KING: And we'll have you as a resource as well.

MS. KNOX: Okay, great. So yeah, add native on page 4 on item (B)(3). On page 5, item (B)(7), add the word groundwater, such that the second line reads, a reduction in the flow of groundwater or water courses. Then item (B)(9) on page 5, add the word native, such that the third line reads, to increase the potential for survival of native, rare, and endangered flora and fauna. I don't support the deletion of protecting customary and traditional uses of wetlands. That was in the prior version, and it's not in the AFS. And then I would add an item to the Section (30)(B) that would say, the report should include areas that formerly had wetlands characteristics or functions, but have been altered or degraded by channelization, filling, draining, dredging, grubbing, deep ripping, groundwater pumping, hardening of surfaces, or introduction of a nonnative or aggressive invasive plant species. . . .*(timer sounds)*. . . That language is currently in there, but in a different place. And I think that the Conservation Commission would not be able to make a decision on that criteria if that information were not included in the original report. And then also, on 07(A), I think we need to have the opportunity for public review and comment on the map. Delete the word abundant with regard to native plants or wetland plants, and insert presence. Then...and then add a time frame on page 7 for the Director to initiate the zoning changes necessary for the wetland overlay. That's it. Thank you.

CHAIR KING: Okay. I didn't quite understand that last one.

MS. KNOX: Okay. Page 7, it says that the Director of Planning will initiate the changes...you know, once the map is created, that they would initiate any zoning changes needed. And I just thought that should have a time frame, you know, so that we don't have a map that never gets implemented through initiating zoning.

CHAIR KING: Okay. That was the one that Deputy Director Takakura thought should be eliminated because she said Directors don't initiate changes to zoning generally. That was her comment . . .*(inaudible)*. . .

MS. KNOX: All right.

CHAIR KING: Okay. All right. Any questions of clarification at this point for Ms. Knox? Member Paltin.

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COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Knox, for your testimony. I have three versions in front of me, and when you referenced the page number, it was not working out for me. I was wondering if you could restate your edits with just the section header, and then I can follow along better.

MS. KNOX: Right. The page numbers, just for your information, I was trying to correlate it to the AFS. So...

COUNCILMEMBER PALTIN: We have two versions of the ASF.

MS. KNOX: Oh, okay.

COUNCILMEMBER PALTIN: We have the redlined version and then the pre-posted. I guess it would be the pre-posted one maybe.

MS. KNOX: Right. I don't have the redlined. But so going through each of these, the one that I said was page 3, Section 2, the citation is 19.04.040, and that's the definition of protected buffer. So that was the one that...

CHAIR KING: Actually, Members, if there are no objections, we'll designate Ms. Knox as a resource person. And then we can bring her on, and we can do a more thorough...go through what you might've missed on her suggestions.

COUNCILMEMBER PALTIN: Okay. I missed it all because I was...

COUNCILMEMBERS: No objections.

CHAIR KING: Okay. Thank you. So we'll have you back, Robin, as a resource person. Thank you. Forrest, you have a question? Mr. Forrest.

MR. FORREST: Thank you. Thank you, Chair. Just for the record, can you state her qualifications?

CHAIR KING: Oh, Miss...you mean Robin Knox? Okay. So she is the Project Manager for the Save the Wetlands Hui project of the Laie Wetlands. She also is the Principal in the...going back through my notes now...for...President of Water Quality Consulting, Inc. That's her company. Okay. So if there is no...do you have an additional qualification that you'd like to share with us, Robin?

MS. KNOX: I would just like to say that I am a certified qualified environmental professional, certified by the Global Environmental Health and Safety credential.

CHAIR KING: Okay, great. Thank you so much. Okay. So if...we'll bring Robin back later if everyone's good with holding their questions for her. We'll go to our next testifier. Looks

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like it's Clare Apana. Last person signed up. Aloha. You're muted. Can you unmute yourself? Still can't hear you.

MS. APANA: How's that?

CHAIR KING: Now we can hear you and see you.

MS. APANA: Okay. Yay. Okay. Thank you very much. Thank you for all the care and concern that you are putting into this bill. . . .*(timer sounds)*. . . I'm done? Okay.

CHAIR KING: The last person.

MS. APANA: All right. I am testifying for Mālama Kakanilua, and we are the nonprofit that is associated with 'Āina Kū'oko'a, Koko Nimitz project. But I would like to state that we would like to see that the traditional and customary practices be placed in the language again. And that is the correct way to say that, you know. It's not cultural practitioner; it is traditional and customary practices, from Article 12, Section 7, of the State Constitution. Just for your information, when you say a Native Hawaiian, you're talking about somebody who is a United States citizen that occurred after statehood. And I believe these...the practices and traditions you're talking about go way past that. So...which is why it's stated that way. And we'd like to make sure that that's still in there because the project that Cody Nemet is doing is definitely all about that. And it's so beautiful to see a restoration project done in this way, and I think your team came out to look at it. The response of the 'āina and the...and the plants to the way that it is being done I think is...speaks for itself. And then I would also like to make a comment about the overlay as opposed to a zoning. And I understand how important it is to get this done and get the mapping done. But as we have seen in the sand dunes, although it's in the community plan, although it's, you know, been mapped, we are always still fighting with developers about the usage. So please be very careful when you...when you put your language in. And is it good not to have a zoning that will protect it or . . .*(inaudible)*. . .

CHAIR KING: I think...are you still there, Clare?

MS. APANA: I'm here. Oh, I hope that you will give it the very best protections that are possible. And I know that you can work it out. . . .*(timer sounds)*. . . But I'll say from what happened with the sand dunes, you know, it's...we tried to protect it, but we are still, every day, having to watch, and projects are still able to do their sand mining. So anyway, thank you...thank you very much, and I hope that you will get to hear from Cody Nemet himself about his...the restoration and how that has worked out with a traditional basis --

CHAIR KING: Yes, we...

MS. APANA: -- of Kānaka Maoli.

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CHAIR KING: We heard from...last meeting, he did a whole presentation on his project. So that was very exciting. So is that the end of your testimony, Clare?

MS. APANA: Yes, it is. Thank you very much.

CHAIR KING: Thank you. I just have a question for you.

MS. APANA: Um-hum.

CHAIR KING: Under permitted uses, letter G says, exercising those rights customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the islands...the Hawaiian Islands prior to 1778, as protected by Article 12, Section 7, of the Hawai'i State Constitution. So does that encompass what you were saying about traditional and customary practices?

MS. APANA: It does. It...the statement is traditional and customary practices. And that is the statement when you...the Native Hawaiian...I'm glad that you defined it, but the Native Hawaiian term...I would...I would say Native Hawaiian, or also known as Kānaka Maoli.

CHAIR KING: Okay. Descendants of the Native Hawaiians, also known as Kānaka Maoli. It does...

MS. APANA: Because I believe it's a misnomer that the State has perpetuated, using Native Hawaiian in this...in these legal terms because the actual legal term...that the...by defining it, you have a different definition than what is actually the definition of what Native Hawaiian is. But...so if you would put in Kānaka Maoli, I think it would be more in keeping with what is traditional.

CHAIR KING: Okay. But we do have those words about customarily and traditionally exercised for...and it goes into the description. These are...this is actually taken out of the State Constitution. So I will make a note to add...and you wanted that added after Native Hawaiians as a...

MS. APANA: Yes.

CHAIR KING: Okay. Descendants of Native Hawaiians, also known as Kānaka Maoli. Okay.

MS. APANA: Thank you very much.

CHAIR KING: Okay. Thank you so much for your input. Any questions for our testifier? Okay. And if you got Cody hanging around there, he's welcome to jump on as well. I didn't see his name yet, but we'll ask.

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MS. APANA: Oh, I thought he was in this meeting.

CHAIR KING: I haven't seen him yet. And he wasn't signed up to testify.

MS. APANA: Oh. I thought he was going to be part of the meeting. Okay. Well, he might be in class.

CHAIR KING: Okay. I'll...

MS. APANA: Thank you very much.

CHAIR KING: All right. Thank you.

MS. APANA: Thank you.

CHAIR KING: I'll make one more call for any other testifiers. And Cody, if you're on, if you could...if you don't want to testify, we can use you as a resource. No?

MS. CORPUZ: Hi, Kelly. I'm on here. I had to jump on late. If I could testify, this is Brandi.

CHAIR KING: I'm sorry, who's that?

MS. CORPUZ: This is Brandi Corpuz.

CHAIR KING: Oh, hi, Brandi. Okay. We just see a phone number.

MS. CORPUZ: Hi.

CHAIR KING: Okay. So we have...next we have Brandi Corpuz, who's got a...why don't you give us your background, Brandi?

MS. CORPUZ: Hi, yes. Hi, everyone. My name is Brandi Corpuz. I am the Executive Director of Rooted Kekahi Me Ka 'Āina, who is working on...we are working on protection and bringing people back to our beaches in Kihei that haven't been taken cared [sic] of, and having cultural practices there, and bringing back native plants. We're trying to do something to take care of the little bit that we have left. Although that is a wonderful project and it is in the wetlands, I wanted to talk today about the fact that I live in that area. I live right down the road from the Waipu'ilani Beach project that we are working on. And we are being inundated with developers who are building...trying to build on top of our wetlands as we speak. So this bill is so important to us as a community, whoever is still in Kihei, in the area, who wants to protect what little wetlands we have. We need this bill to go through so that these development projects will not even be possible, hopefully not even make it through the Planning. We just...we just was able to stop one project called the Waipu'ilani Hale project, which was being built on a

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wetland. But there's another project on the Waipu'ilani Gulch that is also...is further along, and they are basically doing all the work already, you know, grading and grubbing and doing everything, destroying that gulch as we speak. And there's kind of like nothing we can do about it because we don't have this type of bill in place to protect that wetland. And in fact, the Planning Department has told me several times that that is not a wetland, and it is not a dried riverbed...our gulch, which floods every single time it rains hard in Kihei or Upcountry. So we know that it's a wetland. We want to protect it. We know that there is special...it's a special area that needs protection, and it's one of the last that we can even keep going for the future of Maui County, or for the residents of Maui County. So please...I support this bill. I also support what Clare said, and what Robin Knox said about, you know, the revisions to it. It needs to be...it needs to be in there so there is no denial that the cultural practices and the things of the local people who know and love the area, and have the kuleana to take care of the area . . .
(timer sounds). . . are able to do that without problems. Thank you.

CHAIR KING: Okay. Mahalo, Ms. Corpuz. Any questions for our testifier? And Brandi Corpuz was the other presenter who was going to present at our previous Committee meeting, but she was ill at the time. So thanks for being here, Brandi, and for your testimony.

MS. CORPUZ: And now I'm . . . (inaudible). . . So sorry I couldn't come in earlier. I don't have Internet all the time.

CHAIR KING: Okay. We're happy to have you here. Okay. Seeing no questions, do we have any other testifiers?

MS. CORPUZ: Thank you, Kelly. Thank you, everyone.

CHAIR KING: Thank you.

MR. LEAUANAE: There are no other testifiers signed up right now.

CHAIR KING: Okay. All right. Since we have no other testifiers signed up at this time, this would be the time that...oh. Okay, I just got a note that Cody is trying to connect. Are you there, Cody? So since he's having a little bit of issues getting on, are there any objections to having Cody Nemet as a resource person? He was one of the people you heard from last time.

COUNCILMEMBERS: No objections.

CHAIR KING: Okay, great. So we'll have him on as a resource person. And then at this time, if there are no further questions of the testifiers, and no objections, we'll go ahead and close public testimony, and accept written testimony into the record.

COUNCILMEMBERS: No objections

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. . . END PUBLIC TESTIMONY . . .

CHAIR KING: All right. Thank you, Members. So go ahead...testimony is now closed. And I think I have a note that Mr. Whittaker from Corp. Counsel is on, and had a few comments that he'd like to make. There you are. Hi, Keola. Thanks for being here.

MR. WHITTAKER: Hi. Thank you. And thanks so much for allowing me time to make comments. I just have a small handful of relatively minor comments that I think will make this better. And thanks so much for meeting with us and the Planning Department offline. I think the changes that were made in this ASF are really good. So these comments are on top of what the Planning Department said, but we just have one minor disagreement with what they indicated. And that's on page 3. And I'm looking at the posted ASF, not the redlined version.

CHAIR KING: Okay.

MR. WHITTAKER: And this is in 19.47.010. The Deputy Director wanted to take out the word district, but overlay district is a defined term up above on that same page in Section 2. So you don't want to take out the word district because that changes a defined term. I don't think it's necessary. You can take out the word zoning maybe. That might help. But I don't understand the Planning Department's objection to an overlay district. This is how it's done in other jurisdictions to protect wetlands. You have an overlay district. And if you want to use that defined term, then you don't want to take out that word.

CHAIR KING: I think you were in agreement on that with OCS attorneys as well.

MR. WHITTAKER: Yeah.

CHAIR KING: Okay, great.

MR. WHITTAKER: On page 6, this is in 19.47.045. And this is kind of in line with the comments that Clare just made. In E, you might just want to add...it says traditional, maybe just traditional and customary plant cultivation. And then in G, we recommend removing the words in the second and third lines where it says, and possessed by ahupua'a tenants. Because that's pretty limiting because tenants is a...you know, a legal term that indicates that you have legal rights to that specific ahupua'a. It may make sense to just say, exercising those rights customarily and traditionally exercised for subsistence, cultural, and religious purposes by persons who are descendants, et cetera.

CHAIR KING: Okay.

MR. WHITTAKER: So it's not so limiting.

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CHAIR KING: Okay.

MR. WHITTAKER: Then the next comment is in that same page, 19.47.060. In that first line, nonconforming, we can take out, lots, structures and, because the permitted uses don't mention lots and structures. It's really about use...the use of the property. So we recommend removing, lots, structures, and. So it would read, nonconforming uses may continue. Then...

CHAIR KING: Oh, okay. Nonconforming uses and just . . .*(inaudible)*. . .

MR. WHITTAKER: . . .*(inaudible)*. . . continue, yeah. And I...what I think this is trying to accomplish, the intent of this, is to modify what's already in Title 19, 500.110. Because if you didn't want to modify it, you could just not have this section in there, but I think this is intended to modify that, which is fine.

CHAIR KING: Okay.

MR. WHITTAKER: And then just further down there in C, number 2, where it says, any dwelling or structure constructed, we recommend taking out the word constructed because that would mean it's completely constructed, but I don't think that's the intent here. You know, if they have all the building permits and they've already started, I think that's...it's intended to encompass that. So it'd just read any building or structure with a building permit that was approved prior to the enactment.

CHAIR KING: Okay. Okay. So we would be taking out constructed with a building permit?

MR. WHITTAKER: Just take out the word constructed.

CHAIR KING: Okay. Any...

MR. WHITTAKER: Any building or structure with a building permit --

CHAIR KING: Okay.

MR. WHITTAKER: -- that was approved. And the next one is page 10. This is in 18.08.100, all the way down at D, kind of in the middle there. It reads, the preliminary plat will be...and then the word deemed was removed, and it says automatically approved. We actually want to keep the word deemed approved there, even though it's...you know, that word, I think it was removed just to make it more clear language, but the word...the term deemed approved is a legalese term that is found in Hawai'i Revised Statutes 91-13.5(C). So we just want to keep deemed approved there.

CHAIR KING: Okay. And just remove be?

MR. WHITTAKER: Yeah. It has the same meaning, but that way it comports with State law.

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CHAIR KING: Okay.

MR. WHITTAKER: And then I think this will help solve maybe Planning Department's concern with the zoning districts. And so our next change is on page 12, where Wetlands Overlay District is added as a zoning district to 19.06.010. That's probably not necessary because it's not a zoning district. It's an overlay district, which is defined. So maybe this will resolve Planning's concern if we just remove U because it's just not necessary because it's not a zoning district, it's an overlay district.

CHAIR KING: Okay. So that whole U is only for zoning districts?

MR. WHITTAKER: Right. I think that section, 19.06.010, it says the County is divided into the following use zone districts. And since this is an overlay, it's not necessary for it to be listed there.

CHAIR KING: Okay. So Planning just proposed eliminating the word district, but you're saying just to eliminate that letter U.

MR. WHITTAKER: Yeah, eliminate letter U. You want to keep the word district in the beginning because it's a defined term.

CHAIR KING: Okay.

MR. WHITTAKER: And then I'm sorry if Planning already mentioned this, but in our meeting, we discussed...the bottom of page 12, 20.08.040, about any cut or fill activity or grubbing on land. That's...that could be, you know, almost anything, and they would have to come to Council for an exemption. And I think Planning had concerns about that. You know, it's legal to do that, but it...there might be...it might be a little unworkable. But I'll leave that to Planning.

CHAIR KING: Okay.

MR. WHITTAKER: That's all of our comments.

CHAIR KING: Okay. Yeah, we hadn't heard anything on that from Planning. So...

MR. WHITTAKER: Oh, okay.

CHAIR KING: Okay.

MR. WHITTAKER: I'll defer to them on that point.

CHAIR KING: Thank you. And you'll be here for the whole meeting?

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MR. WHITTAKER: Yes, we'll be here.

CHAIR KING: Thank you so much, and thank you again for hanging with us.

MR. WHITTAKER: Sure.

CHAIR KING: Okay. Any questions of Corp. Counsel? Wait, Keola, can you come back a minute? We have a question from Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: I actually don't have a question for Keola, but I do want to hear from Public Works.

CHAIR KING: Oh, yeah, I called them earlier and they didn't seem to be here.

COUNCILMEMBER SUGIMURA: Yeah, I think he's back.

COUNCILMEMBER PALTIN: I don't see him, but I'll give him a call. Jordan Molina, are you on? I don't see DPW on my screen. There you are. Okay.

MR. MOLINA: Hi, good morning.

CHAIR KING: Good morning. Thank you for being here.

MR. MOLINA: Yeah, thank you. And thank you for recognizing me, giving me the opportunity to discuss the bill. I have a few comments on this matter, so I'll just start plowing through them. First, in the policy statement, Section 020...and I'm referring to the most current ASF, August 3rd, 2022, which we just got before this agenda posting. It states at the end...very end, all discretionary permits issued by the County must be consistent with this policy. However, you wrote in grading permits, which is not a discretionary permit. I think that policy statement is misleading . . . *(inaudible)*. . . be clarified.

CHAIR KING: Where...what page of the bill is that in?

MR. MOLINA: Page 4, Section 19.47.020, the last sentence talks about discretionary permits as to suggest that the bill's only regulating discretionary permits. However, it's not because it's including grading permits, which are administrative permit, as defined in Chapter 280(B) for administrative permits.

CHAIR KING: Okay. I'm not really following where you're at, Jordan. The...are you under 19.47.030?

MR. MOLINA: 020, policy.

CHAIR KING: Okay.

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MR. MOLINA: The last sentence. All discretionary permits issued by the County must be consistent with this policy. This policy is not limited to just discretionary permits because grading permits are not a discretionary . . . *(inaudible)*. . . That's what's considered administerial permit, as defined in 280(B).

CHAIR KING: So are you saying that you think it should say all administerial and discretionary permits?

MR. MOLINA: I...I'm just saying I think the policy's misleading to say it only talks about discretionary, but it's including administerial permits as well.

CHAIR KING: Okay. So you're saying we should include administerial permits?

MR. MOLINA: Yeah, just to be consistent with the...not just the policy statement, but the actual application.

CHAIR KING: Okay.

MR. MOLINA: When we get into the Public Works related codes, like the subdivision ordinance, grading ordinance, the way this is organized, this is now for those applications that the...that the Public Works Director now is going to be making determinations against this ordinance. I oppose having two different entities, completely different authorities and duties under the Charter, administering this Title 19 provision. I think it should be consistent and done by the Planning Director.

CHAIR KING: What page are you on?

MR. MOLINA: So the subdivision section starts on page 9, goes into page 10, very...so it's at the top of page 11 where you have this new Subsection E for 18.08.100, where now the Director of Public Works makes decisions on this entire 19...new 19.47. And I think as far as administering all the requirements of this, that should be consistent as far as who is the authority making those determinations. So I would...rather than put it on the Director, just somehow rope it into the same process that everything else is going through to go through Planning Director's review. The other part about this is it's redundant. Title 19 already talks about subdivisions and grading ordinances, complying with all of Title 19. This is 19.500.070 for subdivisions. So that requirement is already in Title 19. Now, moving on to 8 under this Conservation Planning Committee, it's not clear to me what we're trying to do with this. It says the Committee may advise the Mayor, and then you have all this description on what wetlands is tucked into this Chapter 2.82 section. And why wouldn't you put all that into 19.47 to guide what is this mapping, what is going to be considered wetlands? So it's kind of confusing how all that description applies when it's tucked into 2.82. And the way it's organized here...so I'm not sure if you're telling the Mayor these are the areas he needs to be looking at, or somehow telling that the Conservation Planning Committee needs to be evaluating these descriptions of land. So I'd like some clarification on what...I guess

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what you were trying to accomplish with this section and the Conservation Planning Committee. Moving on to the grading ordinance, this is starting on page 12. So you're saying that grading cannot happen in an overlay district, but they can come get an exemption from Council. If...okay, sorry. Take a step back. So you're saying if grading that doesn't trigger a permit occurs, they need to come to Council to get a...more or less a permit. To me, you should just require anything in the wetland overlay to get a permit. Not clear why you would allow an exempt activity, but then make them come to Council. It should just come . . . *(inaudible)*. . .

CHAIR KING: I'm not really sure what you're asking. What section are you...I know what section you're in, but what letter?

MR. MOLINA: E, the new language about grading in the overlay district.

CHAIR KING: That's not clear to you? A person must not commence or perform any cut or fill activity or grubbing on land located in the wetlands overlay district without a grading or grubbing permit, unless the Council granted an exemption to this section when the Wetlands Overlay District was established by ordinance under Section 19.510.040. So if there was an exemption granted, then they don't need that permit.

MR. MOLINA: So they would already be subject to this 14.7 requirements, right? On top of that, they need to now come to Council as well. Is that the intent?

CHAIR KING: Unless they've been exempted.

MR. MOLINA: Exempted from what provision?

CHAIR KING: There's a whole section of exemptions, Director Molina, permitted uses.

MR. MOLINA: Okay. So not exemptions, permitted uses.

CHAIR KING: Well, it was actually...and I think it was actually your predecessor who asked to change that. It said exemptions, but we changed it to permitted uses, and that was her request.

MR. MOLINA: So if it's a permitted use and it grants a grading permit, and there's a determination it's inconsistent, then it can come to Council to basically overrule?

CHAIR KING: You want to move on to your next issue?

MR. MOLINA: I guess I'll take that as a no answer to my question.

CHAIR KING: Yeah. We were...we actually clarified those issues for Ms. . . . *(inaudible)*. . .

MR. MOLINA: Yeah, but you didn't clarify with the Department of Public Works since this new

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version had come out.

CHAIR KING: We clarified...

MR. MOLINA: We weren't included in those meetings with the Planning Department and Corp. Counsel to produce this latest version.

CHAIR KING: Okay. I think you were...Public Works was invited. But anyway, let's go ahead and move on.

MR. MOLINA: So some of these permitted uses still would require a grading permit. So now these types of restoration projects will need to come in for grading permits, will need to produce these reports on activities in the . . . *(inaudible)*. . . part of this proposal, so I just want to be clear that was the . . . *(inaudible)*. . . The other question was about special uses, such as infrastructure, and if those would be allowed to occur in the wetlands.

CHAIR KING: I'm sorry? I didn't quite...

MR. MOLINA: Whether...so there's no special uses allowed in this ordinance, right?

CHAIR KING: I don't understand your question. There are special uses permitted if you look under permitted uses.

MR. MOLINA: No, those are the permitted uses. There's no special situations outside of that list of . . . *(inaudible)*. . .

CHAIR KING: No, that was pretty comprehensive. And as I said, with your predecessor, we clarified that. It used to say exemptions, and now it says permitted uses, and that was her suggestion.

MR. MOLINA: Okay. So permitted uses means what is allowed? Anything not allowed is prohibited?

CHAIR KING: Right.

MR. MOLINA: So infrastructure uses are prohibited because they're not included in any of the . . . *(inaudible)*. . .

CHAIR KING: Right.

MR. MOLINA: Okay.

CHAIR KING: Unless they get an exemption from the Council. So I'd like to move on, Director, if you...is that all your concerns?

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MR. MOLINA: I just wanted to raise attention. Because under this framework, we're not sure whether like things like the Kihei drainage passage . . .*(inaudible)*. . .

CHAIR KING: I'm sorry, you cut out.

MR. MOLINA: I just wanted to point out that we're not clear on whether some of our infrastructure projects, such as the Kihei Drainage Master Plan recommendations can . . .*(inaudible)*. . . these restrictions.

CHAIR KING: Member Sugimura.

MR. MOLINA: And whether...and whether that was the intent.

COUNCILMEMBER SUGIMURA: I think these are such valid questions, and it's making me think about if you're talking about infrastructure, what about the North-South Collector Road and, you know, things like that? What impact does it have on existing projects that we have going on? And what will this project do in terms of us trying to proceed --

CHAIR KING: This bill?

COUNCILMEMBER SUGIMURA: -- on a project like that?

CHAIR KING: Yeah, if there is a wetland, then...and we have major infrastructure that's already going in, then we would have to get an exemption. And the purpose of that is to protect the wetlands so that we don't start overrunning and developing all our wetlands without knowing what we're doing and why.

COUNCILMEMBER SUGIMURA: So I'm just asking the Department. I mean, projects like that, is that an example of what this exemption that you're speaking of would impact, what we're currently doing?

MR. MOLINA: Yeah. Even storm response, if we got to go clean out these areas because they're accumulating debris.

COUNCILMEMBER SUGIMURA: Oh.

MR. MOLINA: I need to get a special Council approval to do emergency response stuff.

COUNCILMEMBER SUGIMURA: That'll take...that'll extend the problem, or make it more difficult to react immediately to an emergency like we just had in December?

MR. MOLINA: Yeah. So if they...

CHAIR KING: I don't think...

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MR. MOLINA: Yeah. So if the intent is to not, you know, disturb these areas, we'll just have to plan accordingly, but it limits the options available.

CHAIR KING: I think the point...the plan is not to build on these areas. So if there's a way that you...if there's something you see under permitted uses, like emergency, you know, storm debris cleanup, that we can add, that would be helpful. . . .(inaudible). . . you're saying?

MR. MOLINA: I guess I just want to understand the...your intent with this, that was something you meant to restrict or not.

CHAIR KING: I'm going to put that down as a potential addition to permitted uses if it's not in there already. Okay.

COUNCILMEMBER SUGIMURA: So I have a...I still have a question, if I could, with the Director then. So what do we do about existing plans that we have in place? I mean, surely, the North-South Collector Road, which goes, you know, clear across South Maui for a certain extent...what impact...or you can...you probably have a better example. That was the first one that came to my mind.

CHAIR KING: Yeah, I...

MR. MOLINA: I guess...or go ahead. Sorry, Chair.

CHAIR KING: Well, anything that's already built is not going to be removed.

COUNCILMEMBER SUGIMURA: But it's not built yet. It's not...North-South Collector Road is not built yet.

CHAIR KING: It's built about 80 percent. So there's two sections that need to connect it that will have to be looked at, but you know, to say that the entire North [*break in audio*] it's there. It's just that we're...we have sections of it that are not connected.

COUNCILMEMBER SUGIMURA: So will that be impacted was my question to the Director.

CHAIR KING: In my opinion, having lived here for 40 years, no, those two areas would not be impacted. They're basically bridges that have to go over a gulch. So they're not going to be building on top of wetland, you know, direct on top of wetland area. But I think we're getting a little bit off track. I want to start...now that we've heard concerns from all the parties, I'd like to go through the bill. Chair Lee.

COUNCILMEMBER LEE: Yeah. But I'd kind of like to know from the Director, instead of us thinking up which projects may be impacted, can you tell us which projects you have planned that will be impacted so that we can exempt them now or, you know...or consider allowing them as permitted uses? Which projects do you have planned now?

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MR. MOLINA: I mean, I guess...yeah, I could rattle those off or prepare a list, but I guess it's more the type of activity. It's not a specific project.

CHAIR KING: You know...do you have...Director, do you have a list of specific projects that are going on known wetlands?

MR. MOLINA: I guess that's the concern is the definition includes things like ephemeral streams. That is every drainage crossing we deal with. Culverts, bridges, board crossings potentially may get roped into this.

CHAIR KING: Okay. I think we have a comment from Corp. Counsel. Mr. Whittaker.

MR. WHITTAKER: Yeah, just to help this along, this bill does not create the Wetlands Overlay District. It says Council may create. So my understanding of the intent is first, Planning Department will create a map of the wetlands. Once that map is done, then Council has to establish the overlay district using those maps, adopting those maps. At that time, then Council should know what projects may be impacted and can exclude them at that time. But it's hard for Jordan to know what projects will be impacted without that map. And this bill doesn't establish that overlay district yet.

CHAIR KING: Okay.

COUNCILMEMBER LEE: Oh, okay.

CHAIR KING: Thank you so much. Okay. Mr. Molina, did you have a question?

COUNCILMEMBER MOLINA: Yeah. Madam Chair, just a suggestion for consideration. I know we've had a lot of suggestions made by Public Works, and now...and, of course, Planning. I don't know if your intent was to move this out today, or if it could be moved...or action taken, say, on your next scheduled Committee meeting, which would be the 17th. That way everybody's concerns have been heard. Hopefully we can get something moving at a...at a later point. I guess the questions surrounding...Director Molina had. So I've gotten writer's cramp today, you know, in terms of all the suggestions and changes being made to your ASF. So anyway, I just kind of throw that out, food for thought or, at the very least, maybe when we take a recess, a revised version of this bill that incorporates some of these suggestions from Corporation Counsel, Public Works, and the Department can be put on a share screen, so to speak. So at least everybody can get a full view. Because sometimes just getting something that's being verbally put out there without, you know, having something that can be viewed by not only us, but the public, I think would be more helpful. So anyway, if not today, maybe at the...on August 17th at your next scheduled meeting, we can have a full, broader view of this...all of these proposed changes. And then at that point, we can consider moving it out. But this is just me. So anyway, I'll wait to hear from the other Members. Thank you.

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CHAIR KING: Okay. Chair Lee.

COUNCILMEMBER LEE: Yeah. I share Mr. Molina's concern. Because now, with the way testimony is, there's a lot of breaks in our thought process. And what happens is somebody says something, and somebody else says something, and I can see where you have it all together because you met separately with Planning and with Corp. Counsel without interruptions. You just went over all the facts and all the information without any distractions from other people bringing up, you know, like extraneous issues. So it's really hard to follow this because there's so much information that was added. And so if we could just go through it one time, you know...

CHAIR KING: That's what we were...that's what we were supposed to be doing today. And you know, we worked all of this out with Planning, but now they have another one, two, three, four, five, six, seven, eight, nine, ten suggestions. And they're not huge suggestions.

COUNCILMEMBER LEE: Yeah.

CHAIR KING: . . .*(inaudible)*. . . that difficult. So you know, maybe, if you want me to, I can go back and incorporate these into the ASF and bring them back. I mean, it wouldn't take more than ten minutes, I think, to incorporate these suggestions.

COUNCILMEMBER LEE: Well, whatever we do, I mean, can we just do it through...the decision making all at one time rather than have it all choppy up...you know, all chopped up with different comments here and there. And somebody wasn't at the meeting, and somebody got...you know, it's all over the place right now. So we'd like to be where you are, where you have all the information organized in your head, as we like to have it that way as well.

CHAIR KING: Okay. Well, thank you. I appreciate that. And that's what...basically what we're trying to do here --

COUNCILMEMBER LEE: Yeah.

CHAIR KING: -- because we had the same conversation last Committee meeting. And I don't think there's ever going to be a meeting where somebody doesn't have another two or three, you know, small suggestions of wording. But we need to get through this because it's important to...you know, if we keep pushing it off, we're going to keep losing more of our wetlands as we speak. So we have a...Mr. Forrest had a...do you have a...have a comment on the current...where we're at with the current ASF?

MR. FORREST: Sure. Thank you, Chair. And I think my comments sort of mirror Corporation Counsel. I think there is a little bit of a misunderstanding about the process here with Public Works' comments, of just misunderstanding the bill. I think a lot of that is

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cleared by when you...when you read the sections of the bill related to the granting of the exemptions. So this would be the framework, and then whenever any particular wetland was up for, you know, delineation, the Council could grant exemptions at that time. And say there was a roadway through there, you would grant an exemption if you found it necessary for that particular roadway at that time. So it's all built into the bill. I understand that it's...in the discussion today, there's some misunderstandings, but all that is already cooked into the bill but, you know, we can obviously work on making it clearer if the Council decides that's necessary. But it's in there. We're worked with Corp. Counsel, again, and Planning. And during the Planning meeting, we took all of their...their points and put them in the bill, for example. But it's clear that there's still come misunderstandings, and that's just what I wanted to say is that the exemption process is the time for the Council...similar to the affordable housing process. When you...when we create special conditions, that's whenever you could create special conditions and allowed uses.

CHAIR KING: Okay. Thank you, Mr. Forrest. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. A couple points. I never was able to get the edits that were clarifying questions from Ms. Knox addressed because we put it off from testimony.

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: And then second question I had, I think it would be from Corp. Counsel, regarding page 8 on the redlined ASF, which is Section 4, Subsection J, of 2.82.040, relating to the Conservation Planning Committee. I was wondering why that wouldn't be in the Chapter 19 portion. And I mean, not to diminish the Conservation Planning Committee or the Mayor, these things seem like it does relate to Title 19 more so than an advisory committee to the Mayor.

CHAIR KING: Mr. Whittaker.

MR. WHITTAKER: Sorry, I don't have the redlined version on me. Could you say what section again?

COUNCILMEMBER PALTIN: Sure. It's Section 4 --

MR. WHITTAKER: Yeah, got it.

COUNCILMEMBER PALTIN: -- Subsection J, of Section 2.82.040 --

MR. WHITTAKER: Okay.

COUNCILMEMBER PALTIN: -- Maui County Code, relating to the Conservation Planning Committee. And it lists out all those things.

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MR. WHITTAKER: So that's the duties and obligations for the Conservation Planning Committee, which is probably why it was placed there, because that's the section that delineates what powers they have and what obligations they have.

COUNCILMEMBER PALTIN: So you don't think it's important for Title 19 to include this as well, or...

MR. WHITTAKER: It depends on the intent. You know, if these factors are important for purposes of mapping and delineating the wetlands, then they should be in Title 19. However, if it's just to provide certain powers to the Conservation Planning Committee, then it's fine that it's here. Jordan Molina didn't mention this, but he is the Chair of that Committee as well as the, you know, Director of Public Works. So I'll defer to him on...on the details of that Committee. But it's fine that it's here since it's dealing with the Committee's powers.

COUNCILMEMBER PALTIN: I guess, then, my question would be for someone like Ms. Knox, if these factors here are important in mapping and delineating wetlands. And then I think what Mr. Whittaker was saying, that they should then be put in Title 19 as well.

CHAIR KING: Ms. Knox.

MS. KNOX: Yes. Thank you, Member Paltin. I do believe that it would be best to include those in the definitions of a wetland. And in fact, much of this comes from U.S. Fish and Wildlife Service and the National Geodetic Data Guidelines that the Federal Government uses to map wetlands. So I do think that it would be appropriate to move that, or to also include it in the definition. You know, I guess it'd be up to people other than me to say whether it needs to be where it is, but I would agree that it does need to be in the definition.

CHAIR KING: And you're talking about the whole section?

MS. KNOX: Yeah, the whole...

COUNCILMEMBER PALTIN: Descriptive.

MS. KNOX: Starting with A under 2, where it's talking about the Committee, you know, what they're...what they can do. And then it lists all these...or different types of wetlands. I think all of that detail from A, B, C...yeah A to...A to J. All of that should be included in the definition.

COUNCILMEMBER PALTIN: Because it assists with mapping and delineating the wetlands?

MS. KNOX: Right. And most of that is directly from the mapping guidelines for the Federal Government.

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COUNCILMEMBER PALTIN: Okay. And then you can have a reference from 2.82.040 to that section in 19, and then I mean, you don't have to redundantly repeat it. Or you could, I guess...whichever.

MS. KNOX: That would be my opinion, but I'm not the legal expert here.

CHAIR KING: Okay. Let's go to our legal expert before I call on Mr. Reyes. I think, Mr. Forrest, you had a comment on it, and then Mr. Whittaker.

MR. FORREST: Thank you, Chair. And I am the one who worked on some of the drafting of this, so I can give a little bit of background. So it is true that this comes from...you know, it's not exactly the same as delineation standards, but the delineation standards are in the other area. So this language is already incorporated in the mapping section, okay. This section was sort of born from discussion with the public when they wanted specific things specifically listed under here, okay. So that's where we got this long list. But if you look at the language itself, it's probably going to give you the answer. It says in (J)(2), the end of that sentence says, restore or protect wetlands, okay. So that's where that could end. Whenever we have a word in legislative drafting, the word including, that's not...that's just a list that says that it can include these, but it's not limited to, okay. So we are giving them a baseline of what we think wetlands includes, but it could be other things. That's the origin of this section. And again, it came from discussions with the Planning Commissions when people wanted...you know, we told them that it was in the definition of wetlands, that it might be redundant, but they wanted us to put it in there specifically. So we did that. And I don't have a problem with that. I don't think Corporation Counsel has a problem with that. I understand that it can be confusing to read, but when you read it in the context, legislative interpretation, everything after the word including is just a nonexclusive list. I do not think this needs to be copied into the definition of wetland. That's a very big change in the decision, and the definition of wetland is mirroring almost, the Federal definition of wetland.

CHAIR KING: Okay. Mr. Whittaker.

MR. WHITTAKER: I concur. When you say legal expert, though--I'm going to turn on my camera very quickly--I don't think it needs to be copied over. They serve different purposes. And there's no reason why the Planning Department can't look at those factors when they're delineating, and I think they will. So there's no reason to put it in two places.

CHAIR KING: Okay. Thank you for that. And I think Mr. Reyes had a comment.

MR. REYES: Yeah, just...thank you. I just wanted to comment on that list with regards to like the mapping effort. You know, the mapping effort, I think that we took great pains to stay as close to the Federal and State method for mapping wetlands, which is the Army

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Corps method, and then we just made it more restrictive. And so I think that adhering to a well-established scientific method for delineating wetlands would be the...you know, the correct approach with regards to mapping the wetlands of the island.

CHAIR KING: Okay. Thank you. Ms. Knox.

MS. KNOX: Yes. I just would like to clarify, from a technical standpoint, that these...the vast majority of that description comes from the U.S. Geodetic Data guidance for mapping wetlands. So what has been mentioned was the word delineation, Corps of Engineers definitions, and so forth. What...the whole purpose of this bill is to be more protective than that, and these are well recognized, scientific categorizations that are used by other branches of the Federal Government other than the Corps of Engineers for mapping. So I think it is important from the mapping standpoint that these be clearly part of the definition.

CHAIR KING: Okay. Member Paltin.

COUNCILMEMBER PALTIN: Yeah. I guess based on Mr. Reyes' comment, I'm a little bit confused as well. Because what we had heard the last time when we were discussing Waipu'ilani was that it's a wetlands, but that the Army Corps of Engineers doesn't recognize it as a wetlands. And now we're creating this wetlands bill that is supposed to be more protective, but we're using the Army Corps standards.

CHAIR KING: No.

COUNCILMEMBER PALTIN: I'm a little confused on that.

CHAIR KING: The Army Corps has three conditions that need to be met, and in this bill it says only two of the three need to be met. So it's allowing for a broader definition of wetlands.

COUNCILMEMBER PALTIN: And then just a follow up on that. By that broader definition of wetlands, would parcels such as Waipu'ilani then qualify?

CHAIR KING: I'll let...Mr. Reyes, do you want to respond to that?

MR. REYES: Well, I haven't been specifically to that Waipu'ilani parcel, but I would imagine yes, in that ephemeral...like an ephemeral stream like Waipu'ilani may not have like hydric soils because water's not flowing through it enough, but it would still have like aquatic vegetation. And by virtue of being a stream, it has an indicator of hydrology. And so two of the three requirements would be met. And so in that instance, you would assume that it would have more protection under the Maui County wetlands bill using this mapping methodology than the Army Corps.

COUNCILMEMBER PALTIN: And to clarify, it...the Waipu'ilani parcel is separate from the Waipu'ilani Stream. We're talking about that one...I forget the address, but it's off

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Waipu'ilani Street.

MR. REYES: Yeah, so that's a great example. That one, certainly you would have at least two of the three indicators. And so that would be a good example of an area that the Army Corps does not claim jurisdiction over, but that would still be considered...would be mapped as a wetland and make it into the wetlands overlay because you're only required two of the three indicators of a wetland.

COUNCILMEMBER PALTIN: Okay. And then I'm not sure if Mister...Director Molina had anything to add.

CHAIR KING: Anything to add on that lot issue, or the definition, Mr. Molina?

MR. MOLINA: Yeah, I think we're missing the point I was trying to make as far as what...the actual function we're trying to regulate here. Because to me, all it's saying is really you want it stated that we would review acquisitions, which the CPC already is charged with doing. Not sure how the rest of this really applies in any way as far as what the duties of the . . . *(inaudible)*. . . We're already charged with providing comments on land acquisitions. If this was meant to somehow highlight wetlands, to describe what they are, to prioritize them for acquisition, I think there's more appropriate sections to convey that policy to be more clear, such as the open space ordinance, to talk about the purpose of those funds and the purpose for acquiring such types of lands. So I mean, the definition itself is fine. It's the application that I'm unsure of the intent here.

CHAIR KING: Okay. Maybe I can call on Mr. Forrest again to explain why this is in here in this section.

MR. FORREST: Thank you, Chair. I think there's two points I want to make. And the first is just that I do agree with Corp. Counsel again that this is the powers and duties, and again, it does say may advise. We changed that from must advise. That's a discretionary function, and it does relate to acquiring property. So if you did have a project, you may advise the Administration that you would like them to acquire it through eminent domain. And then to give you some guidance of what wetlands are, you can look at the list. So that, to me, is...you know, I understand the confusion around it, but I think that sums it up, and the fact...it is in your power and duties, but it is discretionary. Now, to address Councilmember Paltin's question, I believe, I'm not sure about the parcel, but I think this gives context to the whole bill, that...remember, wetlands are protected by the Federal law if they're adjacent to navigable waters. Those are waters of the Federal Government. So what we're saying is that we're going to try to keep the same concept, but apply it anywhere on the island, whether or not it's adjacent to navigable waters or not. And then what you guys are working on at this point would be, do we want to keep the same protections, do we want to keep the same definition, or do you want to change it to be more custom to Maui County. So that's the overall concept of what we're doing. Again, when someone says an area wasn't protected as a wetland by the Federal Government, it might not be that it didn't meet those one, two,

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and three categories; it might be that it just wasn't adjacent to navigable waters.

CHAIR KING: Okay. Thank you, Mr. Forrest. Chair Lee, yeah.

COUNCILMEMBER LEE: I have a question for you, Mr. Forrest. It was mentioned earlier by Corp. Counsel that the first step here is to do the mapping to identify all the areas, okay. But we're spending an awful lot of time on skipping that first step and talking about the implementation part of it, of how to...how to protect, how to restore, the dos, the don'ts. And we're spending an awful lot of time on those details, when we don't even know where all the wetlands are. You know what I'm saying? So this bill doesn't make it crystal clear that the first step is to identify...identify and establish wetlands. I think...I think that part, I guess people just took it for granted, but for the average person, you know, it's important to know that we don't know where all the wetlands are, first of all. And here we are, making policies for places we don't even know yet. So that's adding to the confusion. Any comments on that, Mr. Forrest?

MR. FORREST: Thank you, Chair. I think if we need some clarification, we can add some language, not a problem. I understand that it doesn't flat out say that, which we can put that in probably in the policy decision section to make that more clear. But you are right. And then a lot of these details will come when...if you look under the establishment section, after the mapping is provided, the Council's going to establish by ordinance. When you do that by ordinance, that will be fact-specific to those plots that are involved, and that will be a zoning change ordinance like you do often. So at that time, all of these particulars about if there's a highway, or if there's some particular grubbing exceptions, all of that can be included in that ordinance. And I do think it will be--bring back the affordable housing policy again, you guys have sort of adopted some common changes that you do to those agreements. There might be some common exceptions that you guys have created whenever you're dealing with grubbing or restoration projects, for example. But again, this is a establishment clause. And if it's not clear, I think we could put some language in that policy section, or really anywhere in the...in the beginning of it, to make it clear what the process would be.

COUNCILMEMBER LEE: I'm very concerned about South Maui projects, honestly, because to get an exemption from the Council might take God knows how long. I mean, you...we all know that too often, we move at the speed of molasses. So we need to have exemptions in there already for the Departments to just go in there, and especially in emergency situations, and just fix the issues, you know, the problems, because that's public safety, Mr. Forrest.

MR. FORREST: Okay. Can I address that, Chair?

CHAIR KING: Sure.

MR. FORREST: Okay. Yeah, that's a great point. And that would be done...so under the bill, as it's drafted now, the Council can create exceptions at the time you do the ordinance.

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So if you're going to create a wetlands zoning district, at that time, you could say--and I would recommend--you could develop an emergency response exception that you put in all wetlands, if that's what you would want. At the time when you create the ordinance, you could put in those exceptions so that you don't have to come back for an exception at a later time. But you can...you have the power to come back for an exception at a later time if there's something that comes up that you didn't think of.

COUNCILMEMBER LEE: Thank you.

MR. FORREST: If that's not expressed, then we can make it clearer, no problem.

COUNCILMEMBER LEE: Thank you.

CHAIR KING: And my concern is that we don't want too many exceptions that we end up continually losing more and more wetlands in South Maui. We really can't afford to lose any more. So, you know...but that will come...that will come after this bill goes through and the overlay is created. So Committee...so Members, I can go back to the drawing board. I'm kind of disappointed that these concerns came up at the last minute because this...you know, like I said, this has been posted for a week. We had a meeting with Planning. We got some...now we have new concerns that didn't come up during that meeting, but I'm happy to address those. We do have a difference of opinion between our legal counsel, both with Corp. Counsel and OCS, and the Planning Department, as far as eliminating the word district. And so I would tend to agree with our legal advice to leave that word district in. Is there anybody that's diametrically opposed to that? Mr. Whittaker.

MR. WHITTAKER: Yeah, I was messaging with Jacky, and she...I think she agrees now. As long as we take out that portion from the zoning, you know, section of the ordinance, I think she's in agreement that we can keep the word district.

CHAIR KING: Okay. And take out the word zoning from where?

COUNCILMEMBER LEE: The letter U.

MR. WHITTAKER: Take out that U, right, from 19.06.010.

CHAIR KING: Okay.

MR. WHITTAKER: Just take out that U from districts designated.

CHAIR KING: Okay.

MR. WHITTAKER: That would resolve the...Planning's issue.

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CHAIR KING: Okay. So they don't have an issue with that first concern they had on page 3? Okay. So I can go back in and try to give...get a clean bill together and bring it back, but we thought we did that. So, you know, if we don't work through all these things together, then I don't want to be...I don't want to be in a situation where everybody feels like I'm the only one who understands what's going on because I've been in these meetings. But I'm just hoping that the Committee Members kind of understand where everybody's at now and, you know, how we move forward. And I can do that, and then bring back a clean bill next time. Is that...is that the will of the body? You know, I just don't want this to go on and on, and have people be dragging...I saw this happen with the sand mining bill. And meanwhile, sand mining kept going on while we were trying to create this bill to ban it. Member Paltin, followed by Member Sinenci.

COUNCILMEMBER PALTIN: Thank you. I just wanted to clarify that part about the district and the zoning, if we're on 19.47.010. So what Mr. Whittaker is saying is we're okay with the Council may establish by ordinance under Section 19.510.040 Wetlands Overlay District, and then strike the work zoning, and then it's all good?

CHAIR KING: And what page are you on? You're on that first page 3?

COUNCILMEMBER PALTIN: 3 in the redline.

CHAIR KING: Yeah.

COUNCILMEMBER PALTIN: Page 3 in the redline, but he said he's good. So I understand what he's saying.

CHAIR KING: Yeah, so we would...we would say that the...

COUNCILMEMBER PALTIN: And let's also delete that U...would also correspond to that.

CHAIR KING: So what does the Committee want to do? Do you want to work through all the changes, or do you want me to bring the bill back another...the...another, hopefully final, version of the bill? Member Paltin.

COUNCILMEMBER PALTIN: Yeah, yeah, I would like that. And then I was wondering if when you post the agenda if you can post the redlined version that would be redlined off of what came off of the Planning Commission or something. Or like not necessarily have to be that, but we need to know what is the starting point, and what is the ending point, so that we...you know what I mean? It doesn't necessarily have to be the bill that came out of Planning Commission. It could be possibly this redlined version that we received today, but you know, post it. And then same thing, I still didn't hear Ms. Knox's edits. So if she can be brought into the conversation as well when we have those discussions.

CHAIR KING: Yeah. Let me just ask OCS because I was told earlier we don't post redline versions. So maybe...Mr. Forrest, can you speak on the issue of the...

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COUNCILMEMBER PALTIN: Just for the ease of us, it's a pretty complex subject. So it helps. Otherwise it's very difficult to...it'll take hours as opposed to minutes.

CHAIR KING: Yeah. I don't have a problem, but I was just told that we don't do that. So maybe we can get a response.

MR. FORREST: Yeah, thank you, Chair. We can post that if that is the request of the Chair. It's not what we usually do, but if you guys want it, we of course can do that. I want to just talk about the history of the bill so everyone has a good starting point. So the version that you're looking at now was the bill that came out of Committee, okay. When it was sent to Council, and then later sent to the Planning Commission, the Planning Department created their own version of the bill, okay. So that went through the Planning Commissions, and then it went back, and then we went back to our own version. When we went back to our own version that came out of the CARE Committee, I got all of the changes that were made and incorporated them into our version. So I adopted everything I could that was in the Planning Department's version. They wrote their own bill basically, and...but I used the parts that we agreed on to put them back in our version of the bill. That's the history. And I understand why there's a...if we did a redlined version, it would be an entire redline, but this is truly a substituted bill is a good way to put it. And so going forward, we can do a redline from everything that we change today, and that was changed from the posted ASF.

CHAIR KING: Does that help, Member Paltin? Yeah. I see . . . *(inaudible)* . . .

COUNCILMEMBER PALTIN: Yeah, so a redline...the redline that will be posted on the next meeting will be a redline from the original version that came out of Committee the first time, and maybe a different color of what is redlined from today. Is that what he said? Just repeating it back so that it's clear.

CHAIR KING: Mr. Forrest.

MR. FORREST: We can do that, yes.

CHAIR KING: Okay. I don't understand...Mr. Forrest, I don't understand. If we passed a bill out of this Committee to go to the Planning Commissions, how can the Planning Department change it, and then give a different bill to the Planning Commissions?

MR. FORREST: Chair, I believe that was discussed at the Council level, and I believe it was a compromise that was...that was reached by the Members. And that version is what was sent to the Planning Commissions. And I think the other version was also attached.

CHAIR KING: Oh, okay. Okay, so they got both.

MR. FORREST: It was...

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CHAIR KING: Okay. Member Sinenci, I'm sorry, our Committee Vice-Chair.

VICE-CHAIR SINENCI: Chair. And yeah, and I did want to refer to Mr. Whittaker's chat item when it came to the permitted uses, where he says under 20.08.040(E) and U, number 3, that reads such activity is permitted use under 19.47.045. So to his point, I...again, I appreciated the conversation and the discussion today. And mahalo to Ms. Takakura for coming in and kind of explaining that, but I think when it...when Chapter 19 affects other sections of the Charter, that's also helpful when we can kind of see, okay, this is because it refers to different parts of the Charter, then we need to change that also. I do agree with Chair Lee when she says that this is to establish the mapping, so that we can start with the...establishing those wetland areas first. But it also...I'm intrigued by the...by the potential of this and how it can also expand. I know Chair Lee had mentioned about drainage, and how do we address the drainage of South Maui, including the wetland areas. So I'm...I mean, I'm intrigued about that part. How do we use wetlands as a place to begin looking at drainage for South Maui Nui? I appreciate it, Chair. Thanks.

CHAIR KING: Okay. Thank you for those comments, Committee Vice-Chair. Okay. So that's another potential addition is under 20.08.040(E) at number 3, such activity is a permitted use. Not sure...Mr. Whittaker, on that one, you're...that would refer to what's listed in E, when you say such activity?

MR. WHITTAKER: That's right. So this is addressing Director Molina's comments on the exceptions for needing...for grading and grubbing permits. And I think you indicated your intent was to allow for activities that are already a permitted use. And so somebody wouldn't have to come to Council to get the exemption if it's a permitted use. So this just makes that clear.

CHAIR KING: Okay. So it's just saying that that's one of the permitted uses. Okay. Did we get that, Staff? Okay, Members. So it sounds like the body wants to continue working on this and get another version of the bill in front of you. Hopefully we won't...we won't create a additional 25 more changes after that. I think...are we all fairly clear on the intent of the bill and the...and the way we're going about this? Okay, great. So I'm kind of torn between deferring this and maybe recessing this meeting so that we can go start right back into the bill when we start. Can we do that if it's two weeks...if the next meeting is two weeks away, Mr. Forrest?

MR. FORREST: Are you asking if we could recess?

CHAIR KING: We can recess this meeting or...I guess we would need a new meeting in order to post a new ASF? Does it have to be a new meeting?

MR. FORREST: I think you can. Recessing for two weeks is okay. It's all a matter of timing and a reasonable time to recess. So two weeks is fine.

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CHAIR KING: Okay. So what's your pleasure, Committee? Is it...is a recess...is there any objections to recessing? And then we can come up with a cleaner version of the bill, which we can start writing through the work of the Committee when we get to the 17th. Any objections? Member Sugimura, followed by Member Paltin.

COUNCILMEMBER SUGIMURA: It looks like the testifiers today were actually mostly our resource people because it's so highly specialized. So I think either way you decide to do it, you know, I would love to have your same resources available as this comes up. So you may have the same amount of people testifying as we just saw. I don't know that it's that important to do a recess.

CHAIR KING: Well, we wouldn't be having testifiers. We would just have the resource people.

COUNCILMEMBER SUGIMURA: Right. Right, but I'm saying that a lot of the testifiers today were actually...I mean, a lot of them that testified were actually resource people that provided us information. So...

CHAIR KING: Right. And they can be here again, but we won't need to go through the testimonials first, so that we could get right into the new version of the bill is the intent. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I don't have an objection. I just wanted some clarification. So if we recess, when we post the recessed meeting, would you be able to come back...I mean, include in the meeting details the new bill that you're coming back with, or would we need to wait to see it when we get...when we gavel in? That would be my first question. And then my second question is, the folks that you're going to consult with to make the revised...the revisions of the redlined version would be Corp. Counsel, Planning, Public Works, and Mrs. Knox...Ms. Knox and Mr. Reyes to get...encompass their feedback? Those are my questions.

CHAIR KING: Yes. And probably Cody Nemet as well.

COUNCILMEMBER PALTIN: Um-hum.

CHAIR KING: He was a resource today too. He's had some trouble getting on the call. But that was...that was the question I just asked Mr. Forrest. And now I'm being asked to take a quick recess so that we can figure out whether we can post a new bill or whether we have to have a new meeting, because that was my question to him and he thought we could do it. So if there's no objections, we'll just take a quick...

COUNCILMEMBER SUGIMURA: Can I ask you a question?

CHAIR KING: Sure.

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COUNCILMEMBER SUGIMURA: This is related to recessing. So because of clerks using the Chamber, when you come back for your recessed meeting, do we have to have the address to be again the 9th Floor? Or can we go back to the 8th Floor as the published address?

CHAIR KING: Oh, for a recess, you mean?

COUNCILMEMBER SUGIMURA: Yeah. So can you find that out also?

CHAIR KING: Yeah.

COUNCILMEMBER SUGIMURA: Because you're...okay, thanks.

CHAIR KING: So let's come back at 11:45. Let's just take a four-minute recess if we can. Okay. Recess for four minutes. So it's 11:41. . . .*(gavel)*. . .

RECESS: 11:41 a.m.

RECONVENE: 11:46 a.m.

CHAIR KING: . . .*(gavel)*. . . Will the Climate Action, Resilience, and Environment Committee please return to order? It is 11:46. Thank you, Members, for coming back. And you know, we have either option, but because we don't know...we're...right now we don't know where the next meeting will be, it was...I was advised to go ahead and adjourn the meeting because we have to notice...even...if it was going to change, we could still recess it, but we have to know now. If we're going to recess, we have to know now where the next recessed meeting's going to be. And we still don't know if Elections is going to need the Chambers, apparently, in the next two weeks. So if there's no objections, then we can go ahead and adjourn. And then we'll re-notice the meeting. Any other last thoughts? I guess my last request would be to Robin Knox and to Jacky Takakura. If you would put your suggested changes in writing and send them to the Committee, that would help a lot so that we don't get delayed yet again. And Public Works as well, if you have any suggested changes or additions, please put those in writing. That...is that...can you do that, Jacky?

MS. TAKAKURA: Yes, Chair. I'll do that.

CHAIR KING: Okay. Thank you. And thank you so much for being here and for...I mean, you had a...you had a pretty comprehensive list of things, and they weren't that large, but you know, there's just...along with some of the other questions, I guess we're going to have to go one more time on this. Any...anybody else have comments? No? Okay. If not, then if there are no objections, we'll go ahead and defer this item.

COUNCILMEMBERS: No objections.

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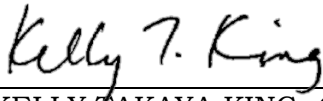
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ACTION: DEFER pending further discussion.

CHAIR KING: Thank you, Members. It's 11:48, and the CARE Committee is adjourned for today. . . .(gavel). . .

ADJOURN: 11:48 a.m.

APPROVED:



KELLY TAKAYA KING, Chair
Climate Action, Resilience, and
Environment Committee

care:min:220803:bc

Transcribed by: Brenda Clark

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CERTIFICATION

I, Brenda Clark, hereby certify that pages 1 through 55 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 8th day of September 2022, in Wailuku, Hawai'i



Brenda Clark