

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Council of the County of Maui

MINUTES

September 8, 2022

Online Only via BlueJeans

RECONVENE: 1:35 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Kelly Takaya King, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Gabe Johnson (out 1:55 p.m.; in 2:30 p.m.)
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Tamara Paltin
Councilmember Yuki Lei K. Sugimura (out 3:05 p.m.)

STAFF:

Lesley Milner, Legislative Analyst
Wilton Leauanae, Legislative Analyst
Kasie Apo Takayama, Legislative Analyst
Shelly Espeleta, Supervising Legislative Analyst
James Forrest, Legislative Attorney
Clarita Balala, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk
Nalani Fujihara, Hawaiian Language Communications Specialist

Mavis Oliveira-Medeiros, Council Aide, Hāna District Office.
Denise Fernandez, Council Aide, Lānaʻi District Office
Zhantell Lindo, Council Aide, Molokaʻi District Office
Anabelle Hernandez, Council Aide, Makawao-Haʻikū-Pāʻia District Office
Daniel Kanahele, Council Aide, South Maui District Office

Axel Beers, Executive Assistant to Councilmember King
Ellen McKinley, Executive Assistant to Councilmember King
Jordan Helle, Executive Assistant to Councilmember Sugimura
Kate Griffiths, Executive Assistant to Councilmember Johnson
Roxanne Morita, Executive Assistant to Councilmember Johnson

ADMIN.:

Keola Whittaker, Deputy Corporation Counsel, Department of the
Corporation Counsel
Richelle Thomson, First Deputy Corporation Counsel, Department of the
Corporation Counsel
Jordan Molina, Director, Department of Public Works
Alex de Roode, Economic Development Specialist, Climate Change,
Resiliency & Sustainability, Office of the Mayor

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OTHERS: Jay Penniman, Project Manager, Maui Nui Seabird Recovery Project
Dr. Steve Montgomery, Conservation Council of Hawaii
Jonee Peters, Conservation Council of Hawaii
Hannah Bernard, Executive Director, Hawaii Wildlife Fund
Additional attendees (6)

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

CARE-74: BILL 21, CD1, FD1 (2022), SEABIRD AND BIODIVERSITY PROTECTION

CHAIR KING: . . .*(gavel)*. . . Will the Climate Action, Resilience, and Environment Committee please reconvene. Today is—what is today? September 8th.

COUNCILMEMBER SUGIMURA: 8.

CHAIR KING: This is a reconvened meeting from September...or August 31st. So thank you, Members, for being here. It looks like we have quorum. I'm going to go through just an abbreviated summary of the Sunshine Law. If you're not in the Council Chamber, when your name is called, please identify by name who is present with you in the room, vehicle, or workspace. Minors do not need to be identified. Please silence all cell phones and noise-making devices, anybody who's on this call, until it is your time to speak. My name is Kelly Takaya King. I'm Chair of the Climate Action, Resilience, and Environment Committee, otherwise known as CARE. And we also have with us Committee Vice-Chair Shane Sinenci. Aloha. And it looks like we have a greeting, bongu.

COUNCILMEMBER LEE: Bongu.

VICE-CHAIR SINENCI: Kia ora and bongu, Chair. For the record, we're still at the Lānaʻi District Office blessing. . . .*(laughing)*. . .

CHAIR KING: Okay.

VICE-CHAIR SINENCI: And I'm here. We got stuck. I'm here with Ms. Morita and Miss --

CHAIR KING: Miss...who?

VICE-CHAIR SINENCI: Oh, is it? Sorry. I'm with the District...Lānaʻi District Staff.

CHAIR KING: Okay, great. And we're reconvened, so we've already closed testimony. So, no need to report on that. Thank you so much. And we have next our Chair Alice Lee. Bongu, not to be confused with bonjour.

COUNCILMEMBER LEE: Right.

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CHAIR KING: You can tell us where it's from.

COUNCILMEMBER LEE: Okay, this is the Archipelago of Malta. Malta is in the Mediterranean, and it's between Sicily and Africa. It's a beautiful place, have a half a million people. And so, the greeting there is bongu. Bongu. And I'm home alone in my house, in my workspace, and looking forward to your meeting. Thank you.

CHAIR KING: All right. Thank you. All right, we...next we have...oh, let's see, Member Johnson. It says excused, but I think you're going to be excused for a small portion of the meeting. So bongu and good afternoon.

COUNCILMEMBER JOHNSON: Bongu, Chair, Councilmembers, and community members. I am with Don Atay in my...in my workspace. And we are coming back from Blue Ginger's. . . *(laughing)*. . . Sorry, a minute or two late. But...and there's no testifiers in...in the brand-new District Office. Mahalo, Chair.

CHAIR KING: Okay. Thank you. And congratulations again on your new District Office. I'm sorry, I missed the blessing yesterday. We also have with us Councilmember Mike Molina from under his virtual bridge. Bongu and good afternoon.

COUNCILMEMBER MOLINA: Bongu and aloha, Madam Chair. Yes, I am under the virtual bridge. I've made the...the run from Wailuku up to my residence here in Makawao up in my workspace. And no humans presently, just a four-legged creature and a couple of feathered...feathered friends in the household with me. And to my knowledge, no testifiers at the Pā'ia District Office. Mahalo, Madam Chair.

CHAIR KING: Okay. Mahalo. That's a good thing because we're not going to allow testifiers today. All right. We have our Councilmember from West Maui, Tamara Paltin. Bongu, 'auinalā.

COUNCILMEMBER PALTIN: Bongu and aloha 'auinalā. I just so happen to know a couple folks in Malta today. So that's crazy.

COUNCILMEMBER LEE: Wow.

CHAIR KING: Wow.

COUNCILMEMBER PALTIN: Herb and Dee Coyle, they're...I...following them on Facebook.

COUNCILMEMBER LEE: Oh, I know them.

COUNCILMEMBER PALTIN: Yeah. They're in Malta today. Crazy.

COUNCILMEMBER LEE: Wow.

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COUNCILMEMBER PALTIN: So broadcasting live and direct from the West Maui District Office, where I have Staff Angela Lucero and Christian Balagso in the West Maui District Office with me. And we have no testifiers. Thank you.

CHAIR KING: Okay. Thank you so much. And we have Councilmember Yuki Lei Sugimura from Upcountry. Bongu and aloha 'auinalā.

COUNCILMEMBER SUGIMURA: Bongu. I am Upcountry, and I will...Chair, I think you know this, but I'm going to be leaving. I have to leave the meeting at 3:00 to go to the Soil and Water Conservation Western Regional Conference that's happening here. But thank you. Looking forward to this meeting.

CHAIR KING: Okay. Thank you for being here. I know you originally said you weren't going to be able to make it. But is that...is your conference virtual?

COUNCILMEMBER SUGIMURA: No.

CHAIR KING: Oh, it's in person. Okay.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR KING: Okay. And we have no Non-Voting Members here. We have...we may have some Members of the Administration as potential resource people. It looks like Alex de Roode from Climate Change, Resilience & Sustainability Office is here. I think we have Keola Whittaker. Are you here, Mr. Whittaker? Not here at the moment, but...okay. Oh, he signed in. Okay. And I'm not sure if Director...is Director Molina on? Oh, yeah. And I can see Keola's (*audio interference*) okay. I don't see Public Works here yet. Our Committee Staff today is Lesley Milner filling in for Brittney Sunderland who's...I guess she's not with us anymore...Legislative Analyst; and Wilton Leauanae, our Legislative Analyst; Calala...or Clarita Balala is filling in for Jocelyn as Committee Secretary, and I think Jocelyn is on vacation; and we have James Forrest, who's our Legislative Attorney, been working really hard the last few days on Mr. Molina's legislation, and this current legislation; and Jean Pokipala, who's our Council Services Assistant Clerk. Thank you all for being here. All right. Just as a disclaimer, please see the last page of the agenda for information on meeting connectivity. And also, folks out there in TV land, and in...in Chambers, and all the different various offices, please be patient if we run into technological difficulties, although it's been pretty good today. All right, Members, today we have our continuing conversation on Bill 21, CD1, FD1 (2022) relating to Seabird and Biodiversity Protection (CARE-74). Members, we will continue our discussion. What I'd like to note, that as requested at our August 31, 2022, meeting, as a response to the memo from Corporation Counsel, which was added to the Granicus file when this meeting reconvened. And under our...our document transmittal policy, documents that are not legislative proposals cannot be uploaded while a Committee is not in recess. So it was actually put on the website, on my page, but I was not allowed to distribute it until today. So, just to...I know Member Paltin was the one that requested this. Anybody feel like they need a five-minute recess to view the document, or are you okay going forward? If everyone is okay going forward, can you give me a thumbs up? I got

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two thumbs up. Anybody else? Otherwise, we can't...okay. I think we'll go ahead and...and move forward with our agenda today because I'm hoping that it won't take quite as long as Mr. Molina's meeting this morning, but we get through this legislation that we...we've been talking about for months and months. Okay. As a reminder, the most recent ASF, item number 10 in Granicus, track changes version is 11, addresses concerns raised during previous meetings, which include residential exemption, which exempts non-oceanfront residential properties, meaning most homeowners will not be affected by this bill at all. Evening sporting events expands the exemption so that all night sporting events can continue as usual, along with whatever special events are happening in those same arenas. So, we...at the request of Parks and Recreation, we added the word special events on top of sports. Obon, and other cultural, and special events, which expands the exemption for special events so that Obon festivals and other cultural events can continue without impact. The Police, Fire, and other emergency services, that exemption was expanded so that they are actually exempt from the entire bill...from the entire ordinance. And at some point, hopefully, they'll find compliant lighting, but they are not required to at this point. And we expanded the purpose and intent of the bill because we heard so much about the issue with turtles, as well as...as energy reduction. So, that has been expand...that has been added to...to encompass protection of wildlife, as well as cultural practices, and energy efficiency. Okay. So, Members, over the course of our discussions, we have been joined by environmental policy and science experts; Dr. Richard Wainscoat, specialist and astronomer, University of Hawai'i Institute for Astronomy; Jay Penniman, Project Manager at Maui Nui Seabird Recovery Project; and David Henkin, Senior Attorney, Earthjustice. We have also received input from Corporation Counsel, Department of Parks and Recreation, Department of Public Works, Department of the Police, the Department of Planning, the Department of Fire and Public Safety, Office of the Mayor, Hawaiian Electric, State of Hawai'i Department of Education, Kamehameha Schools, and Hawai'i Wildlife Fund. It's now up to us to use all of the science, research, and other information that has been provided to us over the last several months to determine what policy decisions we are going to make to protect our night sky and the biodiversity it supports, including endangered turtles and seabirds. Joining us today we have...as our continued resources we have Jay Penniman, Project Manager for the Maui Nui Seabird Recovery Project; we have Dr. Steve Montgomery or Ms. Jonee Peters of the Conservation Council of Hawai'i, and that was on the request of Member Sugimura; we have Hannah Bernard, Executive Director, Hawai'i Wildlife Fund. She's on limited availability, but she's listening to the meeting so that she can come in, if needed. And if Members have any legal questions, our OCS attorney and Corporation Counsel are available to address those as well. If there are no objections, I would like to continue the designation of Dr. Penniman, Dr. Montgomery, Ms. Peters, and Mr. Whittaker as resource personnel in accordance with Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR KING: Okay, great. Okay. So, we were close to taking a vote at the last meeting, and we're working on some amendments recommended by Councilmember Sugimura related to string lights and special events on private property. I was told that she has to leave early, so I'd like to address her proposals, and then ask other Members if they

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have amendments to propose. As a reminder, we made the main motion, and then we made a motion to amend with the ASF from August 25th, 2022. So, now we are working off the ASF and considering additional amendments to that ASF...kind of the same process that we went through in our morning meeting with having the original proposal on the floor along with a replacement ASF bill. Okay. So let's start...oh, the other person I wanted to recognize, who I don't see here...but I think Neldon Mamuad told me he would be here as a continuing resource too. So, if there are no objections, he may be...he's available as well. We had designated him as a resource last time.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR KING: Okay. So, let's start with the proposed amendment to expand the exemption for string lights in Section 20.35.070(A)(2). I would like the Committee Staff to share screen. I have draft language to propose that we keep the exemptions for holiday decorations and cultural festivals. So, they would be exempt from both the requirement to be fully shielded, and the requirement to meet the 2 percent blue light standard. That allows Obon festival lights and traditional holiday lights, that are currently legal, to continue as usual, but current (*audio interference*) other times of the year to be fully shielded. So, this is the bill that, I believe, Mr. Molina passed years ago. I propose we keep that requirement, but exempt them from the 2 percent blue light standard. So, they would be required to do the fully shielded lights, which they're required to do now. So, any café with existing string lights that are legal can continue to use them as usual. If they had been using illegal string lights this whole time, they need to buy new lights or add shields to their lights. String lights aren't that expensive, and Amazon sells shields that you can add to a string light for about a dollar each. This is a compromise that allows businesses to continue using legal lights. Chair will entertain a motion to amend Section 20.35.070(A)(2) to read, "Low wattage fixtures under 2.8 watts, and string lights using bulbs less than 50 lumens used for holiday decorations and cultural festivals, including Obon festivals only, and fully shielded string lights under 2.8 watts and string lights using bulbs less than 50 lumens." Do we have a motion to add that exemption? Okay. Moved by Committee Vice-Chair Sinenci, seconded by Member Sugimura. And we'll go to discussion and/or questions. I'm going to time all the Members at three minutes each. So, any...any questions on (*audio interference*). Oh, you're working...okay. She's getting the timer out. Okay. So, the...can everybody see the screen? And it's...there's an explanation of the...the motion that's on the floor that clarifies the string light exemption. Somebody just...there's something that's blocking the screen. Okay. Clarifies the string light exemption...only allows unshielded lights for holiday decorations and cultural festivals, including Obon festivals. Amend Section 20.35.070(A)(2) to read as...as I quoted, "Low wattage fixtures under 2.8 watts and string lights using bulbs less than 50 lumens used for holiday decorations and cultural festivals, including Obon festivals only, and fully shielded string lights under 2.8 watts and string lights using bulbs less than 50 lumens." So, let me see if we can take...can we take that down just so I can see the Councilmembers, if anyone's got any questions or comments?

COUNCILMEMBER SUGIMURA: Chair?

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CHAIR KING: You stop share? Okay. (*Audio interference*) propose...Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair. And I...I appreciate the...the amendment. Just quick question, I know it mentions, here, cultural festivals, and then you've highlighted Obon festivals. Just...if it matters any, why...because wouldn't Obon already be considered as part of cultural festivals? And maybe just a reason why Obon was highlighted. Because I know other --

CHAIR KING: Okay.

COUNCILMEMBER MOLINA: -- ethnicities may have some evening --

CHAIR KING: Yeah.

COUNCILMEMBER MOLINA: -- festivals but (*audio interference*) --

CHAIR KING: No, you're exactly right. Yeah, you're exactly right. Only...well, I'll ask Mr. Forrest to address that. You're right about your assumption. Mr. Forrest.

MR. FORREST: If you look at the language --

CHAIR KING: Somebody needs to...somebody needs to mute. Oh, you got to use the mic.

MR. FORREST: Okay. Sorry about that. Whenever we have the language, like including after a word, we're just giving examples of cultural festivals. And, you know, particularly why we added that language is because we got a lot of response from the public about Obon festivals. And so we just made it...wanted to make it absolutely clear. It doesn't limit festivals to only Obon festivals, it's just...you could...you could use the word including to be...maybe you could say, for example, Obon festivals. So, it includes them, but it doesn't exclude anything else. Thank you.

COUNCILMEMBER MOLINA: Okay. Thank you for the clarification. Thanks, Madam Chair.

CHAIR KING: Yeah. Thank you for the question, Member Molina. Member Paltin, followed by Member Sugimura.

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to clarify. Is unshielded string lights...currently is illegal, even for cultural festivals and Christmas lights?

CHAIR KING: Mr. Forrest.

MR. FORREST: Okay. Thank you, Chair. There's a current exemption for string lights or what you think of as classic Christmas lights and cultural lights. That exemption is only available during holidays and festival seasons, so it's not a year-round exception. What this exception does is, it maintains that existing exception, so your classic Christmas lights will still be fine. Your Obon lights will be fine. What it does is say that you can also use string lights at restaurants year-round, but they have to maintain the

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current rule of that they have to be fully shielded. What they're exempt from is those lights would be exempt the 2...the 2 percent blue light standard.

COUNCILMEMBER PALTIN: Okay. Thank you for that clarification there.

CHAIR KING: Thank you, Member Paltin. Member Sugimura.

COUNCILMEMBER SUGIMURA: Mr. Forrest...are you...you're still there, right? So, what are you amending? I thought we were amending 2...20.35.070, but I think you have 60. Could you --

CHAIR KING: Mr. Forrest?

COUNCILMEMBER SUGIMURA: -- reference the section again?

MR. FORREST: Thank you. Yeah, the...the document does have a misprint on the top. It should be 70(A)(2).

COUNCILMEMBER SUGIMURA: 70(A) --

MR. FORREST: That's the exemption section.

COUNCILMEMBER SUGIMURA: Right. It should be in the exemption section. So, you're saying it's...it's (A)(2). Isn't it (2)? Oh, I see. I see, (A)(2). So, in my discussions I think I had with you also, Mr. Forrest, what I had proposed was actually, after the word lumens, to be a period, and the rest of the sentence deleted. But now, you've added more things?

CHAIR KING: I think that was already in there, Member Sugimura. But I'll . . . *(inaudible)*. . . --

COUNCILMEMBER SUGIMURA: That was the amendment.

CHAIR KING: The use for holiday...the part that was after, where you were proposing to put the period, was already in there. So, we didn't get to --

COUNCILMEMBER SUGIMURA: Right *(audio interference)* so I was amending the...when I...when I withdrew my amendment was to have the sentence ended at...after lumens, period, and delete the rest. So, it would be a blanket, but not...you know, not listing these cultural things, just so it gets misunderstood, Mr. Forrest.

CHAIR KING: Okay. Well, we...you can...you can make that proposal next, if you want. We're not at that point yet. We're --

COUNCILMEMBER SUGIMURA: Oh, we're not talking about the same thing? Okay. I'll wait for Mr. Forrest, then, to be done.

CHAIR KING: Yeah. Okay. I can...he can answer the question, though, if you have...if you

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want, right now. Mr. Forrest?

MR. FORREST: Yes. Thank you. So, you know, deleting the--there's two different time frames. There's either holidays or not holidays, put it that way. What we're doing is creating a situation where you're fully exempt during holidays, as far as you don't have to be shielded or comply with the blue light. But the...and the nonholidays, we're keeping the existing law that says you have to be fully shielded, and...but exempting them from the blue light standard. So, I think what...if you wanted to propose something, I think I know what you would want to propose, would be to make it so where no one has to have shields on any string lights. And that would be a change to the current code. Current code says that you do have to have shields on these types of lights, so that would...I think that's what you're getting at is...is that you would want to recommend that they have no shields.

COUNCILMEMBER SUGIMURA: And the...and I...I think my discussion was, the last time we met, the Obon example was that if you are now going to require the churches, which that references to the Buddhist . . . *(timer sounds)*. . . churches, they would now have to purchase the shields for the lights, and I'm opposed to that. And I can explain further.

MR. FORREST: Okay. I...I --

CHAIR KING: I think your time is up. So, let's...let's take that up on a second round. Oh, you have a...you have a response.

MR. FORREST: I just...I don't think that's...I want to clarify that those kind of lights would not need to be replaced because they are in the first category, which is either holiday or festival. So the...so, if you're a holiday or festival light, like Obon, like Christmas, you do not have to have shields or comply with the 2 percent standard.

COUNCILMEMBER SUGIMURA: Okay. So, you don't think it needs to be--I'm sorry, I ran out of time. I'll take that up with him on the second round.

CHAIR KING: Okay.

MR. FORREST: Okay.

CHAIR KING: Okay. Any other questions or comments on the motion on the floor, right now? Okay. You want to...we have no other questions or comments. So, if you want to finish your...your line of questioning, Member Sugimura? You have another question?

COUNCILMEMBER SUGIMURA: Yeah. So, can he bring up that...the example again, or the...the motion?

CHAIR KING: The motion?

COUNCILMEMBER SUGIMURA: Besides having...well, besides having the wrong number, it references...it doesn't reference 20.35.070(A)(2), it referenced 20.35.060. Is that correct,

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Mr. Forrest, that's an error?

MR. FORREST: Yeah, let me bring this up.

CHAIR KING: I thought it said (A) and (2).

COUNCILMEMBER SUGIMURA: Yeah, but the reference to the section is, I think, incorrect.

CHAIR KING: We can't see the share screen, yeah.

MR. FORREST: Okay. The share screen...it's off and on, so it's not working right now. The current code is 070. I can --

COUNCILMEMBER SUGIMURA: Okay.

MR. FORREST: -- also drop it in the chat.

COUNCILMEMBER SUGIMURA: Okay. That's why--and it's...it's (A)(2)?

MR. FORREST: Yes, that's correct, (A)(2).

COUNCILMEMBER SUGIMURA: Can you just read the sentence? Since we can't see it, can you just read it so I can...I can cross it.

CHAIR KING: Okay. I can read it again. Let's see. Okay. Low wattage fixtures under 2.8 watts and string lights using bulbs less than 50 lumens used for holiday decorations and cultural festivals, including Obon festivals, and fully shielded string lights under 2.8 watts and string lights using bulbs less than 50 lumens. That would be the exemption under (A)(2).

COUNCILMEMBER SUGIMURA: So, the last part of the sentence, what does that imply? Or maybe Mr. Forrest can explain, because that's...that's added.

CHAIR KING: And fully shielded string lights under 2.8 watts and string...string lights using bulbs less than 50 lumens.

COUNCILMEMBER SUGIMURA: So what kind of examples would that apply to, Mr. Forrest?

CHAIR KING: Mr. Forrest.

MR. FORREST: Okay. That would not apply to Obon festivals. That would apply to like...I guess a restaurant, a restaurant that uses string lights. Right now, the current law would say that their string lights have to be shielded, so we would maintain that. But I mean we wouldn't require them to upgrade to meet the blue light standard. So, anyone who has legal lights right now at their restaurant should be fine. And again, they would have three years to upgrade, if they...if they weren't, but--and if you look at that standard of 2.8 watts and bulbs less than 50 lumens, that was mentioned by the...the

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COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBERS VOICED AYE.

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

ABSTAIN: None.

EXC.: Councilmember Johnson.

ACTION: APPROVED AMENDMENT.

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talking to *(audio interference)* --

CHAIR KING: Okay. Why don't you...why don't you make the motion, and then we'll...then we'll see if we get a second, then you can explain the motion.

COUNCILMEMBER SUGIMURA: Oh, okay. So, under 20 point...sorry, 20.35.070 Exemptions (A)(4), lighting for nights. The motion is to add the word private property, lighting for night sporting events, and permitted special events on State Department of Education properties, private school properties, nonprofit organization properties, private properties, and County parks and facilities. So, I'm adding the word private properties.

CHAIR KING: Okay. Is there a second to the motion?

COUNCILMEMBER MOLINA: Second for discussion.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR KING: Okay. Seconded by Member...motion made by Member Sugimura, seconded by Member Molina to add private properties. And this...you know, just...legally, this would also exclude all hotels because those are considered private properties. But you want to go ahead and speak to the motion, Member Sugimura?

COUNCILMEMBER SUGIMURA: And I think on the hotel...I wasn't thinking about hotels. And I will speak to this. I did speak with Neldon the last time he was in, and he's a resource today, he can speak on this also. But I think that was...he said the...he was speaking to Mr. Forrest during a recess, and that was the agreement that they...they came to. So, I see *(audio interference)* Forrest put something in the chat, but...so I'm just trying to...I'm trying to --

CHAIR KING: Hmm.

COUNCILMEMBER SUGIMURA: -- I'm trying to solve that. I'm not trying to solve the hotel issue.

CHAIR KING: Okay. But private...you have to understand, private property does mean hotels, and the country club, and other private...any kind of private property like that.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR KING: So, you...you...I'll have...I'll ask Mr. Forrest to speak to it since you brought him up.

COUNCILMEMBER SUGIMURA: Yeah.

MR. FORREST: Thank you, Chair. I think that what you're...what you're mentioning is...you know, you could say something like private property except hotels. And, you know, we could...we could draft the exact language, but I...I get what you're getting at. And so,

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that might be something that...it would have a lot less effect if you didn't include the hotels, I would agree with that. Is that what you had in mind?

COUNCILMEMBER SUGIMURA: Yeah *(audio interference)* --

MR. FORREST: So, after private property, but put not hotels.

COUNCILMEMBER SUGIMURA: Okay. Because who this would impact is...is...oh, what is his name--or that Maui Brewing Company that's in Kihei. Because when I mentioned this bill to him, he was saying, oh, then he has to change all his lights, you know, because he has outdoor seating for restaurants and what...I mean there's a bigger impact than just hotels, so...or even Neldon, I don't think he was exclusively speaking only of weddings. So, maybe somebody can comment about that, but *(audio interference)* --

CHAIR KING: *(Audio interference)* I'll ask Mr. Forrest to comment on that. But what you're talking about, for businesses, that's not sporting events or special events, so it won't cover restaurants. We're not...we're asking restaurants to do the right thing and change their lighting. And if he has unshielded lighting, that's actually illegal, so he needs to make...he needs to come up to speed on the string lights if he's got string lights that aren't shielded. Do we--anyway, we're--you want to--anything else, Member Sugimura? I'm going to --

COUNCILMEMBER SUGIMURA: That's it.

CHAIR KING: -- I have some other Councilmembers who --

COUNCILMEMBER SUGIMURA: That's it.

CHAIR KING: -- want to speak to the motion. Okay. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I'd like to move to amend the amendment so that it would add, after private properties, except if they are within the sea level rise exposure area, and not to include May through December, which Ms. Bernard said is the turtle nesting time frame.

CHAIR KING: Okay. Motion to amend the motion. Is there a second?

COUNCILMEMBER LEE: Second.

CHAIR KING: Okay, seconded by Member...or Chair Lee. Mister--are you okay if Mr. Forrest makes a comment on that, Member Paltin?

COUNCILMEMBER PALTIN: Okay.

CHAIR KING: Mr. Forrest.

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MR. FORREST: Thank you, Chair. I just want to get clarification from Member Paltin. Is she saying that that would apply to the entire list of properties, or only to the private property addition?

COUNCILMEMBER PALTIN: Only to the private property portion.

MR. FORREST: Okay. Thank you.

CHAIR KING: Okay. Great. So, private properties. And then...did you put the wording in the chat?

COUNCILMEMBER PALTIN: Shucks. No, I didn't. But can I put my --

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: -- legislative intent in the chat, and you guys can --

CHAIR KING: Yeah.

COUNCILMEMBER PALTIN: -- pretty it up? Okay.

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: Yeah.

CHAIR KING: Okay. Chair Lee.

COUNCILMEMBER LEE: No more discussion.

CHAIR KING: Okay. Anybody else have any questions or discussion on this one?

COUNCILMEMBER PALTIN: Oh, I had a discussion, but let me just finish (*audio interference*) --

CHAIR KING: Oh. I'm sorry. Go ahead, Member Paltin. Go ahead with your discussion, sorry.

COUNCILMEMBER PALTIN: So, I think this goes to what Mr. Mamuad was saying the other day about being scientific. And the...the information that I received from Ms. Bernard, you know, the SLR-XA is that 3.2 erosion line. We could go SMA, but at this point, I think SLR-XA is sufficient because it's the...it would include all the sandy nesting areas, and then a little bit of a buffer, and May through December is their hatching period. So, you know, it's not that we're trying to bum everybody's trip, we're just trying to address the impacts on these endangered species. And I think, you know, the fledgling season is mainly like September through December, so that falls within the turtle season, and so there's that. And then I...I...that's my discussion. Thank you.

CHAIR KING: Okay. Thank you, Member Paltin. And are you okay, Member Sugimura--I

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mean--and Member Paltin, are you okay with doing a friendly amendment that just adds private property except for hotels, and then goes into the other piece?

COUNCILMEMBER PALTIN: Oh, sure.

CHAIR KING: Okay. Member Sugimura, since you made the original --

COUNCILMEMBER SUGIMURA: That's fine

CHAIR KING: -- amendment? Okay. So, exempt --

COUNCILMEMBER SUGIMURA: Fine.

CHAIR KING: -- we'll take hotels out of that exemption. And any other comments --

COUNCILMEMBER PALTIN: Oh.

CHAIR KING: -- or questions --

COUNCILMEMBER PALTIN: To clarify what --

CHAIR KING: -- *(audio interference)* Sugimura.

COUNCILMEMBER PALTIN: Oh, sorry.

CHAIR KING: Oh. Go ahead. Go ahead, Member Paltin, and clarify something.

COUNCILMEMBER PALTIN: Just to clarify what she said as hotels, would...would a friendly amendment to that friendly amendment be transient accommodations? Because we have, you know, STRs on the shoreline and...and like that. So, we're not trying to single out hotels from timeshares or all the various types of transient accommodations here on vacation. While they're on their vacation, help us help the wildlife. So, instead of hotels --

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: -- transient accommodations.

CHAIR KING: Member Sugimura, are you okay with that?

COUNCILMEMBER SUGIMURA: You know...yeah. I have a comment though.

CHAIR KING: Okay. Go ahead.

COUNCILMEMBER SUGIMURA: So, fledglings, I think you mentioned turtles. But I...I believe those are the seabirds that fly September 15th to December 15th during that period, and I think it's on the east side of Haleakala. So, it wasn't...I don't think that was a

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turtle discussion, unless...if you got some more documents that I didn't see. But that
(audio interference) --

CHAIR KING: No, that was a turtle...yeah, that was the . . .(inaudible). . . the information that's
given to us by Ms. Bernard, that the turtle hatchling season is May through December.
The fledgling seabird --

COUNCILMEMBER SUGIMURA: Oh, I thought you said September.

CHAIR KING: -- the fledgling seabirds are from September to December.

COUNCILMEMBER SUGIMURA: Right. So, I thought (audio interference) --

CHAIR KING: So May to December would cover both.

COUNCILMEMBER SUGIMURA: Okay. So--and I guess the question I...I wonder about is that
the period is...if it is from--did you say May to December? And we're trying to change
the law that would affect everything year-round and all over the island, when it's really
for only certain parts of the island that we really have the impact. So, those are other
concerns I had with the bill. So, that's it.

CHAIR KING: Okay. And this is just for this one exemption on these...the lighting for night
sporting events, and permitted special events. So, it's...this is...that's what we're
addressing with this amendment to the amendment. Okay. Member Paltin.

COUNCILMEMBER PALTIN: Oh, I just wanted to clarify, I said SLR-XA, not...not the whole
island...and May through December, not the whole year. So, just clarifying that in
response...that it's not the whole year --

CHAIR KING: That's all the sea level rise inundation --

COUNCILMEMBER PALTIN: Sea level rise --

CHAIR KING: -- the sea level rise exposure area.

COUNCILMEMBER PALTIN: Because it's kind of been...I guess there is a lot of proof about
turtles and blue light and...and so that's scientific evidence. And then...I mean it could
be outside of the SLR-XA too, if you want to care about astronomy...just putting that
out there.

CHAIR KING: Okay. So, if there's no other comment, we'll go ahead and vote on the...Member
Paltin's amendment to the amendment. All those in favor of the amendment to the
amendment, raise your hand and say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: Okay. Six ayes; one excused, Member Johnson.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT TO AMENDMENT.

CHAIR KING: So, that amendment passes, and then we'll go back to the amendment as amended by Member Sugimura. And if there's...is there any other discussion on that amendment? If not, all those in favor of the amendment, raise your hand, and say aye.

COUNCILMEMBER MOLINA: Sorry, Chair.

CHAIR KING: Oh, I'm sorry. Did you have a comment --

COUNCILMEMBER MOLINA: Yeah *(audio interference)* --

CHAIR KING: -- Member Molina.

COUNCILMEMBER MOLINA: -- just have more question for Member Sugimura, just for additional clarification. So, when we were talking private residence, you know, I think...I guess certain examples...like for example, the Uluwai *(phonetic)* family that live in Makena along the shoreline. So, this would exempt families like that, yeah, from the lighting requirement?

CHAIR KING: Oh, this is private properties --

COUNCILMEMBER MOLINA: *(Audio interference)* --

CHAIR KING: -- with these events on them. So --

COUNCILMEMBER MOLINA: Oh, okay. With events, so not just...

CHAIR KING: Right, except for in the SLR-XA. So, if they're in the --

COUNCILMEMBER SUGIMURA: But that's --

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CHAIR KING: -- sea level rise exposure area...that was the amendment. That would...they would...they would not be exempt if they're in the sea level rise exposure area.

COUNCILMEMBER SUGIMURA: That's a really good example --

COUNCILMEMBER MOLINA: *(Audio interference)* --

COUNCILMEMBER SUGIMURA: -- because the...Mr. Molina, because they wouldn't be exempt based upon this amendment.

COUNCILMEMBER MOLINA: I see. Okay. All right. Thank you. And then I think maybe even Kanahā, and other places...in Nāpili you have some long-time Kama'āinas that live along the shoreline. I guess...they don't have events, but I'm just wondering what type of lighting --

COUNCILMEMBER SUGIMURA: Uh-huh.

COUNCILMEMBER MOLINA: -- they would have. Probably very low lighting anyway, I...I believe. It's more like it's been mentioned, the hotels, the business establishments that would have high...higher impact lighting for security purposes, so...okay. I just want...needed to get more clarification *(audio interference)* --

CHAIR KING: Yeah, and...yeah. So then we're giving...you know, the...like I said, this bill goes into effect next January, and then it gives three years for compliance after that. So, as the types of lighting get cheaper, and more available, they'll probably be changing them out at the time they burn out anyway. I mean their lights burn out within three years.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR KING: Okay. Thank you. Okay. If there's no other questions or comments, we'll vote on the amendment as amended. All those in favor, raise your hand and say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: Member Paltin? Okay. Six ayes; one excused, Member Johnson.

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MR. FORREST: Thank you. This is a section that is copied from the Hawai'i County. Traffic Code compliant means that they're not the same color of lights as traffic lights. So, what is used for the yellow, red, and green on traffic lights, if you're within 50 feet of a traffic signal or a traffic light, you couldn't use those exact same colors. So, it's...it's meant to avoid confusion. If you're driving down the street, and you see a...a yellow light that is the same color as a yellow stop light...or a yellow traffic light, that's the point. And the additional language is recognizing that you would only need to do so in close proximity to the actual traffic signals.

COUNCILMEMBER PALTIN: So, what's in the chat right now replaces all of 4 in red on the correspondence from the Committee Chair, August 25th; is that correct?

MR. FORREST: I think it just adds language after the word traffics...Traffic Code compliant, it adds, if within 50 feet of a traffic light.

COUNCILMEMBER PALTIN: Okay. The one in the --

MR. FORREST: And the --

COUNCILMEMBER PALTIN: -- bill says traffic color compliant. You want to align that or change it? In the bill that...from August 25, it says, or traffic color compliant. "Traffic color compliant means the 1931 CIE XY color coordinates of the outdoor light fixture is outside of any of the traffic signal color boxes as defined by ITEST (*phonetic*)-05 (*audio interference*) 500/AJS (*audio interference*) --

MR. FORREST: Yeah. So, we're not changing any of that other stuff. All we're doing is adding...and . . .(*inaudible*). . . and you're correct, I put it in chat, traffic color compliant. And then afterwards, we're adding, if within 50 feet of a traffic light.

COUNCILMEMBER PALTIN: Oh. Okay. All right. Thanks.

CHAIR KING: Member Sugimura.

COUNCILMEMBER SUGIMURA: I wonder if we could have Public Works comment on this? Oh, here's Richelle.

CHAIR KING: Who?

COUNCILMEMBER SUGIMURA: I wanted Public Works, but Richelle popped up.

CHAIR KING: Oh. I don't see Public Works here. So, we'll go to Ms. Thomson. Oh, Public Works...are you at Richelle's office? Or did Richelle move to some other square? Okay. Member...or Director Molina.

MR. MOLINA: No, I'm here. And I been here from the beginning of the meeting. I think this is appropriate. I just had a question of where the 50 foot comes from because it seems

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pretty arbitrary. Thank you.

CHAIR KING: Mr. Forrest.

MR. FORREST: That would be up for, you know, discussion. It's just a number that we thought would be appropriate to...to basically achieve the goal with the minimum impact...the most minimum impact possible. So, if you...if you feel like it should be further, I think...it didn't come from any regulation, if that's what you're asking for. It just seemed to be a practical number.

MR. MOLINA: I would say it's hard to generalize sight distance at an intersection. You have curves, you have hills, you have straightaways that are flat. Depending on the configuration and all those factors, you could be beyond 50 feet and seeing lights conflict with traffic lights. But then, in terms of what the traffic engineering identifies is, I guess, the...whatever that distance where the traffic signal is intended to interface with the traffic also be a factor distance may be.

CHAIR KING: Would you propose 100 feet?

MR. MOLINA: Again, I would like to look at what the engineering standards say is that...that interface zone between the traffic and the traffic signals. Thank you.

CHAIR KING: Okay. Mr. Forrest.

MR. FORREST: Thank you, Chair. I just...I guess I would add that I don't think this Code...this exists in the Code right now. So, we are...we are actually taking a step forward to...to provide more safety than I think is currently in the Code. Because, right now, you could have these color lights within the area. I think...you know, obviously there's a permitting process when...when you have to submit plans. Again, we...we did add this at the request of the Administration. And so, if they have some amendments to make that would make it clear, I think we could welcome those. I guess I would...legally, the...you know, right now, we don't have anything in place. So, adding something that restricts it within 50 feet would be an improvement from the current Code.

CHAIR KING: Okay. Thank you. *(Audio interference)* Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Oh. It looks like Richelle popped up. So, I was going to continue this conversation, if you would allow it?

CHAIR KING: Do you...do you have a --

COUNCILMEMBER SUGIMURA: *(Audio interference)* --

CHAIR KING: -- oh. There she goes. Ms. Thomson, do you have a comment?

MS. THOMSON: I'll defer to Keola. I saw him pop on, sorry.

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MR. WHITTAKER: So, I can provide *(audio interference)* --

CHAIR KING: Mr. Whittaker? Oh, there you are. Okay. You're muted, for some reason.

COUNCILMEMBER SUGIMURA: He's . . .*(inaudible)*. . .

CHAIR KING: Okay. Try again. No, you're still muted. Okay. Want to try again?

COUNCILMEMBER SUGIMURA: He's going to log on again, he said.

CHAIR KING: Okay. Okay. Do you want to come--does anybody else have any comments or questions while we're waiting for Keola to come back? Mr. Forrest.

MR. FORREST: Mic was off. I wanted to explain the...the policy behind this is that basically, what we're doing is increasing the amount of lights that are yellow, orange, and red...mainly in the yellow to orange spectrum. And so, saying that they can't be...all across the island, they can't be yellow and orange is sort of a problem. And so, that's why we tried to limit it to only the areas next to the actual traffic lights. I think...I think that...that's the policy decision behind why we wanted to limit it and not have it just blanket prohibition against the...the whole island.

CHAIR KING: Okay. Let's see, we got...got Keola back. You want to unmute yourself and speak?

MR. WHITTAKER: Okay. Can you hear me now?

CHAIR KING: Yes, we can hear you. Hurray.

MR. WHITTAKER: Okay. My apologies. I changed devices. So, I just want to give you a little bit of background as to where that traffic color compliant came from. It comes from the Big Island's bill. When they first passed their outdoor lighting legislation, about two years into it, they realized that there was some confusion about...between the lights, which were all now change to yellow-looking lights, and the yellow traffic light. So, they added this two years after their outdoor lighting ordinance. In the Big Island's bill, it's...there's no buffer, but they only apply it to certain lights. So, there's lights outside of buildings, they have a Class II definition, which we can pull up. But they only applied it to certain building lights that could be confused with traffic lights. So just wanted to provide you that information.

CHAIR KING: Okay. Thank you so much for that information. Okay. Any other questions or comments? If not, are we ready to vote on this one? Member Paltin.

COUNCILMEMBER PALTIN: I just was wondering, is there a preference for that 100 foot that you said? If 50 feet were arbitrary, would a 100-foot buffer be preferable?

CHAIR KING: Are you asking myself?

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COUNCILMEMBER PALTIN: I guess either Corp. Counsel or Public Works. I do recall, on the Big Island, the confusing the streetlights with the yellow lights. One of my friends got a ticket for that.

CHAIR KING: Hmm. Okay. Well, if you'd like to make a proposal--unless...Director Molina, do you have a preference for 100 feet versus 50 feet?

MR. MOLINA: Yeah. So, back to what I was saying, the standards for traffic signal sight distance are based on the speed limits. And so, for example, at 20 miles per hour, the sight distance standard for a traffic signal is 175 feet.

CHAIR KING: Wow.

MR. MOLINA: So, we would advise that...when it comes to talking about traffic safety, that those standards apply in accordance with the...the traffic standards which we...which we implement *(audio interference)* --

CHAIR KING: Okay. What did you call those standards? Traffic --

MR. MOLINA: The MUTCD. So, that's the Manual and Uniform Traffic Control Devices *(audio interference)* --

CHAIR KING: Okay. But what was...what did...what did you refer to that...that sight distance standard as?

MR. MOLINA: It is from the MUTCD, there's a minimum sight distance for signal visibility table.

CHAIR KING: Minimum sight distance.

COUNCILMEMBER PALTIN: So the --

MR. MOLINA: It specifies sight distance based on the travel speeds.

CHAIR KING: *(Audio interference)* --

COUNCILMEMBER PALTIN: So, just stay in compliance with the MUTCD...that traffic color compliant and...and have it be in accordance --

MR. MOLINA: *(Audio interference)* yeah, you could say consistent with the minimum sight distance *(audio interference)* --

CHAIR KING: Minimum sight distance, okay. Okay. So...okay, you want to...we'll make that friendly amendment. So, it...instead of if within 50 feet, it'll say Traffic Code compliant--what was the wording that you had with --

COUNCILMEMBER SUGIMURA: Minimum sight distance.

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CHAIR KING: -- in accordance with the METCD [sic]. Is that...is that...is that enough for you, Mr. Molina...Director Molina?

MR. MOLINA: I believe so.

CHAIR KING: Okay.

MR. MOLINA: If you just make a friendly amendment --

CHAIR KING: And we can have...yeah, we can have OCS wordsmith that if...to...just to...we understand the intent.

MR. MOLINA: Thank you.

CHAIR KING: So, just let me get these letters right, though. M like Mary, E, T like Tom, C, and D like David; is that right?

MR. MOLINA: M-U, as in umbrella.

CHAIR KING: Oh, M-U...MUTCD.

MR. MOLINA: Correct.

CHAIR KING: Okay. You guys get that, Staff? Okay. Okay. So, is that...I think that was...I can't remember who made the motion on that now. Member...Chair Lee, and then Member Sinenci. Are you okay with that change, Member Sinenci? *(Audio interference)* okay. All right. Okay. All those in favor of the motion on the floor to --

MS. THOMSON: Do you mind if I interject with a legal concern?

CHAIR KING: Okay.

MS. THOMSON: Thank you, Chair. So, I wanted to just draw the Members' attention to Keola's comment in...in the chat. But I think our recommendation...you know, without a more solid basis for setting any kind of, you know, 50-foot or 100-foot buffer, would just be to leave it as is. Because that says that the...that the outdoor lighting needs to be compliant with the traffic color requirements.

CHAIR KING: So, you're saying that you don't need to have a...parameters of...of...with how far the...the lighting can be similar...how far away from it...the traffic light?

MS. THOMSON: *(Audio interference)* I think it would be incredibly difficult to enforce because it's very subjective. So, if *(audio interference)* --

CHAIR KING: Okay. So, just leave it the same language that the Big Island has, is what you're saying.

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MS. THOMSON: Yeah. I would just leave it --

CHAIR KING: Okay.

MS. THOMSON: -- as it is currently right now, and not insert the...any type of distance measurement.

CHAIR KING: Okay. Is there...everybody okay with that? Are you willing to draw...withdraw the motion, Member Paltin? Okay. Motion withdrawn. Second withdrawn...I mean, I'm sorry, Chair Lee, I guess you made the motion. Okay. We'll go ahead and...we'll go ahead and withdraw that motion and move onto the next...all right. Thank you for that, Ms. Thomson. Okay. So, the next housekeeping is the confusion about what types of residential properties are exempt. So, my intention was not to exempt large apartment complexes. And I wanted to clarify the residential exemption only applies to single-family, duplex, triplex, and fourplex properties. So, Chair will entertain a motion to amend Section 20.35.070(A)(3) to read, "non-oceanfront private single-family, duplex, triplex, and fourplex residential," and then go into the residential incandescent light fixtures. So, we're...we're specifically adding single-family, duplex, triplex, and fourplex. And that way, we're...we're still requiring large apartment buildings, since most of them seem to be along the oceanfront anyway, to have the current required light...incandescent light fixtures fully shielded, or have a lumen output of less than 8,100 lumens for each acre of property that's intended to be illuminated. We have a motion by Committee Vice-Chair Sinenci, seconded by Member Johnson. Okay. Any questions or comments on this? Member Sugimura.

COUNCILMEMBER SUGIMURA: Director popped up from Public Works, Jordan Molina.

CHAIR KING: Do you have a question for him?

COUNCILMEMBER SUGIMURA: I want him to express what he's...wants to share with us.

CHAIR KING: Okay. Well, I want...we need a...I mean we're beyond where we're actually taking that. So, if you have a direct question, we'll ask our resource person.

COUNCILMEMBER SUGIMURA: Well, this is something new that popped up today, Chair, that you're adding. So, I would like to hear what the Department as to say about it.

CHAIR KING: Okay. Director Molina.

MR. MOLINA: Thank you, Chair. So, yeah, this is a change from --

CHAIR KING: *(Audio interference)* --

MR. MOLINA: -- what we discussed at the last meeting where, what I understood is the Committee...the Committee had intended for all housing projects to be exempt, but now, that's not the case. So, I just wanted to point out that new developments would be . .

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(inaudible). . . don't benefit from the three-year implementation window, they have to comply immediately, that those projects are likely to get caught. As well as to note that the 8,100 lumens is a small threshold, so...so the duplex, triplex, and fourplex would likely not be able to comply with that 8,100 lumen threshold. So, they probably would not qualify for this exemption. And then lastly, just to note that you're only allowing incandescent bulbs to qualify, which are the most energy intensive and, you know, not efficient types of lighting. So, in that sense, you're kind of going backwards, but I just wanted to point that out for the Committee's attention. Thank you.

CHAIR KING: Okay. Well, this is an exemption, so this is the...we're exempting these incandescent light fixtures. But, Mr. Forrest, can you respond? I think the three years is still allowed, but I'll let Mr. Forrest explain.

MR. FORREST: Thank you, Chair. Okay. Let's start with the section about 8,000 [*sic*] lumens. If you look at...right after the words, fully shielded--and this is directly from Hawai'i County--it says, or have a lumen output. If it said, and have a lumen output, then I would agree with Director Molina, but it says or. And so, what I read that as saying is that in the first section, it relates to fully shielded, okay. So...and that's keeping the current standard. Does that clear it up, Mr. Molina? Do you agree with that?

MR. MOLINA: Yeah. Thank you for pointing it out.

CHAIR KING: Okay. Any other questions or comments? Member Paltin.

COUNCILMEMBER PALTIN: Oh. I just was...would request some clarification. Many of the housing projects that we're seeing now, the affordable ones, are multifamily. And so...like I guess the Kuikahi one, that's not oceanfront, it is private residential. They're all...are multifamily. So now, what...what is the impact on that?

CHAIR KING: Mr. Forrest.

MR. FORREST: Thank you, Chair. I'm not too familiar with that project. Is it like big apartment complex?

COUNCILMEMBER PALTIN: It's kind of a mixture of tiny home, duplexes, multifamily, single family, live/work.

MR. FORREST: Okay.

COUNCILMEMBER PALTIN: It's on 14.97 acres.

MR. FORREST: I think what you've just described would fit in because you've...if you look at what we're talking about...single family, so that's just one per...one family in a house; and then duplex; triplex; and fourplex. If there are more than four units in that development, then it wouldn't cover it. So, I guess that's the question is, are there buildings that are more than a fourplex? If you also wanted to...you might want to add an exemption that says that it...you know, affordable housing projects are exempt, if...if

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that's your primary concern. But from what you just told me, I don't think there would be a problem because, again, you didn't say anything more than a...more than a fourplex.

COUNCILMEMBER PALTIN: I got the application. I'll...I'll look it up. Thank you.

CHAIR KING: We can...if you want, we can add after fourplex, and affordable housing projects. We can exempt affordable housing projects because those are all residential. And we don't really see any of those along the ocean...oceanfront.

COUNCILMEMBER SUGIMURA: Mr. Molina has a hand up.

CHAIR KING: Oh, Member Molina, did you have your hand up?

COUNCILMEMBER MOLINA: No, Chair. No, I was just --

COUNCILMEMBER SUGIMURA: Oh.

COUNCILMEMBER MOLINA: -- reading it...this thing, yeah.

CHAIR KING: Okay. Thank you.

COUNCILMEMBER MOLINA: But, you know...thank you.

COUNCILMEMBER SUGIMURA: Director has his hands up, Molina.

CHAIR KING: Okay. We're actually...you know, we're in deliberations now among the Councilmembers. So, if Councilmembers have a question for a resource person, then I'm just going to reiterate what Mr. Molina...Councilmember Molina iterated this morning, is that...you know, we're in policy making. These are...decisions are going to be made by the Councilmembers. But if you have a question of one of our resource people, please raise your hand and ask them directly. I don't want the resource people to be the ones asking the questions at this point. Chair Lee.

COUNCILMEMBER LEE: Yeah. Thank you, Chair. Mr. Molina, you mentioned it may affect some projects going through the permitting system, or going through the process. Which projects are you talking about?

MR. MOLINA: *(Audio interference)* Chair, and Member Lee. So, Kuikahi is an example. There's multifamily units proposed, they would not be exempt. Even for the single-family components, unless they're going to use incandescent lights, which likely they're not because they're inefficient, they would not be exempt. And then --

COUNCILMEMBER LEE: Are they --

MR. MOLINA: -- unless you stay under the 81-lumen [sic] threshold, which they likely are not, you will not be exempt.

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COUNCILMEMBER LEE: All right. Thank you. Chair --

CHAIR KING: Yeah.

COUNCILMEMBER LEE: -- would...are the rental projects exempt...affordable rental projects exempt?

CHAIR KING: Mr. Forrest, can you speak to that? I mean I...I think the...I think the three years would exempt the Kuikahi Project, but I'll let you go ahead and take it (*audio interference*) --

COUNCILMEMBER LEE: Now, I'm talking about that Wailuku Project, the one with 300 rental units.

MR. FORREST: Thank you.

CHAIR KING: So, that...that one's already...already been approved?

COUNCILMEMBER LEE: Yeah.

CHAIR KING: Okay.

MR. FORREST: Thank you. So, there are some issues up here that could use some clarification. I'm not too familiar with that project. Is that an apartment complex, or is that individual --

COUNCILMEMBER LEE: Yes, apartment complex.

MR. FORREST: Okay. So, if it didn't fall under, you know, the...basically, it'd be more than a fourplex. It'd be . . . (*inaudible*). . . so, yes, there would be lighting requirements for that...that type of a...a building, like a big apartment complex.

COUNCILMEMBER LEE: So, Chair, when you were talking about exempting affordable housing projects, would...would that project be included as an exemption?

CHAIR KING: If it's in affordable housing, yeah.

COUNCILMEMBER LEE: Yeah. Okay.

MR. FORREST: And to be clear, you know, I think there would be...there'd be value in like the projects that are currently in the system or, you know, projects that come up for the next two years or something. The availability of lighting makes it to where these...these housing projects should be using compliant lights, at some point, as to not give them the indefinite exemption. Because again, they...the lighting...the lights are available.

COUNCILMEMBER LEE: It makes it a little difficult, Mr. Forrest, when a portion of the project

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is affordable and a portion is not, right? How do you exempt something like that?

MR. FORREST: So, I...I think what might address those...you know, it's like...there's going to be the fully shielded requirement, okay, that's going to take care most of this. So, what we're really talking about is the requirement to have the lights that comply with the...the blue light standard. And . . . *(timer sounds)*. . . those lights are readily available, those bulbs are readily available. So, you know, when you talk about a residential property, you know, you have your outside lights on your porch. That's going to have to be fully shielded. And what you would need is a bulb that's compliant, and there are compliant bulbs. So, I think the...the answer that the compliant bulbs exist and the existing law already requires them to be fully shielded, that's really the answer. It's like it's not...we're really not far off, either way because you still have to have fully shielded. We're talking about...are we going to make you have the 2 percent standard or not, is really what we're talking about here. And the 2 percent standard bulbs are readily available. But I...I think it does make sense to...to, you know, consider what has been raised as a...you know, exempting existing projects that are already in the process so we don't make them start over again, and exempt them for...you know, for the next two or three years...or maybe a three-year exemption for existing housing projects. But that's up for you guys to consider. That's what I hear coming from you.

COUNCILMEMBER LEE: Thank you.

CHAIR KING: All right. Thank you, Chair Lee. Member Paltin.

COUNCILMEMBER PALTIN: So, this is just a question. Like can we do something where the affordable housing projects, if the bulbs are not readily available, will be exempted until they're readily available, three years or whatever? And if there's a significant cost difference, they can apply to the Affordable Housing Fund for...to meet that cost difference, for the affordable section?

CHAIR KING: Are you...who are you asking . . . *(inaudible)*. . . --

COUNCILMEMBER PALTIN: *(Audio interference)* that's my legislative intent. Is there any --

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: -- lawyers out there that --

CHAIR KING: Okay. All right.

COUNCILMEMBER PALTIN: -- that confirm *(audio interference)* --

CHAIR KING: Mr. Forrest, can we put that into wording?

MR. FORREST: Yeah. Thank you, Chair. You know, we have that language already for the three-year exemption at the...the end of this Code. So, we would use that language that

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says, you're exempt for three years and longer if they are not compliant bulbs. And we could...we could add a little language related to, you know, affordability or something that didn't increase, or basically make it to where it wasn't affordable any longer.

CHAIR KING: Okay. Thank you. Councilmember Johnson.

COUNCILMEMBER JOHNSON: Thank you, Chair. I would support that legislative intent that Councilmember Paltin mentioned. You know, I...I have a feeling if we did...if we didn't include affordable housing, that...that price would go in the HOA fees. And that's a way to make people...make those affordable units unaffordable, just by keep raising HOA fees because they don't have any kind of recourse when that happens. So, I...I stand...I support that legislative intent. Thank you, Chair.

CHAIR KING: Okay. Thank you, Member Johnson. I can support it. I don't think they're going to be more expensive. In fact, we've heard that they actually are cheaper because they will reduce your utility bill, in the long run, as well as the bulbs actually...you know, not being more expensive. So, I don't think that's necessarily an issue, but I do understand the intent of wanting the projects that are currently approved, if they already have chosen their lighting, to be exempt from having to...to change their lighting until when more becomes available. But, you know, the whole point of that...I mean I don't know if you saw the video that we showed last time, but you know, there was quite a bit of reduction in the utility bills. But we've also heard from --

COUNCILMEMBER JOHNSON: Yeah.

CHAIR KING: -- the suppliers of some of these kinds of lighting that it's really not more expensive to use compliant lighting. So, I think that's going to be a nonissue, probably, in the future too, as more and more models become available, then the price drops even more. So, do we...can we add that to the...the motion that's on the floor, Mr. Forrest? Do we need...do we have language, or can you do that from legislative intent?

MR. FORREST: Yes, Chair. We can...we can...if you're...I think you're proposing to add it as a friendly amendment, is one of OCS's favorite things.

CHAIR KING: Okay.

MR. FORREST: So, we'll add it as a friendly amendment if that's the...the wish of the body.

CHAIR KING: Okay. Is there any objection to adding that as a friendly amendment...the legislative intent that was expressed by Member Paltin? Member Paltin.

COUNCILMEMBER PALTIN: Oh, I just wanted to see if Corp. Counsel concurred on the legality of the legislative intent.

CHAIR KING: The legislative intent. Okay. Mr. Whittaker.

MR. WHITTAKER: I don't have a . . . *(inaudible)*. . . --

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CHAIR KING: Legislative intent...did you hear the...the statement by Member Paltin?

MR. WHITTAKER: Yes.

CHAIR KING: Okay.

MR. WHITTAKER: The intent is fine. My concern is the way Mr. Forrest described how he was going to add it. So, he said he was going to add it to the three-year time period. However, as Mr. Molina said, that three-year time period only applies to buildings that are existing now that have existing fixtures. So, when Mr. Forrest drafts it, hopefully, it won't go in there, but it'll indicate...and I think your intent is, maybe should start by, that it applies to affordable housing projects that have already been approved by Council, but have not yet been built. So, maybe that can be worded...wordsmith, but it should not be put into that --

CHAIR KING: Okay.

MR. WHITTAKER: -- three...existing three-year exemption.

COUNCILMEMBER PALTIN: Got *(audio interference)* --

CHAIR KING: Okay. No, I think the intent is to put into the...the section that we're...we're addressing now, as far as residential. But he was just pointing out that at the end of the bill, it has that intent. . . .*(timer sounds)*. . . So, we can put that in. And I think that's a good point to make, and I think Member Paltin agrees that...that the affordable housing projects that have already been approved would be exempt. Okay. So, any other--thank you for that, Member Paltin. Any other questions or comments? Member Sugimura.

COUNCILMEMBER SUGIMURA: So, I'm curious how this affects all residents. I know that the item number 3, non-ocean, private residential incandescent...you know, that whole paragraph was there. And I thought, okay, we covered, now, our residents who are not having to make this change, but now you're saying they do. Or they do not? They do not?

CHAIR KING: No, not if --

COUNCILMEMBER SUGIMURA: So, residents . . .*(inaudible)*. . . --

CHAIR KING: -- if they're not along the ocean...if they're not oceanfront. The oceanfront ones will still be required to make these changes because those are the ones affecting the wildlife the...the most...they have most impact.

COUNCILMEMBER SUGIMURA: Okay. So, that means everybody in Wailuku is fine. Everybody in Kahului is fine. Kula is fine because we're not even close to the ocean, right? So, we've got all our residents protected. Makawao is protected. Lānaʻi, you got

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CHAIR KING: Thank you for coming back, Member Johnson. Are you off the boat?

COUNCILMEMBER JOHNSON: No, I just had a virtual meeting, beg your pardon.

CHAIR KING: Oh. Oh, okay. Great. Great. I thought you were on...oh. I think it was Member Sinenci that has to take the boat at 4:00. Okay, one...let's see. The next one is to make sure existing lights are exempt for three years only if they were legally installed in the first place. So, the Chair will...this is a pretty quick one. So, Chair will entertain a motion to amend section 20.35.070(B) to read, all outdoor lighting fixtures, legally installed, or used as portable lighting. So, just the word...we're just adding that word legally before the word installed so we make sure that we're not saying that if you put illegal lights in, that you're exempt. Do I have a motion?

COUNCILMEMBER PALTIN: So moved.

CHAIR KING: Okay. Moved my Member Paltin, seconded by Chair Lee. Any comments? Member Molina.

COUNCILMEMBER MOLINA: Yeah. Yeah. Thank you, Chair. I just want to get more of a legal interpretation as well, just to hear from Corp. Counsel with this proposal --

CHAIR KING: Okay.

COUNCILMEMBER MOLINA: -- or . . . *(inaudible)*. . . --

CHAIR KING: Mr. Whittaker. The word legally...so, we're putting in the word legally before installed.

MR. WHITTAKER: Yeah, that's fine.

CHAIR KING: Okay. Thank you.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR KING: Okay. If there's no other comments, all those in favor of the motion raise your hand, say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: All right. Seven ayes, zero noes. Measure passes.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR KING: All right. Okay. The next one is update the chapter to change references to 16.18(A) with 16.18(B). And maybe you can explain that, Mr. Forrest?

MR. FORREST: Thank you, Chair. Section 16.18(A), I believe, was removed from the Code. And so, this is housekeeping to update it with what is actually there now, which is Section (B). And on a side note, we do have seven minutes until 3:00. And so, if we do get this out before 3:00, we all get dinner on Chair King. I heard that was --

CHAIR KING: Beer's on me. Okay. Well, thanks for bringing that up, Mr. Forrest. Okay. So, this is...this one is, basically, just housekeeping. Any other...any comments or questions? If not, all those in favor of the motion on the floor raise your hand (*audio interference*) aye. Oh. Did we --

COUNCILMEMBER LEE: Is there a motion? Did we have a motion?

CHAIR KING: Oh, we didn't get a motion on this one yet. Is that what you're bringing up?
Okay.

COUNCILMEMBER LEE: So moved.

CHAIR KING: Our secretary is on it.

COUNCILMEMBER LEE: So moved.

CHAIR KING: Okay. Moved by Chair Lee, seconded by Committee Vice-Chair Sinenci. All those in favor of the motion say...raise your hand and say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: Okay. Seven ayes, zero noes. Measure passes.

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

NOES: **None.**

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR KING: Okay, Members, those are all my housekeeping and amendments. Any other...any additional amendments by anybody? Member Sugimura.

COUNCILMEMBER SUGIMURA: I don't have an amendment, but I wanted to know, did Corp. Counsel sign off on your bill and all of the amendments...one question. Second is, because I have Public Works in my Committee, I wanted to know if the Director would comment on how this affects streetlights. Because, as we know, we had a problem with that, I don't know how many years ago it was, I don't know if it got resolved. But I want to know those two things.

CHAIR KING: What was the first one?

COUNCILMEMBER SUGIMURA: Did Corp. Counsel sign off on this bill?

CHAIR KING: Oh. No, I don't think so.

COUNCILMEMBER SUGIMURA: Then can I hear from them, and then also --

CHAIR KING: They were trying...they were...they were...they tried to write an...a different bill.
The *(audio interference)* --

COUNCILMEMBER SUGIMURA: Well, that was...that was when Keola went to visit the queen. He did. I'm so sad she died today. So, I wonder if...if Keola would --

CHAIR KING: Yeah (*audio interference*) --

COUNCILMEMBER SUGIMURA: -- comment. But I had a question about Corp. Counsel signing off on this bill because it has, you know, legal impacts. And then, also, to hear from the Director for how it affects streetlights. Good questions.

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CHAIR KING: All right. Well, you asked me, and I said no, they didn't, but there wasn't a legal question, I don't think. But we'll let Mr. Whittaker comment.

MR. WHITTAKER: We've sent you about four different memoranda that describes why we can't sign off on this bill. We do think an update to the lighting ordinance is necessary because we have LED lights now. Full shielding is a great idea. It's the blue light percentage we have an issue with. And we've put out multiple memos on why that's the case, so I don't want to repeat the issue. We found no support for that particular measurement of blue light. There are very few lights that comply. Compliant lights are not on Amazon. The Big Island has a small list of compliant lights. They're from one lighting manufacturer. And the only scientist that says this percentage is the right one to put in the bill is Mr. Penniman, whose own study shows that...whose own study does not support that. We found no scientific support for that, which is why we can't sign off. But an update to lighting is...is a good thing. So, that's where we are on this.

COUNCILMEMBER SUGIMURA: Thank you. And Director Molina --

CHAIR KING: Okay. And --

COUNCILMEMBER SUGIMURA: -- I think, can answer my question? Oh. Go ahead. Sorry.

CHAIR KING: Okay. Director Molina, and I'm going to let Councilmember Molina go after.

COUNCILMEMBER SUGIMURA: *(Audio interference)* Chair.

CHAIR KING: Well, I will comment, though, that this...that this is a policy issue. And so, Corp. Counsel has brought up policy issues which this Council...Committee will decide on. I will...I do have Mr. Penniman here, and I don't think he agrees with Corp. Counsel that his study does not support the blue light because this has been his...one of the biggest issues for the Seabird Recovery Program, which is funded by the County, I might add. But we'll go to Director Molina, and then I'll ask Mr. Penniman...I'll go to Member *[sic]* Molina, and then we'll ask Mr. Penniman to expound.

MR. MOLINA: *(Audio interference)* Chair.

CHAIR KING: Director Molina.

MR. MOLINA: Yeah, I'll just note that we went through an extensive debate in the courts on the blue light matter, and it was not determined *(audio interference)* was a significant factor. And just to get reaffirmation and clarify from the Committee, that . . . *(timer sounds)*. . . should the blue light content be imposed, our current street light conversion project will have to be abandoned at a rough cost of \$4 million to--well, take that back--throw away 4 million and pay another 4 million to get it implemented. So, I just want that acknowledged so we have clear direction.

CHAIR KING: Okay. And I'll...I will also say to that...I think we have a response to that because that's not my understanding is it...in that there are ways to fix those lights for around,

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roughly, half a million dollars. But I'm going to go to Member Molina next.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just more a question for Corporation Counsel, following up on the...the response with regards to research. I know it's mention that...that Mr. Penniman was just one source, and we've had some disagreements with his findings. Did you also do outreach, maybe, checking into, I guess, the Dark Skies [sic] organization? I think it's a national organization, maybe even global. Did you folks do research on that as it relates to the blue light content issue?

MR. WHITTAKER: Thank you for that question, Member Molina. We did do research. In fact, I called the resource that was at the first meeting when we were considering this bill, who came here from the Dark-Sky Association, and talked to them about their general recommendations. Their website recommends a 3,000 kelvin measurement to eliminate blue light, which is why we used that in our draft...change to this particular bill, is the 3,000 kelvin measurement. What's great about that measurement is you can buy a light bulb at the store and know if it complies because that information is on the back of your light bulb. You can't go into Home Depot, or Target, or Lowe's and know if it complies with this law because that information is not provided by the lighting manufacturers, which is why the Dark-Sky Association uses that measurement instead of this one and...that the Big Island adopted. And again, the Big Island only has a small list of compliant lights about...that's from one lighting manufacturer. So, that's...that's the issue that we have, it's...it's just compliance will be difficult.

COUNCILMEMBER MOLINA: Okay. Thank you very much, Mr. Whittaker. Thank you, Madam Chair.

CHAIR KING: Thank you, Member Molina. And our sources...I'm going to ask Mr. Forrest to follow up with that because our sources show hundreds of lights available. And one of those lists is the Florida light, which requires zero percent blue light, so all of those would be compliant. But Mr. Forrest, could you expound on that research that we've done on the science? And then we'll go to Mr. Penniman.

MR. FORREST: Yes. Thank you, Chair. And, you know, I don't want to go too far into this because I am an attorney and not a scientist, I think that's a big point to make. I have spoken, and you guys have learned about this list in Florida. What I did learn is that Florida, for their turtle safety lights, they actually have the zero percent blue light standard. And so, whenever I say that we can use those Florida lights, the point is, is that if they comply with the zero percent blue light standard, then they will comply with the two percent blue standard, and that will drastically increase the number of available lights. You know, going back to the...the origins of this bill, all of this information has been argued back and forth. And I...I think the strongest point to make is that this is the standard from the Big Island, and they have been doing it for ten years. So, we also have Jay Penniman, who has submitted his own research for Maui-specific birds. But I think if you...if you have something to rely on, it is that we are adding to the Big Island. So, we're...we're joining the counties, and I would expect other counties to...to follow the unified standard also.

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CHAIR KING: Thank you, Mr. Forrest. And now, I'll call on Mr. Penniman because I think he deserves a right to defend his own study and discuss the data that he's been sharing with us for close to a year now. Aloha, Mr. Penniman.

MR. PENNIMAN: Aloha.

CHAIR KING: You've been on this whole time, so maybe you could respond to the science of using the blue light measure versus kelvin and your own study.

MR. PENNIMAN: Aloha, Chair King. Bongu. Thank you for the opportunity. The study that Mr. Whittaker refers to is being misinterpreted. The interpretations there, which are specifically for the seabird, the 'a'o, the Newell [sic] shearwater, are light measurements made...or eye movement measurements made when the bird is held in captivity, and different spectra of light are run across in front of its eyes, and you watch how the eyes move. It doesn't say anything about how the birds react in nature, or what causes them to fly into lights. It's merely a method of looking at a number of different species and trying to look at their ocular responses to light in a laboratory setting, and seeing, then, can this be used if we can associate to events in the natural world. So *(audio interference)* --

CHAIR KING: Okay. Did you want to speak to the need for reduction of blue light *(audio interference)* --

MR. PENNIMAN: Well, I had put together a PowerPoint that runs through...and also, I think the comment that there are no scientific studies talking about the amount of blue light and the...what the effects...what blue light is. It's not a very long presentation, but if I can share screen, I will present that.

CHAIR KING: Okay. Well, let me see if the Members like to see that. Oh, okay. Sorry, I just heard from OCS, that we...we didn't...we didn't notice any presentation, so we're not really...according to Sunshine Law, we're not supposed to be presenting --

MR. PENNIMAN: Okay. Well *(audio interference)* --

CHAIR KING: -- or we have to open up public testimony again.

MR. PENNIMAN: -- and what I got in terms of blue light. *(Audio interference)* --

CHAIR KING: Okay. You can send it to us...if you can send it to us, though...to the Committee, we can send it out to Members of the Committee.

MR. PENNIMAN: Okay. I will do that. And the...what I would have said is written in the text with it, so you will see the entirety of it. But there are a number of other studies that do show the impacts of short wavelength light on seabirds, and on corals. And the presentation also addresses some of the reasons that they...these might be in effect for...especially our 'Ua'u, the Hawaiian petrel, which has not been studied with the kind

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of...in the type of visual response that is in the paper that Mr. Whittaker was referring to. I think one of the other pertinent pieces of information that I cover in there that you might be interested in, is we looked at the three years prior to when the new streetlights that were purchased by Public Works were installed, and then we looked at the three years after they were installed. So, that would be 2016 to 2018, the old HPS streetlights, which had a blue light content of 8 percent, and then those new LED streetlights, which have blue light content of 12 percent. The HPS lights in the 2016 to 2018 year period had a fallout of ten seabirds. In 2019 to 2021, with the LEDs with 12 percent, we had a fallout in that same area of 18 birds. So there was an increase there. And we are not advocating for the high-pressure sodium. We understand changing those out, but that reducing that blue light content, as the bill would do, would be the more appropriate way to really address wildlife, human health, and astronomy impacts.

CHAIR KING: Okay. Thank you. Any further questions, Members? Question by Member Paltin, followed by Member Molina. Member Paltin.

COUNCILMEMBER PALTIN: Thank you. My question is for, I think, Corp. Counsel. Say that we don't feel that it's conclusive that seabirds are affected by blue light, but we do find that the evidence is conclusive that turtles are affected by blue light, and that astronomy is negatively impacted by blue light. There's also studies about human health, and other types of wildlife, and the circadian stuff...not a fan of science. So...and there is also conclusive studies that seabirds are negatively affected by light, period, and that's why we have the shielding laws. So, I'm not clear why we can't sign off on it because turtles in the shoreline, and that's why my amendment was specifically for the SLR-XA, specifically May through December. And we're talking about turtles there. We're talking about astronomy outside of the SLR-XA. We're talking about shielding of lights for the birds. So, I'm...I'm not clear why we need to equate seabirds and blue light--I mean I have seen other studies that equate seabirds and blue light having negative impact. But not, specifically, I guess Hawaiian seabirds, or indigenous, endemic seabirds of Hawai'i. But if we can connect the blue light with the turtles, the astronomy, and light in general with the seabirds, what is...what is the hold up on the sign off?

MR. WHITTAKER: Well, those are great questions. And we do have to talk about science when we're talking about legality because we are often sued on the basis of science, right? So, we've...we've looked into this because of the litigation, and we have a lot of information. We deposed Hannah Bernard and others that are experts on sea turtle nests in Maui. What we discovered is that there are very few nests on Maui. There hasn't been one, I believe, since 2018. And where the nests have been located, over time, there are no lights that affect them. So, the last couple nests were at Ho'okipa Beach, and there are no direct lights that go onto Ho'okipa Beach. And so, if you want to take a scalpel approach, which is what Florida does, you could apply these lights...restrictions to the area that you mentioned, you know, 3.2 feet from the beach or...or the SLR-XA measurement. And I think, you know, there is more conclusive evidence of sea turtles than there is seabirds. Our concern with the . . . (timer sounds). . . blue light percentage is more the enforceability, cost, and just the practical issues with it. You can reduce blue light content by using a kelvin measurement of 2,700 or 3,000, which is, again, what the Dark-Sky Association recommends, and what over 30 jurisdictions have done

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around the world, including the United States. We know, when we buy those lights, that they comply with the law.

COUNCILMEMBER PALTIN: Chair, if I could follow up?

CHAIR KING: Yeah. Who did you want to follow up with?

COUNCILMEMBER PALTIN: Just about the enforceability, the cost, and--what was the third thing that you said? Enforceability, the cost, and the --

MR. WHITTAKER: Just the practicalities of...of compliance.

COUNCILMEMBER PALTIN: Okay. Thank you. And to the point of enforceability, cost, and practicality of compliance, I see string lights, unshielded, at Honokōwai food truck. So, I mean we don't have compliance currently going on. So, I...I guess that already doesn't seem to be a concern. I would say that I do agree that Public Works shouldn't enforce it. I would personally prefer them to just do the building permits regarding lights and possibly to work with EP&S, as they are kind of Environmental Protection and Sustainability, enforcing the plastic bag ban, the plastic cutlery, the Styrofoam boogie. And they already kind of have this relationship with restaurants and...and telling them, like hey...you know, and working with them, not...not so much throwing down the hammer. And so, I think the implementation of this legislation is on whomever the Administration is. And currently, they're not implementing enforcing fully shielded lights. And so, to be concerned with this other bill, which is like the vision or the standard, when they're not enforcing the current bill possibly because we didn't work with EP&S, or we think Public Works is supposed to do it, or we don't know who's supposed to enforce the current lighting standards might be the reason. But I don't think the policy part of the legislation is the issue. You said...you said enforceability, practicality, and like that. And is that policy, or is it already a failing Administration to enforce existing law?

MR. WHITTAKER: Well, first I want to say, there is no requirement that all lights be fully shielded in the current law. They're...the lights are divided into various classes, and each class has its own requirements. And then within each class, there are different shielding requirements depending on the light that is being used. So, I don't want to say that string lights violate current law. I don't know if that's the case. We'd have to look at the class and the light that's being used. So, the current law may be enforced. So, that's number one. Number two, it is both a policy issue and a legal issue because we could...if these...we could face legal issues if these are enforced, for example, against the Federal and State Governments, which is what this new bill would do. And in addition, if they have negative effects on the environment, we could get sued. So, there are multiple issues. And if Public Works can't enforce it, we could also be sued. So, there are multiple...these...the...the division between policy and legality is not always clear.

COUNCILMEMBER PALTIN: Okay. I think string lights are supposed to be fully shielded, though, by the Code. And so, somebody from the Maui Nui Marine Seabirds could sue

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Public Works for not enforcing the fully shieldedness of string law...string lights?

MR. WHITTAKER: I do not think they --

CHAIR KING: Member *(audio interference)* --

MR. WHITTAKER: -- they have that standing to do that.

CHAIR KING: Member Paltin, I'm going to ask Mr. Forrest to address what's just been said, because I think there's a major difference between our attorneys and Corporation Council's opinion on some of these things. So, Mr. Forrest --

COUNCILMEMBER PALTIN: Okay.

CHAIR KING: -- do you want to address some of the statements that were made by Corp. Counsel?

MR. FORREST: Thank you, Chair. You know, there's really not that much of a difference. The standard that is being proposed by Corporation Counsel is a kelvin standard. It would result in most of the blue lights being noncompliant. Okay. It's a way of measuring blue light. It's way of measuring blue light with temperature rather than wavelength. What we've been told is that the temperature can be manipulated by manufacturers, and it has been done so. So, the pure measurement is nanometers. And so, that's where...that you're talking about 500 nanometer wavelength. That's why we're not that far off because even if you use the kelvin standard, you would reduce this blue light. Where we are off is the issues with compliance and what...whatever was brought up. I would just point you, again, to Hawai'i County. Hawai'i County has been doing this for ten years, okay, and they haven't been sued for their 2...2 percent blue light standard. I think that's as...that's as far as that needs to go. We're adopting our neighbor island standard, and that's going to be...be a benefit to both Counties. And if you want to get into details about, like, you know, what has to have a fully shield or not, the easy way to say is most of these lights that you're talking about are going to be LEDs. And because LEDs weren't around in 2007, they're not in the current Code. So, they'd fall under the other category on that chart that Corp. Counsel was referring to. So, under the other category, they do have to be fully shielded. So, it's...it's not far off to say that all lights have to be fully shielded because the ones that don't are very, very minimal. You know, I...I think...again, all of this...this has been discussed back and forth--yes, that's the chart. That is...let's see, Section 090. And so, you don't see LED on that chart, that means it falls under the category other. And because it's other, it has to be fully shielded. The main point about the differences between the...the legal and the policy, and then the science...you know, you do have the science. And what Councilmember Paltin was saying is true, you know, the...the 2 percent standard on Hawai'i Island is based off of astronomy. And again, they use that as justification. We have that in our bill also. So, I think it's...you know, I...I don't want to comment on that. I guess my...my main point would be Hawai'i County has been using the same standard for ten years. They are complying with it successfully. So I think...I think that's all I...I would have to say on that.

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CHAIR KING: Thank you, Mr. Forrest. And we did get a comment...I did get a text from Ms. Bernard about the...Corp. Counsel's statement about no sea turtle nests. But she...she just wanted to point out, sea turtle nests have occurred in 2020, 2021, and 2022. So, we do have those consistently...probably not in the areas where there are a lot of bright lights. But I think we've pretty much gone over and around this issue as much as possible and, you know, this is a policy decision that we need to make. We have...the Council has committed to supporting biodiversity. And this is...we've heard from turtle experts, and bird experts, as well as Dark-Sky experts about how important reducing the light pollution is. And so, if there's no other comments or questions, I think we should go ahead and take the vote. Anybody else...is everybody ready to vote on this? Member Paltin.

COUNCILMEMBER PALTIN: I would also like clarification on the \$4 million cost.

CHAIR KING: Okay. Well, the...I think there was like 3...what I was told, there was \$3-1/2 million worth of lights that were bought, that they were not the correct lights, they don't fall under this standard, which is why--and I'll let Mr. Forrest back me up on this because he did a lot of research on this--which is why we're being sued by Earthjustice. So, Mr. Forrest, could you maybe clarify what the...I thought it was 3-1/2 million, maybe it's 4 million that the County spent on these lights?

MR. FORREST: Okay. Thank you, Chair. And I...I don't want to go too much into litigation that's...but the history was that the County had purchased lights. And the group had sued the County so that they couldn't use them, saying that they failed to do an environmental assessment, and I believe that was granted by the court. And that was several years ago, I think it was three years ago. Since then, those lights have not been used. So, I think the point that's raised is, you know, what do we do with those lights? Do we want to, somehow, allow them, or do we want to take our losses and buy lights that comply? And I guess the...the alternative to those lights would...would be lights that do comply with our standard, I...I think more of...are on the model of the ones that are on Hawai'i Island. And it is a little bit more complicated than that, but that's the simple version. I don't think we need to go too much into the details of the litigation.

CHAIR KING: Thank you, Mr. Forrest.

COUNCILMEMBER PALTIN: *(Audio interference)* --

CHAIR KING: And I...I do want to remind Members too, that when we started to look at this bill, one of the first questions I asked, and it was answered by Mr. Bilberry of Corp. Counsel, is that if...if there's a lawsuit going on, is this going to affect the lawsuit one way or another. And the answer we were given was, no, it wouldn't affect the lawsuit. So, that's why we've been going forward with this bill. And I've just been surprised at how much pushback we're getting from Corp. Counsel. My understanding is that those lights...the lights are out of warranty anyway, or soon to be out of warranty because they've been warehoused for so long. So, you know, I don't know if the...if that...did you...did your question get answered, Member Paltin?

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COUNCILMEMBER PALTIN: Well, I guess the question is, did...I thought I had heard something that Public Works did do an EA since the litigation happened. So, is the litigation still ongoing? And did the EA that Public Works, I thought, did satisfy the litigation? Or I mean --

CHAIR KING: *(Audio interference)* --

COUNCILMEMBER PALTIN: -- I feel like it plays into this situation a bit.

CHAIR KING: Mr. Forrest.

MR. FORREST: Thank you, Chair. And, you know, that was what was released at the last Council meeting, the draft EA. There will be an extensive process of litigation where that would be submitted to the court, and it's...the writing is on the wall that those groups...those environmental groups are going to protest, and they're going to have objections to that. So, no, that did not end the issue. It was our...it was our EA...I guess the . . . *(inaudible)*. . . it should have been probably done in the beginning, and we've done it now, and that process will...will be hashed out in the courts, but I'm sure that could take a...a long time.

COUNCILMEMBER PALTIN: And then, I guess, for Director Molina. Did the...how much longer do we have on the manufacturer warranty?

CHAIR KING: Director?

MR. MOLINA: Thank you, Chair. Thank you, Member Paltin. I'll have to check, but that doesn't...that doesn't cause us to have to throw away the lights immediately just because the warranty is up, but this bill would...would do that. Thank you.

COUNCILMEMBER PALTIN: There was that one testimony from somebody about that gel coat that would filter out the light. Did *(audio interference)* that one?

MR. MOLINA: Yeah. So, we'd have to explore how that...we could make that work, if it could work.

COUNCILMEMBER PALTIN: Okay. I'll yield.

CHAIR KING: Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Just following up on the question for Director Molina on the usage of the lights that are currently in stock. Has it...you know, should this legislation pass, so there's no other areas that these lights can be used in any of our County facilities? And if that is the case, has the possibility of resale, like selling these lights potentially to a sister county, like O'ahu County or Kaua'i County, who don't have any outdoor lighting standard ordinance...has that been discussed as a possibility as a way to, I guess, maybe reduce our losses, we get something back at least

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from this purchase?

MR. MOLINA: Yeah, we'll look at all that. But we've been in limbo this whole time, and continuing to spend money on HPS lights while we wait. Thank you.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Director.

CHAIR KING: I think Mister --

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

CHAIR KING: -- thank you, Member Molina. I think Mr. Forrest had actually looked into that as well. Do you have a comment on that, Mr. Forrest?

MR. FORREST: Thank you, Chair. This was all discussed at previous meetings. So, I just wanted to remind you guys. That individual, Bob Adams, he had an aftermarket filter that he was talking about putting on those lights that would cost an additional \$500,000. That would be one way to mitigate the losses. That...I don't know the details of that discussion, if it was actually 100 percent guaranteed it would work, but that was an option. But I...and I think if you're looking to sell these, you're probably going to have to sell them somewhere in Iowa, or something, and I wouldn't recommend them going to any other island around here.

CHAIR KING: So, yeah, our...you know, my...my feeling on...on putting in lights that are not appropriate is sort of...you know, I'm...I'm a poker player, and if you...if you're betting big and you realize you can't win, you don't keep betting, you get out of the game. And so, you know, if we're going to...if we're going to install these lights just because we have them, knowing that they don't...they aren't appropriate, and they don't fit the policy that we want for our environment, and our biodiversity, then we're going to have to--and we may get sued. If the law...if we lose the lawsuit, they're going to have come back out. So, why would we go ahead and install these if they're going to have to be removed eventually, and we're going to have to buy new ones anyway? (*Audio interference*) what we could do to add the filters, or shading, or...or something like that, and put the right ones in. I mean this whole...this whole conversation is about doing the right thing for our environment, and to support our biodiversity. And so, that's really the policy issue here. You know, the legal issue, we were told by Corp. Counsel in the beginning that this...this is not about the lawsuit, this is a policy issue that this Council needs to make. And so, that's kind of where we're at right now. And if no one has any other questions or comments, I'd like to go ahead and--Member Paltin.

COUNCILMEMBER PALTIN: Oh. I just wanted to clarify. I think...I wasn't talking about Bob Adams. I was talking about the testimony from Patrick Grant (*phonetic*).

CHAIR KING: Okay.

COUNCILMEMBER PALTIN: For the record.

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CHAIR KING: So, there...you know, there's...yeah, we did hear from more than one supplier. There was, I think, three different suppliers that testified at our...so, okay. Any other comments from Councilmembers?

COUNCILMEMBER PALTIN: And just to clarify, it was W-R-A-T-T-E-N gelatin color filter, material specification 568. . .*(inaudible)*. . . longpass, Wratten number 22, range description 568FWP.

CHAIR KING: Wow, good...good notetaking, Member Paltin. Member Sinenci.

VICE-CHAIR SINENCI: Thank you, Chair. Yeah. And I appreciate you taking this extra time to go over and really look at this bill. And I can speak in support. I particularly support, you know, the compromising effort and addressing all of the...the exemptions, including the nighttime sports events, private residence, exemptions for emergency use, public safety, nighttime road construction, road crossing. So, I think we addressed a lot of those very important things. And so, I'm hoping that this bill can help commit to, you know, addressing our native species that...that we have in our island. And if we lose that, I think we can never get...get that back. So, thank you, Chair.

CHAIR KING: Thank you, Member Sinenci. Yeah, my sentiments exactly. We're protecting our future, as well as the future of our environment, and our biodiversity. And by the way, next month on, I believe, what is October 8th...no, October 7th, if I can find it, there's a...I don't have the exact date. But there's a World Migrating Bird Day where basically, the theme is dim the lights because it's recognized as a worldwide issue. So, if there are no other comments or questions, I'd like to go ahead and call for the question...this is the question on the amended amendment...the amended ASF, as...with all the amendments that we just put in there, and...and then we'll go from there to the main motion as amended. So, this...right now, we're...we're addressing the ASF, the...the motion that was made at the last meeting. Okay. So, all those in favor...or should we...do we need a roll call vote? We'll do a...we'll try a voice vote first. All those in favor raise your hand and say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: Okay. Six ayes, one excused, Member Sugimura. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Sugimura.

MOTION CARRIED.

ACTION: APPROVED AMENDMENTS.

CHAIR KING: And now, we're down to the main motion as amended. So, this is a final motion to send this to Council for first reading again. Member Johnson, were you voting?

COUNCILMEMBER JOHNSON: I wanted to speak to the motion if...if --

CHAIR KING: Okay.

COUNCILMEMBER JOHNSON: -- the Chair allows.

CHAIR KING: Sure.

COUNCILMEMBER JOHNSTON: Thank you, Chair. You know, before I was a farmer, I worked in conservation here on Lānaʻi, and I worked specifically with these birds; the 'ua'us and 'ua'u kanis, that Dr. Penniman has...has done a lot of work with. I've worked with Dr. Penniman in the past. We've hiked them hills that we speak of, the Lānaʻi Hale. There's a big population up in Haleakalā as well. And these...these birds are near and dear to my heart, of course, because I used to hike seven miles a day up and down, in uluhe fern, the mountain, trying to protect these birds from all the other things we could...we could do. And that's for...that's the people who work hard in the conservation side. And now, we're talking about just us, as a community, as a...as a three-island...a four-island County, to say, okay. The conservationists start doing their end, maybe...maybe we, as a...as a municipality, can do something on our end. So, I...I rise in full support of this. And I think...if anybody is curious, you can go on YouTube, or just Google it, and listen to what 'ua'u sound like at night. And you can hear them at night, and...when the dark...moon is dark, and it's a beautiful sound. And it really puts you in the place of what the actual thing we're trying to save here. It's not just some out there, out of the way unknown. These are animals that are in...you know, on top of the mountains, and you can hear them, and I encourage everyone to kind of do a little Google research on what we're trying to protect. And I think you would...you would agree that we can do something for these. So, rise in strong support. Thank you, Chair.

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CHAIR KING: Mahalo, Member Johnson. This is the flyer that was put out there...put in our recent utility bill by MECO. It's got our...the Save Our Seabirds information, and the 'ua'u is the third one on here, Hawaiian petrel, with big red letters, it says endangered. So, you know, thank you for all your work and, you know, protecting our endangered birds. There's two of the four; the 'a'o also, the shear...which is the shearwater, is also endangered. So, I think time is of the essence. And I'm hoping that we can move this out, and get it through the...the Council as well. So, with that being said, all those in favor of the motion as amended, to move it on to full Council, raise your hand and say aye. Aye.

COUNCILMEMBERS VOICED AYE.

CHAIR KING: Okay. Six ayes, one excused, Member Sugimura. Motion passes unanimously. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Sugimura.

MOTION CARRIED.

ACTION: Recommending FIRST READING of BILL 21, CD2, FD1 (2022).

CHAIR KING: And I'm so happy I could get you out of here earlier. I was...I was...I was so happy this morning when we got the...the bicycle bill finally passed. And so, this has been a big day, I think, for the Council Committees. (Audio interference) you know, two bills that we've worked on for a long time, and gone back and forth, and considered everybody's opinions on, and we're finally moving them out of Committee, and hopefully through the full Council by the end of this term. So, thank you, Members. Thank you for all your thoughtful questions, and input, and your commitment to our...our County's biodiversity. And we will definitely put...send this...the first reading measure onto the International ICLEI Biodiversity Committee to...to comment on as well. And with that, do we have...Staff, do we have any other . . .(inaudible). . . that we need to take care of?

MS. MILNER: No, Chair. Thank you.

CHAIR KING: Filing of the communication or anything? I think because it came back, we

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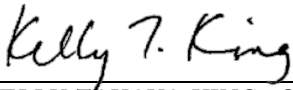
don't have to do that.

MS. MILNER: Correct.

CHAIR KING: Okay. Thank you, Members. And the meeting of...the reconvened CARE Committee meeting of August 31 is now adjourned. It's 3:34. . . .*(gavel)*. . .

ADJOURN: 3:34 p.m.

APPROVED:



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

care:min:220908:th

Transcribed by: Tricia Higa

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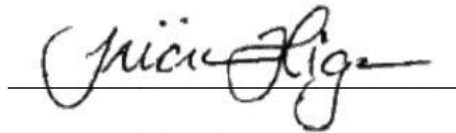
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CERTIFICATION

I, Tricia Higa, hereby certify that pages 1 through 49 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 17th day of October 2022, in Mililani, Hawai'i

A handwritten signature in black ink, appearing to read "Tricia Higa", is written over a horizontal line.

Tricia Higa