DEPARTMENT OF THE
CORPORATION COUNSEL 205

MOANA M. LUTEY 6385
Corporation Counsel
KRISTIN K. TARNSTROM 9934
BRIAN A. BILBERRY 7260
Deputies Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Hawaii 96793
Telephone No. (808) 270-7741
Facsimile No. (808) 270-7152
Email: kristin.tarnstrom@co.maui.hi.us

Attorneys for Respondent
DEPARTMENT OF PLANNING FOR THE
COUNTY OF MAUI

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STATE OF HAWAII
LAND USE COMMISSION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF The issuance of a declaratory order that the number of dwellings allowed on properties in the Rural District can be more than one per one-half acre if allowed by County Zoning.	DOCKET No.: DR21-71 RESPONDENT DEPARTMENT OF PLANNING, COUNTY OF MAUI'S RESPONSE TO PETITION FOR DECLARATORY ORDER; APPENDICES A-D; CERTIFICATE OF SERVICE **Hearing:** Date: April 14, 2021 Time: TBD

RESPONDENT DEPARTMENT OF PLANNING, COUNTY OF MAUI'S RESPONSE TO PETITION FOR DECLARATORY ORDER

I. INTRODUCTION

Petitioner Andrew Greir ("Petitioner") brings the instant action to clarify the statutes and requirements governing the number of dwellings units allowed on his property located in a State Rural district and a County RU-0.5 zoned district. The Department of Planning ("Department")

has consistently interpreted these statutes to limit the number of allowable dwellings in State Rural districts to one per half-acre, except where HRS § 46-4(c) applies. The Department's position is that HRS § 46-4(c) only applies in circumstances where the lot size is less than one-acre, and HRS §§ 205-2 and 205-5 would only otherwise allow one dwelling. Petitioner's property is 2.02 acres, and therefore it is the Department's position that the State Rural district governing statutes mandate a maximum of four dwelling units on Petitioner's lot.

Due to the conflict of Petitioner and the Department's interpretation of these statutes, the Department supports the Land Use Commission ("Commission") issuing a decision to clarify the statues and their application.

II. STATUTES AND CODES

- Hawaii Revised Statutes § 205-2(c), *Districting and classification of lands*

> (c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet.

- Hawaii Revised Statutes §205-5(c), *Zoning*

> (c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts: …

> In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.

- Hawaii Revised Statutes § 46-4(c), *County zoning*

> (c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

- Maui County Code § 19.29.030, *Rural Districts: Permitted Uses*

> Principal Uses, (a)(1) One single-family dwelling per one-half acre in the RU-0.5 and County rural districts…
>
> Accessory Uses (b)(3) Accessory dwellings pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes.

- Maui County Code § 19.35.050, *Number of Accessory Dwellings Per Lot.*

> (A) Maui:
>
> - 1. No more than one accessory dwelling shall be permitted on any lot that is less than seven thousand five hundred square feet.
> - 2. No more than two accessory dwellings shall be permitted on any lot that is seven thousand five hundred square feet or greater.
>
> (B) Molokai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater.
>
> (C) Lanai: One accessory dwelling shall be permitted on a lot that is seven thousand five hundred square feet or greater

III. STATUTORY CONSTRUCTION

This action requires the interpretation of a number of statutes. The Hawaii Supreme Court provides guidance as to the established rules of statutory interpretation.

> First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of City & County of Honolulu, 114 Hawai'i 184, 193, 159 P.3d 143, 152 (2007). A Court may not insert material terms into a code or statute, substantially changing its meaning. *Carlisle v. One (1) Boat*, 119 Hawai'i 245, 256, 195 P.3d 1177, 1188 (2008).

> It is a cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all the words of the statute."

Camara v. Agsalud Supreme Court of Hawai'i. 67 Haw. 212, 216, 685 P.2d 794, 797 (1984).

IV. PLANNING DEPARTMENT'S POSITION

The Department agrees with the nature of the issue presented as stated by Petitioner, "[w]hether HRS §§ 205-5(c), 205-2(c), and 46-4(c) restrict a county's ability to provide for greater density in the Rural district than one dwelling per one-half acre." Pet., p. 5. The Department also agrees that there are no material facts in dispute, and that the issue presented is solely one of interpretation of the Commission's related statutes. Id. p. 14. The Department also fully supports resolving this issue before this Commission for the sake of clarity and finality, and agrees that this Commission has authority to answer the issue presented under HRS § 91-7 and Land Use Commission Rules HAR § 15-15-98, et seq. *See* Id., Appx 1.

The Department agrees with Petitioner's identification of the applicable statutes and codes in this action. Petitioner's land is zoned State Rural, and County RU-0.5. Pet. p. 4. The parties diverge on the proper interpretation of these statues, the intent of the legislature in passing them, and what their "plain language" states.

A. THE DEPARTMENT'S INTERPRETATION OF APPLICABLE CODES

HRS § 205-5(c) governs lands in the State Rural district, and requires that "there shall be but one dwelling house per one-half acre, except as provided for in section 205-2." HRS § 205-2(c) provides that there be "not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c)". HRS § 46-4(c) allows that "each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted."

The State Rural district statutes, HRS §§ 205-5 and -2, do not limit the number of houses by <u>lot</u>, but rather by acres within a lot, basing the maximum dwelling units purely by acreage. As just noted, they require there "shall be but one dwelling house per one-half acre," and they make this a general requirement but-for the narrow exception carved out in HRS § 46-4(c).

HRS § 46-4(c) does relate to lots, and it is a general statute that does not explicitly apply only to State Rural districts. HRS § 46-4(c), allows a county to make appropriate rules and standards to allow two single family dwellings on a lot when only one residential dwelling would otherwise be allowed. This provision only pertains to the instances where <u>one</u> residential dwelling is allowed by rule, and in those cases HRS 46-4(c) carves out an exception so the one home may have an "ohana" or additional dwelling unit. It does not apply to circumstances where more than one dwelling unit is allowed on a lot.

The HRS § 46-4(c) plainly states that counties may allow "the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." HRS § 46-4(c) (emphasis added). I.e., where "a residential dwelling unit" is allowed, the County can make it into two. The use of the phrase "a residential dwelling unit" identifies one residential dwelling unit: the language is phrased in the singular, and is specific and unequivocal.[1] It also is the only way to construe the context of the first part of this provision. The statute specifically limits the number of additional dwelling units a County can allow, by precisely stating they may allow the "construction of two single family dwelling units." Id. (emphasis added).

If two single-family dwellings are already allowed on the lot, the provisions allowing construction of two dwelling units would be meaningless and unnecessary. When construing the language of a statute, one must "give effect to all parts of a statute, and that no clause, sentence or word shall be construed as superfluous, void…" *Camara, supra*,. 67 Haw. at 216. Further, the statute merely allows "construction of two single-family dwellings" in place of one, it does not say "two additional single family dwellings on every lot," turning one into three. "We cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts. We do not legislate may or make laws." *Carlisle*, *supra*, 119 Hawai'i at 256.

[1] While there is a rule of statutory construction that phrases in the plural or singular mean both singular and plural, HRS § 1-17; such rule is not applied where the statutory context and history indicates an intent that singular in fact means "one." *See AlohaCare v. Ito*, 126 Hawai'i 326, 347, 271 P.3d 621, 642 (2012) (the Hawaii Supreme Court "has interpreted statutes using the statutory presumption in HRS § 1-17 only after reviewing the legislative history and context in which a statute was passed to determine whether the legislature intended to signify both the singular and plural forms of a word.") The legislative history and context is addressed *infra*.

Finally, the Department's interpretation is supported by the legislative history. HRS § 46-4(c), referred to as "ohana zoning" originally passed in 1981. *See* HRS § 46-4(c) (1981), Act 229, S.B. No. 55 (June 22, 1981) ("HRS § 46-4(1981)"); *See* Appx. A.[2] The purposes of the law were,

> to permit the construction of two dwelling units on residential lots which can reasonably accommodate such increased density…
>
> Currently many homeowners are prohibited from building more than one single-family dwelling unit on their lots. Your Committee finds that allowing the development of an additional dwelling unit on those lots would allow optimal utilization of scarce land…

Senate Journal 1981, p. 923, Conf. Com. Rep. No. 41 on S.B. No. 55 (emphasis added); *see also* House Journal 1981, Standing Committee Report p. 1329, SCRep. 929 on S.B. no. 55 and Senate Journal 1981, Standing Committee Report, p. 1161, SCRep. 577 re S.B. 55. Appx A.

The original bill stated that it could not be pre-empted by "any other law, county ordinance, or rule," which would include HRS §§ 205-2 and 205-5. HRS § 46-4 (1981). In 1989 the legislature decided to "broaden the authority of the counties to regulate ohana zoning." *See* HRS § 46-4(c) (1989), Act 313, H.B. 1128 (June 13, 1989) and Senate Journal, Conference Committee Reports p. 779, Conf. Com. Rep. No. 51 on S.B. No. 1128 in Appx B. This 1989 bill removed the mandatory requirement that could not to be superseded, to "allow, rather than require the counties to adopt ohana zoning." Id. Since this bill removed the mandatory language, it was construed as excluding HRS §§ 205-2 and 205-5 from the benefit of ohana zoning. *See* HRS § 46-4(c)(1989), Act 5, H.B. No. 1156 in Appx C. Therefore, the language in HRS §§ 205-2 and -5 was altered to include the exception language we see now. Id.

[2] Each bill, along with its cited legislative history, is attached hereto as a separate appendix.

In correcting the language of HRS § 205-2 and 205-5, the Senate Committee noted that "the purpose of this bill is to permit second dwelling units in rural districts pursuant to county ohana zoning ordinances." HRS § 46-4(c) (1989), Act 5, S.B. 1556 and Senate Journal 1989, Standing Committee Reports, p. 1047, SCRep. 622 on S.B. no. 1128 in Appx C. All of the legislative history demonstrates that the intent of the legislature was to allow an additional home on those lots where only one was allowed, including in State Rural districts.

Both the plain language, context, and the legislative history demonstrate that the "ohana" exception in HRS § 46-4(c) carves out a very limited exception as it is applied to State Rural districts. Ultimately, HRS §§ 205-2 and 205-5 identify that "there shall be but one dwelling house per one-half acre…" but allow the limited exception of HRS § 46-4(c) to apply to those lots where only one dwelling house is allowed.

B. APPLICATION OF DEPARTMENT INTERPRETATION OF HRS §§ 205 AND 46-4(C)

Since HRS § 46-4(c) would only apply in instances where only one dwelling is allowed, it is only relevant in State Rural districts when the lot size is less than one acre. For example, for a State Rural lot that was only a half-acre in size, HRS § 205-5 and -2 would allow only one dwelling unit. Since only one dwelling unit is allowed, HRS § 46-4 is applicable, and along with applicable County Code provisions, the lot would also be allowed to have one additional dwelling unit.

As the lots grow in half-acre increments, they are allowed additional dwellings under HRS § 205-5 and -2, and because they are already allowed more than one dwelling, HRS § 46-4(c) is not relevant. For example, on a one-acre lot, HRS § 205 would allow two dwelling units, and since there are already two dwelling units allowed on the lot, HRS § 46-4 does not apply. Under

these circumstances, the County Code would allow either two single-family dwellings, or one single-family dwelling and an ohana unit, depending on the preference of the owner.

As you move up in size, for a 1.5 acre lot, HRS § 205-5 and -2 would allow three dwelling units total, and therefore again HRS § 46-4(c) does not apply. Under the County Code, the County would allow either three single-family homes; two single family homes and one ohana; or one single-family home and two ohanas, depending on the preference of the lot owner. A visual representation of the Department's interpretation of the interplay of these statutes is presented herein as Appendix D.

C. Application of Department Interpretation of Statute to Petitioner

Petitioner Andrew Grier owns a property of 2.02 acres in a State Rural, and County-zoned RU-0.5 district, where all the above statutes apply. Pet., p. 4. Based on his 2.02 acres of land, he would be allowed no more than four dwelling units under HRS § 205. Since the statute allows more than one dwelling unit on his lot, HRS § 46-4(c) does not apply any exception.

Petitioner alleges he was granted building permits for three single-family dwellings in compliance with County zoning. Pet., p. 4. The Department of Public Works (DPW) processes building permit applications, and the Department of Planning reviews them for consistency with zoning. Maui County Code (MCC) § 18.04.030D. When Petitioner applied for a fourth dwelling, along with an accessory unit, he states he was given preliminary approval for both. Id. However, at some point prior to the final building permit being issued, the Planning Department identified that Petitioner could only have one additional dwelling on his land. Id. It is undisputed that Petitioner was not granted any final approval on a fifth building permit, prior to the Department realizing any mistake.

The Department strongly disputes Petitioner's characterization that the Department "changed its interpretation" of these applicable statutes. Pet. p. 13. The County has consistently enforced the interpretation addressed above as it pertains to State Rural districts. The County Ordinance that Petitioners rely upon to create their right to two additional dwelling units, discussed *infra*, was only passed in December 2018. The Department gave multiple presentations on the ordinance to community groups and other organizations, noting that it would have limited applicability in the State Rural district.[3] The Department's interpretation on this point has been consistent, irrespective of the allegation by Petitioner Grier that the Department initially made an error during the pendency of his fourth and fifth building permit applications.

V. RESPONSE TO PETITIONER'S POSITION

Petitioner believes he is entitled to the four dwellings allowed under HRS § 205, as well as an additional two dwellings under (a misinterpretation of) HRS § 46-4 and Maui County Code.

A. RELEVANT MAUI COUNTY CODE AND COUNTY ZONING

Similar to HRS § 205-2 and -5, Maui County Code allows one single family dwelling per one-half acre in the RU-0.5 district under MCC § 19.29.030. As to "accessory dwellings", Maui County Code has a specific chapter – which is applicable in several zoning districts – which allows a maximum of two accessory dwellings to any lot larger than 7,500 sq. feet. MCC § 19.35.050. Accessory dwellings are expressly allowed in the R-0.5 district, but the adoption is "pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes." MCC 19.35.050.

[3] If requested by the Commission at hearing, the County will present the testimony of Michele McLean, Director of the Department of Planning, that she personally gave presentations on the County legislation on February 15, 2019, March 15, 2019, April 4, 2019, May 1, 2019, September 17, 2019, March 5, 2020, and November 13, 2020 to various community organizations.

If the Maui County Code were the only applicable statute in this instance, then Petitioners would be allowed six dwellings: four single-family dwellings and two accessory dwellings. This could occur, for example, if the area were in the State Urban district, and County-zoned RU-0.5. Under this circumstance, the State Rural limitations in HRS Chapter 205 would not apply because it was State Urban and under County Code, Petitioner would be allowed six dwellings.

However, accessory dwellings are only allowed in the RU-0.5 district "pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes." MCC 19.35.050 (emphasis added). The County Code adopts and recognizes the requirements of HRS § 205 when it applies. Even if it did not, the requirements of State Rural district would still independently apply to Petitioner's land: he is subject to multiple layers of land use regulations and the County's land use does not supersede the State zoning requirements, unless expressly allowed.

B. PETITIONER'S USE OF HRS §46-4 AND COUNTY ZONING

Petitioner recognizes the limitations over his property as expressed in HRS §§ 205-2 and -5, but reads HRS § 46-4(c) as allowing the County to fully supersede those limitations. Petitioner erroneously characterizes HRS § 46-4(c) as "allowing construction of more than two dwelling units on a lot within the Rural district" so long as the County has passed such ordinances to allow it. Pet. p. 8 (emphasis added). That is simply not what the plain language of HRS 46-4(c) states, nor its intent, as is addressed above. To achieve this end, Petitioner's interpretation adds a phrase and subtracts a phrase in HRS § 46-4(c).

Petitioner adds that the county may allow "construction of more than two dwellings" when the statute does not state "more than." This is contrary to the plain language, and intent, of the statute which simply allows "construction of two single-family dwelling units on any lot where a

residential dwelling unit is permitted." HRS § 46-4(c). By Petitioner's logic, the County may allow unlimited additional dwellings, which could result in extremely high density residential development in the State Rural district.

Second, Petitioner believes these additional dwellings can be allowed "on a lot within the Rural district," and in doing so subtracts the phrase "on a lot where a residential dwelling unit is allowed." For one, he ignores that a residential dwelling unit must already be allowed on the lot. Second, he ignores the language that "a residential dwelling unit," in the language, context, and legislative history of this statute, represents one residential dwelling unit.

Petitioner treats HRS § 46-4(c) as a loophole to HRS § 205-2 and -5, rather than a small exception. This is despite the specific language that in State Rural districts, "there shall be but one dwelling house per one-half acre." The County may not supersede the requirements embodied in the State land use regulations.

C. SUPREMACY OF STATE LAW

The Department's interpretation of the statutes and codes herein is not premised upon the "supremacy" of State Law, i.e. that there is a conflict of law and the State's must be supreme. As shown above, the County and State law are not in conflict. County regulations for the rural districts in MCC § 19.29.030, allow one dwelling per half-acre; and accessory dwellings are allowed "pursuant to chapter 19.35 of this title and chapter 205, Hawaii Revised Statutes." The County Code recognizes and adopts the requirements of chapter 205 therein. Further, HRS § 205 simply applies to this piece of land as its own, separate land use regulation. Its requirements must be met separate and apart from County requirements. *See* HRS § 205-5(c).

VI. CONCLUSION

As demonstrated herein, HRS § 46-4(c), the State Rural land use statutes allow the counties to permit two dwelling units where one is already allowed on lots less than an acre in size. On lots an acre or larger, the HRS § 46-4(c) exception does not apply, and HRS §§ 205-2 and 205-5 require the counties to allow only one house per one-half acre.

DATED: Wailuku, Maui, Hawai‘i, February 26, 2021.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Respondent
DEPARTMENT OF PLANNING,
COUNTY OF MAUI

By /s/ Kristin K. Tarnstrom
KRISTIN K. TARNSTROM
BRIAN A. BILBERRY
Deputies Corporation Counsel

APPENDIX A

ACT 229 S.B. NO. 55

A Bill for an Act Relating to Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes that the spiraling costs of housing, the limited availability of land for housing, and the failure of wages to keep pace with inflation, contribute to the inability of many families to purchase their own homes.

The legislature also recognizes the resulting trend of children living in their parents' homes even after reaching adulthood and after marriage. This trend has positive and negative aspects. The situation is negative when it is forced upon persons because there is a scarcity of affordable homes. The trend can be positive, however, because it helps preserve the unity of the extended family.

The purpose of this Act is to assist families to purchase affordable individual living quarters and, at the same time, to encourage the preservation of the extended family.

SECTION 2. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

"**§46-4 County zoning.** (a) This section and any ordinances or rules and regulations adopted in accordance with it, shall apply only to those lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district as shall be deemed best suited to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land so as to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

(1) The areas within which agriculture, forestry, industry, trade, and business may be conducted.
(2) The areas in which residential uses may be regulated or prohibited.
(3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted.
(4) The areas in which particular uses may be subjected to special restrictions.
(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered.
(6) The location, height, bulk, number of stories, and size of buildings and other structures.

(7) The location of roads, schools, and recreation areas.
(8) Building setback lines and future street lines.
(9) The density and distribution of population.
(10) The percentage of lot which may be occupied, size of yards, courts, and other open spaces.
(11) Minimum and maximum lot sizes.
(12) Other such regulations as may be deemed by the boards or city council as necessary and proper to permit and encourage orderly development of land resources within their jurisdictions.

The council of any county shall prescribe such rules and regulations and administrative procedures and provide such personnel as it may deem necessary for the enforcement of this section and any ordinance enacted in accordance therewith. The ordinances may be enforced by appropriate fines and penalties, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Nothing in this section shall invalidate any zoning ordinances or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accord with a long range, comprehensive, general plan, and to insure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers now possessed by any county to achieve the ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsection (c).

Neither this section nor any ordinance enacted under this section shall prohibit the continuance of the lawful use of any building or premises for any trade, industry, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accord with the Hawaii rules of civil procedure.

(c) Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted; provided:

(1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and
(2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection.

This subsection shall not apply to lots developed under planned unit development, cluster development, or similar provisions which allow the aggregate number of dwelling units for the development to exceed the density otherwise allowed in the zoning district.

Each county shall establish a review and permit procedure necessary for the purposes of this subsection."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 4. This Act shall take effect on January 1, 1982.

(Approved June 22, 1981.)

ACT 230 S.B. NO. 815

A Bill for an Act Relating to the Renter's Income Tax Credit

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-55.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Each taxpayer with an adjusted gross income of less than $20,000 who has paid more than $1,000 in rent during the taxable year for which the credit is claimed may claim a tax credit of [$20] $50 multiplied by the number of qualified exemptions to which [he] the taxpayer is entitled; provided each taxpayer sixty-five years of age or over may claim double the tax credit."

SECTION 2. Statutory material to be deleted is bracketed. New material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1980.

(Approved June 23, 1981.)

ACT 231 S.B. NO. 557

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In addition to the excise tax credit allowed under section 235-55.5, Hawaii Revised Statutes, and in addition to any other credit allowed under chapter 235, Hawaii Revised Statutes, there shall be allowed each resident individual taxpayer who qualifies under section 235-55.5(a), Hawaii Revised Statutes, a general income tax credit of $100 which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes. The general income tax

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.

groups of people.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 432, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 432, S.D. 1, C.D. 1.

Senators Henderson, George and Machida
Managers on the part of the Senate

Representatives Sakamoto, Fukunaga, Kawakami, Waihee and Medeiros
Managers on the part of the House

Conf. Com. Rep. No. 40 on H.B. No. 728

The purpose of this bill is to tighten the existing buy-back provisions in the Hawaiian Homes Commission Act, 1920, as amended, in order to curb speculation, lower the price of homes to new lessees of surrendered leases, and prevent a drain of the Department of Hawaiian Home Land's housing loan funds.

Currently, lessees who surrender their leases or have them canceled receive the difference between the appraised value of the improvements, as determined by independent appraisal, and debts owing the Department of Hawaiian Home Lands. Appraisals of improvements have been much higher than the original costs of the improvements. Thus, the Department has had to pay much for the surrendered leases. This has allowed some lessees to make large cash gains after short residences on leased lands. The added costs have also been passed on to subsequent lessees.

The Department of Hawaiian Home Lands has proposed this bill. The buy-back provisions are based on those of the Hawaii Housing Authority. The Department feels that this bill is equitable to itself and surrendering lessees. Your Committee agrees with the Department in this regard.

Your Committee has added a subsection (h) to the new section created in Section 2 in this bill to specify that this bill does not affect rights or interests which have vested prior to enactment of this bill - that present homestead leaseholders are not affected. This is done to allay the fears of many homesteaders who have expressed concern over this matter.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 728, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 728, H.D. 1, S.D. 1, C.D. 1.

Senators Yamasaki, Anderson and Young
Managers on the part of the Senate

Representatives Sakamoto, Kiyabu, G. Hagino, Hashimoto, Kawakami and Narvaes
Managers on the part of the House

Conf. Com. Rep. No. 41 on S.B. No. 55

The purpose of this bill is to permit the construction of two dwelling units on residential lots which can reasonably accommodate such increased density.

Currently, many homeowners are prohibited from building more than one single-family dwelling unit on their lots. Your Committee finds that allowing the development of an additional dwelling unit on those lots would allow optimal utilization of scarce land, provide an immediate and relatively inexpensive means of increasing the supply of affordable housing, and encourage the maintenance of the extended family lifestyle we value in Hawaii.

To clarify possible ambiguities as to the scope of this bill, your Committee has substantially amended the bill in the following manner:

1. The bill has been amended to apply to "any lot where a residential dwelling unit is permitted" to assure that residential dwelling units constructed in areas which are not specifically zoned for residential use (for example, apartment, hotel, etc.) would fall within the scope of this bill.

2. The application of the bill to any particular lot is conditioned upon satisfaction of applicable county requirements. This is intended to insure that any two dwellings constructed on a residential lot pursuant to this bill does not exceed any limitation otherwise imposed on the development of the lot. This would include height, setback,

and lot coverage requirements. The bill also enables counties to establish additional requirements.

3. The application of the bill to any lot is also conditioned upon the counties finding that infrastructure and other public facilities can support the additional development.

4. Residential areas in which density bonuses have already been provided, such as planned unit developments or cluster developments, are excluded from the scope of the bill.

5. The counties are explicitly required to adopt permit procedures for dwelling units developed under this bill and the effective date of the measure has been changed to January 1, 1982 to allow for such development and adoption.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 55, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 55, S.D. 1, H.D. 1, C.D. 1.

Senators Young, Holt and Anderson
Managers on the part of the Senate

Representatives Shito, Chun, Kobayashi, Sakamoto and Lacy
Managers on the part of the House

Conf. Com. Rep. No. 42 on S.B. No. 1713

The purpose of this bill is to bring state regulations concerning health care insurance for the elderly into compliance with Public Law 96-625, enacted by Congress on June 8, 1980.

This law requires states to adopt before July 1, 1982, a regulatory system for Medicare supplements in conformance with federal requirements. Failure to adopt such a system will subject the State to federal regulation. This bill authorizes the state insurance commissioner to adopt a variety of rules regulating terms and types of coverage, eliminating misleading provisions, and providing for full disclosure in the sale and marketing of health care coverage to senior citizens.

This bill will protect the State's elderly consumers of medical insurance and ensure that the State retain regulation in this area.

Your Committee has made an amendment to the provision that nonprofit medical indemnity or hospital service associations be exempt from the provisions of sections 431-463 to 431-498, Hawaii Revised Statutes, to condition such exemption on its compliance with federal statutes and regulations.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1713, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1713, S.D. 1, H.D. 1, C.D. 1.

Senators Yamasaki, Anderson, Cobb, Henderson and Uwaine
Managers on the part of the Senate

Representatives Blair, Kiyabu, Chun, Dods, Kobayashi, Levin, Okamura, Shito, Lacy and Ikeda
Managers on the part of the House
Representative Dods did not sign the report.

Conf. Com. Rep. No. 43 on H.B. No. 1590

The purpose of this bill is to clarify provisions in the current statutes regarding the leasing and development of state owned, submerged lands and lands beneath tidal waters.

Your Committee finds there are two statutory avenues under which the Board of Land and Natural Resources can lease submerged lands and lands beneath tidal waters. Section 171-60, Hawaii Revised Statutes, requires prior approval of the Governor and authorization of the Legislature while Section 171-53 requires only prior approval of the Governor. However, your Committee believes that legislative authorization should be required whenever the Board of Land and Natural Resources leases submerged lands and lands beneath tidal waters. Accordingly your Committee has amended the bill in the following manner:

(1) By amending the purpose section (Section 1) of the bill so that the purpose, in

SCRep. 929 Housing and Water, Land Use, Development and Hawaiian Affairs on S.B. No. 55 (Majority)

The purpose of this bill is to allow construction of two-family dwelling units or two separate units for single-family residential use on lots zoned for residential use.

Your Committees find that an immediate, and far less costly, increase in the supply of housing can be achieved by allowing construction of multiple dwellings. An additional benefit that will be realized by passage of this measure is that several generations of a family will be allowed to live together on one lot. The counties are allowed to condition the applicability of "ohana zoning" to specific residential areas upon satisfaciton of plan review and reasonable health, safety and welfare requirements. Thus, ohana zoning would not be allowed in a particular neighborhood if the existing infrastructure of streets and sewer and water systems cannot support the increased density.

Your Committees recommend the following changes to S.B. No. 55, S.D. 1:

1. Page 6, line 4 and line 6 - Change "square footage of the two-family dwelling unit" to "ground level square footage of the two-family dwelling unit." Zoning ordinances which specify floor area ratios usually refer to ground floor area.

2. Page 6, line 9 - Change "ensure adequate facilities" to "ensure adequate off-street parking and public facilities." This change provides assurance that the increased densities allowed by this bill will not result in an excessive number of vehicles parked on perhaps already crowded public streets.

3. Other minor amendments for purposes of clarity and style.

Your Committees feel this measure, as amended, has the necessary safeguards to make "ohana zoning" an acceptable and practical partial solution to Hawaii's housing problems.

Your Committees on Housing and Water, Land Use, Development and Hawaiian Affairs are in accord with the intent and purpose of S.B. No. 55, S.D. 1, as amended herein, and recommend that it pass Second Reading and be placed on the calendar for Third Reading as S.B. No. 55, S.D. 1, H.D. 1.

Signed by all members of the Committees except Representative Sakamoto. (Representative Monahan did not concur.)

SCRep. 930 Judiciary on S.B. No. 1136

The purpose of this bill is to correct out-of-date references contained in the provisions relating to indigent prisoners eligible for parole but who have outstanding fines and costs.

Section 353-68, Hawaii Revised Statutes, relating to the initiation and granting of parole to prisoners permits the paroling authority to parole a prisoner who has been sentenced to pay any fine or cost, without such payment, if the prisoner qualifies as a "poor convict" as defined in section 712-4, Hawaii Revised Statutes, and complies with the provisions of that section.

When the Hawaii Penal Code was revised in 1972, section 712-4, Hawaii Revised Statutes, was repealed. Although the Penal Code contains no provisions for "poor convicts", as such, section 706-645, Hawaii Revised Statutes, provides for revocation of all or part of a fine by the court upon a petition by the defendant who is not in contumacious default of the payment thereof. The Penal Code no longer makes any provision for the payment of costs by a criminal defendant.

Accordingly, your Committee feels it appropriate to amend section 353-68, Hawaii Revised Statutes, to refer to the correct statute and to delete references to costs.

Your Committee on Judiciary is in accord with the intent and purpose of S.B. No. 1136, S.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

candidates have not marked pledges down as contributions because of the difficulty in balancing their books when such pledges were not received. The requirement of obtaining occupations of persons contributing through the mail was characterized as onerous. He opposed limits on the contributions of political parties. Testimony received from a representative of the League of Women Voters indicated that there was a need to revise the bill to exempt individual contributors from registration and reporting requirements.

Your Committee adopted most of the recommendations made by the Executive Director of the Campaign Spending Commission, but revised the bill to exempt individual contributors from the registration and reporting requirements by redefinition of "committee". Your Committee further revised the bill to eliminate ceilings on contributions to candidates from any person, as your Committee is of the belief that existing provisions by way of reporting requirements make such a restriction unnecessary. Your Committee has provided for a thirty per cent increase in the voluntary spending limits for candidates, and a ten per cent increase for each subsequent year, as inflation is making such an increase necessary. Finally, your Committee has revised the bill to simplify the campaign reporting procedures and has eliminated the present requirement of filing reports in years in which the person is not a candidate.

Your Committee on Judiciary is in accord with the intent and purpose of S.B. No. 1684, S.D. 1, as amended herein, and recommends it pass Second Reading in the form attached hereto as S.B. No. 1684, S.D. 2, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 577 Housing and Hawaiian Homes on S.B. No. 55

The purpose of this bill is to allow construction of two-family dwelling units or two separate units for single-family residential use on lots zoned for residential use.

Your Committee finds that an immediate increase in the supply of housing can be achieved by allowing construction of multiple dwellings.

The zoning created by this bill ("ohana" zoning) would allow more residents to live in lower-density residential areas. Construction of additional units, through expansion of existing units, would be less costly than building new structures, since land and infrastructure are amortized; and ohana zoning would allow several generations to live together and share with one another. Senior citizens will specifically benefit, allowing them to occupy separate units on a single family lot.

Your Committee has amended this bill by changing "residential lot" to a "lot zoned for residential use". This change would allow lot owners without homes to plan for the construction of two-family dwelling units. The bill has also been amended to include attached and unattached dwelling units. This change specifies the kind of construction permitted.

Your Committee has also made non-substantive changes to eliminate unnecessary language and clarify the provisions of this bill.

Your Committee on Housing and Hawaiian Homes is in accord with the intent and purpose of S.B. No. 55, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 55, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 578 Housing and Hawaiian Homes on S.B. No. 646

The purpose of this bill is to allow group living in areas zoned for residential use.

As received by your Committee, this bill allowed group living as a permitted use for any real property zoned by a county use ordinance under a residential use designation provided that (1) not more than seven unrelated adults all age fifty-five or older made up the group; and (2) not more than two cars owned by members of the group are garaged or parked on the street at the residence.

Your Committee has amended the bill to delete the age requirements for members of the group and the reference to numbers of automobiles owned by members of the group.

As amended, the bill would allow group living facilities as a permitted use on residential

APPENDIX B

constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action."

SECTION 3. This Act shall take effect on January 1, 1990.

(Approved June 13, 1989.)

ACT 313 S.B. NO. 1128

A Bill for an Act Relating to Ohana Zoning.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Each county [shall] may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted[; provided:

(1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements;
(2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection; and
(3) Construction of the second dwelling is otherwise in accordance with applicable zoning ordinances and rules, and general plan and development plan policies.

Nothing in this section shall supersede any recorded covenant or deed restriction that prohibits the construction of a second dwelling on a lot.

After receiving notice that a permit has been granted pursuant to this subsection, the applicant, once a week, for two consecutive weeks, shall publish a notice in a newspaper of general circulation in the area stating the applicant's name and address of the property, and notifying the public that the permit has been obtained. No contruction shall be initiated until the last of the notices has been published. If the applicant fails to publish the notices, and constructs the unit, and a covenant or deed restriction exists that would have precluded the construction of the second unit, any person or entity who successfully brings an action for violation of the covenant or deed restriction shall be entitled to reasonable attorney's fees and costs.

This subsection shall not apply to lots developed under planned unit development, cluster development, or similar provisions which allow the aggregate number of dwelling units for the development to exceed the density otherwise allowed in the zoning district.

Each county shall establish a review and permit procedure necessary for the purposes of this subsection]."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 1989.)

Specifically, to continue to be eligible for foster board allowances beyond the age of majority, this measure requires the foster child to be twenty-three years old or younger and attend an accredited institution of higher education. In addition, the bill also amends Section 346-16, Hawaii Revised Statutes, by adding a definition of "institution of higher education" to include any institution which requires a high school diploma or equivalency certificate for enrollment, or any college, university, vocational, or technical school and further amends the same section by making technical changes to the definition of "foster boarding home" for purposes of clarity.

Your Committee has amended this bill by adding the required spending ceiling language as a new Section 3 of the bill. Subsequent sections have been renumbered.

Your Committee, upon further consideration, has amended this measure by decreasing the period of eligibility to age twenty-one.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 360, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 360, H.D. 2, S.D. 2, C.D. 1.

Senators McMurdo, A. Kobayashi and Koki.
Managers on the part of the Senate.

Representatives Arakaki, Fukunaga, M. Ige, Kawakami and Liu.
Managers on the part of the House.

Conf. Com. Rep. No. 51 on S.B. No. 1128

The purpose of this bill is to broaden the authority of the counties to regulate ohana zoning.

Currently, Section 46-4(c), Hawaii Revised Statutes, requires the counties to adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted, provided that county requirements are met and public facilities are adequate to service the additional units.

This bill would allow, rather than require the counties to adopt ohana zoning and would give the counties the authority to determine whether ohana units would have a negative impact on the neighborhood where they are proposed. The bill would also require applicants to submit a notarized statement stating that no recorded covenant or deed restriction prohibits the construction of a second dwelling on their property.

Upon consideration, your Committee deleted the entire substance of Section 46-4(c), HRS, except for the provision on page 1, lines 3-5, which allows each county to adopt reasonable standards for ohana zoning.

Your Committee finds that the bill, as amended, will give the counties the necessary discretion to decide whether or not ohana zoning will be permitted.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1128, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1128, H.D. 1, C.D. 1.

Senators Crozier, Solomon and Reed.
Managers on the part of the Senate.

Representatives Hayes, Amaral, M. Ige, Ihara Jr. and Cavasso.
Managers on the part of the House.

Conf. Com. Rep. No. 52 on S.B. No. 1376

The purpose of this bill is to amend the means by which a bank is required to notify a mortgagor of his right to discontinue a mortgage life insurance policy when the initial period of free coverage ends, if such coverage is not a condition for obtaining the mortgage, and to expand the requirement of notification to include savings and loan associations, industrial loan companies, credit unions, and casualty insurance companies.

Currently, banks are required to send each insured mortgagor, at least four weeks prior to the expiration of the period of free coverage, a yes/no check-off form in which the mortgagor may indicate a desire to continue or discontinue the mortgage life insurance after the free period has ended. Failure by the mortgagor to provide the form shall result in the automatic termination of the mortgage life insurance policy upon expiration of the free period. There are no similar provisions in the current law for savings and loan associations, industrial loan companies, credit unions, and casualty insurance companies.

This bill would require all of these institutions to send a written notice advising each mortgagor of the right to cancel the insurance, the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice to each insured mortgagor shall be sent at least four weeks prior to the expiration of the period during which the insurance is provided without charge.

Your Committee amended this bill by making several technical, nonsubstantive amendments for the purpose of style and clarity, and to correct drafting errors.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1376, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1376, H.D. 1, C.D. 1.

APPENDIX C

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved April 7, 1989.)

ACT 5 H.B. NO. 1556

A Bill for an Act Relating to Ohana Zoning.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify and correct Hawaii's ohana zoning laws.

Before 1981 section 205-5, Hawaii Revised Statutes, stated that the minimum lot size for construction of a dwelling house in rural districts was one-half acre except as provided in section 205-2. The pertinent part of section 205-2 allowed for construction of a dwelling house on a lot as small as 18,500 feet provided that density requirements were met.

In 1981 the legislature effectively repudiated the restrictions of sections 205-2 and 205-5 by legalizing "ohana zoning," which allowed more flexible use of Hawaii's land for residential purposes. It was believed that ohana zoning would increase the supply of available affordable housing and encourage maintenance of the extended family.

As originally promulgated, the ohana zoning law, section 46-4(c), stated in pertinent part that "Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." The unequivocal language used in this section made it clear that it superseded all other laws that would otherwise prohibit ohana zoning, including sections 205-2 and 205-5.

Last session the legislature amended section 46-4(c) by replacing the ohana zoning provision quoted above with a new ohana zoning provision that states in pertinent part that "Each county shall adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." This amendment was a response to the concerns of some home owners that ohana units were being built in areas where private covenants strictly prohibited such increased density. Aside from this one, rather narrow, exception, the intent of the legislature was that ohana zoning remain an option for Hawaii's people.

An unforeseen and undesired effect of the 1988 amendment, however, was that ohana zoning was arguably again prohibited by sections 205-2 and 205-5 in rural district lands. As the law now stands, even if any county were to adopt "reasonable standards" allowing ohana zoning as mandated by section 46-4(c), sections 205-2 and 205-5 would still supersede those standards and prohibit ohana zoning. This effect is manifestly contrary to legislative intent and is therefore corrected in this Act.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended to read as follows:

"**§205-2 Districting and classification of lands.** (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
(2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in section 183-41 are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 183-41, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park

lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 7, 1989.)

ACT 6

S.B. NO. 677

A Bill for an Act Relating to the General Excise Tax Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

"**§237-9 Licenses; penalty.** (a) Any person who shall have a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of [$2.50 (except when a $1 fee is prescribed by section 237-10),] $20, a license to engage in and to conduct such business [for the current tax year], upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. [The license shall expire on December 31 next succeeding the date of its issuance.] Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of $20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one time license fee of $20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of

Your Committee on Energy and Natural Resources is in accord with the intent and purpose of S.B. No. 1054, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1054, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 622 Housing and Hawaiian Programs on S.B. No. 1128

The purpose of this bill is to permit second dwelling units in rural districts pursuant to county ohana zoning ordinances.

This bill proposes to correct what appears to be an unintended consequence of the latest 1988 amendment (Act 252) to Section 46-4(c) Hawaii Revised Statutes (HRS), the ohana zoning statute. When Section 46-4(c), HRS was originally adopted in 1981, it contained a superiority clause which overrode all other laws, ordinances, or rules. When the 1988 amendment was made, this superiority clause was deleted. The effect of this change is that Section 46-4(c), HRS no longer supersedes Section 205-2, HRS which establishes density in "Rural Districts" at one dwelling per one half acre. Therefore, an additional ohana dwelling unit can no longer be built on a "Rural District" lot of less than one acre because of the density provision in Section 205-2, HRS.

This bill remedies this problem by amending the Rural District description in Chapter 205 to permit second dwelling units under county ohana zoning ordinances.

Your Committee heard testimony in support of this measure from Kauai County Council Chair Ronald Kouchi, Councilman James Teheda, Planning Committee Chair, and from the Hawaii Association of Realtors.

Your Committee on Housing and Hawaiian Programs is in accord with the intent and purpose of S.B. No. 1128 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 623 Housing and Hawaiian Programs on S.B. No. 1833

The purpose of this bill is to amend Sections 214(b) and 215 of the Hawaiian Homes Commission Act of 1920, as amended, by removing the current ceiling of $50,000 on loans or guarantees for the repayment of loans made to lessees for the repair, maintenance, purchase and erection of a dwelling and related improvements.

This bill would replace the fixed dollar amount with a formula for calculating a ceiling for residential loans and loan guarantees. The ceiling would be fifty percent (50%) of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development, Federal Housing Administration (FHA). The proposed formula using the FHA maximum loan amount, would align the department's loan and loan guarantee maximums with current home costs. This would eliminate the need for DHHL to periodically request statutory amendments to keep up with rising costs.

Your Committee finds from testimony presented by the Department of Hawaiian Home Lands (DHHL), that this bill is necessary to provide additional home construction funds for homestead lessees. Due to inflation, the cost of constructing a new home has been steadily rising every year.

Your Committee heard testimony requesting that similar action be extended to loans made to lessees for farm and ranch operations. Your Committee concurs with DHHL that the immediate priority is to resolve the ceiling on residential loans. However, your Committee feels that the concern regarding the ceiling on loans for farm and ranch operations should also be addressed and will introduce a resolution requesting DHHL to study the matter.

Your Committee on Housing and Hawaiian Programs is in accord with the intent and purpose of S.B. No. 1833 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 624 Housing and Hawaiian Programs on S.B. No. 1808

The purpose of this bill is to provide that the Housing Finance and Development Corporation's (HFDC) shared appreciation in the project shall be limited to the pro rata share of units receiving rental assistance.

Section 201E-134, Hawaii Revised Statutes, currently provides the HFDC with a shared appreciation on 100% of any project that benefits from the State's rental assistance program, regardless of whether or not 100% of the project is provided a rent subsidy. Testimony from HFDC stated the current law may be a deterrent to developers who may want to utilize the rental assistance program for less than 100% of the units in a qualified rental project, but who are reluctant to share the appreciation on the entire project with the HFDC.

Your Committee on Housing and Hawaiian Programs is in accord with the intent and purpose of S.B. No. 1808 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 625 Transportation on S.B. No. 1894

The purpose of this bill is to provide that vehicles containing sand, gravel, dirt, and loose paper, rubbish, and other material, be covered by a cargo net, tarpaulin, canopy, or other material to prevent spillage onto highways.

APPENDIX D

STATE RURAL – COUNTY RURAL / RURAL 0.5

Such as: Maui Island, Maui Meadows, Maui Uplands, Pukalani

< 1 ACRE	1 TO < 1.5 ACRES	1.5 TO < 2.0 ACRES	2 TO < 2.5 ACRES	2.5 TO < 3.0 ACRES
2 DWELLINGS	**2 DWELLINGS**	**3 DWELLINGS**	**4 DWELLINGS**	**5 DWELLINGS**
1 MAIN – 1 ADU	2 MAIN – 0 ADU	3 MAIN – 0 ADU	4 MAIN – 0 ADU	5 MAIN – 0 ADU
				
	1 MAIN – 1 ADU	2 MAIN – 1 ADU	3 MAIN – 1 ADU	4 MAIN – 1 ADU
				
		1 MAIN – 2 ADU	2 MAIN – 2 ADU	3 MAIN – 2 ADU
				

STATE RURAL – COUNTY RURAL 1.0

Maui Island

	< 1.5 ACRES	1.5 TO < 2.0 ACRES	2 TO < 3.0 ACRES	3 TO < 4.0 ACRES
	2 DWELLINGS	**3 DWELLINGS**	**4 DWELLINGS**	**5 DWELLINGS**
	1 MAIN – 1 ADU	2 MAIN – 1 ADU	2 MAIN – 2 ADU	3 MAIN – 2 ADU
				
		1 MAIN – 2 ADU		
				

STATE RURAL – COUNTY INTERIM

Maui – most common in Hana

	< 1.5 ACRES	1 [illegible] ACRES	2 TO < 2.5 ACRES	2.5 to < 3 ACRES
	2 DWELLINGS		**4 DWELLINGS**	**5 DWELLINGS**
	2 MAIN – 0 ADU	3 MAIN – 0 ADU	4 MAIN – 0 ADU	5 MAIN – 0 ADU
				
	1 MAIN – 1 ADU	2 MAIN – 1 ADU	3 MAIN – 1 ADU	4 MAIN – 1 ADU
				
		1 MAIN – 2 ADU	2 MAIN – 2 ADU	3 MAIN – 2 ADU
				

STATE HRS SUMMARY: www.capitol.hawaii.gov/

A. HRS 205-5(c) states *"…there shall be but one dwelling house per one-half acre, except as provided for in section 205-2."*
B. HRS 205-2(c) states *"Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c)"*
C. HRS 46-4(c) states *"Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted."*

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

IN THE MATTER OF The issuance of a declaratory order that the number of dwellings allowed on properties in the Rural District can be more than one per one-half acre if allowed by County Zoning.	DOCKET No.: DR21-71 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, I caused a copy of RESPONDENT DEPARTMENT OF PLANNING, COUNTY OF MAUI'S RESPONSE TO PETITION FOR DECLARATORY ORDER on the following persons by U.S. Mail, postage prepaid:

Mary Alice Evans
Director, Office of Planning
P.O. Box 2359
Honolulu, HI 96804-2359

Dawn Takeuchi-Apana, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, HI 96813

James W. Geiger, Esq.
305 East Wakea Avenue, Suite 200
Kahului, HI 96732

Counsel for Petitioner
ANDREW GRIER

/

/

DATED: Wailuku, Maui, Hawai‘i, _____.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Respondent
DEPARTMENT OF PLANNING,
COUNTY OF MAUI

By /s/ Kristin K. Tarnstrom
KRISTIN K. TARNSTROM
BRIAN A. BILBERRY
Deputies Corporation Counsel