

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

January 5, 2018

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, JANUARY 5, 2018, BEGINNING AT 9:01 A.M., WITH CHAIR MICHAEL B. WHITE PRESIDING.

CHAIR WHITE: This meeting of the Council of the County of Maui shall please come to order.

Mr. Clerk, please call the roll.

### ROLL CALL

PRESENT: COUNCILMEMBERS ALIKA ATAY, ELEANORA COCHRAN, S. STACY CRIVELLO, DONALD S. GUZMAN, G. RIKI HOKAMA, YUKI LEI K. SUGIMURA, VICE-CHAIR ROBERT CARROLL, AND CHAIR MICHAEL B. WHITE.

EXCUSED: COUNCILMEMBER KELLY T. KING.

*(Councilmember King was not present when the roll was called; however, she arrived at 9:09 a.m.)*

COUNTY CLERK DENNIS A. MATEO: Mr. Chair, eight Members "present", one currently "excused". A quorum is set to conduct the business of the Council.

CHAIR WHITE: Thank you, Mr. Clerk.

And for opening remarks this morning, we will go to Member Crivello.

### OPENING REMARKS

The opening remarks were offered by Councilmember Stacy Crivello.

CHAIR WHITE: Thank you very much, Ms. Crivello.

Will you all please stand and join me in the Pledge of Allegiance.

### PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR WHITE: Thank you. And as we begin our agenda, please make sure that your phones are put on the silent mode.

And with that, Mr. Clerk let's proceed.

COUNTY CLERK: Mr. Chair, proceeding with testimony on ceremonial resolutions. We have one individual who have signed up to provide testimony on both resolutions. Calling Rodney Kilborn, with Handsome Bugga Productions.

(Councilmember King arrived at the meeting at 9:09 a.m.)

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

#### MR. RODNEY KILBORN, HANDSOME BUGGA PRODUCTIONS:

Hauoli maka hiki hou. Aloha mai. Aloha kakou. Good morning, Mr. Chairman White and to our Members. Council, great job. To all you workers, waking up every morning to your alarm.

I was asked to give testimony. I have nothing in front of me presented. But, I have a good heart. My pu`u wai, will speak. I'd like to take this time to honor two; a gentleman and a beautiful wahine; Ian Walsh, Paige Alms.

I knew these individuals when they were in diapers. I was not the one who changed the diapers. I was not the one who wiped the hanabata off your face when you were sick. It was mom and dad. Your parents are one of the most strength in our children today. It's the village, which the uncles and aunties that they had. And without that

village, they wouldn't be here who they are today. You cannot grow by yourself. You have to have aunties, uncles, moms and dad.

Yes, I was the uncle that gave the cracks. When I seen things that went in the wrong direction, I gave em cracks. When I seen them did the right things, I gave them my pu`u wai. And that was always, and that will always be, and even till today, the heartaches that we go through together, that's the small things. It's the love, aches, that remains. And you guys, uncle love you guys.

And, I honor you guys. I give you guys my blessing. I'm so proud for your accomplishment today. We never knew it would reach at this level. But, we knew something in there that you have, you would've reached higher. And, it's not the accomplishment of winning the event, but accomplishment of who you are as human being, good people, good heart. Keep that. That's what going carry you the furthest. Not the biggest wave, but the biggest pu`u wai. From me to you.

I'd also like to recognize a person that is not here. And, I wish he was here. I tried to get in touch with him and, so that he could be here. But, it's Billy Kemper. Billy Kemper won the first Big Wave World Surf League event two years ago. He's a Maui born in Kuau. He also won the second event two times in a row last year, Billy Kemper. He send his honor. He send his blessings to you guys. He said his arms are reach out to you guys. And he said uncles and all your aunties, thank you for helping me through my years. That was from Billy's in his words. He's not here today, but in honoring him too.

I'd also like to give recognition, my guys, Uncle Johnny Mac, get Allan, get the Santos, Ni`iloa. This is the strength, and even more than them; Ola, Pokini, which he's not here, Jeff Silva, which is not here. Wish they could be in here to celebrate you guys honor but work, yea. But, they wanted to send their blessings too, because without them, we wouldn't have the Big Wave Challenge which we have today.

Somebody had said to talk about, little bit about history. Never turn, yea, three minutes? I going put my hand here. History came in 1994 when windsurfing started to take the elevation or the recognition out at Peahi, I don't call the place Jaws. Jaws is here. I call it Peahi. And, out at Peahi, they were doing windsurfing, I'm a promoter that came back from a lot history with surfing. So, I started to gather that and try to bring surfing, windsurfing. That couldn't happen. Then we had such a thing called the strap crew which is a great bunch of guys. So, we try to do event; never happened back then.

1996, to make things real forward. 1996, we did the first event. And, we did it for pizza. And, it was a tow-in event. Everybody came up my house afterwards. We

had pizza, and we had, three minutes. And, we also had koa bowls for all the individual. That's the starting of Peahi, was a tow-in.

And then after that, we did couple more tow-in events, and it turned real successful. And today, we have the surfing which is called a paddle-in. And to honor, Ian Walsh is one of the guys that was very strongly pushing to see these paddle-in events to happen out there. So, congratulation to him too. But, I'd like to end it there. I don't like to go on because I can get really bored.

But, I'd like to say one thing before I leave yea. You guys get the most beautiful smile, and I think I handsome. I think you guys more handsome. And, I think we should just keep that in the 20, 2018, carry that, and let's try be the better person. Let's try all work together. And, let's build Maui together, because we cannot build it by ourself; no can, you guys. So, listen to the voices, take it, hold it, grab it, sponge it, and let it rip. So, stay cool, stay surf, stay high, get barrel. Aloha. Thank you.

CHAIR WHITE: Thank you, Mr. Kilborn.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Yes.

COUNCILMEMBER GUZMAN: I'd just make a quick a comment. I'd like to thank Mr. Kilborn for all the years of advocating for the World Big Wave Tour to be present, and all the hard work from his crew. I was there this last, this last year, and it was very organized and, and a well-maintained running machine.

I'd also like to thank Mr. Kilborn for all his support in our Council's purchase of the property at Hamakualoa, as we was very instrumental in the Malama Hamakualoa Association. And, big mahalos for all his help in the community. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, Mr. Kilborn was the only individual that had signed up to provide testimony on ceremonial resolutions.

CHAIR WHITE: Okay. Please proceed. Oh, without objections, Members, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.



CHAIR WHITE: Thank you.

COUNTY CLERK: Proceeding with ceremonial resolutions.

## CEREMONIAL RESOLUTIONS

RESOLUTION  
NO. 18-1

CONGRATULATING PAIGE ALMS  
FOR WINNING THE WOMEN'S FINAL  
OF THE 2017 PEAHI CHALLENGE

CHAIR WHITE: Actually, Paige, you can, you can sit down for a little while. We've got a little more to get through.

Please proceed.

COUNTY CLERK: Mr. Guzman.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair.

I MOVE TO ADOPT THE RESOLUTION AS IDENTIFIED BY  
THE CLERK.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Guzman, and a second from Ms. Sugimura.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. May I ask the Clerk to read the resolution in its entirety?

CHAIR WHITE: Certainly. Mr. Clerk.

*(The resolution was read in its entirety.)*

CHAIR WHITE: Thank you, Mr. Clerk.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. In regards to Paige Alms, we are so very blessed to have had her grow up here and be from Maui. And, we welcome her on the floor today.

A little bit of the history behind the Peahi Challenge Women's Championship. In 2016, the women were invited for the first time to compete at the Peahi Challenge. Paige was the outstand. She was the standout in the field of a dozen competitors and became the first Big Wave Women's World Champion.

She returned this last year in 2017 to win again; celebrating back to back wins at the break she loves to surf. The challenge of surfing is not just peak weather conditions, but one driven by self-motivation. Paige competes against other surfers at this event. But first and foremost, she trains hard and competes against herself; constantly striving to push beyond her personal best. She does this in conditions that are never consistent.

She and her fellow big wave surfers are a part of a small group that share a special connection with the ocean, and the monster waves they ride. In spite of all the accolades and the growing celebrity at home and abroad, Paige remains a Maui girl; representing our community and Hawaii with pride and aloha wherever she travels.

Furthermore, Paige and her boyfriend own a surfboard company together. And, they have contributed to the economic development of our community. They live and practice health and wellness both mentally and physically at Deep2Peak a Maui company, and are always promoting Maui businesses that help along their surfing journey.

I'd also like to talk about the big waves that we have here at Peahi, and the special significance of them, and the importance that this Council found it very necessary to purchase the Hamakualoa area that encases the Peahi big waves. As Maui residents and visitors, we, this is an epic sight and will promote our community, and Maui as a whole in the future. Something that we will always be proud of purchasing, and always be proud of cherishing on the North Shore.

So, I thank and congratulate Paige Alms for all her success and future endeavors. Aloha. And, I ask the Members for their full support of this resolution. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman.

Members, any further discussion on this item?

Ms. Cochran.

COUNCILMEMBER COCHRAN: I guess as a former surfer, since I got to this job, it's like such a faraway land and thought. But, this, I mean, I've dreamt of doing what these guys have done, but of course, never had the guts or skills to do so. And, my husband, Wayno Cochran, has the oldest surf shop; Maui Surfboards. And so, he wish too he was born a little earlier, later, and could have been part of the strap crew, which were all his buddies. So, it was one of his dreams too, but never got fulfilled due to age constraints, I suppose.

But, I just want to say, wow, to see the female and the wahine step up to this realm is just incredible, and something that if I was born, you know, a lot later than I did, then perhaps maybe one day. But, it's just so awesome to see, and it's definitely a huge honor.

And as Handsome Bugga mentioned, you know, it's deep in my pu`u wai. The surf and the connection to our oceans is runs strong and deep for me. And, we have some great representatives here to spread that aloha and that spirit, and that mana`o across the world.

So, I'm here in huge support. And, huge congratulations to their efforts and their successes in this field. So, yea, charge on, guys. Mahalo.

CHAIR WHITE: Thank you, Ms. Cochran.

Mr. Atay.

COUNCILMEMBER ATAY: Chair, you know, over the holidays, I recently received as one of my holiday presents was a Roku Stick, which allowed me to coincidentally watch the replay of the Peahi Challenge. And so I had the, when I, when I turned the TV on, I had the chance to watch the Peahi Challenge.

And, and I saw this young lady, Paige Alms, win the women's challenge. But, I also saw a couple of the waves where the other competitors ate it, you know. And so it's

not as, you know, not as easy to conquer that wave so it made me further appreciate. And, everyone must further appreciate this lady's accomplishment, coming from Maui, becoming the world champion. Winning the Peahi Challenge here on Maui is a big thing. So, congratulations to you.

CHAIR WHITE: Thank you, Mr. Atay.

Any further discussion, Members?

Well, I'll just add that in my youth I knew a couple of big wave surfers that would surf Waimea. And the conditioning that they would put themselves through is they would tie themselves to the side of a swimming pool, and swim, and swim, and swim for hours just to make sure that, as Mr. Atay says, if you're on a wave in which you eat it, you're going to be under, you know, you're going to be underwater for a while.

And, as a body surfer, I don't have to hold my breath all that long, but when you're on something that size, I can just imagine the, the challenge of making sure that you, you're in the condition that you need to be to, to make it back to the surface before you run out of air.

So, I take my hat off to you. I'm, I'm, as a body surfer, I would never get anywhere near something like that. And, so I take my hat off and, and congratulate you.

So, with that, Members with no further discussion, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. May I ask Ms. Alms to come down to the floor to receive her accolades?

CHAIR WHITE: Certainly.

COUNCILMEMBER GUZMAN: Thank you.

CHAIR WHITE: Ms. Alms.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I'd like to introduce Paige Alms, and ask her to say a few words as I present to her the resolution, a copy of the resolution.

MS. PAIGE ALMS: Aloha, Maui County Councilmembers, and everyone here to support all of this. Thank you so much for having us. It's been an honor to be able to surf out at Peahi since I was 17 years old, and seeing where the sport has gone and transitioned into more paddle surfing. It's been absolutely amazing to watch. I'm so grateful to have grown up here on Maui, surrounded by the ocean and a vast array of people and talented athletes from all over the world.

Now, at 29, to say that I'm living my childhood dream alongside some of my dearest friends, it would definitely be true, but most definitely an understatement. I graduated from King K 12 years ago. And looking back on everything that I've been through, accomplished, and things that I'm still working towards, I feel very privileged to be in the position that I am in.

In this unique time on our planet, in our country, our State, our island, and in the support that I surround myself and my life with, I hope to leave a positive impact for the next generation growing up here on Maui and throughout the world.

I want to say a huge thank you to Maui County and the World Surf League for working together to put on the best Big Wave event in the world. The Peahi Challenge has set a precedent for all of the Big Wave events worldwide. It truly is amazing, and I'm so happy to be a part of it. Thank you to all of the crew that put in tireless hours to get the event up and running. It definitely wasn't easy with all of that rain leading up to event. And I know it's no easy task doing it in such short notice. Everyone that contributed in any way, shape, or form; mahalo.

It's a huge honor to win such a prestigious event here at home, especially alongside Ian when he won the final. I was definitely fired up to go out and try and do it for the second time. Keeping these trophies here on Maui really means the world to me and to us. I feel that winning this event is a win for our whole entire community, not

just for us. I hope it inspires people from all over the world to go out and chase their dreams.

There's so many people in my life that put in so much to help me achieve my goals and my dreams. I'm so grateful. Thank you, especially to family and friends that are here today. I hope the next generation can see that through hard work and determination that anything is possible. Thank you.

CHAIR WHITE: Thank you, Ms. Alms and Mr. Guzman.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, for the record, RESOLUTION 18-1.

RESOLUTION  
NO. 18-2

CONGRATULATING IAN WALSH  
FOR WINNING THE MEN'S FINAL OF THE  
2017 PEAHI CHALLENGE

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN:

CHAIR, MOVE TO ADOPT THE RESOLUTION AS INDICATED  
BY THE CLERK.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Guzman, and a second from Ms. Sugimura.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. May I request the Clerk to read the resolution in its entirety?

CHAIR WHITE: Certainly.

Mr. Clerk.

*(The resolution was read in its entirety.)*

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. When you talk about North Shore surfing, you can't mention it without saying the Walsh brothers. We are so pleased to welcome Ian Walsh, our Peahi Challenge Men's Champion, to the County Council on today's floor.

Ian has extended Maui's surf winning streak every, winning every title in the last three years at the Peahi contest, which has been part of the World Surf League's Big Wave Tour. It's amazing that this young man is from Haiku, and his home break is Peahi. Before turning 21, Ian surfed a 70-foot wave there. To put that in perspective, a wave that size would almost be the height and length of this County Building. It's mind-blowing. And, you can see how small he looks surfing that, that big wave there in the picture.

Ian has continued to garner nominations and awards throughout the world and as well as within the community, becoming the world class professional surfer that he is. Years of hard work and dedication came together to make his performance look effortless when he charged down that wall of water. Through his worldwide travels, Ian remains a Maui boy who represents our community with aloha. And, we're so very proud and honored to have seen him reach his accomplishments. I ask this Members of this Council in full support of this resolution, and congratulate Ian in all his success. May God bless you and your family.

CHAIR WHITE: Thank you, Mr. Guzman.

Any further discussion on this item?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. And, again, this is an incredible feat, and it just reminds me that my husband mentioning seeing this spot way back in the day, but wondering how can you paddle fast enough to drop in to such a, you know, a

huge wave and all that speed coming up the face, at you, and trying to drop in? But, these, these guys are doing it. So, you know, this dream that he always had in his mind that it's impossible. I don't know how, and so they started towing in, and that was the answer. But now to actually see them paddling in is, yea, that's world's beyond that anybody could ever think could happen. But, they're doing it, so it's, it's very amazing.

And again, honor and pride is brought to Maui County, so mahalo for that. And, looking forward to the other feats that all accomplish. Thank you.

CHAIR WHITE: Thank you, Ms. Cochran.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Chair, thank you. You know, Member Guzman mentioned the Walsh brothers. And, I've, I've heard the names many, many years ago where a lot of guys called them, or recognized the Groms. And, my late son-in-law would talk about them, and we talked about Peahi.

My connection to Peahi goes back 50 years. But, it's not about the water. My connection was about the land, about the shoreline, cause that was a regular place for us to go and gather and pick opihi along the coastline. Primarily, only in the summer months. So, while we were there, I never saw these waves along the coastline in the summer.

To see it, once again, to see where they have taken this sport of paddling in, catching these big waves, this accomplishment once again, recognizing Mr. Walsh as the world champion for the Peahi Challenge. I also sit here and look at a member of the World Surfing League traveling the world. I would like to also recognize him then as an honorary member, as an ambassador of Maui. And, it would, it would make, make great sense for the Maui Visitor's Bureau to support and participate with all of the Maui members that go out on tour, because every one of them promote our island home.

Once again, I want to say congratulations to Ian Walsh for his winning, and accomplishments, and future endeavors representing Maui.

CHAIR WHITE: Thank you, Mr. Atay.



Any further discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Guzman.

COUNTY CLERK: Thank you, Chair. May I request Mr. Walsh to come down to the floor to receive his accolades?

CHAIR WHITE: Certainly. Mr. Walsh.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, I'd like to present the resolution, a copy of the resolution to Mr. Walsh, our champion, as well as request for him to say a few words.

CHAIR WHITE: Certainly.

COUNCILMEMBER GUZMAN: Congratulations.

MR. IAN WALSH: Thank you very much. What a, what an honor this is to have surfing acknowledged by the County of Maui. I just want to say thank you very much for that. And, I appreciate all of you, and Mr. Chairman, for taking time out of your day to come share this with us, along with everyone in the crowd.

And, I want to say thank you to Rodney, Johnny, Ola, and all the guys that helped put this event on. I think more than what the world gets to see is a lot of hard work that happens behind the scenes. And, all the surfers really appreciate it. And, at the end of the day, what you guys do to keep all their heads above water is kind of above all else. So, thank you guys for all the time and energy, and the good job putting it together.

And, as Paige said, I'm a product of King Kekaulike as well. Both of us having grown up here through public schooling, it's an honor to be standing here today. And, I really, really appreciate the opportunity to even be here. And, I think that both of these victories, along with the two previous years coming from Billy and Paige previously, is a strong testament to this beautiful island and the work ethic that you guys and my family have instilled in all of us. So, I'd like to give yourselves a round of applause and say thank you for everything you guys are doing for us.

And, that's it for me. Thank you, guys. I appreciate it.

CHAIR WHITE: Congratulations again, Mr. Walsh. And, thank you, Mr. Guzman.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, for the record, RESOLUTION 18-2.

Mr. Chair, proceeding with presentation of testimonies on agenda items. We have established limited interactive communication that enables individuals from Hana, Lanai, and Molokai, to provide testimony from our District Offices.

Individuals who wish to offer testimony from Hana, Lanai, and Molokai should now sign up at the District Office, with the District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located on the eighth-floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda. And, pursuant to the Rules of the Council, each testifier is allowed to testify for up to three minutes with one minute to conclude if requested.

And when testifying, please state your name and the name of any organization that you may represent.

Hana Office, please identify yourself and introduce your first testifier.

MS. DAWN LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and Happy New Year to everyone. There is no one waiting in Hana to testify.

COUNTY CLERK: Thank you.

Lanai Office, please identify yourself and introduce your first testifier.

MS. DENISE FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai, and there is no one waiting to testify.

COUNTY CLERK: Thank you.

Molokai Office, please identify yourself and introduce your first testifier.

MS. ELLA ALCON: Good morning, Chair. This is Ella Alcon on Molokai, and there is no one here waiting to testify.

COUNTY CLERK: Thank you.

Mr. Chair, we have six individuals who have signed up to testify in the chamber this morning. The first person to testify is Stan Franco, with, the housing co-chair with FACE Maui, testifying on Committee Report 18-1. To be followed by Jennifer Noelani Ahia.

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. STAN FRANCO, FACE MAUI (testifying on Committee Report 18-1):

Good morning, Chair--

CHAIR WHITE: Good morning.

MR. FRANCO: Members of the Council, Happy New Year. We're starting a new year fresh, and I think this is a wonderful way to start it by approving this resolution *[sic]* 18-1. FACE Maui supports it enthusiastically, I should say.

Now, when the amendment was made by Kelly, just, just a little slight thing that I would maybe change. It says, "stakeholder meeting". And, I want to give you, Mike, the flexibility to have multiple meetings. Maybe we should have in parenthesis, an asterisk there or something, so you don't have to have just one meeting. That's a little footnote, but it's not critical. I think, I just want to say we thank you so much for doing this for our community. I think it'll be a great thing.

I want you to imagine being on a canoe; Maui, Molokai, and Lanai canoe. And we're leaving Honolulu Harbor, and we get outside the breaks, and there is a discussion on the canoe as to where our next port would be. And, there is disagreement; Kahului or Hilo? And, half of the crew says Kahului, and half of the crew says Hilo. And, guess what will happen? We would be staying out there in the middle of the ocean, because we cannot decide where to go.

I wrote an, a viewpoint for the Maui News in 2016 about the competing interest on the affordable housing issue. I think what we need to do as a community is to work together, to sit and talk with each other. I'm not saying those interests are not valid. All those interests are valid, whether it be the environmental issue, whether they be iwi and the burial bones, whether they be like me; housing advocates saying that we got to put housing in at any kind of cost.

We, I have to look at that myself, because I have to be concerned about the environment as well. Whether you be a developer looking at making the most profit. Whether you be a construction union wanting the most pay for your, for your workers. We all have to give a little bit so that canoe can get to its port, and that everybody is in agreement. That's the challenge that we have.

I'm going to make a commercial message. Sorry, Mike. I want to invite you guys all to the FACE Annual Martin Luther King Interfaith Service. This is going to be on Monday, January 15, at Christ the King Church at 5:30. And, we have a great speaker, Matt Taufetee. And, he's a former gang leader and a State prison inmate. He killed a man and has served time for that. And, his story is incredible. He's rehabilitated himself, and now is helping prisoners not to get back into prison. So, I invite all of you to come and listen to his story, be part of the event, and the music, and everything that goes into Martin Luther King Day. Thank you so much.

CHAIR WHITE: Thank you very much, Mr. Franco.

Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Jennifer Noelani Ahia, testifying on Bill 117. To be followed by David Prais.

MS. JENNIFER NOELANI AHIA [testifying on Bill No. 117 (2017)]:

Good morning, Council. Aloha.

CHAIR WHITE: Good morning.

MS. AHIA: I'm Jennifer Noelani Ahia here to talk about the sand mining bill again. I want to talk about the grading and grubbing permit for Maui Lani Phase 9 that was first

issued in December 2014. It has just been, as of December 2017, rubber stamped and approved again.

There's a few problems with this. That permit is already in violation. First for resource extraction, which the County of Maui notified Maui Lani of in early May of 2017. Second, the volume that is listed on that permit has already been exceeded. It was brought up in the Malama Kakanilua versus Maui Lani Partners case. And, the engineer Tanaka said, on the record, that the limits had been exceeded already. Third, that permit has no known burials checked. Since 2014 there have been several burials that have been found in that TMK.

So, this is a permit that should have been revoked a long time ago for these reasons. And yet, it was just rubberstamped and approved, again, without any sort of review process by the Department of Public Works. Now, the Department said that they don't have any obligation to do any such review. That they know nothing about burials; that that's, again, that that's SHPD, pointing the finger again. And, they also said that they have no process to rescind or revoke a permit that is in violation. How can that be? Is that across the board for every permit in Maui County? Does that mean that anybody who is in violation of their permit, oh well, there's no process to rescind it? That's ridiculous and insane.

Now, I bring this up in response to this particular legislation, because if this permit that was just revalidated now exempts Maui Lani from this legislation, then we just spent eight months to create another loophole for developers. This is a`ole pono. This reeks of internal collusion. Was this the plan all along, to stall this legislation long enough to rewrite all these things so Maui Lani could get a waiver because their permit is already in place? Maui Lani is the primary reason that we started this legislation in the first place, even though they say they don't sand mine. But, we already have established that Maui Lani and Bill Mills have the same exact address, and the checks go to the same place on Alakea Street. So yes, Maui Lani does sand mine.

This is not the will of the people. Again, Queen Liliuokalani said the voice of the people is the voice of God. Do what is pono and fix this. Mahalo.

CHAIR WHITE: Thank you, Ms. Ahia.

Members, any need for clarification?

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Yea, thank you very much for coming to testify once again. You mentioned about the case.

MS. AHIA: Yes.

COUNCILMEMBER GUZMAN: I know that Judge Cardoza ordered a preliminary injunction to cease and desist. What, and it was conditioned on upon the trial date. So, do you know if that has been set?

MS. AHIA: It has not been set that I'm aware of.

COUNCILMEMBER GUZMAN: Okay, so the preliminary, okay so the preliminary injunction that prevents them to move forward is still in place?

MS. AHIA: It is still in place.

COUNCILMEMBER GUZMAN: Okay. Thank you.

CHAIR WHITE: Okay. Ms. Crivello.

COUNCILMEMBER CRIVELLO: Mr. Guzman, asked my question. So, with, just to clarify with your understanding, one of the plaintiffs, with the preliminary injunction still in place how were permits authorized to be allowed issuance?

MS. AHIA: I don't know.

COUNCILMEMBER CRIVELLO: In your opinion.

MS. AHIA: I mean, how did Public Works allow them to get this permit, to renew this permit? I have no idea.

COUNCILMEMBER CRIVELLO: Okay.

MS. AHIA: I don't know.

COUNCILMEMBER CRIVELLO: So, I, I--

MS. AHIA: I think it would be a good, a good thing to investigate though, and find out how they were able to rubberstamp this permit even with all those conditions.

COUNCILMEMBER CRIVELLO: So, if I may, Chair.

CHAIR WHITE: Please proceed.

COUNCILMEMBER CRIVELLO: So, with your understanding and talking about the grubbing permit, are you familiar, and I call it Mr. Guzman's proposal to add more teeth by giving the County more authority in the monitoring process, and even the issuance of permit. Do, do you find that as a matter of responding to the concern that you testified before us?

MS. AHIA: I, I do. And, I think that it will be useful and helpful. However, it does not prevent Maui Lani at this point if they get an exemption, and they're allowed to proceed. If, depending on what happens with the court case, nobody knows what's going to happen, this legislation may not protect us from, from them sand mining the way that it was intended to when this legislation was originally written and when this issue was brought forth. And so, we need to look a little bit further down the road and make sure that all the, all those things are considered when this legislation is put through.

COUNCILMEMBER CRIVELLO: Thank you.

MS. AHIA: Thank you. Mahalo.

COUNCILMEMBER KING: Chair, can I just follow up with one more question?

CHAIR WHITE: Wait, I think Ms. Sugimura had her hand up. Followed by Ms. King.

COUNCILMEMBER SUGIMURA: Thank you very much for being here many times, and sharing your thoughts. So, I just wondered, Chair, that in line of the questions that Member Crivello had, if we could ask Corp. Counsel later, maybe, about the preliminary injunction and the impacts of that. Cause I don't know legal things, but I have kind of an idea. But, it, I just want to get clarification, so I just want--

CHAIR WHITE: Yea, that would be appropriate during the discussion phase.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair. And, hopefully we'll also have Public Works here. But, thank, Ms. Ahia, thank you for being here and for your testimony. I'd like to get a written copy of it if you have it in front of you to share.

MS. AHIA: I don't have it.

COUNCILMEMBER KING: But, I also wanted to ask you if you have any record, correspondence, either by email or hard copy letter of some of the exchange you've had with Public Works, because you've, you know, you, in your testimony when you said that their response, about the responses, do you have a--

MS. AHIA: Clare Apana, who will be testifying later actually crafted the letter that was sent to Public Works, and has the response from Public Works.

COUNCILMEMBER KING: Okay.

MS. AHIA: So, we can get, we can get that to you folks.

COUNCILMEMBER KING: Okay, great. Thank you.

MS. AHIA: Okay. Mahalo.

CHAIR WHITE: Thank you for being here, Ms. Ahia.

Mr. Clerk.

COUNTY CLERK: Next testifier is David Prais, to be followed by Rikki Frederick P. Torres-Pestana.

(Councilmember Cochran was excused from the meeting at 9:55 a.m.)

MR. DAVID PRAIS [testifying on Bill No. 17-117 (2017)]:

Aloha Kakahiaka.

CHAIR WHITE: Good morning.

MR. PRAIS: David Ka`eo Kamanaokeyaloha Prais.

*(Spoke in Hawaiian.)*

First off, you're asking questions that you guys should have the information on your table already. Elle Cochran stepped out. She's awesome. She's on the lead of all this. You guys should have this together. This extra time that these companies can come in and ask for exemption, not pono. You guys know what for do. You're not



doing it. Eight months already, yea. We've cried. We've gotten angry. I come in here to laugh, because you guys not doing nothing. We're going to do something, cause you guys not doing it, yea.

I just got cleared of my Haleakala charge for blocking a DKIST. It's daddy day. First was court, now it's over here. And, I like her see all of your guys faces for know that we was up front telling you guys what for do. Long time ago, we shouldn't have to. You know what for do. But now, we're going to do it, cause you no like. Meet you in the field, cause you not listening up front. Mahalo.

CHAIR WHITE: Thank you for being here, Mr. Prais.

Mr. Clerk.

COUNTY CLERK: Next testifier Rikki Frederick P. Torres-Pestana, testifying on Bill No. 115. To be followed by Amy Halas.

MR. RIKKI FREDERICK P. TORRES-PESTANA [testifying on Bill No. 115 (2017)]:

Good morning.

CHAIR WHITE: Good morning.

MR. TORRES-PESTANA: Aloha. For the record, I'm a Hawaiian kingdom national. I have a hard time coming in this house of deception. We all know in 1993, under the Administration of President Clinton, they apologized to the Hawaiians and the world for stealing a whole country. It was a crime called High Treason Committee back in 1893, January 16.

This coming 16th, we're having a huge gathering in Oahu. Earlier, I've heard all the pretty words of how aloha and the first peoples of this islands, we're going to take care of the Hawaiians, and we're going to, surfing came from Hawaii. Hawaii has given the world a lot of things, and it's going to give the world more things.

I'm in the house of deception. This is a treasonous place. These flags stand for what you say democracy. This bill, just these wordings alone, a bill for an ordinance authorizing the Mayor of the County of Maui through the Chief of Police to enter into an intergovernmental agreement with the State of Hawaii, the State of Hawaii. But, you apologize for stealing the whole country and you still acting in a treasonous way. Department of the Attorney General.

America is making the most wars on this planet right now. At one time I was a mercenary for the country who stole my country. I'm a combat veteran of Vietnam, Mr. White. I saw many men like you die. I saw the government cry. I seen the government lie. And, they still lying today when I look at people like you. It's time for some real justice here in these islands. Reinstate the Hawaiian government. And, it's coming. I've been wide awake for over 40-something years. It's coming people. It's coming. International United Nations, they're watching, they're listening, and they're here. I don't want any of you to get hung for being a treasonous. Aloha. That's the button for me to zip my portagee lip.

CHAIR WHITE: No, you have 30 more seconds.

MR. TORRES-PESTANA: I really mean it. You folks need to look in the mirror when you go home, pule and look at what's going on. You use all these words; aloha, the people, surfing. I've watched it, I've seen it.

When you go home pray, really pray, cause many of us do it every day, every minute of the day. Somebody posted about, Dalai Lama says, prayer is worthless. Yet he comes from a country that prays every day. It doesn't make sense. The world is waking up to the untruths and the injustice of colonialism by the western mind. Aloha. Mahalo.

CHAIR WHITE: Thank you, Mr. Pestana.

Mr. Clerk.

COUNTY CLERK: Next testifier is Amy Halas, testifying on Bill 117. To be followed by Eliana Halas.

MS. AMY HALAS [testifying on Bill No. 117 (2017)]:

Mahalo for allowing the first reading of the sand mining moratorium bill on December 15, 2017. This bill passed out of the Infrastructure and Environmental Management Committee on October 30, after 8 IEM meetings, and 12 different drafts over a five-month period. This chronology is relevant because since it passed out of the IEM Committee, it is my understanding that the landowners listed in the moratorium area map were personally contacted by the Maui County Council, and advised to file grading and grubbing permits with the Maui County Department of Public Works.

Why is this significant? In the proposed legislation, there is an exemption for activities conducted pursuant to a valid permit issued prior to the effective date of the ordinance. Furthermore, the Council is authorized to waive, waive any provisions of this chapter as long, there's certain stipulations. But I ask as long as sand mining grading and grubbing activities continue within the sand dunes identified by the map, it will be impossible to execute the purpose of the bill. How can the 2006 Maui Inland Sand Resource Quantification Study possibly be updated if sand mining grading and grubbing activities continue?

Additionally, in considerate, consideration of the extremely short-staffed Maui State Historic Preservation Division Office with only one available archaeologist, it is impossible for SHPD to enforce the provisions of the HRS. We regularly witness dogs urinating on the rock wall that surrounds the burial sites in the Maui Lani Regional Park. We've had no response or resolution to this desecration from the County or the State. So, how can we expect SHPD to adequately protect the burial situated within the moratorium area map?

For decades, Home Maid Bakery was denied permission by the burial council to develop the area adjacent to the bakery. Yet, on October 12, 2017, an excavator started grading this known burial ground. SHPD was helpless and unable to intervene, because the area was exempt, because it did not exceed 100 cubic yards. If you drive past Home Maid Bakery today, you will see vehicles parked all over this wahi kapu. In light of these blatant desecrations to which SHPD cannot intervene, I ask how can they possibly protect the known NC2 burials resting for centuries within the land identified on the moratorium area map?

As you will recall, Kumu Hula and former Land Use Commissioner Napua Grieg-Nakasone testified that in 2012, the archaeologists at Waiale testified that over 400 sets of remains were found during test digs alone. They testified to some of these remains being those of our ali'i. And, when asked by State Attorney General what led them to this conclusion, they stated that the iwi were found with kahili, lei noho palaoa. And, at the December 20, Maui, Lanai Burial Council meeting, Lisa Rotunno-Hazuka disclosed that there were 70, 79 iwi, and 35 burial pits that have been found in the Maui Lani Phase 6 Parkways Subdivision. How many more iwi kupuna rest under the soon to be excavated house lots?

I urge the County Council to strike item number 3--

CHAIR WHITE: Ms. Halas, could you please conclude.

MS. HALAS: --and, to not allow exemptions from the moratorium. Mahalo.

CHAIR WHITE: Thank you, Ms. Halas.

Members, any need for clarification? Seeing none, appreciate your testimony this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Eliana Halas, testifying on Bill 117. To be followed by Mahina Martin.

MS. ELIANA HALAS [testifying on Bill No. 117 (2017)]:

Aloha mai kakou. My name is Eli, aloha mai kakou, my name is Eliana Halas Kaluawehe Kaikamaka. And, when you sand mine, you are desecrating the bones of my ancestors, and a lot of other peoples' iwi. How would you feel if someone that you loved was dug up and relocated somewhere, was relocated somewhere else, and, and have a house built where your ancestor was buried? How would the next generation and the next generation would feel about this all? Mahalo.

CHAIR WHITE: Thank you, Eliana. Good job.

Members, any need for clarification? Thank you for being here today.

Mr. Clerk.

COUNTY CLERK: Next testifier is Mahina Martin, testifying on County Communication 18-19. To be followed by Lauryn Rego.

MS. MAHINA MARTIN (testifying on Committee Communication No. 18-19):

Aloha and Happy New Year. Good morning, Councilmembers, Chair. There are so many items here to testify on, and others more well-versed in different issues speak as I would myself on their issues; particularly in sand mining.

But, today I wanted to talk about 18-19, which is a request for a performance audit on the Department of Liquor Control. I don't think you're a stranger to the issues on the Department. And, I want to thank Councilmember Yuki Lei Sugimura for initiating this.

As you know, the Department has had a very turbulent year with the community, including the public and private sector. So, I ask today that you move forward in any way possible on a performance audit simply because I'm not sure what an audit could do for us in the, at the end of the day. But it should give us enough information to allow a new commission next year to have action items to start to look at what can be done. We have had very unnecessary occasions between the community and the Department that could have been avoided if there was a much better collaboration, a feel of open door. I've never had to go to a public meeting where I needed security to buzz me in. I think those little things are unnecessary.

As you know, we fought for a repeal for the number of laws that enacted without enough and adequate public notice. And then we left it at the Department and the Commission working with a nonprofit community only to discover that that didn't evolve as it could have. So, while they are a law enforcement organization to some degree, I find that the Maui Police Department is far more open with the community, as is their Commission. I find that the Fire Department is far more collaborative with the community than the Liquor Department, and yet, here we sit. So, while I agree that enforcement agencies need to have some caution. There is an overabundance of leadership governing from fear that is unnecessary.

So, I think a performance audit will be helpful. It will give the Commission adequate data. It will give the community, we don't have time for this, I don't, most people don't. Nonprofits cannot afford to continue to go through what they do and lose, as one group did, \$16,000. Here we are, here you are, giving nonprofits money to function and operate and support the services that our community needs. And yet, right hand, left hand, here are nonprofits losing money as they try to raise their own.

So, I say we have the audit, we find out what's going on, so that folks like you and I and the nonprofits and businesses don't have to read 200 pages of minutes each time we want to know what's going on, then take vacation days to go and learn more. So, thank you again for doing this and I look forward to that moving forward. I appreciate it.

CHAIR WHITE: Thank you, Ms. Martin.

Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Lauryn Rego, testifying on County Communication 18-12. To be followed by Daniel Kanahale.

MS. LAURYN REGO, (testifying on County Communication No. 18-12):

Aloha, Council. Thank you for being here, and accepting testimony on this item. I'm testifying on the sand mining moratorium. I have three things I want to touch upon; the exemptions, the grandfather clause, and finally a word about Corporation Counsel.

Today you're here to go through the applications for exemption to the moratorium of which I think six or seven came from Maui Lani. I understand why the original exemption was granted for Dowling. He had no sand, so that made a lot of sense. But, then we end up opening this huge can of worms. And, then the next development that comes through has sand in every single soil sample. And, they also want to take 7,000 dump truck loads out. So, it starts to get a little bit unreasonable. So, I hope that today everybody is really prepared to scrutinize all of those individual exemptions that have now come forward, because I'm sure with six of them coming from Maui Lani that there's going to be more that are really unreasonable.

The second thing is the grandfather clause. So, the whole deal with Department of Public Works rubberstamping their, the Maui Lani Phase 9 permit is, sorry, I lost my testimony here. But, the, it just, the whole thing just seems crazy. Like, if we spent all of this time to craft a bill and now Maui Lani Phase 9 is exempt from it, like, what a huge waste of everybody's time. And, it just feels like Maui Lani in the end is like making a laughing stock of this body and, and everyone's time. So, I just urge that if what we need to do is to get rid of that exemption, the grandfather clause, then let's get rid of it, you know.

And, finally, I just wanted to talk about what I've been watching with Corp. Counsel. And, you know, obviously I'm a layperson, but I feel like we should remember that Elle Cochran was voted into office with more votes than any other Member. And, that's because we trust that she's going to make legislation to put forth like the will of the people.

And, so from a layperson's standpoint, like, I would assume that Corp. Counsel's job is to say here's this bill that you're trying to get passed through, and then let's figure out how to get it passed through in a way that doesn't leave the County liable. And instead, what it seems like from a layperson's standpoint is that Corp. Counsel is preventing the bills from passing, and adding in other reasons, and sometimes not legal reasons why the bill shouldn't pass.

And, so I find that really confusing, and I'd just like to say that I hope today everybody can just come together, figure out how to pass this bill in a way that doesn't exempt the biggest offender in the whole kind of reason why this legislation needed to be brought up in the first place. So, thank you.

CHAIR WHITE: Thank you, Ms. Rego.

Members, any need for clarification?

Mr. Clerk.

COUNTY CLERK: Next testifier is Daniel Kanahele, testifying on County Communication 18-12. To be followed by Kaniloa Kamaunu.

MR. DANIEL KANAHELE (testifying on County Communication No. 18-12):

Clock is still ticking. Okay. Aloha, Chair White. I honed my body surfing skills at Sandy Beach in Makapu`u. Maybe we were out there at the same time. I say amen to the testimony of Noelani Ahia.

I am opposed to an economic system which is prevalent in United States of America that extracts our natural resources to the point of depletion, exhaustion, and collapse. I have seen the Sandhills extracted from Waihee all the way to Waikapu, repurposed for sand and beach sand reef replenishment for construction. They've built homes, commercial things. Hundreds of millions of dollars had been made. When is enough is enough, you know?

Are we going to leave any of this ecosystem, the dune system, for future generation? Or is it all about us, the me generation? What about your grandchildren? What about the habitat, the creatures that depend on the sand dunes, ground-nesting birds; like the owls, pueo, and nene, and the flora? You don't care about them? What about the iwi kupuna, bones of the ancestors? How many iwi do we have to move, put under median strips, under sidewalks bunched together? How many, how many thousands? When is enough, enough?

When are we going to make a decision and do something that is pono? Today? We are not going away until our concerns are addressed. We hope that you will address them. They've been well-stated over many such meetings here, before the Maui Planning Commission, before State Historic Preservation Division. Time has come my fellow citizens to do what is pono; not think about now, think about the future, think about your children. What are we going to leave for them?

Ten years ago I walked in the sand dunes by the Maui Parkways. The no, no more sand dunes is there now, just a big hole in the ground. Where did all that sand go? Where did it go? Please do the right thing. Cause I know that many of the testifiers here are going to keep fighting until what is right is done. Can do that today. Make sure this bill addresses our concerns, especially the permitting process. There's something screwy with that. Can we not take a closer look at that? Can we not solve that permitting process? Let's do that. Thank you. I wish you a Happy New Year. Mahalo.

CHAIR WHITE: Thank you, Mr. Kanahele.

Members, any need for clarification?

COUNCILMEMBER KING: Chair, can I just make, yea, one clarification?

CHAIR WHITE: Ms. King.

Mr. Kanahele.

COUNCILMEMBER KING: Sorry, about that Daniel. Thanks for being here. So, I just wanted to clarify because when you came down it was to testify on Communication 18-12, but you're also testifying in favor of Bill No. 117, which is the actual passage of the bill?

MR. KANAHELE: I support it if it addresses the concerns that we, that have been expressed here. If there, something that needs to be tweaked in there in discussion, and you consider at testimonies, please tweak that. So, you know, these exemptions that don't exempt the, the primary folks that do the sand mining from continuing to do that. So, that's my concern.

COUNCILMEMBER KING: Okay.

MR. KANAHELE: Yea, I support it if it does what it's supposed to do.

COUNCILMEMBER KING: Okay.

MR. KANAHELE: Protect the sand. At least for a while right, until you figure out what to do moving forward.

COUNCILMEMBER KING: Thank you.



MR. KANAHELE: Thank you.

CHAIR WHITE: Thank you, Mr. Kanahele.

Mr. Clerk.

COUNTY CLERK: Next testifier is Kaniloa Kamaunu, testifying on Bill 110, 111, 112, and 117, on behalf of Aha Moku O` Wailuku/Kuleana.

MR. KANILOA KAMAUNU, AHA MOKU O` WAILUKU/KULEANA, [testifying on Bill Nos. 110 (2017), 111 (2017), 112 (2017), and 117 (2017)]:

Aloha mai kakou. Kaniloa Kamaunu, Waihe`e Valley. And, my concerns with the, I guess it's the drainage. I know that work was done on Waiehu, in Waiehu, as far as the sewer system, and where they ran into iwi kupuna.

You know, Waihe`e, Waiehu, they all sand dunes. They all get burials. And it's not the first time in the area of Waiehu that they found. Every time they go and they dig up, they put in new lines, they put in new pipes, they don't find. My concern is with the drainage. What is the drainage about? I don't see any drainage problems in this area whether mauka or makai. It is, you know, a sand dune, so it does, I mean, it does go through, you know, it doesn't stay. So, I don't understand what the, you know, maybe cause I don't understand the parameters of where exactly the drainage system that you're working on to allocate for . . . Waiehu. You know, so it runs quite, you know, I not sure where you're addressing. I tried to pull it up. I couldn't get the file up.

But, it's a concern to the Aha Moku because, you know, because one, the burials. Cause any time you going start digging, you know you going find. And, then, you know, what happens. We already had to encase one disturbance probably seven months ago, that we had to take care of with SHPD, work that's been done to put in the new sewerline.

And then also, there's, you have to put people on board to get, cause you're following the Federal mandate that all people have to be on this system. So, the thing is that means that people, of the residents that are not on board with the sewerline now also have to get on board. That means more digging. That means more inundation on, you know, going into the sand. So, what is the, you know, what is the actual legislation on, on that situation?

And, you look at 111, 111 to 112, I mean, 110 to 112, about the same, you know, questions. I don't understand what the drainage is for. And, also the concern of the work that the County has already done on the beachside with the acquisition of the 63 acres. I had a concern. Is that part of that, where they went to clean out and they went to take care of the equipment? Is there an SMA permit to have these machines on the shoreline, especially in an area that's known as where there's spring water, fresh water springs in the area? When I talked to the operators of the equipment, he had no idea about the permits. He had no idea. He just went there cause he was instructed to go. So, anyway, so that's on those items.

And then of course, the last one 117, you heard my constituents. You know, what is upsetting is of all the time that we spent in 2017 fighting this issue, you know, even previous years, you're talking about 10 years, almost 12 years now that we've gone on with this. And we went to court, and we went to, you know, we luckily that our attorney was gracious enough to put his fees aside to assist us in this case.

And then to come to find out that just a week ago that permit was extended, the original permit. To have an extension that means the original permit was kept in place. There was no amendment to that permit. That means they didn't reapply. All that was done, all that was done was they were given an extension on the same permit, which means that whatever we did meant nothing.

And the excuse from the Public Works person is that they had no idea. Are they living under a rock? Don't they see this on the news? Aren't they part of this . . . working for the County of Maui? Are they not aware of the issue?

In fact, what is crazy, cause we went in front of them, myself and Clare Apana, with the Home Maid Bakery. We went in front and she was the very one we talked to, and her demeanor was she didn't care. If it wasn't for Ms. Otani coming in and speaking with us, we wouldn't have gotten anywhere. And the, and, you know, so my concern with this, thank you guys for the work that you've done; appreciate.

The thing is, it doesn't address the number one problem; the permitting process. Once they get the permit, it addresses it. It fails to address prior to the permit. So, it doesn't adjust the person, and the way they getting the permit. It only adjusts, and once the permit is given, then you acting upon, if I'm not mistaken when you read the document. It does not interact prior to the permit being issued.

And, if, as you can see with what just happened a week ago, ridiculous. How can this lady not be held accountable for her actions, and just to . . . say I have no idea? Now, if that's not a concern, or, so who's watching the right, left hand, I don't know. Because, all of a sudden, we getting people making, making decisions that they

didn't take to consideration all the evidence given, such as with the, with the Home Maid Bakery? They were sent documents. Their office was sent documents. SHPD had interacted in 1996, and they failed to follow what was given. I don't understand. You know, so it's very disconcerting to me. Thank you.

CHAIR WHITE: Thank you, Mr. Kamaunu.

Members, any need for clarification?

Mr. Atay.

COUNCILMEMBER ATAY: Thank you, Chair. Thank you, Mr. Kamaunu, for your testimony and presence. So, I'm just trying to get clarification from yourself, as well as I heard the earlier testifier. So, what, what the community is asking and your group, the Aha Moku O' Wailuku group, is suggesting to us to recommend having an audit done on the permitting process?

MR. KAMAUNU: Yes. Cause that's where the, you know, that's where, it's the beginning. It's, you know, like I said, I'm grateful for what was the work that has been done, but it's kind of like in the middle or after the fact. The real, the real fact of the matter is, is it stringent enough on the permitting process that they have to check every box. And that someone is accountable for every box that is checked off so that the public as well as this Council know exactly which person was held responsible for the box that was checked, you know, and have the evidence, supposedly on record?

COUNCILMEMBER ATAY: Thank, thank you for that recommendation. Cause I, I too have had that kind of big question mark in the trying to understand the various permitting processes from the various departments. So, duly noted that we should be requiring an audit for the Public Works as well as for Planning. Thank you.

MR. KAMAUNU: Yea, cause what was confusing, sorry, what is confusing is, you know, we go to one person, then we jump into another person, and then it falls to another department, and then they turn us back around again and tell us they actually not involved. So, you know what I mean. It's confusing. Who, you know, we're just trying to find the answers, you know. But, we get upset because there is no answers, there's no records, and what are we paying for then? I don't understand.

COUNCILMEMBER ATAY: Yea, so I, I want to say thank you for your vigilance and diligence.

MR. KAMAUNU: Mahalo.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. Thank you for being here, and the many, many times you've come to testify and share your, your thoughts.

MR. KAMAUNU: You're welcome.

COUNCILMEMBER SUGIMURA: On Wednesday, we had, and I don't know the item number, but I'm going to call it the Guzman proposal for grading and grubbing. And, I think it addresses the, exactly what you're saying in terms of the permitting and archaeological inventory sites and preservation. And, I wondered if you've had a chance to see it, review it?

MR. KAMAUNU: Yes, I did. And that's why I said the component that's actually missing is the, is the part to get the permit. It's missing. If you read it, it only talks about after the fact. It only, only responding to, okay, the person has gotten the permit, this is how they're going to act while they have their permit. It doesn't, it doesn't have anything to say, well, you're going to have to get this, this and this. It doesn't do that.

And, it also doesn't address which the problems having, like just happened last week, with the issuance of a permit that should have been flagged; especially for its sensitivity and that it went to, you know, part of it is still in court. And, there is basically a temporary injunction. That should have been a flag for that worker to know that, well, you know what, you're going to have to resubmit and come back to the Council, you know, to, instead of just following through, like, okay, you've done it before, we'll do it again. It's, you know, that's very, that's very, you know, it's very uncomfortable, you know, to say that they can easily do that.

But, yea, when I read it, that's the first thing I noticed; that it only addresses as the work is being done, not before they even get their permit. So, that's the part that it, the component is lacking if I, if I not being mistaken. When I looked at it, that's what I saw.

COUNCILMEMBER SUGIMURA: Thank you. I think that's being addressed. Thank you.

CHAIR WHITE: Any further need for clarification?

COUNCILMEMBER GUZMAN: I, I don't need to clarify--

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: But, I wanted to clarify for the testifier. Thank you very much for, in fact, a lot of your input was placed into the, that legislation. But, it, it actually does address prior and when they do have the permit. In fact, if that bill was in effect right now, at the bare minimum, work would have been suspended from the last amendment that we just did on Wednesday. But, as it develops, we're going to tighten it up.

MR. KAMAUNU: It's more concerning then, that person from that agency or that department should've been aware of what was happening, and that should have been flagged. And, more so that should've showed up here. You know what I mean? You know what I mean.

COUNCILMEMBER GUZMAN: Yea, I totally agree with you, but there's no, that law isn't passed yet. So, it's basically an open--

MR. KAMAUNU: But, but again, that's the problem we were having, was that sensibly, that's not something you would have overlooked. You know what I mean? That's sense, you know, I mean that commonsense-wise, I would've passed it forward and said, you're going to have to go deal with whoever has more authority than I do.

COUNCILMEMBER GUZMAN: And, that's why sometimes we have to codify things, Chair. Thank you.

MR. KAMAUNU: Thank you very much.

CHAIR WHITE: Thank you, Mr. Kamaunu.

Mr. Clerk.

COUNTY CLERK: Next testifier is Annette Heu, testifying on Bill 117. To be followed by Adriane Raff Corwin.

MS. ANNETTE HEU [testifying on Bill No. 117 (2017)]:

Before any acknowledgement for the Council today, I would like to acknowledge the loss of a dear friend who stood in honor for our community, and personally paid to defend us against a situation like we are facing today.

Paper hurts people. Paper hurts community. I drove to Lahaina yesterday to deliver flowers to our guests who come to Hawaii. I live in Kalua on Palama Drive. It took me five hours, five hours. Do we need more housing? Do we need more traffic?

Do we need more infrastructure? Do we need sand filled with the bones of our ancestors for beach replenishment, for sandboxes? Sandboxes. So, do we go to a preschool and say here's a bag, if you find anything in your sandbox, just iwi kupuna. Get guys, I know them. They going take em over there.

What are we doing? This is Maui, Hawaii. What are we doing? Wake up. The paper needs to say stop. And, if this paper cannot stop them, I will find a way to stop them. And, if it's going to be standing on the side of the road saying do not buy homes from this place, your restrooms are on the bones of our ancestors. So, flush this, okay. Flush this until all of you, you intelligent attorneys find a way to represent the people who sit here, and take the crap cause this is full of shit. Excuse me, sorry. I'm mad. That's what mad looks like.

COUNTY CLERK: Next testifier is Adriane Raff Corwin, testifying on Committee Report 18-1, Committee Report 18-2, and Bill 117, on behalf of the Sierra Club Maui.

MS. ADRIANE RAFF CORWIN, SIERRA CLUB MAUI GROUP, [testifying on Committee Reports 18-1 and 18-2, and Bill 117 (2017)]:

Aloha kakou. Thank you for having me to testify. I'll start with the Committee Reports. I will start with 18-1. I just wanted to voice my support for what Stan Franco was saying. Sierra Club Maui Group does support this resolution, but we think that very likely there will be need to be more meetings with community partners like Stan of FACE Maui, na, Na Hale O Maui, Habitat for Humanity; everyone that, you know, is working on affordable housing. And, so we hope that maybe you'll revise that resolution just to make sure that there can be multiple meetings, and all of those affordable housing advocates is voice are, voices are adequately taken into the process.

I'll move onto 18-2, Land Use Committee. I just wanted to thank the Land Use Committee for voting to file this change in zoning request. Sierra Club very much supports this filing of this change request. And so, thank you very much for that.

And, I will move onto the last item, the sand mining bill. As always, Sierra Club Maui Group does support this bill. But, as you heard from many others, we have grave concerns with this permitting revelation that has happened. And one thing I want to point out is, not only was the permit renewed, but if the timestamps on the emails are correct, Mr. Tanaka, the engineer, sent in an email, attached is our request for extension of the grading permit for your review and approval on November 20, 2017, at 3:28 p.m. If this timestamp is correct, Cathy Hasfurther of the Public Works

Department, sent the, we've received your request and we have granted a one-year extension for your permit 29 minutes later on November 20, 2017, at 3:57 p.m.

Now, I'd like to think about this in terms of affordable housing. I know in affordable housing we talk about how hard it is to get permits, right; how people are waiting months, and months, and the system is broken. And yet, somehow for this one, 29 minutes for a renewal of something that's got a court case, that's got a thing in Council. And, I have to laugh at this, because what's going on in the permitting process here? I mean, I laugh because I'm sad.

But, this is evidence that we have a real problem. And, I know Council does not have the power to rescind the renewal, but I hope you will very much look into this issue and start looking at, as previous testifier said, we need an audit. 29 minutes to rubberstamp something this controversial, and months, and months, and months on affordable housing issues and permits that we actually really need. The priorities here are extremely skewed, and I think that email is the smoking gun. Thank you very much.

CHAIR WHITE: Thank you for your testimony.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Could I, do you have copies that you could give to us?

MS. RAFF-CORWIN: Yes. That email was forwarded to Clare Apana. So, she has the original email that was forwarded, and she forwarded it to me. I don't know how, how much of a chain of forwarding you want, but I can forward you the version I have.

VICE-CHAIR CARROLL: What you can give. And, you know where my office is up there.

MS. RAFF-CORWIN: Yes. Okay.

VICE-CHAIR CARROLL: And you can make copies in my office.

MS. RAFF-CORWIN: I can email it right now to the Clerk as well, just so everyone can have a copy of it, if that works.

VICE-CHAIR CARROLL: Thank you.

MS. RAFF-CORWIN: Okay, great. Thank you.

VICE-CHAIR CARROLL: Thank you, Chair.

CHAIR WHITE: Thank you. Any further need for clarification, Members?

MS. RAFF-CORWIN: Thank you.

CHAIR WHITE: Thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Johanna Kamaunu, testifying on Bill 117. To be followed by Rosemary Robbins.

MS. JOHANNA KAMAUNU [testifying on Bill No. 117 (2017)]:

Happy New Year. You know, this, this is a real serious situation and a lot of times we get really angry and really frustrated about it. And, something happened earlier here today and we just couldn't stop laughing about it, I'm sorry. But, sometimes we need to change perspective.

The only thing I came to share with you today that you may not have information to was a decision made by the Burial Council last month regarding the issue in Maui Lani. I'm sorry to say that I don't have the word for word text of the motions that were made. But, clearly, the Burial Council found that there is some problems with the applications and that we needed more information. That was number one; we needed more information.

So, one of the points was to have a complete inventory of the area. We've been getting reports of finds every so many months as they clear up more and more areas. What's, what was puzzling or actually revealing was the fact that most of it is in one area. At the start of this project, the AIS showed that at best there were two sets of remains found; one at the very front of the project, and one at this location where we now have 79, is the 79 burials, remains, and 35 pits. They're all within this one mound. Well, I shouldn't say all, but for the major part of it, it's in this one mound. And, as time goes by and they come before us, it's always because we're going to have to move the road, or we're going to have to change the alignment of the homes.

Well, our Burial Council is made up of a lot of first-timers, and so they knew they couldn't make this decision without having complete information. So, two things that I can remember we did was that no further action should be taken in Maui Lani until



we have an inventory of that place, a complete inventory. Secondly, no further action should take place until we understand the methodology that is used by archaeologists to do their work, because this is, it presents a grave misrepresentation of what is actually there. And that's their job, to give us an idea of what is there before the project's go ahead.

And I'm sorry that, to say that there were three other points that I did not get. But, I think for your efforts, this is probably the most important. I wish you luck in this process of creating this new law for us. We just recently discovered what we could do as a Burial Council. So, I hope you better luck in your efforts. I do not support any more work in the Central Maui plains, period. Thank you.

CHAIR WHITE: Thank you, Ms. Kamaunu.

Members, any need for clarification?

Mr. Clerk.

COUNTY CLERK: Next testifier is Rosemary Robbins, testifying on County Communication 18-9. And, Ms. Robbins will be followed by Clare Apana.

MS. ROSEMARY ROBBINS (testifying on County Communication 18-9):

Good morning, everybody.

CHAIR WHITE: Good morning.

MS. ROBBINS: Nice to see a full house here today. That's two days this week we've had that. It's encouraging. Thank you for being able to shuffle your schedules to be able to do this.

CHAIR WHITE: Could you move a little closer to the microphone please?

MS. ROBBINS: Better?

CHAIR WHITE: That's much better. Thank you.

MS. ROBBINS: Okay. So, that's a welcome to everybody; here and the viewers at home. I'm here this morning to bring up item in communications, item no. 18-9. It's on page 3 of our 8-page agenda this morning.

The people who have testified before me this morning are so tuned. These are not people that are graduating from sophisticated law schools, particularly. Some of them are so imbued with common sense, with sensitivities that say, you just can't walk all over people and camouflage it in paperwork. They've got the message. It's within them. Please, please, please honor that. We're going to be sunk without it. And, we're not taking a look at what has happened with other nations around in the planet; yikes. So, in, including with our own Federal government, we need to be able to think clearly, communicate conscientiously, and be able to make things better than they were when we started.

So, on item 18-9, like I say, page 3 on our agenda today, it talks about a proposed resolution entitled "APPROVING THE ACQUISITION OF REAL PROPERTY, APPROXIMATELY 15,351 SQUARE FEET". It does not go on for miles and miles. And the price for that would be \$2,585,000. There seems to be a big hurry to pass this through.

And, there seems to be a real pattern that's emerging out of here. People who are doing the appraisals of some of our lands here in Maui County are people who are acting on assumption, and it's written in here, acting on assumptions not on investigated facts. And then saying, in sense of disclosure, and keep in mind that I'm an appraiser on some things but I'm not a pro on some of the things like the God spare us materials that have been raised here this morning; the sand, the other hazards that are in some of our other areas.

So, I'm encouraging you to recognize that all of this that you heard this morning is dealing with facts unrepresented and certainly not proven. And some of the facts that have been proven are in opposition to what some of this paperwork just attempts to flow on. So, doing this by way of county communication gives you time to be able to do things and not pass bills that are related to them until the stuff gets cleared up. Thank you.

CHAIR WHITE: Thank you, Ms. Robbins.

Members, any need for clarification? Seeing none, thank you for being here this morning.

MS. ROBBINS: You're welcome. Thank you for hearing them all.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Mr. Chair, next testifier is Clare Apana, testifying on Bill 117. To be followed by Ellie Rae.

MS. CLARE APANA [testifying on Bill 117 (2017)]:

Good morning, Councilmembers--

CHAIR WHITE: Good morning.

MS. APANA: --Chair. Excuse my voice. I have so much to say to you, and I have so much information which I could give you. Please do ask me about my meeting with Ms. Catherine Hasfurther of the Public Works Department, Permitting, the Engineering Division. It was horrifying to me to find out this information. And, I have given you, given it to you; the two communications that I have made with her.

If you are going to give exemptions, you must be prepared to do this. I have read through some of the Archaeological Inventory Surveys of the people who have asked you for exemptions. And, they were allowed to have archaeology that went one trench for over two acres, one trench for over two acres; accepted by someone from SHPD in Kauai, instead of our own local staff who know the sand dunes.

Please be willing and ready to make real determinations about whether these places really do deserve an exemption. I think you are much safer to say no exemptions for six months, or come up as you are really ready. Emmanuel Lutheran, Mr. Bagoyo's project; those projects were allowed to go under the wire with poor AIS's.

Every single AIS in this sand dune should have asked people who know about the area; who care, who know, who have knowledge, and cultural practitioners; that's HAR 1328. None of them have ever asked. None of them have ever asked. Every single AIS that you will be looking at is incomplete. They have not completed the part where they ask the cultural practitioners, the people who have knowledge of the area. They have not completed that part of the AIS.

There are many things, and you have dealt with many things. Please do ask me about the Maui Lani Phase 9 grading permit for over 213,000 cubic yards of sand as a grading permit that has been given an extension. Thank you very much.

CHAIR WHITE: Thank you, Ms. Apana.

Members, any need for clarification?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And, thank you, Ms. Apana, for being here. I'm looking at the handout that you did give us. And, it says that that grading permit is attached. Is it supposed to be here? What, what--

MS. APANA: It is the grading permit. It is in your, already in the sand mining moratorium. It is the one that was done on December 14, December 2014, for Phase 9.

COUNCILMEMBER COCHRAN: Okay.

MS. APANA: That is in the record of this moratorium bill. I can, I can provide that to you again if you want.

COUNCILMEMBER COCHRAN: No, no I just thought it was, sorry, I just thought it was part of this. But, okay, I know what you're talking about. And, did you, and was that to be, did you want to point out more?

MS. APANA: Yes, I would.

COUNCILMEMBER COCHRAN: Is that why you suggested the, see attachment?

MS. APANA: That is actually a letter that I sent to the Public Works Department to Catherine Hasfurther, the person who allowed the, the, who gave the extension to Phase 9 for this grading permit. This is the letter that I sent to her. And, I can send you the attachments. I'm sorry, that would've been very long to send you all the attachments. And yes, I gave it to you because I think that you should know what's happening here. Phase 9 is now in subdivision, and their subdivision calls for taking down the sand.

For me, I'll, I don't see how they can do that. We went through a lot of trouble, time, and expense, because the County would not take that permit and make it invalid. We went to get a court order, a preliminary injunction, and they are still allowed to have that permit renewed.

I know you know it's wrong. I want you to know that it's happening. And, I want you to know that if a professional asks for a renewal knowing that the original plans that were given to this project and approved are violating the permit, does that professional have any kind of responsibility to tell the truth about the permit? The engineer, Mr. Tanaka, asked for the extension. He was also on the witness stand where he had to admit that the grading plans and maps that he put out exceeded the limit of the permit. Does he have to tell? No. She says, no, he doesn't have to say. We don't ask him for any more information. So, is this an honor system that is

really broke? I think so. Do they have to say that there were burials found in that area? No, they don't. That's SHPD, not part of Public Works.

There's a lot more than the bill that you have crafted, and I thank you for the bill on Wednesday, but there's a lot more that you have not addressed. And, the moratorium is necessary because it'll take a while for you to be able to figure out what needs to be done. I wish that you would consult with us as Mr. Guzman said he would, because--

CHAIR WHITE: Ms. Apana, we have to--

MS. APANA: --we've been doing this for so long. Sorry about that.

CHAIR WHITE: No, no I appreciate what you're saying, but, I think you've done a very good job of answering Ms. Cochran's question. And, I'm sure the others may have questions as well.

Any further need for clarification? Ms. Cochran, did you have another question?

COUNCILMEMBER COCHRAN: No, Chair.

CHAIR WHITE: Okay. Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Ms. Apana. I just wanted to follow up on my earlier request and see if, can we get copies of any returned correspondence that you've had from Public Works?

MS. APANA: Yes, you can.

COUNCILMEMBER KING: Because we have the letters that you sent to them, but it will be helpful to have any, any responses that they sent to you.

MS. APANA: I got an email response to say that this had been set, this matter has been sent to the Corporation Counsel to see if the permit extension is valid.

COUNCILMEMBER KING: But there were comments made earlier that you heard from Public Works that they didn't know how to rescind a permit, and some of these other things that were made.

MS. APANA: I have that, given you that correspondence that outlines my meeting with Ms. Hasfurther. And, in that meeting, she said, she was asked point blank how does, how do we go about getting this permit extension rescinded? And she said,

uh, uh, well, there isn't any, I'll have to study what you have brought me. And, but we all know that there is a law already that can rescind this permit. But she was not willing to share that law with us.

COUNCILMEMBER KING: Okay. Well, whatever you have that you could share with us from, you know, that's got statements from the folks that you've been talking to at Public Works would be helpful.

MS. APANA: I would be very happy to do that. I can transcribe our, our voice recording of the meeting we had if you--

COUNCILMEMBER KING: Okay.

MS. APANA: --if that would be helpful to you.

COUNCILMEMBER KING: Yea, I think that would be helpful, if it's not too much trouble.

MS. APANA: Yes.

COUNCILMEMBER KING: Thank you.

CHAIR WHITE: Any further need for clarification? Thank you very much for your testimony this morning.

MS. APANA: Thank you. Thank you very much.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Ellie Rae, testifying on County Communication 18-12. To be followed by Lala Johnson.

MS. ELLIE RAE MARSHMAN CASTILLO (testifying on County Communication No. 18-12):

Aloha. Thank you so much for having me here. And, Happy New Year to everyone. So, I'm actually going to talk a little bit about 10-9, I'm sorry, 18-9, the open space in Kihei for sale; as well as 18-12, the sand mining.

So, my name is Ellie Rae Marshman Castillo. And, I am, I live in the Aha Moku O' Wailuku, and I live in the Ahupua`a of Waikapu. And, forgive me if I said that a little not right, but I'm trying and I'm learning.

I am a geologist. I have a degree in geology, and I used to work for the Minnesota Department of Natural Resources. And, I've been a resident now of Maui for eight years, and I love Maui very much. And, I have become, I feel like, I have become a member of the community, and I try and support the promotion and the love of Maui and all that it has to offer, because it's paradise and it has amazing things to offer.

And you, as the County Council, helped make this place, as you said, Ms. Crivello, this morning that you are trying to, we're trying to make it safe and take care of our land and natural resources. And, when I hear that come out of your mouth this morning, it also breaks my heart because I have seen a lot of terrible, terrible things happen to our island, and to the people. And, I am saddened by that, as well as I'm sure as you heard today many other people.

So, two years ago, it might have been last year, I can't remember the exact date, I went to a DLNR shoreline erosion and development meeting. And, this meeting talked about what's happening with our shoreline erosion, of course. And, during this meeting, the DLNR stated that all development, and should be stopped on the shoreline. And so, this is one thing that comes along with development of what we have going on here in the island.

And, to kind of throw that into talking about the open space in Kihei, the purchase of it, you know, we should still be talking to the community about that. The community hasn't been brought forward on this. And, the development of that, the lot right next to it being a, you know what, six-million-dollar home now.

I'll just finish up real quick here, sorry. And, as far as the sand mining, the AIS, yea, after talking to the community and organizations, and listening to the community, a lot of times it's been brought to the people of our community that you're not listening, you're not listening to the people. You're listening to the corporations and the developers.

And, there is such a thing called smart development. And the smart development that would start, that should and, and has started here on Maui--

CHAIR WHITE: Ms. Rae, could you please conclude? You've exceeded your time.

MS. CASTILLO: I'll finish right now.

CHAIR WHITE: Thank you.

MS. CASTILLO: The smart development that has started and, and should continue to start, continue to move forward on Maui is not developing the low-lying areas and the central valley. It's been evident that there's bones and iwi kupuna everywhere in the, in the central valley and we need to respect that. Just as the little keiki said this morning, "would you like it if we just bulldozed over your burial site and said ah, we're just going to move it over here?" So--

CHAIR WHITE: Thank you very much for your testimony, Ms. Rae.

MS. CASTILLO: Thank you.

CHAIR WHITE: Members, any need for clarification?

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, I'm just curious. Do you know what a Qdo is? You're a geologist.

MS. CASTILLO: No.

COUNCILMEMBER SUGIMURA: Thank you.

MS. CASTILLO: What is a Qdo?

CHAIR WHITE: Any further--

COUNCILMEMBER SUGIMURA: It is a amendment that was submitted, it's, it's in our, it's amendment submitted by one of our Members; definition of Qdo, which is part of the sand mining ordinance. So, I just wondered since you're a professional.

MS. CASTILLO: Do you know what, what do the acronyms stand for?

COUNCILMEMBER SUGIMURA: I'll look it up.

MS. CASTILLO: Well, I'd be, I'd be glad to read over any information that you have and--

COUNCILMEMBER SUGIMURA: I'll look for it.

MS. CASTILLO: --give my opinion on that.



CHAIR WHITE: Thank you very much for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Lala Johnson, testifying on Bill 110, 111, 112. To be followed by Trinetta Furtado.

MS. LALA JOHNSON [testifying on Bill Nos. 110 (2018), 111 (2018), and 112 (2018)]:

Aloha, Councilmembers, and aloha, Chair. My name is Lala Johnson. I was here to support the bill for Bill No. 117. But, as I sat there, it was brought to my attention about Bill No. 110, 111, and 112. The key words that that awaken me was amending the year 2018, also Department of Public Works, another word, especially, was Waiehu Drainline repairs.

This is a place where I was brought up. That is my sand pile, or my sandbox. That is my swimming pool. When I see this, it alerts me that I need to stand here and to testify or to also ask that you have permission to come into the lands only because it is ancient lands first of all. It's a sensitive area with the sand dunes, the wetlands. And, I've had experiences, my own experiences of having the, like how Kaniloa had mentioned, the tractor coming into the wetlands and having to stand forth, or stand, to ask why they were there and to practically have them stop. And, I didn't just do it with my body, but also with a phone call to the Public Works, and also by writing to them my complaint of having that happen.

So, here I see Bill No. 110, 111, and 112, and I ask when you sit and you discuss, and have a discussion about this, that you consider the people that is from that place that no one understand it. Because, my question is drainline repairs. Already we've had them come in and did repairs, and opened up the roadway. And, like Kaniloa has mentioned, that we already placed an iwi there, and it, and I will tell you that it, there is iwi. I feel like we are the poster child of what is happening today with the sand dunes.

If only I had known what I know now, maybe it wouldn't have happened with our community, our own community in Waiehu with developers; Abdul Realty back then. And, what had happened in removing the iwi that was there, which is, which is our ancestors, and placing them somewhere such as in the back of Norman's Mortuary in the box of beer boxes and treating them that way. And, I stand here telling you that don't let this happen again. Don't have this repeat itself.

And, I am here standing also, when you come into Waiehu please be respectful. Consider the people. Know that we exist. And, I will make sure you know that we exist, and that I will be standing there to protect and defend that place. And, please consider that we also are people, that we're not mean or, or we're not, we're not going to, well, we're going to stand, that's for sure. What we do, I'm not too sure nowadays, because of the generation that we have. But know that there is a face in Waiehu. And please, please consider these bills and let us know what's going on. Mahalo.

CHAIR WHITE: Thank you, Ms. Johnson.

Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Trinette Furtado, testifying on County Communication 18-9.

MS. TRINETTE FURTADO (testifying on County Communication No. 18-9):

Aloha mai kakou, and hauol`i maka hiki hou, Councilmembers and Council Chair. My name is Trinette Furtado and I am here to testify this morning on County Communication 18-9, which has to deal with allowing the Mayor of Maui County to purchase a 15,351-square foot lot in Kihei for \$2.5 million to provide beach access.

You have a resolution that you can vote upon and can be passed today, and an accompanying bill asking that those funds be removed from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

There are many concerns here. The least of not which are the concerns of the community of Kihei. I have heard from both the Aha Moku Kula Kai, and the Kihei Community Association representatives who were not aware that this purchase was even being considered for beach access. And, I think you need more information. Are there no other possible accesses to this particular beach preserve, to Kenolio Beach preserve? Why the purchase for more than the appraised price?

Currently it's being zoned as apartment, and could the appraisal be based on that zoning? And if so, the County would have to, I would assume, in order to make it a public access and easement, change the zoning there. Should that not be taken into consideration when looking at the purchase price of this, especially since the

County is not going to use the land as it currently zoned to build apartments? The comps that you will see in the files that you have accompanying this are based on the allowed use and the allowed zoning. So, again, several million dollars for lots on either side or within the area, considering what has been built on those lots and what those lots are currently being used for, I think really do need to be taken into consideration.

Again, this is a huge chunk of money that could be used in other areas of the County for open space preservation, for cultural resources, and I urge you to please do your, your due diligence and ask the tough questions if they become tough questions, as to why this purchase is necessary, and why is it so immediate that you vote upon it? Thank you.

CHAIR WHITE: Thank you, Ms. Furtado.

Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, we have one more testifier who has signed up. Joseph Kohn, testifying on Bill 117.

DR. JOSEPH KOHN [testifying on Bill No. 117 (2017)]:

Aloha kakou. I am Dr. Joseph Kohn. I'm a board-certified internist, and I'm the founder of We Are One, Inc. I was gifted with that responsibility, and I hope to rise to the task.

I'm here to testify on many of the items, but in general, I do want to talk about respect. And, I want to talk about disrespect of the dying American system of oppression that puts corporations and money above people. This is Maui. And, it's an illegal occupation, everybody knows that. And, the corporate structure that would oppress us all and continues to oppress us is not what we support, that is we the people; internationally, nationally, and locally.

It's time to stand the justice, to preserve our resources for the people in whatever method that looks like. There are new ways of being that is the future. Going along with the dying American capitalist corrupt system is not the future. Change or die. That's what we're up against. Thank you for your attention.

CHAIR WHITE: Thank you, Dr. Kohn.

Any need for clarification?

Seeing none, Mr. Clerk.

COUNTY CLERK: Mr. Chair, there is no further individuals signed up to testify in the Council chamber. If there's any additional individuals in the chamber or at the District Offices who would like to offer testimony, please identify yourself at the, to the appropriate staff and proceed to the testimony lectern or District Office conference call at this time.

Mr. Chair, Hana Office has advised us that they are closed and there is no testifiers there.

Lanai Office, are there any additional testifiers?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

COUNTY CLERK: Thank you.

Molokai Office, are there any additional testifiers?

MS. ALCON: There's no one here on Molokai waiting to testify.

COUNTY CLERK: Mr. Chair, there's no other individuals in the District Offices nor the chamber who wish to offer testimony.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, we have received written testimony. Without objection, I'd like to receive that into the record.

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY RECEIVED FROM THE FOLLOWING WERE MADE A PART OF THE RECORD OF THIS MEETING:

1. Adriane Raff Corwin, Sierra Club Maui Group;
2. Clare Apana;
3. David Arakawa, Land Use Research Foundation of Hawaii;

4. Randall Endo, Alexander & Baldwin, Inc.;
5. Peter H.M. Lee, Hawaii Laborers-Employers Cooperation and Education Trust;
6. Christopher Delaunay, Pacific Resource Partnership;
7. Tom Blackburn-Rodriguez, Go Maui;
8. Pamela Tumpap, Maui Chamber of Commerce;
9. Leiane Paci, Maui Lani Partners; and
10. Barbara Barry.

CHAIR WHITE: Thank you. And, without objection, we will close public testimony for the day.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Public testimony is closed.

And, we will take our morning break. Thank you for your attention, and please be back in your seats at 11:25. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:11 A.M., AND WAS RECONVENED AT 11:28 A.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBER KING, EXCUSED.)

CHAIR WHITE: This Committee will please come back to order.

Mr. Clerk, let's proceed with the agenda.

COUNTY CLERK: Mr. Chair, proceeding with minutes.

## MINUTES

The minutes of the Council of the County of Maui's regular meeting of November 3, 2017, was presented at this time.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT THE MINUTES OF THE REGULAR MEETING OF  
NOVEMBER 3, 2017, BE APPROVED.

COUNCILMEMBER CRIVELLO:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Crivello.

Mr. Carroll.

VICE-CHAIR CARROLL: No discussion.

CHAIR WHITE: Thank you.

Members, any discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, SUGIMURA,  
VICE-CHAIR CARROLL, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER KING.

CHAIR WHITE: Measure passes with eight "ayes", and one "excused"; Ms., Ms. King.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, proceeding with county communications.

### COUNTY COMMUNICATIONS

NO. 18-1 - ROBERT RIVERA, FIRST DEPUTY PROSECUTING ATTORNEY,  
(dated December 11, 2017)

Transmitting a notice of grant award from the State of Hawaii, Department of the Attorney General Crime Prevention and Justice Assistance Division for the Victim Witness Assistance Division, in the amounts of \$64,864 for both FY 2018 and FY 2019.

(Councilmember King returned to the meeting at 11:29 a.m.)

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. With no objections by you or the Members, I request that the Clerk bring up County Communications up to and including 18-4.

CHAIR WHITE: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

NO. 18-2 - CAROL K. REIMANN, DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated December 11, 2017)

Transmitting the notice of grant award from the State of Hawaii, Executive Office on Aging, for the State Health Insurance Assistance Program (SHIP) in the amount of \$28,500.

NO. 18-3 - CAROL K. REIMANN, DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated December 27, 2017)

Transmitting a contribution award letter from Matson Foundation for the Elderly Lunch Program in the amount of \$1,000.

NO. 18-4 - MARK R. WALKER, DIRECTOR OF FINANCE, (dated December 8, 2017)

Transmitting 67 contracts/grants for November 2017.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you.

I MOVE THAT COUNTY COMMUNICATIONS, AS READ BY  
THE CLERK, BE FILED.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Hokama, with a second from Ms. Sugimura.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you very much. Most of these are just required notifications of Council of grant funding received by the County.

I will make just one comment. Under 18-4, there's a list of contracts and grants. You will notice, Members, there is a lot of requests for time extensions. I would ask the subject matter Committee Chairs if appropriate to review those extensions, because a lot of it will be referring completion of projects we have supported through appropriations. And so, you may want to review that within your Committee's purview. Thank you very much, Mr. Chairman.

CHAIR WHITE: Thank you, Mr. Hokama.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: Members, any, any requests for referral?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you.

MR. CHAIR, I WOULD REQUEST THAT THE FOLLOWING CONTRACTS AND GRANTS BE REFERRED TO YOUR HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE: G4423-1, RELATING TO THE TIME EXTENSION FOR THE HALE MAHAOLU'S PRESERVATION PROJECT; AND G4425-1, RELATING TO THE TIME EXTENSION FOR KA HALE A KE OLA RESOURCE CENTERS, INC. STAIRCASE SAFETY INITIATIVE PROJECT.



CHAIR WHITE: Thank you.

Members, any other referrals?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Sorry, Chair. No referrals, but I have a, there seems to be a typo on 8-1 on the application form. So, I just, I don't know if that's minor or should that be corrected? So, under "Project Director", it says, "John D. Dim", D-I-M. And then under his telephone number is lacking one digit; 808-270-777. So, there's obviously a fourth digit there. So, I'm not sure, I mean, if that needs to just be corrected; typos of sorts.

CHAIR WHITE: Corporation Counsel, is that an issue?

CORPORATION COUNSEL PATRICK WONG: With respect to the typographical errors?  
Yea, those, those can be certainly made.

CHAIR WHITE: I couldn't hear you.

CORPORATION COUNSEL: Those changes can be made as it's clerical in nature.

CHAIR WHITE: Yea, if, if the body agrees, we'll make those technical adjustments.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: I appreciate my colleague's eagle eye review of the documents. Again, Chairman, there is no action required by this body. It is a notification of a grant award from the State to the County of Maui.

CHAIR WHITE: That's true.

COUNCILMEMBER HOKAMA: So, it's just a notification. We've already placed it within the budget currently to receive these funds. And again, this notification just tells us specifically it's for 64,864. And no further, again, decision made by the body. Thank you.

CHAIR WHITE: Thank you.

Any further requests for referrals? Seeing none, all those in favor of the motion, please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, the following communications are being recommended to be referred to the following committees.

NO. 18-5 - MARK R. WALKER, DIRECTOR OF FINANCE,  
(dated December 12, 2017)

Reporting on transfers/loans from the General Fund and the Department of Water Supply Revenue Fund to the 2017 Proposed General Obligation Bond Fund as of December 31, 2016.

The recommended action is that County Communication No. 18-5 be referred to the Budget and Finance Committee.

NO. 18-6 - MARK R. WALKER, DIRECTOR OF FINANCE,  
(dated December 15, 2017)

Reporting on transfers/loans from the General Fund and the Department of Water Supply Revenue Fund to the 2018 Proposed General Obligation Bond Fund as of November 30, 2017.

The recommended action is that County Communication No. 18-6 be referred to the Budget and Finance Committee.

NO. 18-7 - LYNN A.S. ARAKI-REGAN, BUDGET DIRECTOR,  
(dated December 11, 2017)

Transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018, OCEAN RECREATIONAL ACTIVITY FUND"; and
2. "ACQUISITION FOR REPLACEMENT OF EXISTING MOTOR VEHICLE REQUEST FORMS".

The recommended action is that County Communication No. 18-7 be referred to the Budget and Finance Committee.

NO. 18-8 - LYNN A.S. ARAKI-REGAN, BUDGET DIRECTOR,  
(dated December 13, 2017)

Transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES; DEPARTMENT OF FIRE AND PUBLIC SAFETY, LANAI COMMUNITY PLAN AREA, GOVERNMENT FACILITIES, LANAI FIRE STATION IMPROVEMENTS; TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS";
2. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS, DEPARTMENT OF FIRE AND PUBLIC SAFETY, LANAI COMMUNITY PLAN AREA, LANAI FIRE STATION IMPROVEMENTS"; and
3. "CERTIFICATION OF ADDITIONAL REVENUES FOR FISCAL YEAR 2018".

The recommended action is that County Communication No. 18-8 be referred to the Budget and Finance Committee.

NO. 18-9 - SANANDA K. BAZ, BUDGET DIRECTOR,  
(dated December 19, 2017)

Transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018, OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND"; and
2. A proposed resolution entitled "APPROVING THE ACQUISITION OF REAL PROPERTY, APPROXIMATELY 15,351 SQUARE FEET, LOCATED IN KIHEI, MAUI, HAWAII".

The recommended action is that County Communication No. 18-9 be referred to the Budget and Finance Committee.

NO. 18-10 - SANANDA K. BAZ, BUDGET DIRECTOR,  
(dated December 21, 2017)

Transmitting the following proposed bills entitled:

1. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES; DEPARTMENT OF FINANCE, COUNTYWIDE, OTHER PROJECTS, COUNTYWIDE EQUIPMENT; TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)";
2. "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 4454, BILL NO. 63 (2017), RELATING TO THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF MAUI (COUNTYWIDE EQUIPMENT)"; and
3. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX C

– CAPITAL IMPROVEMENT PROJECTS, DEPARTMENT OF FINANCE,  
COUNTYWIDE, COUNTYWIDE EQUIPMENT".

The recommended action is that County Communication No. 18-10 be referred to the Budget and Finance Committee.

NO. 18-11 - RIKI HOKAMA, COUNCILMEMBER,  
(dated December 20, 2017)

Relating to the Fiscal Year 2019 Budget.

The recommended action is that County Communication No. 18-11 be referred to the Budget and Finance Committee.

NO. 18-12 - ELLE COCHRAN, COUNCILMEMBER,  
(dated December 28, 2017)

Transmitting proposed amendments to Bill 117 (2017) "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND".

The recommended action is that County Communication No. 18-12 be referred to the Infrastructure and Environmental Management Committee.

(COUNTY COMMUNICATION NO. 18-12 WAS CALLED UP WITH BILL NO. 117 (2017) LATER IN THE MEETING, THEN FILED. See pages 82 through 143 for discussion.)

NO. 18-13 - MIKE WHITE, COUNCIL CHAIR,  
(dated December 19, 2017)

Relating to refuse service for Waikapu Gardens in Wailuku.

The recommended action is that County Communication No. 18-13 be referred to the Infrastructure and Environmental Management Committee.

NO. 18-14 - ELLE K. COCHRAN, COUNCILMEMBER,  
(dated December 28, 2017)

Relating to Keawe Street (Lahaina) Infrastructure.

The recommended action is that County Communication No. 18-14 be referred to the Infrastructure and Environmental Management Committee.

NO. 18-15 - WILLIAM SPENCE, PLANNING DIRECTOR,  
(dated December 7, 2017)

Relating to the Community Plan Amendment, District Boundary Amendment, and Change in Zoning for Seabury Hall, transmitting copies of documents and the following proposed bills entitled:

1. "A BILL FOR AN ORDINANCE TO AMEND THE MAKAWAO-PUKALANI-KULA COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO PUBLIC/QUASI-PUBLIC FOR 14.95 ACRES SITUATED AT MAKAWAO, MAUI, HAWAII, TAX MAP KEYS (2) 2-4-008:041 AND (2) 2-4-008:001 (POR.)";
2. "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT FOR PROPERTIES SITUATED AT MAKAWAO, MAUI, HAWAII, TAX MAP KEYS (2) 2-4-008:041 AND (2) 2-4-008:001 (POR.)"; and
3. "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT FOR 14.95 ACRES SITUATED AT MAKAWAO, MAUI, HAWAII, TAX MAP KEYS (2) 2-4-008:041 AND (2) 2-4-008:001 (POR.)".

The recommended action is that County Communication No. 18-15 be referred to the Land Use Committee.

NO. 18-16 - ALIKA ATAY, COUNCILMEMBER,  
(dated December 21, 2017)

Relating to Impacts of the Change in Zoning Process on Pending and Future Land Use.

The recommended action is that County Communication No. 18-16 be referred to the Land Use Committee.

NO. 18-17 - MIKE WHITE, COUNCIL CHAIR,  
(dated December 28, 2017)

Relating to an assessment study to administer lands acquired through the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

The recommended action is that County Communication No. 18-17 be referred to the Parks, Recreation, Energy, and Legal Affairs Committee.

NO. 18-18 - DAVID J. UNDERWOOD, DIRECTOR OF PERSONNEL SERVICES, (dated December 7, 2017)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, THE CITY AND COUNTY OF HONOLULU, THE COUNTY OF KAUAI, AND THE COUNTY OF HAWAII TO SHARE THE COSTS AND EXPENSES OF SERVICES DIRECTLY RELATED TO THE INTEREST ARBITRATION HEARING FOR BARGAINING UNIT 14".

The recommended action is that County Communication No. 18-18 be referred to the Policy, Economic Development, and Agriculture Committee.

NO. 18-19 - YUKI LEI SUGIMURA, COUNCILMEMBER,  
(dated December 28, 2017)

Relating to a performance audit of the Department of Liquor Control.

The recommended action is that County Communication No. 18-19 be referred to the Policy, Economic Development, and Agriculture Committee.

NO. 18-20 - DAVID TAYLOR, DIRECTOR OF WATER SUPPLY,  
(dated December 6, 2017)

Transmitting the Department of Water Supply's Monthly Source Report and Groundwater Use Report for the month ending November 2017.

The recommended action is that County Communication No. 18-20 be referred to the Water Resources Committee.

NO. 18-21 - DAVID TAYLOR, DIRECTOR OF WATER SUPPLY,  
(dated December 13, 2017)

Transmitting the State of Hawaii's Commission on Water Resources Management water use reports for September and October 2017 for all registered well reporters in the County of Maui.

The recommended action is that County Communication No. 18-21 be referred to the Water Resources Committee.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, are there any requests for referral? Or, any objections to the referrals as read by the Clerk?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, the CC 18-12, I'm requesting to move that to end of calendar when Bill 117 gets called up. That's the--

CHAIR WHITE: Any objections, Members?

MEMBERS VOICED NO OBJECTION.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR WHITE: So ordered. Thank you.

COUNCILMEMBER KING: Just, I have a question, Chair.

CHAIR WHITE: Any other refer, yes, Ms.--

COUNCILMEMBER KING: Yea, no, I had just talked to Councilmember Hokama earlier, and I thought that 18-9 was going to go to PRL, to the Parks Committee. To, that was the open space acquisition for the parks. Not sure if that was the intent.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.



COUNCILMEMBER HOKAMA: Yea, I, I apologize to my colleague, Ms. King. I misread the status recommendations being proposed to Council this morning. I will say that the Budget Committee is happy to receive it. I am happy to work with Ms. King, being the district member of South Maui, regarding this consideration. And at the appropriate time will post it for hearing and allow the Department to give their comments, as well as receive community input on the consideration, Chairman.

COUNCILMEMBER KING: Okay. I don't have a problem. I just thought we had had that conversation. I thought maybe it was miswritten.

COUNCILMEMBER HOKAMA: Yea, that was my error.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR WHITE: Thank you.

Any other objections to the referrals made by the Clerk? Seeing none, all those in favor of the motion, please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with eight "ayes", and there were no, I'm sorry, nine "ayes". Thank you.

Mr. Clerk.

COUNCILMEMBER HOKAMA: Chairman, short recess please.

CHAIR WHITE: Sure. Recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:44 A.M., AND WAS RECONVENED AT 11:44 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: Thank you, Mr. Hokama.

Mr. Clerk, proceeding with the agenda.

COUNTY CLERK: Mr. Chair, proceeding with Committee Reports.

### COMMITTEE REPORTS

COMMITTEE REPORT  
NO. 18-1 - HOUSING, HUMAN SERVICES, AND TRANSPORTATION  
COMMITTEE:

Recommending that Resolution 18-3, entitled "AUTHORIZING THE COUNCIL CHAIR TO CONTRACT FOR AN AFFORDABLE HOUSING POLICY AND IMPLEMENTATION ANALYSIS," be ADOPTED.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

MR. CHAIR, I WOULD, I MOVE TO ADOPT THE  
RECOMMENDATION IN COMMITTEE REPORT 18-1.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Ms. Crivello, and a second from Ms. Sugimura.

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Your Housing, Human Services, and Transportation Committee met on, met on December 14, 2017, to consider a proposed resolution to authorize the Council Chair to contract for an Affordable Housing Policy and Implementation Analysis.

The Affordable Housing Policy and Implementation Analysis would identify current obstacles, recommend policy changes, reduce barriers, and create incentives to address the shortage of affordable housing in Maui County.

Your Committee recommended revising the proposed resolution to allow the Council Chair to convene a stakeholder meeting to recommend the scope of work, deliverables for the contract, and qualifications for potential consultants prior to commencing the request for proposals process.

Your Committee voted 6-0 to recommend adoption of the revised proposed resolution. I respectfully ask for the Council's support, and I thank you.

CHAIR WHITE: Thank you, Ms. Crivello.

Members, any further discussion on this item?

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. I speak in support of this motion on the floor with reservations this morning, Mr. Chairman. Yes, it's still morning. And, quickly, I understand, you know, this came from Budget Committee, during the budget, last budget session, this consideration of this 250,000. And, it was to find out why certain things weren't working, Chairman. So, I support moving forward to have an analysis done.

I know Admin has asked us for positions. We've granted them some. They've asked us for some additional monies. We already gave them millions in years past, and yet, we still behind the eight ball, okay.

Here we are one year later, I'm going to be looking at the same MCC UH Maui Campus empty buildings that is our land and our structures not being utilized. I had hoped that we have had, would have some comment, at least, for the next budget session regarding this subject area. And, I understand things arise, barrier, challenges are placed before you, Chairman. So, I'll, I'm supportive of it.

And, I, you know, for me, Chairman, you know, the Committee appropriate more than I had anticipated. I had asked for this 250 to support the Department, Ms. Crivello's Committee, and yourself, Chairman, for some flexibility. But, I think there is sufficient money that we now also have the ability to address unforeseen circumstances.

And, I'm going to bring it up now, because I believe this is something we should consider. And, that part of this funds, if appropriate, should be considered on how we can mitigate what is happening on Molokai with the closure of another big

employer, and its impact on housing inventory, and the ability of Molokai residents to maintain housing opportunities.

And so, I'll be open, I know I've had some discussions with Ms. Crivello, and I think this is something Council can show initiative of. I'm hoping that Mayor Arakawa will see the importance of being proactive than reactive to situations like this, because I think by mitigating some of the upfront costs, this County would be paying out a lot less down the road if we should defer smart action in advance. Thank you, Mr. Chairman.

CHAIR WHITE: Thank you, Mr. Hokama.

Any further discussion on this item?

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you. No, I, I appreciate the previous comments.

AND, I THINK, I JUST THINK PURSUANT TO THOSE COMMENTS AND, AND TESTIMONY THAT JUST HAD A FRIENDLY, I'D LIKE TO PROPOSE A FRIENDLY AMENDMENT JUST TO CHANGE IT, CHANGE THE SECOND "WHEREAS" [SIC] TO "WILL CONVENE A STAKEHOLDER MEETING OR MEETINGS TO RECOMMEND THE SCOPE" BECAUSE IT MAY ENTAIL, AS WAS MENTIONED EARLIER, MAY ENTAIL MORE THAN ONE MEETING TO DETERMINE THE SCOPE OF WORK AND THE DELIVERABLES.

CHAIR WHITE: Yea, the, the Chair will have, will have meetings. So, I don't think the amendment is necessary, but, you know, it's up to the body.

COUNCILMEMBER HOKAMA: Chair.

CHAIR WHITE: Yes.

COUNCILMEMBER HOKAMA: Just one comment I would share with my colleagues; that the wider the scope, the longer the study takes.

COUNCILMEMBER KING: Right.

COUNCILMEMBER HOKAMA: Okay. Part of what budget had, had hoped for, that's I think the right phrase, we had hoped for was that would have some indication for this upcoming budget, okay. We're not going to make it. But, I would hate for us to enter into an assessment and analysis that is so broad it's going to take us forever to get it done, and it'd take us forever to review it, and it be ready for the next cycle. You know, I think we're going to miss opportunities, Chair.

So, I would just say that the scope of this analysis needs to be smart, and within a specific timeframe target so that we can get the information that is desired by the Council. Thank you, Chairman.

COUNCILMEMBER KING: And, Chair, I don't disagree--

CHAIR WHITE: Thank you, Mr. Hokama.

COUNCILMEMBER KING: --with my colleague, but I just wanted to make, you know, to give the comfort level that, yea, it's not just going to be one meeting for the sake of meeting because it's in the resolution, but there will be meetings until we get a good scope of work and deliverables and the things that are in here; qualifications for the potential consultants, which may not happen in one meeting.

CHAIR WHITE: Thank you.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: Ms. Crivello, followed by Ms. Sugimura.

COUNCILMEMBER CRIVELLO: Thank you. I appreciate Mr. Hokama's efforts to, first of all, consideration of mitigating unforeseen circumstances for housing on our island of Molokai.

But, in reference to the broader scope, I would like to credit our Office of Council Service staff that have been doing due diligence in having had several, several meetings with stakeholders and all, all different parties that contribute, so that the scope is narrowly appropriate for what we hope to get out of this, these funds that we have.

So, yes, we don't want a broader. And, I think with the meetings that, with the convening stakeholder meetings that we've talked about and is noted in this reso will allow us to, to have that. And, because it's quite, in my opinion, it's quite well put together that the staff has worked hard on, I think we're very close, you know, we're at, at the stage of convening these meetings, and then moving further so that

we can meet what Mr. Hokama is talking about, the budget and, and the timeframe that we have. That being said, I guess we can move forward. If, if it means adding an "s" to it, that's fine too.

CHAIR WHITE: Okay. Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, I like hearing to support Molokai, because I think we're all, you know, saddened by the news of the closure or movement of DOW. And, and that it would affect many families.

COUNCILMEMBER KING: Chair, can I just make a point of order, cause I think we're on a--

CHAIR WHITE: No. Hold, hold on please.

COUNCILMEMBER KING: --we're on an amendment, that we haven't had a second on it, so we're--

CHAIR WHITE: Ms. King, hold on.

COUNCILMEMBER SUGIMURA: So, I like the discussion that I'm hearing, and I do know that a lot of work has been put into this from OCS staff. I appreciate that, as well as our Chair of the Committee. So, I support this wholeheartedly, and to see it move forward, and to see how we can provide homes for our working families. I think this is a good step.

CHAIR WHITE: Thank you. The Chair would just suggest that this, this may not be the appropriate place to use funds from, and, but as we, as we get the responses to the RFP, then we'll have a better idea of whether there's any excess or not.

So, Ms. King.

COUNCILMEMBER KING: Well, I'm just making a point of order that there's a amendment proposal on the floor, so we haven't had a second, but we're in a discussion. I wasn't sure if we're entering into a discussion on the amendment or--

CHAIR WHITE: I didn't recognize the motion. I, I said that as far as I'm concerned, I'm having multiple meetings anyway, so I don't think it's, I mean, it's unnecessary in my view. But, if you'd like to see if you can get a second that's fine.

COUNCILMEMBER KING: Well, I, I've proposed the amendment, so, you know.

COUNCILMEMBER COCHRAN:

SECOND.

COUNCILMEMBER KING: I don't think it's that big a deal to add it if it gives a comfort level to the folks.

CHAIR WHITE: No, I don't either. I don't think it's a big deal if it's not there. But, anyway.

Okay, we have a--

COUNCILMEMBER COCHRAN:

I SECOND.

CHAIR WHITE: --we have a motion and a second. Any discussion? All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Okay, any, we're back to the main motion. Any further discussion on the main motion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, for the record, RESOLUTION NO. 18-3.

COMMITTEE REPORT  
NO. 18-2 - LAND USE COMMITTEE:

Recommending that County Communication 17-130, from the Planning Director, transmitting a Change in Zoning application originally filed with the Planning Department in 2011 and reviewed by the Maui Planning Commission on May 10, 2016 by Dr. Sujata Bhatia, transmitting documents and a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII TAX MAP KEY (2) 3-9-010:077" be FILED.

CHAIR WHITE: Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN  
COMMITTEE REPORT 18-2.

COUNCILMEMBER HOKAMA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Mr. Hokama.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Your Committee, your Committee met on March 22, March 24, November 14, November 15, December 13, 2017, to consider a request from Dr. Sujata Bhatia for a Change in Zoning from R-3 Residential District to B-2 Community Business District for approximately one acre located at 1488 South Kihei Road, Kihei, Maui, Hawaii.



Granting this Change in Zoning would allow for the development of a wellness center on the property.

At its meeting, your Committee heard from testifiers opposed to the applicant's plans for development. Despite the applicant's efforts to redesign her proposed project with the community in mind, concerns about the impact of the project on a regional ecosystem, cultural preservation, historic activities, and the status of the onsite retention pond, led to your Committee's recommendation to file County Communication 17-130. Filing of the communication will deny the Change in Zoning request.

I ask for the Committee's support. Thank you.

CHAIR WHITE: Thank you, Mr. Carroll.

Any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

COMMITTEE REPORT  
NO. 18-3 - PARKS, RECREATION, ENERGY, AND LEGAL AFFAIRS  
COMMITTEE:

Recommending that Resolution 18-4, entitled "INDEMNIFYING TEENA RASMUSSEN IN ROBERT G. STRAUB V. COUNTY OF MAUI, ET AL., CIVIL NO. 17-00516 JMS-RLP," be ADOPTED.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN  
COMMITTEE REPORT 18-3.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Mr. Guzman, and a second from Ms. King.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Your Committee met on December 12, 2017, to consider a proposed resolution to authorize the indemnification of Teena Rasmussen in the case read by the Clerk.

The First Amended Complaint alleges, among others, violations of the Family Medical Leave Act, the Americans with Disabilities Act, retaliation, and age discrimination against, related to Robert Straub's termination from the employment with Office of Economic Development's Maui County Business Resource Center, effective January 31, 2017. The complaint alleges aiding and abetting in the age discrimination for which Ms. Rasmussen is personally liable.

The Deputy Corporation Counsel said that after reviewing the case and the documents thus far, the Department believes indemnification is appropriate because Ms. Rasmussen was acting in the scope of her employment as the Economic Development Director. The Deputy did mention that on behalf of her management decision to lay off Mr. Straub, it was because of a budgetary consideration of the Department because of Rasmussen's interest, and interests of the County are aligned.

Your Committee voted 8-0 to recommend adoption of the proposed resolution. I ask for the Council's support of your Committee's recommendation. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman.

Any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

And that brings us to the end of our committee reports. And, Members, it's time for our midday break, so please be back in your seats at 1:30. Until then, we stand in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:59 A.M., AND WAS RECONVENED AT 1:32 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting shall please come back to order.

Mr. Clerk, are we ready to proceed with our agenda?

COUNTY CLERK: Mr. Chair, prior to the lunch break, relative to Committee Report 18-3 that was passed prior to lunch break, for the record, that would be RESOLUTION 18-4.

Proceeding with ordinances for second and final reading.

## ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 106 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX B, REVENUES – FEES, RATES, ASSESSMENTS  
AND TAXES, DEPARTMENT OF PLANNING, GENERAL FUND,  
CHARGES FOR CURRENT SERVICES, FEES – DEPARTMENT OF PLANNING

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. I would ask the Members and yourself, Mr. Chairman, if with no objection, I'd like the Clerk to bring up all bills including Bill No. 112.

CHAIR WHITE: Any objections, Members?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 107 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -  
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,  
EMERGENCY MANAGEMENT AGENCY  
(STATE HOMELAND SECURITY GRANT (SHSG) PROGRAM)

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 108 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO ESTIMATED REVENUES;  
DEPARTMENT OF PARKS AND RECREATION;  
KIHEI-MAKENA COMMUNITY PLAN AREA, PARKS AND RECREATION,  
WAIPUILANI PARK IRRIGATION SYSTEM;  
TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND  
TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 109 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS,  
DEPARTMENT OF PARKS AND RECREATION,  
KIHEI-MAKENA COMMUNITY PLAN AREA,  
WAIPUILANI PARK IRRIGATION SYSTEM

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 110 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO ESTIMATED REVENUES;  
DEPARTMENT OF PUBLIC WORKS,  
WAILUKU-KAHULUI COMMUNITY PLAN AREA,  
DRAINAGE, WAIEHU DRAINLINE REPAIRS,  
TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND  
TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 111 (2017)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 4454,  
BILL NO. 63 (2017), RELATING TO THE ISSUANCE OF GENERAL  
OBLIGATION BONDS OF THE COUNTY OF MAUI  
(WAIEHU DRAINLINE REPAIRS)

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 112 (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS,  
DEPARTMENT OF PUBLIC WORKS,  
WAILUKU-KAHULUI COMMUNITY PLAN AREA,  
WAIEHU DRAINLINE REPAIRS

CHAIR WHITE: Thank you, Mr. Clerk.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you.

I MOVE THAT THE BILLS, AS READ BY THE CLERK, PASS  
SECOND AND FINAL READING.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Hokama, and a second from Ms. Sugimura.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, your, again, this is for second and final reading. Your Budget and Finance Committee has vetted through each bill that is before the body for final decision this afternoon.

We did receive comments regarding Bills 110, 111, 112. These are capital improvement projects as presented by the Department of Public Works. They are repair maintenance projects. It is not for a new portion of our system. And, as we have stated in our committee report, as well as we do have the presence of Director Goode, who has made himself available, so thank you, Director Goode. But basically, it's two projects, Mr. Chairman and Members, for this request on those bills.

The first one is at Wailupe Drive and Analio Street. It's approximately 1500 feet of 60-inch, 60-inch drainline estimated at \$1.18 million. The Department has informed us that it is 40 years old, and that the salt air and salt spray flushing through the system has accelerated the corrosion impacts of these metal pipes.

Second is at Hiahia Place within the Oceanview Subdivision. It's for a 450 feet of 48-inch drainline to be replaced. And, the Department currently estimates this project to be at \$350,000.

It is still my position to request the Council to consider supporting these. Again, I appreciate the testimony. And, if we do have legislation or laws in place, I would expect the Department to follow whatever requirements it is as it would impact these

specific projects, Mr. Chairman. If there are any questions, I'm happy to respond, as well as if there are specific questions regarding this appropriation request, then I would ask the Members and yourself, Mr. Chairman, to allow Mr. Goode to present response if appropriate. Thank you.

CHAIR WHITE: Thank you. Just for clarification, did you say 40 years--

COUNCILMEMBER HOKAMA: Correct. The drainlines are about 40-year-old, 40 years old.

CHAIR WHITE: Thank you.

Members, any further discussion on these items?

Yea, the Chair would just like to add that I think Mr. Kamaunu, who testified this morning, brought up a really valid point. His concern with these bills was that there may be, if it's drainage project, he didn't know whether it was new or replacement at the time of his testimony. He brings up a very critical issue, because he mentioned the drainlines. And, if we're putting it, if we're looking at putting in new drainlines or in, his other comment was regarding the hookups for, for people who had to get into the sewer system, it requires excavation. And, when you excavate, you don't know what's under there.

So, I know that what's going on in the, in the dunes is a more significant amount of excavation by, you know, by very significant amounts. But, the issue is still the same one where, you know, whenever we excavate, if we don't know what's under there, we may or may not find something, we may or may not find iwi. And, I think that all of us are very concerned about protecting iwi. But, we've got to do it in a, in a way where we're putting more of the onus on, on SHPD. And, possibly, we may need to look at thinking about deputizing some folks to act on SHPD's behalf, if the State Legislature is not stepping forward and providing the appropriate level of funding.

But, I thought his, his comments were very appropriate, and it just, it just brought back into my mind that this is not just an issue in the dunes on this side, it's an issue on the Lahaina side, it's an issue all over in the County, because the iwi are not buried just in the sand, they're buried in, in dirt, on the West Side. And so, you know, it's a very touchy issue. One that we're, you know, we're going to have to deal with in a very respectful and gentle and effective way. But, I thought his testimony on these three bills really bore out the fact that this is a much broader issue than the one we're going to be discussing in a little while. So, I just share that with you today.

COUNCILMEMBER KING: Chair, can I just make one comment on that?

CHAIR WHITE: Yea, Ms. King.

COUNCILMEMBER KING: Thank you. I really appreciate bringing that up, and I also want to just remind everybody too, that we have, this is one of the reasons we put a Hawaiian cultural, you know, native Hawaiian cultural expert on the Planning Commission, and Hana Advisory Committee, and all the other planning commissions, is so that there would be somebody there looking out for, you know, since we're not getting the best service from SHPD. But, looking out for that in those areas, at least that the Maui Planning Commission addresses. So, I look forward to actually seeing that kind of, and I know we've just, it took us a while to actually get them in place, but I look forward to the input from the people that are placed in there to serve those, those positions. Contributing, you know, in, in, you know, until such time as we can get more action from SHPD or deputize somebody.

CHAIR WHITE: Thank you for that. And it may be something that could also become part of the focus of the Cultural Resource Commission.

COUNCILMEMBER KING: Right.

CHAIR WHITE: So, anyway, any further discussion on those items? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measures passes with nine "ayes".

Mr. Clerk.



ORDINANCE NO. \_\_\_\_\_  
BILL NO. 113 (2017)

A BILL FOR AN ORDINANCE AMENDING SECTION 10.48.040,  
MAUI COUNTY CODE, RELATING TO PARKING PROHIBITIONS  
ON CERTAIN STREETS AND HIGHWAYS

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you very much.

I MOVE TO PASS BILL 113 (2017) ON SECOND AND FINAL  
READING.

COUNCILMEMBER HOKAMA:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Mr. Hokama.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you. Bill 113 would amend Section 10.48.040 of the Code by prohibiting parking in two areas. The first is in the close vicinity of the Grace Bible Church driveway on West Hawaii Street in Kahului. And the other is the north side of Haku Hale Street [*sic*] in Honokowai.

The bill addresses safety concerns that arise from vehicles parking in these two areas. And, that's what it addresses. And, so we vetted through it in IEM and unanimously supported, and looking for my fellow Members support on the passage of the bill, second and final.

CHAIR WHITE: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR WHITE: Any further discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,

SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 114 (2017)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.080,  
MAUI COUNTY CODE, RELATING TO  
COMMUNITY PLAN ADVISORY COMMITTEES

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair.

I MOVE TO PASS BILL 114 ON SECOND AND FINAL  
READING.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Ms. King, and a second from Ms. Sugimura.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. The purpose of the bill is to establish criteria and procedures for the selection, appointment, and removal of community plan advisory committee members. This is the first step to improving the community plan review and amendment process, and this bill will provide clarity and much needed guidance for future CPAC's, or Community Plan Advisory Committees. I ask for the Members support. And, we did pass this out unanimously out of Committee after much discussion.

CHAIR WHITE: Thank you.

Members, any further discussion on this item?

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I speak in support of the motion on the floor at this time. One thing that I appreciate the Committee working hard on was if you wish to serve, then attend the meetings.

And, I know we made specific reference regarding three strikes, what I call the three-strike rule as part of the ordinance. But, I had thought, currently, the Administration applies it to all boards and commissions. So, I'm not too sure whether we got that clarified or not. But, I would be supportive that this be a unified rule for any and all County boards and commissions.

When you volunteer, you telling us you willing to serve. By not showing up, you telling us, you know, you're too busy. So, I'm willing to give another individual that opportunity. Thank you, Chairman.

CHAIR WHITE: Thank you, Mr. Hokama.

Further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 115 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE  
COUNTY OF MAUI THROUGH THE CHIEF OF POLICE TO ENTER INTO AN  
INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII,  
DEPARTMENT OF THE ATTORNEY GENERAL

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Could you bring up the next item too?

CHAIR WHITE: Without any objections, Members.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 116 (2017)

A BILL FOR AN ORDINANCE ESTABLISHING ADDITIONAL QUALIFICATIONS  
FOR THE DIRECTOR OF PUBLIC WORKS AND  
THE DIRECTOR OF ENVIRONMENTAL MANAGEMENT

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. Chair, the two bills, both of them are up for second reading.

AND, I MOVE TO PASS 117, 115 (2017) FOR SECOND AND FINAL, AS WELL AS 116 (2017).

CHAIR WHITE: Do we have a second?

COUNCILMEMBER HOKAMA:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Mr. Hokama.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. So, on Bill 115, this authorizes the Mayor to enter into an intergovernmental agreement with the State of Hawaii Department of Attorney General, to receive excess DOD personnel, personal property under the Law Enforcement Support Program.

And, the Council made special note that they wanted to have like a report so that we would understand what is being transacted, as well as they were very cautious to ensure that this didn't cost the County additional funds.

The next item, which is near and dear to me, which is qualifications. We are passing second and final for establishing qualifications for County administrative heads appointed by the Mayor pursuant to Section 6-4, revised Charter of the County of Maui, 1983, as amended.

And, this bill restates a minimum of the things that were in the Charter, we added more through Committee discussion. So, it's a minimum of five years of administrative experience required of administrative heads of the Charter. And, requires that three of those years consist of responsible managerial and budgetary experience. It would also require a bachelor's degree in relevant discipline, or a combination of education and work experience equivalent to such a degree. And, three years of experience in one or more of the Charter mandated functions under the director's purview.

The effective date of this is January 2, 2019.

And, this both passed my Committee, Chair, and I respectfully ask for our Members support.

CHAIR WHITE: Thank you, Ms. Sugimura.

Members, any discussion on these items?

COUNCILMEMBER KING: Chair, just a question.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Because, I, I don't remember discussing the start date. But, does that, does that affect the next Mayoral appointments then?

CHAIR WHITE: Correct.

COUNCILMEMBER KING: Okay. So, it, it'll go into effect before those are officially approved?

CHAIR WHITE: Correct.

COUNCILMEMBER KING: Okay.

CHAIR WHITE: Any further discussion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 117 (2017)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI  
COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF  
CENTRAL MAUI INLAND SAND

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

I MOVE TO PASS BILL 117 (2017) ON SECOND AND FINAL  
READING.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

AND, I MOVE TO AMEND, TO MAKE AN AMENDMENT AT THIS TIME, I MOVE TO AMEND SECTION 20.40.020, AND WE SHOULD HAVE THE SUMMARY FORM HERE, AMENDMENT SUMMARY FORM IN FRONT OF US, BY AMENDING THE DEFINITION FOR CENTRAL MAUI INLAND SAND BY INSERTING THE TERM "QDO" AND STRIKING THE PHRASE "CLASSIFIED QDO BY USGS" TO READ AS FOLLOWS: "CENTRAL MAUI INLAND SAND" MEANS DQO INLAND SAND LOCATED WITHIN THE AREA SHOWN ON THE MAP SET FORTH IN SECTION 20.40.080; AND FURTHER, TO AMEND SECTION 20.40.020 BY AMENDING THE DEFINITION OF QDO BY INSERTING THE PHRASE "AS CLASSIFIED BY THE UNITED STATES GEOLOGICAL SURVEY AS REFERENCED IN EXHIBIT "A"" TO READ AS FOLLOWS, AND WE SHOULD ALL HAVE THAT IN FRONT OF US, "QDO" MEANS OLDER DUNE DEPOSITS (HOLOCENE AND PLEISTOCENE) AS CLASSIFIED BY THE UNITED STATES GEOLOGICAL SURVEY AS REFERENCED IN EXHIBIT "A".; AND FURTHER, BY ATTACHING EXHIBIT "A", WHICH INCLUDES A MAP ENTITLED "GEOLOGICAL MAP OF THE STATE OF HAWAII, SHEET 7 – ISLAND OF MAUI" AND A DOCUMENT ENTITLED "METADATA FOR USERS OF THE GEOLOGIC MAP OF THE STATE OF HAWAII".

And that was a motion to amend.

COUNCILMEMBER KING:

SECOND THE MOTION.

CHAIR WHITE: Okay, we have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN:

AND, ALSO FILING OF THIS COMMUNICATION.

So, the project summary form, I believe everyone has had a chance to receive this and look at it. And, hoping to get support for this, this amendment, which is more of a housekeeping, I believe, Chair, in a sense.

CHAIR WHITE: Any further discussion on this amendment?

COUNTY CLERK: Mr. Chair.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: Is the summary in the Granicus? It's in Granicus?

CHAIR WHITE: You know what, we're going to take a quick recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 1:51 P.M., AND WAS RECONVENED AT 1:52 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting will come back to order.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: Members, before you proceed, Ms. Cochran--

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: --we neglected to call up the item, along with the County Communication, along with the bill.

COUNCILMEMBER COCHRAN: Oh, the one that I moved to end of calendar? Okay, sorry.

CHAIR WHITE: So, yea.

So, Mr. Clerk, can you please call up the bill, or call up the county communication?



COUNTY CLERK: Thank you.

NO. 18-12 - ELLE COCHRAN, COUNCILMEMBER,  
(dated December 28, 2017)

Transmitting proposed amendments to Bill 117 (2017) "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND".

CHAIR WHITE: Okay. Thank you, sir.

So, you don't need to redo everything, but just needed to call up the bill, or call up the communication. Please proceed.

COUNCILMEMBER COCHRAN: Okay. And so, Chair, at our December 15, 2017, meeting, the proposed bill was amended by adding the definition of Qdo. And, the amendment before us today was recommended to this body by Corporation Counsel as a cleaner version of the amendment that was already approved at first reading.

And, this amendment offers an exhibit as a resource for identifying the Qdo sand, which will even further clarify the definition of Qdo sand.

And, so, as I have been, as I've indicated the past three Council meetings, this matter was considered over the course of eight IEM meetings. And, at the Council meeting on November 17, 2017, the proposed bill was amended by striking tax map key (2). Oh wait, sorry, just stop, I need to just stop at the, this amendment offers exhibit as a resource for identifying Qdo sand which will further clarify the definition of Qdo. And, that's the justification for this amendment. Sorry, I was rolling on into the next.

CHAIR WHITE: Okay. Members, any further discussion?

Ms. Crivello, did you have a question?

COUNCILMEMBER CRIVELLO: Well, I guess I need clarification. Are we able to question about the Qdo on a specific trmk's or will that come further after--

COUNCILMEMBER COCHRAN: That's later.

COUNCILMEMBER CRIVELLO: --we pass this amendment--

CHAIR WHITE: You can ask those questions--

COUNCILMEMBER CRIVELLO: --in a full motion?

CHAIR WHITE: You can ask those questions now.

COUNCILMEMBER CRIVELLO: Okay, so, I understand what you are trying to identify as older dune deposits, I guess, is probably how it's been defined. So, I note, and excuse me, cause I'm not on the Committee, but I've been trying to follow, so I note also on the bill there's a request for an exemption on a particular property. And, how, how does that Qdo is identified on the map? Is it just a strip as such, and how old is the map? Does the map go back to the 40's, or is it at most recent to, to identify? And, I guess I'm referring to the Dowling property that is part of the exemption. And, and to be in, I guess I don't know if the word is in compliance, or clarity with the Qdo amendment that's added into this bill, and that particular exemption that is part of all this.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Okay. If I understand the question, so how is Qdo determined? All the Geotechnical Reports, which has been distributed to all of us and AIS's, all those experts in the field have, have it in these reports. They're identified by the geologists, by the people who, the experts.

And, in relation to Mr. Dowling's property, his reports, studies show that there, there was no sand present. So thereby, he had every right to be exempted out of this moratorium.

COUNCILMEMBER CRIVELLO: So--

COUNCILMEMBER COCHRAN: Cause he doesn't have this type of sand in, on his property.

COUNCILMEMBER CRIVELLO: I see. But, the mapping shows some sort of strip of it.

COUNCILMEMBER COCHRAN: Through his reports. So, it, it's been altered like a lot of lands in this area have been. So, it no longer has that sand.

COUNCILMEMBER CRIVELLO: So, and then my next question is, who has the, the required or authorized certification to say this is Qdo? And, you know, sand blows,

wind blows, sand travels, so how does, how do we justify the facts that it's Qdo's? I just, I'm just want the factual part of it explained so that I can have full clarity, Chair, on how we are determining what properties fit in, or how does AIS concludes on no more Qdo's or have, and how old is the studies that comes out with the Qdo's on those particular properties?

CHAIR WHITE: Is that a question that you would like to pose to Mr. Goode, or?

COUNCILMEMBER CRIVELLO: Yea, probably. Or, maybe Ms. Cochran can answer that.

COUNCILMEMBER COCHRAN: Chair.

COUNCILMEMBER CRIVELLO: Or would her resource people?

COUNCILMEMBER COCHRAN: I can.

CHAIR WHITE: My, I think without objection, I think we should bring Mr. Goode down here, as well as let Ms. Cochran share her mana`o.

COUNCILMEMBER COCHRAN: I, my, thank you, Chair. And yea, and basically it's the engineers, and it's the reports, it's their call and their determinations in these reports. That the landowners hire them to create and do the trenching studies, whatever it is they do to get the reports done. And, they're all up to date. We've received them all. And, that's who makes that determination, are the experts in the field is kind of how I look at it. It's the engineers.

CHAIR WHITE: Okay. Mr. Goode.

DIRECTOR OF PUBLIC WORKS DAVID GOODE: Good afternoon, Chair, Members.

CHAIR WHITE: Good afternoon. Did you, do you need Ms. Crivello to repeat the question, or did you hear it?

DIRECTOR OF PUBLIC WORKS: Was the question, who is going to make the determination if it's in the, if it's Qdo or not?

COUNCILMEMBER CRIVELLO: Yes. And, I, I was trying to determine also in this question is, what, who certifies the engineers that the landowner hires or does, and you're an engineer yourself, so how is that process? How many, do we have certified engineers that can certify Qdo's or non-Qdo's?

DIRECTOR OF PUBLIC WORKS: Okay. Mr. Chair.

CHAIR WHITE: Please proceed.

DIRECTOR OF PUBLIC WORKS: It's a very, sounds like a straightforward question. I have kind of a long answer, if that's okay. The bill, the bill as written describes the use of a USGS map, alright. And, on that map, it identifies all different types of soil throughout the Hawaiian Islands. And, there's a Maui map. And, if you've looked at the map, you'll see that there's a designation of Qdo for an area of dunes, inland dunes, in Central Maui. If you look at the map, you'll also see there's Qdo in Kapalua, there's Qdo in Lanai and Molokai. I assume there's other, the other islands as well, I haven't even bothered to look.

And, it generally describes, I think as the motion mentioned, it's coastal dune area. But, it doesn't talk about the size of the grains of sand, the type of sand, whether its mixed with silt, mixed with rocks. It's just kind of a general designation on a very large map. So, one would expect to see some type of sand in those areas.

So, on the letter that the Chair wrote, which I believe copies have been transmitted to you, my response, a few days ago. The question was more or less on, on parcels that are bisected by this line. And, the line by the way we understand is in GIS. I think Ms. Landenberger testified that we can call it up. You know, we could have them submit a map showing where the line is. But, as we saw it, I believe in the example of Mr. Dowling, who may have had Qdo I understand on the property, there wasn't actually that sand there at that time.

So, the map is going to be, have a larger error associated with it. So, and, working with my staff and understanding how we would enforce the ordinance, we would require them to draw the line as shown on GIS, and then field verify with a soils engineer what's actually there. I've spoken to soils engineers that practice on Maui regularly. They're very familiar with the qualities of all types of sand and rock, gravel, silt, etc. And, they explained to me that in their standard soils classification, which is an ASTM designation of how they do it, it's like American Standard Testing Materials, yea, there is no Qdo. That doesn't exist.

What exists are things like, is it rock, is it gravel, is it sand of what, of what grain size, okay. So, we're going to rely on the soils engineer to go back to the ordinance, again, deeper into the definitions of the ordinance. We refer back to the definition of sand in our existing grading ordinance, and it talks about the diameter of the sand particle, and whether it has contamination in terms of silt or rocks. That the soils engineers can tell us. They can tell us, yea, it's this size grain; that would be considered sand. But, they would not tell us it's Qdo or not. Because that is just something that has nothing to do with soils engineering at all.

So, I know it's a long answer to a straightforward question. But, that's basically how we would enforce the ordinance by having the applicant show us on the map where the line is from GIS, do field sampling using soils engineering techniques, excuse me, and then they would come back and say, yes, there's sand here of this grain size or not. And then, we would still issue a permit if they tell us they are not exporting the sand, right. You cannot export, under the ordinance, proposed ordinance, you cannot export from a lot. So, if SHPD approves, other relative agencies approve, we'd still issue the permit, but they couldn't export the sand.

So, that's again, I apologize if I went over.

COUNCILMEMBER CRIVELLO: No, no. So, Chair, if I may.

CHAIR WHITE: Please.

COUNCILMEMBER CRIVELLO: So, if they're just doing, I, I thought I heard or understand you just say that the soil engineer, or is there another engineer, the soil engineer does not qualify any Qdo's or certify of any kind of Qdo's? Or, is the Qdo also the size, and grain, and what have you, or diameter of the sand? Because if not, then who's going to assure us that the amendment that Councilmember Cochran wants to put in with the Qdo's, who, my question is, who does certify it?

CHAIR WHITE: Mr. Goode.

DIRECTOR OF PUBLIC WORKS: I need to look at the amendment a little bit. But again, the soils engineer is not going to say whether it's Qdo or sand or not. The soils engineer can say whether it's of a particular grain size or not, if it's under our definition of sand in the grading ordinance.

COUNCILMEMBER CRIVELLO: Okay. Is there anyone other than soil engineers that certifies it, to your knowledge?

DIRECTOR OF PUBLIC WORKS: No, that's, it's talked about at length with our staff who deal with these kind of things on a daily basis. And, there's geotechnical folks, but almost, that's almost interchangeable with soils engineer.

COUNCILMEMBER CRIVELLO: Okay. Thank you, Director. Thank you, Chair.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: That was my question that Ms. Crivello asked. So, if that's the case, it doesn't make sense to add Qdo then, in, in definition means older dune. What is the purpose then of having Qdo as part of this bill if nobody can identify it? Or is it just we need to go to another type of study, or whatever? That was my question.

And then, going back to this map. Since the bill has a map which definitely ID's TMK's and, and I just wondered what is the correlation with this map and this map? It's kind of a broad general map. If it could be a little bit more detailed, so we know that we're basically looking apples for apples. I would appreciate that; so that it's clearer.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, Qdo means old, old. It's old. So, how you test and determine what that, if that sand is Qdo or not is the age of it. And, they test for the age. And, the definition is 11,700 years into the millions of years old. That's what's going to determine if it's Qdo. It's not the color, it's not the, perhaps, it's whatever, the colors are more consistent in older. But, the point is, it's the age is what it's honing in on.

And this map came from USGS, geological people, which is their forte and expertise. And, that's how we drew our line. And, in this line are the older sand dunes, the Qdo type sand. So, that's as simple as it gets. And, why it's there, and why it's in the amendment, and why we're looking for more clarity in defining and explaining what it means. So, it's about the age. It's not about the color, it's not about the look, feel, touch, nothing; age.

CHAIR WHITE: A question for you. It's the Chair's understanding that the Qdo, the Qdo map, on the USGS map, is identical to the, the green map on the, the one that was attached to the initial bill. Is that correct?

COUNCILMEMBER COCHRAN: Yes. Is it green, or was it peach?

CHAIR WHITE: Well, no it's peach on this.

COUNCILMEMBER COCHRAN: Yes, yes.

CHAIR WHITE: But, it was green, I believe on the map that was presented in Committee.

COUNCILMEMBER COCHRAN: Yes.

CHAIR WHITE: So, I guess my question is, if, if the Qdo determination or designation is only on the USGS map, but it's not a term that's used in either the AIS's or by soil engineers, then doesn't the map take care of the designation of the area that you're wanting to protect, without using the term Qdo? Because I, I have not heard that anyone uses the term Qdo in either AIS's or in soil work; geotechnic soil work. So, I'm just wondering if Qdo is necessary if we've already got the area that is designated Qdo, represented in full with the map that was part of the bill initially?

COUNCILMEMBER COCHRAN: The Qdo better defines it from alluvium, which is the newer, the more mauka sort of blends in with the mountainside stuff versus the Qdo, the older. And, in AIS's and these geotechno, they're using words like sand dunes. They're using, but when you go to USGS, they have distinguished that you have alluvium the newer, you have Qdo the older. And in this line that we've drawn in this whole moratorium area, that's what it is, so.

CHAIR WHITE: But, isn't the alluvium--

COUNCILMEMBER COCHRAN: The newer.

CHAIR WHITE: The alluvium is, is not the same type of sand. It's--

COUNCILMEMBER COCHRAN: Mixed.

CHAIR WHITE: --it's sand ground up by rivers and so forth. So, it's a completely different type of sand. So, my, my thought is that the Qdo is already represented in the green portion of the map, even though that there may be alluvium sands that are nearby. But, I think the map that you've presented represents the Qdo area. And I'm just wondering if we can just depend on the map rather than calling it something that no one, no one uses as a reference point. I think that's the, I think that's the confusion for the Department. And, maybe we can clarify whether that is a confusion for you or not.

DIRECTOR OF PUBLIC WORKS: Mr. Chair, it would be confusing in that we are not familiar with the term and neither are the geologists. But, the Qdo area is in the bill already.

CHAIR WHITE: Right.

DIRECTOR OF PUBLIC WORKS: So, that area that was defined, I think what the green color, I think you mentioned, that's exactly from the USGS. And so, to us it's there,

and GIS has already plotted it, so we can get to it. But calling it Qdo sand is not a term that we're familiar with. We're familiar with the term, the definition of sand and the grain size in the grading ordinance, and the soils engineers can verify that.

CHAIR WHITE: Okay. Ms. Cochran.

COUNCILMEMBER COCHRAN: So, Chair, yea, going back to several meetings ago, and introducing the term Qdo, this is the justification to rehash, I guess, to try and explain the, this Qdo amendment. So, it's acknowledged that the term Qdo is not utilized in the AIS's and in the Geotechnical Reports. However, it is the identifier we use to draw the boundaries for this moratorium using the USGS Geological Map, which identifies the older dune sand, the Qdo sand.

The AIS's and Geotechnical reports actually use a much more obvious terminology in their findings. The terms that are used in these reports are Pu'uone sand, dune sand, and sand. In contrast to the other terms that are used in the same report, such as alluvium, silt, clay, gravel, etc.

So, the reason for the addition of Qdo is crucial for the definition of Central Maui inland sand is that we have run into a few examples where without that clarifier, certain properties that contain alluvium, which is gravity-swept soil from the mountain mixed with either clay, silt, sand, or gravel, and is deposited in a much more recent geological time, would be inadvertently unable to move that material from their lot.

So, this is not the intent of the moratorium. And the intent of this moratorium is to not allow older dune sand, the Qdo, to be moved off the lot for the next six months. And, and the way it's currently written could have negative unintended consequences for landowners identified on the moratorium map. So, that would be a original, original justification for defining out Qdo versus alluvium within this boundary that we got from USGS geological maps.

CHAIR WHITE: Okay, so what you're saying if I'm understanding it correctly, is that within the Qdo district that is outlined in the map, the green section of the map, that there is likely to be both Qdo and whatever the other term is for alluvium sand. Is that correct?

COUNCILMEMBER COCHRAN: It's trying to, yea, there's different types of deposits, or material in the different TMK's.

CHAIR WHITE: No, but I'm talking about within the green area. Because it was my understanding that the Qdo was represented by the green area, and that there was



alluvium sand or other inland sand caused by alluvium that is outside that green area. What I was trying to say is that we've already got the Qdo area designated by the GIS map that you provided in the Committee. But it, I can understand you wanted to add the definition of Qdo if there is alluvium sand in the existing Qdo area. And, if that's the case then I think your, your amendment makes some sense. But, if it's, if the alluvium is all outside of the Qdo desig, you know, the Qdo area on the map, then I'm not sure we need the change in definition.

COUNCILMEMBER COCHRAN: Right. Okay, yea. And so, that's why we had to specify this, is because there's been some alluvium really close to the boundary lines of the Qdo, right. This line there in some of these reports we've been vetting through, it's, so we had to like distinguish that this portion is clearly alluvium and this portion is Qdo within the boundary. So, there's just been some real nearby kind, not cross-mixing, but they're there kind of side by side on the line, on a property. And so, that's why we had to have this distinguishing; there was alluvium, and there's Qdo. And, as your, you know, you're getting to, there, that's why. Cause, we can't, so, I don't know how else to keep explaining what, I mean.

COUNCILMEMBER SUGIMURA: Chair.

COUNCILMEMBER COCHRAN: You know, sand and dirt, I mean, they're not going to go, oh, I'm not going to go near you. There's, we have mixes of things. But, we're trying to, I don't know, somehow decipher what that is and what this is. And, we're trying to protect the Qdo, the older sand dunes.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, I guess my question is why. Why protect the older sand dunes? And, is it because of the archaeological impacts and the iwi kupuna, which is what the purpose of this bill was? Or is it because of not wanting to move sand off a TMK, or other things that I've heard? But, what is the purpose? And, if we cannot identify except here in this map area that means you have Qdo, so what? What is the purpose? What is the purpose of identifying Qdo if nobody can, well, first nobody can test for it, so we don't know if it's real or not? And then, why, what is the purpose? Can somebody answer that?

COUNCILMEMBER KING: Chair.

COUNCILMEMBER COCHRAN: It's in the bill.

COUNCILMEMBER SUGIMURA: Well, besides that.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: I did ask that question. I guess it wasn't, didn't register with everybody, but I did ask that question early, in a previous meeting that is it more likely that the Qdo sand has the burial remains? And, the answer was yes, because those are the older sands. The, my question about the amendment would have been the same. Is it, if there, is there a chance of having that alluvial sand within or near the boundaries of what we're looking at with this green map? And, if the answer is yes, then I don't see a problem with defining if it's those sands that we're protecting, because those are the ones most likely to have the, the remains of the iwi kupuna in them, which is the main purpose of, of, you know, that I feel of this bill to, to get that information out before we continue with whatever activity is happening.

And, and one of the things that, you know, because of the question that was asked of a testifier earlier who said she was a geologist. And, actually, she is somebody that I know personally and I didn't even know she was geologist. But I, I got this response from her that this term is only used for reference to deposits in Hawaii, which is why she was not familiar with it, because she's only been here short-term and she hadn't been working as a geologist, is not used anywhere else in the world, therefore, it is not a general geologic term. So, it's a Hawaii geologic term. That's, you know, that's just, it's the information I got from somebody who said they were a geologist who was here earlier.

So, you know, I guess, I don't know what other, what other, if we're looking for a higher authority to tell us that, that there's more likely to be iwi kupuna in the older geologic sand. Makes perfect sense to me, but my bigger concern was is if we're not worried about salvaging the alluvial sand, then we should make a distinction. So, you know, I would vote for this amendment on that basis.

CHAIR WHITE: Further discussion on this item?

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: I think the confusion for me is that I know that it's been stated we had several meetings; ten or eight. But, I vaguely recall a very minimal discussion about the Qdo, and the Qdoy [sic]. And, it was only just maybe a few minutes on the presentation of the attached map to the original bill.

So, I did try to weed through Ms. Cochran's amendment here. And, I don't know how it actually works within the body of the legislation. But, what I'm questioning is

the Exhibit "A" as referenced to, or attached to. So, when you incorporate an Exhibit "A" to the legislation, it becomes part of the bill itself. So, when I read through the "Metadata for Users of Geologic Map of the State of Hawaii", I was having a hard time understanding the process here. It talks about the Universal Transverse Mercator scheme, as well as the North American datum of 1983.

Hawaii is in UTM zone 4. It goes on further to talk about layers of volcanic abbreviations of our volcanoes in Hawaii. And then it goes into trying to identify the, I guess the age of different sill and dikes.

And, I couldn't find anywhere where at some point you have to go through, where is that, all of the document until the very end, on the last, second to the last, no wait, third to the last page, where you actually see a Qdo and Qdy. And, then there's no definition as to it, as it's just saying younger dune deposits and older dune deposits.

So, my point is what is this document for? It doesn't just, it's not talking about Qdo or Qdy. So why is it, as part of the exhibit, and that's going to be incorporated to the legislation? I, I'm having a difficult time with this exhibit as being part of the, and if Ms. Cochran can show me where exactly it's talking about Qdo within this document, then I would be, stand to be corrected.

But, I read it twice and still having issues as to the formulas on how they determine some of this stuff. It's, it goes to a 4, 43 to 39 degree over, Chair, you know as well as I do I'm terrible at math and that's why I don't like Budget. But, when you start putting in formulas and stuff into a document, I get kind of like clear, starry-eyed, and I need somebody with a resource to go through this document and tell me exactly what I'm reading and how does this apply to the legislation before us?

This is second and final reading. And so, for this exhibit to come before us now, it's difficult for me to comprehend it, or at least not have the questions I do regarding these documents as it is going to be incorporated as part of the legislation. And, we might want to refer to Corporation Counsel as to was the implications of attaching these various documents to legislation? I guess my, that's my question.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Would you like an answer from Corp. Counsel?

COUNCILMEMBER GUZMAN: Mr. Wong.

CORPORATION COUNSEL PATRICK WONG: Chair, I'm not quite certain that the attachment of the document brings any further clarity to the motion before the body. So, I would defer to the maker of the motion to respond to that question.

CHAIR WHITE: I think the, you know, I think the, I think Ms. Cochran's intent is correct; to try to identify between inland sand and alluvial sand. But, if I'm, if I'm hearing Mr. Goode correctly, there are also places where the sand and the alluvium are mixed. And so I, I think we need to provide them direction on what is covered by this bill and what's not, and, I, and you're moving in that direction. I'm just not sure Qdo is the right term. Maybe it's alluvial sand or something of that sort.

I don't know. Mr. Goode, do you have any suggestions?

DIRECTOR OF PUBLIC WORKS: Thank you, Chair. The bill previous to this proposed amendment had a definition of Central Maui Inland Sand, means inland sand classified Qdo by USGS, and then shown on a map. Then there's a definition of inland sand. So, I would look to, again, trying to implement the ordinance. It says, means inland sand classified Qdo. Then it goes on to define inland sand. Inland sand means sand, as defined in the grading ordinance, okay. Central Maui inland sand, means inland sand, means sand that we already have in our ordinance.

So, I think that to me kind of spells it out already. We're capturing Qdo on the map, and then we go to the technical definition of sand. I, I think what you have before this amendment was workable for us. It also defined Qdo as meaning older dune deposits; Holocene and Pleistocene.

So, again, after talking to the, the folks that we would rely on, because we don't have geologists, we don't have soils engineers, we're going to look for a report, you know, that basically states that in a particular project in, that's an affected parcel under this ordinance, that if there's any exportation of material, it would not include sand as defined in 20.08, the grading ordinance, which is exactly what you're, you're def, your three step definition points us to. I think we can handle that.

CHAIR WHITE: Okay. You're reading the, I believe you're reading the amendment, the proposed amendment.

DIRECTOR OF PUBLIC WORKS: I'm reading before the amendment. The bill that was, I think, Mr. Wong gave me out of the binder, so I believe that was the bill previously, so.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: And so, if Department, Corporation Counsel, this body, wants to keep it as is, I'm good to keep it as is too. If we want amendments, great. But, basically, this map was created as a resource. This map was created to delineate the area where this moratorium was to take effect. And, we have sand all over the place and it was going to go down and around Dream City. It was going to go down all the way out to Paia, Spreckelsville, down to Mokulele Highway, I mean, it was going everywhere. So, we had to bring it in and, and treat the area of concern.

So, that is how this map and the lines were drawn, and now it was Corporation Counsel who suggested to my office that we better clarify and define. So, now it seems to be mudding it and getting it all out of proportion again. So, if it's best just to go back and not clarify more as Corporation Counsel suggested we do, then I'm fine with that too. I'm fine to go back to original and withdraw amendment and everything if that's what we need to do right now. I'm okay either way.

CHAIR WHITE: Well, the Qdo that is in the, is on the map is your reduced area already right? Are you saying there's Qdo in Paia and other areas? You said that it, it's all over Dream City and everything else.

COUNCILMEMBER COCHRAN: So, so what I just want to say that, sorry Chair. This is the area of the moratorium, here's the line, here's what's in it. This is what we're trying to protect; older sand dunes, cause this is the high, high, most likely area for iwi and what have you that the purpose of this whole bill is about. So, that's what it is. And, however we can get there, great. And, if now this definition is throwing it off, then let's not even go there.

But, this map needs to stay, cause this map needs to show where the lines are to where the moratorium takes effect. And all these TMK's are within this boundary. So, I mean, we need to just stick with what's here, and I'm fine.

(Councilmember Guzman was excused from the meeting at 2:29 p.m.)

CHAIR WHITE: Yeah, my understanding of the map that is connected to the bill is the one that was presented in Committee, as much as it is this one. This augments it. But, is that correct?

COUNCILMEMBER COCHRAN: Yea, it didn't change.

CHAIR WHITE: No, I know.

COUNCILMEMBER COCHRAN: It just, just in the verbiage. In fact, the words that Mr. Goode just read got kind of shifted down below. It's the same wording: Qdo,

older sand dune; alluvium, younger. I mean, it's all the same words, it's just went into a different area to better clarify, but I mean if it's not clarifying then let's not, let's not use it is how I'm feeling right now.

So, and if Mr. Goode can understand what this means without the further defining then, then so be it. I'm okay that way too.

CHAIR WHITE: Any comment, Mr. Goode?

DIRECTOR OF PUBLIC WORKS: One comment would be the bill, as I understand it, lists specific TMK's.

CHAIR WHITE: Correct.

DIRECTOR OF PUBLIC WORKS: So, it only affects those TMK's. I don't need any other maps, I got TMK maps, right? We know exactly where those parcels are. Some of those parcels have this Qdo line bisect them. They're not wholly in it, they are partially in it. So, I think that's where the, that's where we're going to have to dive into a little bit; is it in or not?

But otherwise, it's, it's a very, for us it's easy to see there's specific TMK's, so we know where those are. We know where those are.

COUNCILMEMBER KING: So, Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: So, yea, no, I agree that, I mean, I think it was, there was a response, the amendment is a response to a request from a previous meeting; to clarify Qdo, because there was a big discussion on that.

But, you know, I'm good withdrawing my second if we can go back to the original description. But, you know, I just wanted to clarification on whether we're using the map that's already in here, or are we adding another map? Is the map that was in the amendment, maybe Ms. Cochran can clarify, is the, if, is the map that is in the amendment the one that we're using, or are we just sticking with whatever was in the original one where the areas outlined in green? Okay.

CHAIR WHITE: Yea, my, my understanding is that we are working off the map that was part of the Committee discussion, which is much more detailed and much--

COUNCILMEMBER KING: Yea, zeros in and focuses in on that spot.

CHAIR WHITE: --zeroed in on the area than, than this map is.

COUNCILMEMBER KING: Right.

CHAIR WHITE: I think this was just to, to support the Qdo if I'm not mistaken.

COUNCILMEMBER KING: Yea, okay.

COUNCILMEMBER COCHRAN: Yea. So, Chair, I can withdraw my amendment, if that's works better at this time.

CHAIR WHITE: If you, if the Department can work with it either way. Okay.

COUNCILMEMBER COCHRAN: Okay.

DIRECTOR OF PUBLIC WORKS: Yes, we can.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: Okay. Further discussion?

COUNCILMEMBER COCHRAN: Wait. So, we, sorry. So, are we on the, I withdrew that amendment to the main motion.

CHAIR WHITE: Yea, we withdrew.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: So, we're back to the main motion.

COUNCILMEMBER COCHRAN: Main motion.

CHAIR WHITE: So, any further discussion?

COUNCILMEMBER CRIVELLO: On what, the main motion?

CHAIR WHITE: On the main motion.

COUNCILMEMBER CRIVELLO: Okay, so, the maker of the, I'll follow her, if she has further discussion. I'll follow Ms. Cochran, if she's the maker of the motion. If she has anything after her, then I, I have some questions.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, Chair, yea, thank you. So, it's been indicated at the past three Council meetings, this matter was considered over the course of eight IEM Committee meetings. And, at the meeting on November 17, 2017, the proposed bill was amending, amended by striking tax map key (2) 3-5-00:064 *[sic]* from the moratorium area, and amending the attached map to reflect the removal of that TMK.

And, then at December 1, 2017 meeting, we discussed the fact that letters had been sent to all TMK holders in the proposed moratorium area, and that we would give those who were notified until Friday, December 8, to petition us to consider removing them from the moratorium area.

So, on December 15, 2017 meeting, as discussed during consideration of the amendment today, the proposed bill, well actually we didn't do the adding the definition of Qdo. So, we have all those TMK's that are looking for exemptions. And, so, I have comments on all of these at this time. So, I'm not sure who's--

CHAIR WHITE: I think Mr. Carroll will be bringing those up.

COUNCILMEMBER COCHRAN: Oh, okay.

CHAIR WHITE: So, any, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you. Again, I need to apologize that I think I'm throwing out some Committee work after eight Committee meetings that I'm not privy of direct participation, but as an observer.

So, you know, I have to appreciate the tenacity and the hard work that has come out of this Committee to bring major awareness of all of Central Maui. And, for me, this is, this is quite an awareness. Cause when I think back in 1998, Maui, there's a Maui cultural expert that gave his blessings for a Hawaiian Homes project being built on historical ground, and that was Waiehu Kou, and the Coastal Dunes and Wetlands Refuge and Waihee, and Waiehu to where many of us Hawaiians, you know, live and have had the opportunity. So, I don't know what took place then.

But, I look at what's happening today. And, and the utmost, in my opinion, which I see lacking in this six months moratorium and, and the testifiers may disagree with what I have to say and likewise with the proposed legislation. I see the purpose make mention in, in regards to our, the iwi that we want to protect. But, I see zero provisions in this legislation to, to actually prevent the disturbance of Hawaiian



historical and cultural, archeological sites. Then, I go back to the words of Judge Cardoza on behalf of the individuals or the plaintiffs that did their filing and the decision for preliminary injunction on this matter.

And so, he says there has not been compliance with the archaeological plan, strict adherence to the mono, monetary, monitoring plan is needed to protect the important archaeological site. So, I see this legislation as needs maybe more expansions. It's a sand study. It comes out with quantification of, of the sand. And, yes, the purpose, but how do we get specific in this legislation for the purpose of na iwi kupuna?

I, I see inconsistencies with the stated purpose. That's just my opinion. I think we need to be more solid in addressing na iwi kupuna. So, six months to complete the stated purpose of revising the Maui Inland Sand Resource Quantification Study. I, I think something's missing. And, I maybe missing it completely. But, there is two proposals we have before us; one that we accepted as somewhat deeper teeth in making sure that the approval or the permitting process is solidly authorizing County to be able to work with SHPD. But, basically saying, you get here and you do all this and that.

There's also processes with our agricultural lands. So, what I've learned out of this, and including the original housing development of Dream City that goes way back then, sand dunes all over. When we look at here in our Central, the ones that we are addressing, what are we doing to protect and prevent any kind of desecration? And, I, I believe that's what the testifiers are saying. How do you protect further desecration? And, you know, if I go to a cemetery where my kupuna is buried, that's my kuleana to malama, okay. So, how do we make this our kuleana to, to malama? Are we going to continue to allow the, the winds to blow the iwi all over the place?

And then, I, I start to question, if it's a moratorium, why are we allowing just one exemption? Why are we doing that? So, yea, no more sand, did the AIS, but there's still a line on, on the map, maybe a thin strip, but it's still there. So, how does that differ from the other requests from the others that are requesting exemption perhaps did or did not, or will, are doing an AIS?

I go back to, is this our first step of doing this? We've identified remains. It, so it's been said that we've identified remains. So, where are we to malama our kuleana to take care of those remains? So, I, I just, you know, when I look back there were like eight to nine attempts to try and pass through this to where it's at today. Something tells me that there is not enough clarity. And, I come up with some muddy, it's too muddy in my braincells. I want to see more specifics.

So, ekala mai for, you know, having this kind of discussion out of Committee. And, and we're at second reading, but I think too the testifiers have to recognize truly what is, what is painted, that's just a broad paintbrush through it all. So, what do we want? And if this meets to the, some of the voices that have come before us, okay. But, I just throw that out as my questions to how we can, I guess the word for me today is solid teeth that going bite heavy for its protection.

CHAIR WHITE: Thank you, Ms. Crivello.

Further discussion?

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. As Ms. Cochran has said, there were many applications that came inside for exemption. And, before I get into that, I will echo what Councilmember Crivello said. It's a great concern to us all. And, I have said this over in Land Use Committee and other places that there's been so much work done with the Burial Council, Historic Preservation Commission, SHPD, all of these organizations, DLNR, and they're really, really well-written and they really cover everything. And, there shouldn't be a problem. We shouldn't even be talking about this today. But, we need to work with them. We need to go over there and make sure the laws that are in there are effective. And, the people that are supposed to monitor that have the resources to do it.

Having said my little peace over there, we have these amendments before us today. They've been received by the specific deadline, and we'll go through each one of these to make each individual decision on each parcel based on their, on their individual facts.

TO BEGIN, MR. CHAIR, ON YOUR BEHALF, I MOVE TO STRIKE THE REFERENCE TMK 2-3-5-002:011, EMMANUEL LUTHERAN CHURCH OF MAUI, FROM THE PROPOSED MORATORIUM AREA AND TO REDRAW THE MORATORIUM AREA ON THE RELATED MAP AND REMOVE SUBJECT TMK, OWNER, AND LOT AREA.

And, if you Members will look at Exhibit "A", what was distributed, that is what on, that will help.

At the November 17 meeting, the Council exempted Kehalani Agricultural Investors TM Key (2) 3-5-001:064 from the sand mining moratorium. This led to other landowners requesting the similar exemptions who were further along in planning

and development of their properties. Attached as the exhibits are the Amendment Summary Form are the specific request from landowners which I believe, for us to consider.

The property owned by Emmanuel Lutheran Church is near Kehalani Agriculture Investors property. According to the owners, extensive archaeological work has already been done and accepted by SHPD. Entitlements of the property have already been received to allow Emmanuel Lutheran Church School Campus and Church, along with the new 201H Affordable Housing Development, which will be submitted shortly to the Council.

That is all I have, Chair. The, and the detail, again, on the original application has been distributed; and that's "A". And I would open the floor for discussion.

CHAIR WHITE: Okay.

VICE-CHAIR CARROLL: Oh, excuse me. I don't even have a second.

CHAIR WHITE: So you can--

VICE-CHAIR CARROLL: So, I would open the floor for discussion.

CHAIR WHITE: Yea, you got into quite a bit of discussion. Maybe you should just restate the motion just for clarity.

VICE-CHAIR CARROLL: Yes, I think I could have presented that a little better.

MR. CHAIR, OKAY, I MOVE TO STRIKE REFERENCE TO  
TMK 2-3-5-002:011, EMMANUEL LUTHERAN CHURCH OF  
MAUI, FROM THE PROPOSED MORATORIUM AREA AND TO  
REDRAW THE MORATORIUM AREA ON THE RELATED MAP  
TO REMOVE THE SUBJECT TMK, OWNER, AND LOT AREA.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll and a second from Ms. Sugimura.

Mr. Carroll, any further discussion?

VICE-CHAIR CARROLL: No, I have no further discussion.

CHAIR WHITE: Okay. Thank you.

Any further discussion, Members?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair. And so, this, there's like three TMK's that got subdivided. They were all part of one parcel. Their AIS and reports are all encompassed in this one report. But since then, the three, the one TMK has been subdivided out to three parcels, and this is one of them; Emmanuel Lutheran Church, Waiale Road 201 LLC, and Valley Isle Fellowship Church. So, my comments in reference to Emmanuel Lutheran also encompass those other two, because I can't, you know, the information transcends all three properties, because at one time they were all one lot.

And so, my, I'm not in favor of exempting this lot along with the other two that will be mentioned coming up. In the report, 25 trenches were excavated in total on all three parcels, averaging 19.7 feet long by 6.6 feet deep. Sand dune matrices were identified within trenches 10 and in trenches 17 through 23. Trench 10 was excavated on the Waiale Road 201. Trenches 17 to 22, Valley Isle Fellowship; and then trench 23 was Emmanuel Lutheran.

This means Qdo or Pu`uone sand was found on all of these. So, it was found on Emmanuel Lutheran's Church property also. And, in order to qualify for a waiver or exemption, they would need to prove that they're not affecting a burial site, and that it doesn't conflict with this proposed resolution, which is the Qdo sand. And, and declare, and the purpose is to no extraction or removal of sand from a lot.

So, in our vetting, these landowners have successfully satisfied only one of the two requirements to qualify for an exemption. So, that's where the Emmanuel Lutheran, in my eyes, should not qualify.

CHAIR WHITE: When you say your, you're assigning, you're handling all three together, did you identify which trenches are on Emmanuel Lutheran's portion?

COUNCILMEMBER COCHRAN: Yea.

CHAIR WHITE: And, my recollection was on--

COUNCILMEMBER COCHRAN: The 23.

CHAIR WHITE: --on the, excuse me, but on the map, Emmanuel Lutheran had a very small sliver, almost identical to Mr.--

COUNCILMEMBER COCHRAN: Dowling.

CHAIR WHITE: --Dowling's property.

COUNCILMEMBER COCHRAN: Dowling's got excavated off. These, they still have the sand. So, Emmanuel Lutheran is trench 23, and yes, sand.

CHAIR WHITE: And, where abouts is that on the, on the map?

COUNCILMEMBER COCHRAN: Oh, I don't know where on the property, but.

CHAIR WHITE: And my recollection was that there was, the portion of the, the map that intersected theirs was a small sliver at the bottom. I don't have my, I don't have my map with me.

COUNCILMEMBER COCHRAN: Right. And, thank you. So, I have this map that kind of breaks down, if we need, I don't know, copies for everyone.

CHAIR WHITE: You know what, let's, we, we need to have the--

COUNCILMEMBER COCHRAN: But, so, okay. Wait, sorry, before--

CHAIR WHITE: Let's take a quick recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:51 P.M., AND WAS RECONVENED AT 3:09 P.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBER GUZMAN, EXCUSED.)

CHAIR WHITE: This meeting shall please come back to order. If staff could please pass out the map, I'd appreciate it.

Members, this is a, Ms. Cochran, I believe, provided each of you, do you have this map? Everybody have this map? Okay. And, then we're also providing this map which shows the green area that is affected by the moratorium. And it also shows the various TMK's or the property lines involved. It should help you understand where the various parcels are.

So, with that, back to Ms. Cochran.

COUNCILMEMBER COCHRAN: Is it me? Oh. Okay. And, that was, I was just explaining, Chair, how these three, Emmanuel Lutheran along with the others, and now we have the map that shows the once upon a time one parcel, and then it's divided now into three. And, in their AIS's, it clearly states those trench, how many trenches and things they've done, and they all contain sand on these lots. Therefore, I, they should not be exempted at this time.

CHAIR WHITE: I thought that, I thought that, my recollection was your staff had said that one of the trenches on Emmanuel Lutheran's parcel had sand. I was wondering which one that was.

COUNCILMEMBER COCHRAN: Trench 23.

CHAIR WHITE: I believe she said it was 23.

COUNCILMEMBER COCHRAN: Yes. Trench 23. Kind of middle of there, that lot.

CHAIR WHITE: Yea, but if--

COUNCILMEMBER COCHRAN: Is where.

CHAIR WHITE: --if looking at this map, this appears to be the dividing line between Emmanuel Lutheran and Valley Isle Fellowship. So, it looks to me like the, the one containing sand is on the upper side. Oh no, I'm sorry, it's on the lower side.

COUNCILMEMBER COCHRAN: Yea.

(Councilmember Guzman returned to the meeting at 3:12 p.m.)

CHAIR WHITE: Honoapiilani is on the high side. So, on the, on this larger map it shows that there is, that the green intersects just the bottom of that property. So, so the question in my mind is, if they have sand on just the lower section of the property, should we be telling them they can't proceed with their plans? Because it would appear to me that they would likely to be able to work around it, or, or keep it on site, so.

COUNCILMEMBER COCHRAN: Yea, they could.

CHAIR WHITE: Okay. Any further discussion, Members?

Ms. King.

COUNCILMEMBER KING: So, I'm having a little hard time transferring this map onto what section of this map it's on. You said something about the green line.

CHAIR WHITE: We'll take a quick recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 3:13 P.M., AND WAS RECONVENED AT 3:14 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: We're back in order.

COUNCILMEMBER KING: So, Chair, so, thank you for pointing out to me. So, there's some sand on one of these lots, and then, and I'm, your comment earlier about they should be able to work around it. So are you saying that we shouldn't need to exempt them because if they don't have sand, they, if they're in the moratorium but they don't have sand there's nothing really that's going to affect them anyway is there?

CHAIR WHITE: Well, there is sand there.

COUNCILMEMBER KING: Yea.

CHAIR WHITE: So, my feeling is, like we did with Mr. Dowling, these people should just be exempted so that they don't need to deal with it.

COUNCILMEMBER KING: But, I thought we exempted Dowling because he didn't have sand.

CHAIR WHITE: He has sand. He has a sliver of--

COUNCILMEMBER KING: No, we were told that he didn't have sand, that's why he was exempted.

CHAIR WHITE: On, okay, I'm sorry, Ms. Cochran.

COUNCILMEMBER COCHRAN: That sliver, it's been excavated off. He no longer has sand on that property. It's disturbed. It's been taken off. It's no longer there anymore, that sand.

CHAIR WHITE: And, was that confirmed?

COUNCILMEMBER COCHRAN: So, he has no more sand at this time. Therefore, exempted, cause the lot he has has no sand anymore. It's been disturbed.

CHAIR WHITE: And, and has that been confirmed?

COUNCILMEMBER COCHRAN: Oh, yea. It's in the reports, his reports. Yea, and that's why.

CHAIR WHITE: Okay. Further discussion, Members?

Mr. Guzman.

COUNCILMEMBER GUZMAN: Yea, Chair, just to, cause I apologize, I came in a little late. The, the TMK for the Emmanuel Lutheran, according to the Exhibit "A" moratorium area map, it says (2) 3-5-002:011, but it's outside of the green. That means no--

CHAIR WHITE: No, there's a, there's a small sliver of green at the, at the makai side.

COUNCILMEMBER GUZMAN: Oh just a, but what's the, what's the size of that sliver? Cause I, on the big map, it, I can't see. It's, it doesn't indicate green. But, I guess it, the dot is just barely touching the green line?

CHAIR WHITE: Yea, the dot is touching the line, so I would say that the sand occupies maybe a sixth of the lot. And, that coincides with the, with trench number 23, which was said to have sand being in that same location.

COUNCILMEMBER GUZMAN: And, in comparison to, and just follow up, comparison to this lot, where is the Maui Lani lots that are subject to the court case?

CHAIR WHITE: I can't tell you which, which that is. I would guess that it is, you know, maybe Ms. Cochran.

COUNCILMEMBER GUZMAN: Mr. Goode.

COUNCILMEMBER COCHRAN: Chair, it would be the 5, 3, okay, so--

COUNCILMEMBER GUZMAN: Mr. Goode, would you, are you aware of the TMK's for the?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.



COUNCILMEMBER COCHRAN: Let's see, Kuikahi Drive, there's that blue arrow pointing to that intersection of Kuikahi, turns into Maui Lani Parkway. So, if you drive towards, on Maui Lani Parkway, and you see, like the two, I think those are reservoirs, the two white, the (2) 5-7-153, you'll see that parcel that says the ending is 53, that would be the project site.

COUNCILMEMBER GUZMAN: Okay, okay.

COUNCILMEMBER COCHRAN: In question at this time that's going through the litigation.

COUNCILMEMBER GUZMAN: Okay.

CHAIR WHITE: Correct.

COUNCILMEMBER GUZMAN: So, if it's not anywhere near that area? Okay, got it.

CHAIR WHITE: Okay. Any further discussion?

COUNCILMEMBER COCHRAN: I'm sorry, Chair, real briefly. Your statement in regards to they just can't move the sand off the property, so it's just what was found in that trench 23 will just need to stay. I mean, whatever on the lot, but they can't remove it off. And, as you state correctly, they can work with that. So, that's why I personally don't see the need for a exemption.

CHAIR WHITE: Well, I think this--

COUNCILMEMBER COCHRAN: And, they have sand.

CHAIR WHITE: You know, my view is we've got a number of affordable housing projects that are in the, in the works. And, by lifting, or by providing an exemption, we're allowing folks not to have this cloud hanging over them. So, that was my reason for, well and again, we put out the invitation, because once we allow one end, the Chair felt that we needed to at least listen to the others and let them make their presentations, and we'll take a vote up or down and see how it, see how it goes.

So, any further discussion, Members? Seeing none, the vote is whether or not to exclude or, yea, exclude the Emmanuel Lutheran property from the moratorium. So, all those in favor please signify by saying "aye".

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER CRIVELLO: Aye.

CHAIR WHITE: Those opposed say "no".

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER KING: No.

COUNCILMEMBER HOKAMA: No.

CHAIR WHITE: Roll call vote please, Mr. Clerk.

COUNTY CLERK: Councilmember Alike Atay.

COUNCILMEMBER ATAY: NO.

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: NO.

COUNTY CLERK: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: NO.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: NO.

COUNTY CLERK: Councilmember Don S. Guzman.

COUNCILMEMBER GUZMAN: AYE.

COUNTY CLERK: Councilmember Kelly T. King.

COUNCILMEMBER KING: NO.

COUNTY CLERK: Councilmember Pro Tempore Stacy Crivello.

COUNCILMEMBER CRIVELLO: YES.

COUNTY CLERK: Council Vice-Chair Robert Carroll.

VICE-CHAIR CARROLL: AYE.

COUNTY CLERK: Council Chair Mike White.

CHAIR WHITE: AYE.

AYES: COUNCILMEMBERS CRIVELLO, GUZMAN,  
VICE-CHAIR CARROLL, AND CHAIR WHITE.

NOES: COUNCILMEMBERS ATAY, COCHRAN,  
HOKAMA, KING, AND SUGIMURA.

COUNTY CLERK: Mr. Chair, four "ayes" and five "noes".

CHAIR WHITE: Okay. Thank you. Measure passes.

Mr. Carroll.

COUNTY CLERK: No.

CHAIR WHITE: Oh, I'm sorry. Oh, I'm, oh I thought you said five--

COUNCILMEMBER COCHRAN: Noes.

COUNTY CLERK: Four "ayes", five "noes".

CHAIR WHITE: I counted five "ayes"; Mr. Carroll, Ms. Crivello, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: No.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER KING: No, she voted "no".

COUNCILMEMBER COCHRAN: No. She's a "no".

CHAIR WHITE: Oh, you voted "no"? Oh, I'm sorry, then that was, that's my mistake. So,  
motion fails.

Okay, moving to the next one.

VICE-CHAIR CARROLL: Thank you, Chair, excuse me.

I MOVE TO STRIKE REFERENCE TM, I MOVE TO STRIKE REFERENCE TO TMK 2-3-5-002:020, WAIALE ROAD 201 LLC, FROM THE PROPOSED MORATORIUM AREA AND REDRAW THE MORATORIUM AREA TO THE RELATED MAP TO REMOVE THE SUBJECT TMK, OWNER, AND LOT AREA, AND THAT'S EXHIBIT 4 [SIC].

CHAIR WHITE: Do we have a second.

COUNCILMEMBER CRIVELLO:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Crivello.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. The property owned is on Waiale Road. Waiale Road 201 LLC, has received a 201H approval by the Maui County Council in 2016 for 70 single family homes on lots ranging in size from 3,900 square feet to 5,000 square feet.

Construction plans are being reviewed by the agency and the Archeological Inventory Survey was approved. No significant sites were found.

If an exemption is not granted then infrastructure work, which is set to begin in March 2018 will be adversely affected. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Further discussion on this item?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And so, this is one of those, it's on our map here on the bottom left kind of triangle shaped parcel. And, this particular parcel had 10 trenches, and they have sand. So, I don't see that they ought to be exempted out of this moratorium at this time.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Yea, thank you. It appears that two, that that TMK Lot (2) 3-5-002:012, under the moratorium area map is not within the Central Maui Inland Sand.

COUNCILMEMBER KING: So, that's, it's the wrong one.

COUNCILMEMBER GUZMAN: So, is that correct?

COUNCILMEMBER KING: No, he's doing 2-0 right now.

COUNCILMEMBER GUZMAN: Oh, 2-0. Oh, sorry.

COUNCILMEMBER KING: It's completely--

COUNCILMEMBER GUZMAN: Strike that.

CHAIR WHITE: Yea, to your, 2:020.

COUNCILMEMBER GUZMAN: Thank you, Chair.

COUNCILMEMBER KING: He went out of order.

COUNCILMEMBER GUZMAN: Yea, I went out of order. I apologize. Withdraw those statements, strike it.

CHAIR WHITE: Okay.

Ms. Crivello.

COUNCILMEMBER CRIVELLO: So, I have a question with this request for exemptions. Are we basing it on that there are already AIS that has been prepared, and it identifies sand, whereas the original, or one of the landowners there never ever had sand, or they removed it?

COUNCILMEMBER COCHRAN: Yes.

COUNCILMEMBER CRIVELLO: They removed it? And, that was allowed? I mean, okay.

CHAIR WHITE: It was before the, before the bill. So, my, one of my concerns on this, this item is whether or not, I don't believe the AIS identified that any iwi were found in this area. Do you know whether they were or not, Ms. Cochran?

COUNCILMEMBER COCHRAN: I'm not, I'm not sure.

CHAIR WHITE: You know, my, my concern again is if, if we, if we had identified that there were iwi present on this property, I, I'd be concerned about proceeding. But, the, the challenge with this is we have an affordable housing project that's already moving. They're ready to begin construction in March of 2018. This came before us when, in 2016. So, we approved it last year for a 16 single family homes. So, the Chair is concerned that we're stopping projects dead in their tracks if we, if we block this one, so.

Further discussion, Members?

COUNCILMEMBER COCHRAN: Sorry, Chair. I think, I mean, one of the compromises from the earlier beginnings of this moratorium, it was two years and now we've whittled it all the way down to only six months. And so, I feel like, right, this was supposed to be a six month pause, let's reassess what's, what is what it's about. And so, I believe it's reasonable.

And, one of the criteria for a waiver of sorts is that, you know, it's the sand component and they have sand in 10, 10 trenches. They had sand matrices in 10 excavations on this parcel.

CHAIR WHITE: You know, I, I'm not disagreeing with that.

COUNCILMEMBER COCHRAN: So, and you're right, it's the Qdo, high probability of iwi, and what have you. So, that's, just sort of a little take a breather pause, let's reassess what's here, and for a few months is all. So, I'm, this is another one that is not, in my eyes, to be exempted.

CHAIR WHITE: Any further discussion? Seeing none, again this is a vote to exclude this parcel. All those in favor please signify by saying "aye".

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER CRIVELLO: Aye.

CHAIR WHITE: Those opposed say "no".

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER ATAY: No.

COUNCILMEMBER KING: No.

CHAIR WHITE: Okay. Roll call vote, please.

COUNTY CLERK: Councilmember Alika Atay.

COUNCILMEMBER ATAY: NO.

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: AYE.

COUNTY CLERK: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: NO.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: NO.

COUNTY CLERK: Councilmember Don S. Guzman.

COUNCILMEMBER GUZMAN: NO.

COUNTY CLERK: Councilmember Kelly T. King.

COUNCILMEMBER KING: NO.

COUNTY CLERK: Council Pro Tempore Stacy Crivello.

COUNCILMEMBER CRIVELLO: YES.

COUNTY CLERK: Council Vice-Chair Robert Carroll.

VICE-CHAIR CARROLL: AYE.

COUNTY CLERK: Council Chair Mike White.

CHAIR WHITE: AYE.

AYES: COUNCILMEMBERS CRIVELLO, SUGIMURA,  
VICE-CHAIR CARROLL, AND CHAIR WHITE.

NOES: COUNCILMEMBERS ATAY, COCHRAN,  
GUZMAN, HOKAMA, AND KING.

COUNTY CLERK: Mr. Chair, there's four "ayes", five "nays".

CHAIR WHITE: Okay. The motion fails.

Mr. Carroll, next item.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO STRIKE REFERENCE TO TMK 2-3-8-007:102,  
WAIKO INDUSTRIAL INVESTMENTS, LLC, FROM THE  
PROPOSED MORATORIUM AREA AND TO REDRAW THE  
MORATORIUM AREA ON THE RELATED MAP TO REMOVE  
THE SUBJECT TMK, OWNER, AND LOT AREA; AND THAT IS  
EXHIBIT "C".

CHAIR WHITE: Do we have a second?

COUNCILMEMBER GUZMAN:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Mr. Guzman.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Waiko Industrial Investment, LLC, received a change in zoning from the Maui County Council on September 2014, and construction plans were submitted in February 2017, with plans to start construction grading in early 2018.



They have submitted a copy of their archeological study, which showed no significant impact. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Any further discussion on this item?

COUNCILMEMBER COCHRAN: Chair. Sorry, Chair.

CHAIR WHITE: Please proceed, Ms. Cochran.

COUNCILMEMBER COCHRAN: Wait, is this the Valley Isle Fellowship? What did, did he say Waiko?

CHAIR WHITE: No Waiale.

It's the Waiale?

COUNCILMEMBER COCHRAN: Waiale?

CHAIR WHITE: Oh, no I'm sorry.

COUNCILMEMBER KING: I think he said Waiko.

CHAIR WHITE: No, it is Waiko.

COUNCILMEMBER COCHRAN: This is Waiko.

VICE-CHAIR CARROLL: This is, this is, excuse me, this is Waiko Industrial Investment, LLC.

COUNCILMEMBER COCHRAN: Waiko. Okay, so this is Mr. Churchill had come in for this one. And, this Waiko Light Industrial's TMK tested positive for dune sand in every sample taken. And, again, in order to qualify for a waiver, applicants must provide sufficient information that the proposed activity would not affect a burial site, and that the activity does not conflict with the purposes of this legislation, which is removing sand.

When we asked this entity, they stated the plan to grade the property, they're going to grade that property approximately 10 feet, which matches their grading plan that was submitted. Their geotechnical report show pristine and clean sand from surface to as deep as ten feet below the lands current grade. And, my office actually went

to the site to inspect to find that the property itself is quite flat already, which according to the AIS is a result from previous extensive grading and grubbing, and sand mining activities.

And so, for these reasons, I do not feel comfortable in taking them out of this moratorium at this time. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Cochran.

Any further discussion on this item?

COUNCILMEMBER GUZMAN: Question.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Did they, they got an implementation plan from SHPD?

CHAIR WHITE: Pardon.

COUNCILMEMBER GUZMAN: Do they have that in place, an implementation plan?

CHAIR WHITE: What do you mean, implementation plan?

COUNCILMEMBER GUZMAN: I mean, for the, for the grading and grubbing. Do they, do they, is, or are they permitted at this point?

CHAIR WHITE: I'm not sure. Mr. Goode, are you aware? I don't, I don't know whether, I don't believe they have a permit yet.

Any further discussion on this item? Okay.

COUNCILMEMBER SUGIMURA: Chair.

CHAIR WHITE: Yes.

COUNCILMEMBER SUGIMURA: I spoke to Mr. Churchill, and he said that on this project they're soon ready to go. And, there's another one of their projects that they didn't include, because that one was not ready. But, this one, I think is.

CHAIR WHITE: Pardon.

COUNCILMEMBER SUGIMURA: Mr. Churchill, I spoke to. If this is the Churchill project, Ryan Churchill, I spoke to him and he said on this one they are about ready to go. But, another project that's on this TMK they're not. So, they didn't include that one. So, this one is.

CHAIR WHITE: This one is ready to go?

COUNCILMEMBER SUGIMURA: Soon, yea.

CHAIR WHITE: That was my understanding as well. I don't, I don't know if they have their permit.

Any further discussion?

Ms. Cochran, or Ms. Crivello.

COUNCILMEMBER CRIVELLO: Chair, so did I hear that, I'm sorry. So, these, this particular property has his AIS in yet, and he's ready for, he's shovel ready?

CHAIR WHITE: The understanding that I have is that they, they do have an AIS in, and they have the, they've applied for subdivision and they have preliminary approval. I don't believe they have the final permit.

COUNCILMEMBER CRIVELLO: So, the AIS gives clearance? But, I'm hearing contrary from Councilmember Cochran.

CHAIR WHITE: It has, it has sand deposits.

COUNCILMEMBER CRIVELLO: Sand deposits. But, any, any kind of iwi, and any findings of archeological, anything archeological, any findings?

CHAIR WHITE: The part of the report that I looked at had cow bones, because there was a feed lot there. So, I don't know. I know the extent of the, of cow bones that are there, but I don't, Ms. Cochran, maybe you have information on that.

COUNCILMEMBER COCHRAN: I believe they had cattle grazing, or cattle on land areas that they couldn't trench out. But, they did find, I think a lot of it, it was, yea, it was still under use for, for cattle, a feed lot type practice. It is next to heavy iwi burial sites, but it's next to, but there's a good chance there could be. But, no, I don't believe they've literally come across human burials. But, there's a high probability according to reports, so.

CHAIR WHITE: Okay.

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Isn't, isn't one, the purpose of this waiver is so that we can do more investigation as to whether there are iwi kupuna in these areas? I mean, isn't that part of the purpose of this. We won't know, that's why we're doing this moratorium, so we could, we could find out. But, you know, my understanding is if the, the exemption that we're trying to do, they were only supposed to apply for it if they didn't have sand on their property. So, we're getting all these applications of properties that do have sand, and they haven't been screened out. So, we're just looking at every single one of them.

CHAIR WHITE: Yea, the challenge is that we're, they've all had their Archeological Inventory Surveys. I'm not aware of them finding iwi. So, to find iwi, you have to dig up the whole property. So, anyway, that's, that's part of the challenge.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: We don't know.

Yea, Ms. Cochran.

COUNCILMEMBER COCHRAN: Right. And, I think Ms. King is touching on some of the key points. For this particular project, it says nearly 100 percent of the subject area has been reshaped or heavily utilized in the relatively recent past.

They note that two human burial features were inadvertently discovered during archeological monitoring for the Consolidated Baseyards Development section between the east and west section of this subject area. So, this area sits in between places that have found burials.

But again, like you said, that you know, they haven't trenched out the entire lot yet in order, and haven't. But, what the sample trenches have hold up is definitely the sand, and then of course, a lot of it they could not get to because of the existing feed lot activity. So, high probability, but that's speculation.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: I think David, I saw him raise his hand earlier.

CHAIR WHITE: Mr. Goode, did you have something to add?

DIRECTOR OF PUBLIC WORKS: Chair, I just looked online on Kiva net. And, the grading permit was issued Tuesday. So, they're automatically exempt on the proposed ordinance, cause they have an existing permit.

And there's a note in here that says they are to comply with SHPD's August 14, 2015 letter regarding implementation of their accepted monitoring program.

CHAIR WHITE: Okay. Well--

COUNCILMEMBER CRIVELLO: So, that being said--

COUNCILMEMBER SUGIMURA: They're exempt.

COUNCILMEMBER CRIVELLO: So, it's already exempt?

CHAIR WHITE: Right, so we don't--

COUNCILMEMBER SUGIMURA: So, we have to vote on it?

CHAIR WHITE: Pardon.

COUNCILMEMBER SUGIMURA: Do we need to vote on it, or, cause they're in this bill? We got to take them out then. Or, do we just assume not?

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Quick, yea, Mr. Atay.

COUNCILMEMBER ATAY: I kind of questioning this. We're in the middle of, we've been in the middle of deciding to have a moratorium for well over six, seven, eight months, and the Department goes ahead last week Tuesday gives them a permit? Where, where's the understanding of what we're trying to accomplish here? You know, there will be a request for an audit.

CHAIR WHITE: Well, I think at this point if the permit has been approved then there's no reason for this motion. So, with, withdraw that motion, Mr. Carroll.

VICE-CHAIR CARROLL: To withdraw the motion? Yes, thank you.

CHAIR WHITE: Okay. So, that motion has been withdrawn. Please proceed to the next.

VICE-CHAIR CARROLL: The next one you might have on your paper, TMK 2-3-6-00:001 *[sic]*, TMK 2-3-6-002:003, Waiale 905 Partners, LLC, no longer requires removal from the proposed moratorium, as the property owners are satisfied with the revised Qdo definition. And, you can see it in Exhibit "D".

CHAIR WHITE: Okay, so, we don't, okay so we don't need a--

COUNCILMEMBER KING: Sorry, which one was that?

CHAIR WHITE: It's the two parcels.

COUNCILMEMBER SUGIMURA: Next two parcels.

VICE-CHAIR CARROLL: And, since they've withdrawn, that was just for the Councilmembers' information.

CHAIR WHITE: Yea, my recollection is that they have a significant amount of Qdo, but it's in an agricultural preserve, and they have no intention of, of doing anything to move it.

COUNCILMEMBER COCHRAN: I have, Chair I have a little more info. If, so this is Mike Atherton folks. Both these TMK's, the, yea, his exemption requests were contingent upon whether or not the Qdo definition was added to the bill. And, since the definition is there, they no longer feel it's necessary for the exemption. He agreed to withdraw the request for both parcels. And, both parcels contain very small portions of Qdo sand. And, in the landowner's own words, those areas will be preserved in perpetuity through a conservation easement for agricultural use. So, that's our understanding.

CHAIR WHITE: Good. Thank you.

Okay. Next item.

VICE-CHAIR CARROLL: Thank you.

I MOVE TO, EXCUSE ME, I MOVE TO STRIKE REFERENCE  
TO TMK 2-3-5-002:012, VALLEY ISLE FELLOWSHIP, INC.,

FROM THE PROPOSED MORATORIUM AREA AND REDRAW  
THE MORATORIUM AREA ON THE RELATED MAP TO  
REMOVE THE TMK, OWNER, AND LOT AREA; AND THAT'S  
EXHIBIT "E".

CHAIR WHITE: Do we have a second?

COUNCILMEMBER GUZMAN:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Mr. Guzman.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. The Archeological Survey and Assessment have already been completed for this property, which was done along with their neighbor's property, Emmanuel Lutheran Church.

The conclusion was that it was only one historical element on the property, and it was determined not to be of historical significance. At one time, the property was also part of the Waiale Road 201, LLC, parcel, but that parcel was sold for affordable homes. Therefore, we must be consistent with the decisions on both the Emmanuel Lutheran Church and Waiale Road 201, along with the nearby Kehalani Investors Project, all, which all encompass the same area. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Oh yea, thank you. Am I to understand that the, this TMK is outside of the Central Maui Inland Sand, according to this map?

CHAIR WHITE: It looks like it has a very small sliver.

COUNCILMEMBER GUZMAN: Oh, I see. Okay.

CHAIR WHITE: Or, maybe Ms. Cochran can add to that.

COUNCILMEMBER COCHRAN: Well, Chair, thank you. So, in my opening comments with the, that Emmanuel Lutheran and the Waiale, this is part of that one lot once again. And they're at that top left-hand corner off Honoapiilani Highway.

And, they had 10 trenches done, and sand dune matrices were found. So again, reason for me that it should not be exempted at this time. But, it's, yea, the, so it's not really a sliver. I mean I think it's a good section of their property. So, they got sand.

CHAIR WHITE: It's the 012 parcel.

COUNCILMEMBER COCHRAN: Valley, this is Valley Isle, sorry, this is Valley Isle Fellowship, is that where we're on? Yea, okay. I believe it's the top, on the green lot map.

CHAIR WHITE: Yea, they're the top of that lot, right?

COUNCILMEMBER COCHRAN: Yea, 25-acres.

CHAIR WHITE: So, did you identify whether any of the trenches on this property contain sand? Cause it looks like they're, they're above the, they're in more in the alluvial deposits.

COUNCILMEMBER COCHRAN: No, sorry. So, trenches 17 through 23 were excavated and they all contained dune sand.

CHAIR WHITE: Okay, 23 is on the other property.

COUNCILMEMBER COCHRAN: They did 17-23. Yea, 23 was that other parcel. Because remember, this is all one AIS.

CHAIR WHITE: Right.

COUNCILMEMBER COCHRAN: And so, that's why, yea, we already spoke about 23 for Emmanuel Lutheran. So, 17 through 22 is Valley Isle Fellowship Church, and they all, all those trenches contained it.

COUNCILMEMBER KING: Chair.

COUNCILMEMBER COCHRAN: Yes, dune sand.



COUNCILMEMBER KING: Just wanted to point out too, just in reading their letter, there's nothing happening here that we currently do not have any immediate plans. And you know, so I'm not really sure why they care about the exemption, they don't appear to be developing anything on that property anyway. So, you know, why are we even considering?

CHAIR WHITE: Okay. Any further discussion? Seeing none, all those in favor of excluding the Valley Isle Fellowship property, signify by saying "aye".

VICE-CHAIR CARROLL: Aye.

CHAIR WHITE: Those opposed say "no".

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER KING: No.

CHAIR WHITE: Roll call vote please.

COUNTY CLERK: Councilmember Alika Atay.

COUNCILMEMBER ATAY: NO.

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: AYE.

COUNTY CLERK: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: NO.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: NO.

COUNTY CLERK: Councilmember Don S. Guzman.

COUNCILMEMBER GUZMAN: AYE.

COUNTY CLERK: Councilmember Kelly T. King.

COUNCILMEMBER KING: NO.

COUNTY CLERK: Councilmember Pro Tempore Stacy Crivello.

COUNCILMEMBER CRIVELLO: YES.

COUNTY CLERK: Council Vice-Chair Robert Carroll.

VICE-CHAIR CARROLL: AYE.

COUNTY CLERK: Council Chair Mike White.

CHAIR WHITE: AYE.

AYES: COUNCILMEMBERS CRIVELLO, GUZMAN, SUGIMURA, VICE-CHAIR CARROLL, AND CHAIR WHITE.

NOES: COUNCILMEMBERS ATAY, COCHRAN, HOKAMA, AND KING.

COUNTY CLERK: Mr. Chair, five "ayes", four "nays".

CHAIR WHITE: Okay. Measure passes.

Move on to the next item, Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO, EXCUSE ME, I MOVE TO STRIKE REFERENCE TO TMK 2-3-8-007:152, MAUI LANI 100, LLC, FROM THE PROPOSED MORATORIUM AREA AND REDRAW THE MORATORIUM AREA ON THE RELATED MAP TO REMOVE THE SUBJECT TMK, OWNER, AND LOT AREA; AND THAT'S EXHIBIT "F".

CHAIR WHITE: Do I have a second? Okay, the motion fails due to lack of a second.

Mr. Carroll.

VICE-CHAIR CARROLL: Do you want me to proceed?

CHAIR WHITE: Pardon.

VICE-CHAIR CARROLL: Should I proceed?

CHAIR WHITE: Yea.

VICE-CHAIR CARROLL:

I MOVE TO STRIKE REFERENCE TO TMK 2-3-8-007:157, MAUI LANI PARTNERS, FROM THE PROPOSED MORATORIUM AREA AND REDRAW THE MORATORIUM AREA ON THE RELATED MAP TO REMOVE THE SUBJECT TMK, OWNER, AND LOT AREA; EXHIBIT "F".

CHAIR WHITE: Do we have a second?

COUNCILMEMBER CRIVELLO:

SECOND.

COUNCILMEMBER SUGIMURA: Where, where, which parcel is it? Sorry.

CHAIR WHITE: So, we're on TMK 2-3-8-007:157. No, I'm sorry.

COUNCILMEMBER SUGIMURA: 157 to 153.

CHAIR WHITE: 157, right.

VICE-CHAIR CARROLL: That is, yes. The last one is 157.

CHAIR WHITE: Okay. So, we have a motion from Mr. Carroll, and a second by Ms. Crivello.

Further discussion, Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. This parcel is located adjacent to Pomaikai Elementary School on Kamehameha Avenue and is known as 6D. The parcel has been mass-graded with a valid grading permits and approved Archeological Surveys Assessments, and monitoring plans, and is flat. The owner is requesting an exemption for the property. Thank you, Chair.

CHAIR WHITE: Any further discussion on this item?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you. Let's see here. So, Maui Lani, there's five of these TMK's. So, this one along with four other, five others, I'm going to just make comment to all of Maui Lani's excluding the Phase 9, which is the big contentious litigation one.

So, this TMK along with five others belonging to Maui Lani are considered for exemption, as we are vetting through. And, all of them have been mass-graded and our now flat. This is Maui Lani's justification for asking to be exempt from the sand mining moratorium. They've already damaged the sand dunes beyond repair. They are flat, and now they are worried that the six-month moratorium will harm their sales of these previous sand dune lots.

And, I am not in support of exempting this and the others. Maui Lani is the only landowner that requested an exemption. They did not provide an AIS or a geotechnical report, as all the others have. Maui Lani has proven to themselves, proven themselves to this community and to myself not to be quite fully trustworthy, and to have, I'm seeing blatant disrespect for our laws and regulations.

Maui Lani, with the help of our own Administration, have circumvented our permitting process to conduct resource extraction in area where resource extraction is not legally allowed under the guise of mass-grading permits with little and almost no oversight. And, Maui Lani is now asking to be exempt for these properties because they are already flat. And, they expect to operate under the assumption that if they are granted exemptions, we should take them at their word, and they will not attempt to grade these parcels any further, or remove any sand that has been left in their wake.

So, this is my justification for not leaving it in their hands to be trusted. And, I, they ought to be left in this moratorium at this time.

CHAIR WHITE: Thank you, Ms. Cochran.

Any further discussion?

COUNCILMEMBER CRIVELLO: Yea.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: I get so confused. So, I see, I don't see any green, so I guess, like Cochran mentioned, they went ahead and did their excavation. So, how does that differ, differ from Dowling? How, how do they differ with the extraction? Well, I just want to just get it, what is allowed for one. I'm not saying I support it or not. But, I don't see any green, just looking at the map. But, I can appreciate what Ms. Cochran is saying, because, you know, what they did may not be pono, but that was also the same approach that came from the TMK 064. So, how does, how does that differ? Why do, how does that differ, prior to this bill?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, going back to Mr. Dowling's property. Once upon a time, there was sand there. It has been ex, it's been removed. So, by the time we started vetting through and crea, trying to create this moratorium, he said, hey look at my property, I don't have any sand. And, that's why. He literally has no more sand left. It had been taken away.

These properties all still have sand on them. That, that is the most, I guess, stark difference between Everett Dowling's property and these. Everett has no more sand. He did once upon a time, but it's been taken off. These guys still have sand left. It's flat, but they still have sand.

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Yea, I, I wasn't sure what was, the reference was to, because that looks green to me, the 157 parcel looks like it's right in the middle of that green section. But, that's, what my understanding was, it wasn't that there's no more sand there, it's just that they, they've taken the tops off the dunes.

But, you know, my biggest, my bigger concern is that I think these Maui Lani parcels are the reason why we're even in this discussion for this moratorium. And so, you know, if we're not going to do the main parcels that were originally, you know, the complaint of this, then why are we here? So, I, I just, you know, I'm against exempting any of these parcels at this point. Thank you.

CHAIR WHITE: Thank you.

COUNCILMEMBER CRIVELLO: Okay, Chair. Chair, I guess I've read the, interpreted the map incorrectly with the TMK on here. But, yea, there, there's green but there's also, like Ms. Cochran said, that they, they did their extraction, yea. But, there's still some green sliver in there. Okay.

CHAIR WHITE: Any further discussion?

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: If I may. I think one of the reasons why we are here is because what took place before, you know. And, like, I take the position, eh, better now, better late than never and it's too late. I think, you know, we, there was a court case, litigation, injunction, and what the findings and discovery was, was that, you know, there was irreparable harm done.

The question was a lot of the archeological studies and archeological reports that took place 15, 12, 10 years ago was stamped by a non-archeologist. So, by right, we, we went ahead and allowed permits and developments to occur when really we should be rescinding these permits. If they have not exercised the permits, even with archeological studies in hand, I would raise a question of doubt as to who was that person or company that said no more iwi, you know. So, that's why we're here. You know, we're here, yea, we little bit late. But, you know what, we here. And, that's why we have to vet this through. We know without a doubt there is iwi in these sand dunes. And, out of respect, we must do this vetting.

Yea, all these guys came running in under the gun. I'm very disappointed. You know, I'm very disappointed knowing how hard we working and trying to have all these meetings to address this problem. And yet, we have Administration goes ahead. That's why I question government accountability and government transparency. That's why our people wonder, no trust. I say nuff already, let's do this right. Understand it, it's green. Green got sand.

CHAIR WHITE: Thank you, Mr. Atay.

Any further discussion? Seeing none, this is a vote to strike TMK 2-3-8-007:157.

Mr. Clerk, why don't we just do a roll call vote.

COUNTY CLERK: Councilmember Alike Atay.  
COUNCILMEMBER ATAY: NO.  
COUNTY CLERK: Councilmember Yuki Lei Sugimura.  
COUNCILMEMBER SUGIMURA: YES.  
COUNTY CLERK: Councilmember Elle Cochran.  
COUNCILMEMBER COCHRAN: NO.  
COUNTY CLERK: Councilmember Riki Hokama.  
COUNCILMEMBER HOKAMA: NO.  
COUNTY CLERK: Councilmember Don S. Guzman.  
COUNCILMEMBER GUZMAN: NO.  
COUNTY CLERK: Councilmember Kelly T. King.  
COUNCILMEMBER KING: NO.  
COUNTY CLERK: Council Pro Tempore Stacy Crivello.  
COUNCILMEMBER CRIVELLO: NO.  
COUNTY CLERK: Council Vice-Chair Robert Carroll.  
VICE-CHAIR CARROLL: NO.  
COUNTY CLERK: Council Chair Mike White.  
CHAIR WHITE: NO.

AYES: COUNCILMEMBER SUGIMURA.

NOES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
VICE-CHAIR CARROLL, AND CHAIR WHITE.

COUNTY CLERK: Mr. Chair, one "aye", seven "noes". Excuse me, eight "noes".

CHAIR WHITE: Based, based on, yea, thank you. Based on that vote, Mr. Carroll, let's skip to, I'm assuming that the remaining Maui Lani, well, let me ask the question, is there anyone who would like us to consider any of the other Maui Lani parcels at this point?

Okay. So, let's move onto--

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: I request a very short recess to confer with you.

CHAIR WHITE: Recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 3:58 P.M., AND WAS RECONVENED AT 4:00 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: Okay, we're back in session.

I believe we have one, one remaining motion, Mr. Carroll.

VICE-CHAIR CARROLL: Yes, yes, Chair.

COUNCILMEMBER COCHRAN: Chair, Chair, sorry, Chair. Before Mr.--

CHAIR WHITE: Wait.

COUNCILMEMBER COCHRAN: Sorry, Chair, if you don't mind.

CHAIR WHITE: Yea, if you could hold off, Mr. Carroll.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Before Mr. Carroll proceeds. So, is it agenda, I mean, we can just kind of do that and just skip over all the other lots, and not give each lot its vote? Is that--



CHAIR WHITE: Well, that's why I asked if any of you would like us to bring up any of the remaining Maui Lani lots, because we, we didn't get a second on the first one, we voted down the second one. So, I didn't feel there was any need for us to go through the others, unless somebody wanted us to consider them. So, that's why before we took the recess, I asked if anyone would like us to consider them, and I got no response. So, as far as I'm concerned, those issues are, we passed, we passed by those issues.

COUNCILMEMBER COCHRAN: Okay. I mean, I'm good with that. But, I just wanted to make sure that we're vet, you know, we were being fair in that they, anyways.

CHAIR WHITE: No, I, I'm--

COUNCILMEMBER COCHRAN: If it's all good and it's parliamentary procedure wise-fine, then I'm good.

CHAIR WHITE: I think we have, we have given, I mean, you know, there's no reason to, from my perspective, there's no reason to make the motion when we've had two significant rebuttals.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: So--

COUNCILMEMBER COCHRAN: Just double-checking.

CHAIR WHITE: I'm still willing to consider if anyone wants to, to do it to be fair. But, I think we've, we've moved past that. So, unless anyone has a desire, we'll move onto the last of the exemption request.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO STRIKE REFERENCE TO TMK 2-3-8-007:151, GENTRY MAUI DEVELOPMENT, LLC, FROM THE PROPOSED MORATORIUM AREA AND REDRAW THE MORATORIUM AREA ON THE RELATED MAP TO REMOVE THE SUBJECT TMK, OWNER, AND LOT AREA; AND THAT IS EXHIBIT "F".

CHAIR WHITE: Do we have a second? I don't hear a second, so with a, without a second, the motion fails.

Thank you very much, Mr. Carroll.

Members, we're back to the main motion, unless anyone else has any items to bring up. So, with that, further discussion on the main motion?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Yes. I have to say, our recent discussion with the exemptions was, for me, totally confusing, but I appreciate the efforts. I still feel that the real issue is not being addressed. And, I, and I don't see those provisions. I have to reinstate that. The argument I've always heard, including coming from the preliminary injunction was had to do with na iwi kupuna. I, we just going do a sand study and quantification of the sand study.

Whether this passes or fails, I still feel that processes will be more fully addressed with, I have to call it Mr. Guzman's proposals. So, I don't think I can support a bill that does not address specifically on the full purpose of why this bill was made; study of the sand, and six months moratorium with exemptions, to me, is not a moratorium. That's just my feel. Thank you.

CHAIR WHITE: Thank you, Ms. Crivello.

Further discussion on this item?

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Yea, I, I agree, I would, would've liked to, it to have been longer. But, I didn't sit on that Committee in those eight meetings, and I know that there was disappointments some, parts of some Members that had got whittled down to six months. But, like Mr. Atay said earlier, here's where we're at. We can take a step forward, we can do some protection, we can look forward. We heard, we heard numerous people come out in favor of it who understand this to be protection of the iwi kupuna, and are urging us to pass this.

And so, I would just, I'm in, in favor of passing it, people have done a lot of work on this so I don't want to see this deferred one more time. And, let's move on. Let's get, you know, let's do the work during this next six months and see where that

leads. Maybe it will lead to more comprehensive legislation depending on what we learn in the six months. Thank you.

CHAIR WHITE: Thank you, Ms. King.

Any further discussion?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And, I'm very happy to be here at this point. So, and I agree with everybody's comments that, you know, I wish we had more teeth, wish there was more to this, but after all these months, this is what it is. And, it has been a struggle and a challenge, and everything else just to get to where we're at.

So, I'm just happy to have something here at the table. And, I just appreciate, you know, everyone's input, and especially the, you know, the public and the people. So, I look at the purpose of this, yes, one portion of it is to the Sand Resource Quantification Study. But the other is this pause, this take, this take a breath and stop for a moment, only six months, which came down from two years, was to conduct further analysis required to establish regulations for mining and to protect Maui's environment and limited natural resources, prevent the disturbance, Hawaiian historical, cultural, archeological sites and unmarked human burials. That is the first portion of the purpose of this bill.

And so, yea, it's not addressing it all, but this is the point for the moratorium at this time. So, I again am happy to be here. It's been a long road and, and a lot of hours and hard work with my staff and everyone. So, just ready for the vote anytime now. Thank you.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Chair. This is just a moratorium. A moratorium is asking us and everyone to put us on pause. And, while we on pause, let's get on it and do the research, do the studies, do the proposals, and come back with something that has teeth. Come back that, with something we'd still have that opportunity to, to bring in and interject items that will address, addressing the forward movement of taking care of our iwi kupuna. Right now, this is a moratorium to put things on pause, and let's get to it. There's a court case still going on. You know, we may, whatever comes out of that may play a role in our future decision-making.

You know, also, what goes on with Administration. I, I'm still perplexed why people cannot figure out the difference and the definition of what is grading and what is grubbing. It's okay for some people to say grub eight foot deep of sand and iwi kupuna. It's okay. No, it's not, you know.

We now find some of the studies saying that they didn't find any indications until ten feet deep. So, all of a sudden everybody's request for grading and grubbing going be at least ten feet deep, yea. Ten feet deep, thousand feet wide, thousand feet long. How many tons of iwi kupuna is that, that can be?

And, so I would say, pause, take this moratorium, give us time to hustle and find out and study and, and come up with true solid ordinance and resolutions that also will address clearly defined grading and grubbing, and not sand mining. Thank you.

CHAIR WHITE: Thank you, Mr. Atay.

Further discussion on this?

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Yea, I would agree with Member Atay that we, I mean, the way I look at it is that this bill may not necessarily address the issues. But, for me, it allows time for the two bills that I have pending to come forth. And, one of them is in the Planning Commission; that really does address the definitions of distinguishing between excavation, and grubbing and grading. And then we also have the permitting process in Chapter 20, which is under Bob Carroll's Committee.

Right now, there's nothing in place. There are no laws. So, as soon as we pass those two bills and vet them through, I think those two bills really address the heart of the issues. I initially wanted this all to come together with the moratorium bill and those two bills, but unfortunately, they were bifurcated, so we have the moratorium here in front of us.

Just to give everyone an update, I believe the Chapter 19 bill of the definitions really specifying the definitions of grubbing and grading, and excavation, was sent over to the Cultural Resource Commission on December 7. We did put a call into Planning Department to see whether or not that has actually gone forward to the Planning Commission. Under our ordinances, they have 120 days to review it, and then it defaults after the 120 days back to the Council for review. So, I'm just waiting on those two bills, and hopefully they, they will address most of the issues, if not all, that were, that is before us.

But, it is what it is. This is, this is the moratorium bill. And, I think we went from a two year to a six-months, because there was issues as to being able to legitimize the, and justify the length of it. And, so legally speaking, I know that there's been developers or other, I wouldn't say developers, other agencies that's come before us and said, look, if you pass this, we're, we might have a claim for eminent domain. But, I, I would like to assure that because that we have at least one bill pending in Planning Commission, that gives us a justification to say, yea, six months is okay, because four of those months is on review in the Planning Commission for the Chapter 19 bill. So, I, I believe that we can justify the length of the moratorium.

Other than that, the other bill that's in Bob Carroll's office, we are moving forward on that. And in fact, we've reached out to SHPD to see whether or not they can put together a checklist just like our soil and conservation districts do. And so, I think that, that bill is going to be really fine-tuned and is really going to be the crutch of being able to put teeth in all of the permitting process.

But, that's the way I look at it, Chair, is it is a pause for us to catchup, and at least have those bills passed eventually. Because right now, we have no law. So, thank you, Chair.

CHAIR WHITE: Thank you. A housekeeping item, Ms. Cochran, you need to include in your motion--

COUNCILMEMBER COCHRAN: Chair, you need me to--

CHAIR WHITE: --the filing of 18, County Communication 18-12.

COUNCILMEMBER COCHRAN:

YEA, CHAIR, I MOVE TO FILE COUNTY COMMUNICATION  
18-12.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: Okay, thank you. We'll just take that with the--

COUNCILMEMBER COCHRAN: Together?

CHAIR WHITE: --with the main motion, yea.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: The Clerk had requested a quick recess. So, recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 4:12 P.M., AND WAS RECONVENED AT 4:17 P.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBER SUGIMURA, EXCUSED.)

CHAIR WHITE: This meeting shall please come back to order.

Members, before we take the, Mr. Carroll, did you have a?

VICE-CHAIR CARROLL: Yes, Chair. Members, I think we've come to the point, I am going to support the moratorium bill. But, I think we need to make it clear, from a lot of the conversation, the general public would think that every developer and every applicant is a dirty rat trying to go over there and sneak everything you can get, and all these churches and everybody else, which is just terrible. This is not the case.

Almost all of these applicants have done everything they could to meet all the requirements from the Planning Commission, from everybody else. They have done their part. But, the applicants have not failed. We have failed. This Council has failed.

(Councilmember Sugimura returned to the meeting at 4:18 p.m.)

VICE-CHAIR CARROLL: So, I don't think we should . . . going over there and ragging on a lot of these people. There are some of them, yes, that took advantage. But most, no, they are good people. And, it's up to us to end this moratorium, period, to make sure we take care of them, because they are our people. We are delaying a housing project, affordable housing, to make this happen. Now, nobody should be really proud of that, because if we'd done our jobs on Councils before us, we wouldn't be in this situation.

But, I just think it needs to make really clear that this isn't really a big victory. This is something, a pause, like Mr. Atay has said, to try to go over there and make right what we have failed to do before. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Members, any further discussion on this?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Yea. I said yes, to some of the exemptions, because I recognize they are opportunities to build affordable homes. And, you know, after hearing, especially what Mr. Carroll and Mr. Atay had mentioned, I think I will privy myself to change my mind. But, like I said, let's make sure we're addressing the real issues.

And, if we're going to pause for six months, do we, who does all the quantification of the, according to the bill, the sand quantification? Are we paying for it, or are we having the landowners do it? So, those are the kind of questions too that I have. But, you know, I have to appreciate from the two years to six months that we've come down to.

But in, in all favor to the testifiers, what I kept hearing was protection of our ancestors, their iwi. So, I think that should be our full priority. And, if it takes six months for us to come up with that attempt and clarify it, I guess I can, I can go for it.

CHAIR WHITE: Thank you, Ms. Crivello.

Any further discussion?

Okay, Members, the, we've made one amendment to the bill, actually two amendments to the bill. And, so before we take the vote, the Chair would just like to reinforce that this, we should make this the final vote. And, so that would require us to waive Council Rules in order to make this the final vote. If it passes, then we don't need to come back at our next meeting. And, and if it doesn't pass, it doesn't matter. But, Ms., I believe Ms. Cochran has the motion, the appropriate motion to make. Ms. Cochran.

COUNCILMEMBER COCHRAN: Yea, thank you, Chair. So, this is, this motion is the now prior to the final vote on the actual, main motion? Do--

CHAIR WHITE: Yea, we have to--

COUNCILMEMBER COCHRAN: This vote, okay.

CHAIR WHITE: We have to waive the Rules before we do the final vote.

COUNCILMEMBER COCHRAN: Okay. Alright. Thank you, Chair.

SO, PURSUANT TO RULE 14(C) OF THE RULES OF THE COUNCIL, I MOVE TO SUSPEND RULE 19(C) OF THE RULES OF THE COUNCIL TO ALLOW BILL 117 (2017) TO BE PASSED ON SECOND AND FINAL READING.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Yea, thank you, Chair. And, you explained the reasoning, so thank you for the opportunity.

CHAIR WHITE: Thank you.

Any further discussion on the motion to waive the rules? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, HOKAMA, KING,  
SUGIMURA, VICE-CHAIR CARROLL, AND  
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Okay, we're back to, now that we've got that out of the way, we're back to any further discussion on the main motion prior to the vote?

Mr. Hokama.



COUNCILMEMBER HOKAMA: Chairman, thank you. I'm going to just reinforce my comments I gave at first reading, Mr. Chairman. I think my colleague from Wailuku District said it well; it is what it is. I understand, and I support the six-month moratorium, which I did from the second meeting in Committee.

But, I'm not going to vote for it today. And, I'm going to tell you why. I don't have a problem with the moratorium, but I have a problem with making exceptions. It either is applied to everybody or nobody. That's how I'm look, I look at it. And, I don't have to deal with potential of why did so and so get and somebody else didn't get? I don't need discrimination conflicts of why certain property owners got certain considerations. For me, it applies to everybody.

Six months is six months; I can live with that. And, everybody is abide the same basic policy that we are setting up this afternoon. So, I'm going to vote no. But, if a bill comes back with the same proposal without exemptions, I'll be there to vote for it. Thank you.

CHAIR WHITE: Thank you, Mr. Hokama.

Any further discussion?

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Yes, Mr. Atay.

COUNCILMEMBER ATAY: I, I too support Mr. Hokama's position. You know, the two amendments that are being added, it'll, both of those amendments, I voted no, but was outvoted with the yes. I prefer the same thing, is that if we have this bill created, it'd be, you know, no exemptions, and just hold, pause for everyone for six months.

CHAIR WHITE: Thank you, Mr. Atay.

Any further discussion?

COUNCILMEMBER CRIVELLO: So, Mr. Atay, Chair. So, Mr. Atay is saying that we should remove all exemptions? Or, is that just a suggestion on your part?

COUNCILMEMBER ATAY: No, we had the two that were added.

COUNCILMEMBER CRIVELLO: But, we, and initially we have an exemption too, right? We have Mr. Dowling's exemption, and we have two additional exemption. So, it's really not a moratorium. Thank you.

CHAIR WHITE: Any further discussion, Members?

Okay, we'll just take a roll call vote, Mr. Clerk.

COUNTY CLERK:	Councilmember Alika Atay.
COUNCILMEMBER ATAY:	YES.
COUNTY CLERK:	Councilmember Yuki Lei Sugimura.
COUNCILMEMBER SUGIMURA:	NO.
COUNTY CLERK:	Councilmember Elle Cochran.
COUNCILMEMBER COCHRAN:	AYE.
COUNTY CLERK:	Councilmember Riki Hokama.
COUNCILMEMBER HOKAMA:	NO.
COUNTY CLERK:	Councilmember Don S. Guzman.
COUNCILMEMBER GUZMAN:	AYE.
COUNTY CLERK:	Councilmember Kelly T. King.
COUNCILMEMBER KING:	AYE.
COUNTY CLERK:	Council Pro Tempore Stacy Crivello.
COUNCILMEMBER CRIVELLO:	YES.
COUNTY CLERK:	Council Vice-Chair Robert Carroll.
VICE-CHAIR CARROLL:	AYE.
COUNTY CLERK:	Council Chair Mike White.
CHAIR WHITE:	AYE.

AYES: COUNCILMEMBERS ATAY, COCHRAN,  
CRIVELLO, GUZMAN, KING,  
VICE-CHAIR CARROLL, AND CHAIR WHITE.

NOES: COUNCILMEMBERS HOKAMA AND SUGIMURA.

COUNTY CLERK: Seven "ayes", two "noes".

CHAIR WHITE: Measure passes.

Thank you all very much for a long day. And, thank you all for participating and coming to testify over the last several months. So, with that, we are, okay, with that we are adjourned.

### ADJOURNMENT

The regular meeting of January 5, 2018 was adjourned by the Chair at 4:26 p.m.

  
\_\_\_\_\_  
DENNIS A. MATEO, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII

# Maui Lani Permit Extension - Email from Public Works

Adriane Raff-Corwin <adriane.raff-corwin@sierraclub.org>

Fri 1/5/2018 10:50 AM

To: Robert Carroll <Robert.Carroll@mauicounty.us>; County Clerk <County.Clerk@mauicounty.us>; Clare Apana <kouwahine@gmail.com>;

📎 3 attachments (810 KB)

ML Phase 9 permit extension.JPG; Letter to Public Works Jan 2 2018.pdf; Follow up to Cathy Hasfurther Jan 4 2018.pdf;

Aloha Council,

Attached is a photo of the print out that Clare Apana received as proof that the Public Works department had approved the extension of the Maui Lani Phase 9 permit.

I am also attaching a letter of complaint that Clare delivered to Ms. Hasfurther regarding this permit extension and a follow up letter illustrating the many ways the permit process is broken.

I have cc:ed Clare in case Council would like to contact her.

Mahalo,  
Adriane Raff Corwin

--

Adriane Raff Corwin  
Sierra Club Maui Group Coordinator  
(808) 419-5143  
[adriane.raff-corwin@sierraclub.org](mailto:adriane.raff-corwin@sierraclub.org)

RECEIVED  
2018 JAN - 8 AM 8:11  
OFFICE OF THE  
COUNTY CLERK

Clare Apana  
260 Halenani Dr  
Wailuku, HI 96793  
January 2, 2018

Dear Director Goode and Catherine Hasfurther,

This letter is to inform you that your extension of the Maui Lani Phase 9 grading permit (attached) needs to be halted. I was shocked to find out that Ms. Hasfurther gave Mr. Tanaka an extension because there is a preliminary injunction.

I am attaching the Preliminary Injunction finding that Maui Lani Partners and its contractors and agents violated the approved Archaeological Monitoring Plan as well as sworn testimony from their engineer that the grading plan itself violates the terms and conditions of the permit.

Mr. Tanaka requested the extension. He also stated his firm created the engineering drawings for the permit. He testified on 9/8/2017, under oath, that his grading plan exceeds the 45 foot height change limit of this permit. His testimony is also attached.

In May of 2017, I co-sent a letter to Mayor Arakawa and county department heads including the Public Works department. This letter outlined several problems that proved the permit information given was not correct, and we asked that the permit be rescinded. I also spoke to Ms. Hasfurther in April 2017 about the incorrect information about the human burials that had not been reported on the application. I am a recognized cultural practitioner in this area and have performing cultural practices for the burials, the ancestors, and the sand dunes for many years. I am informing the Office of Hawaiian Affairs, whose legal department has been working with the county of Maui on the issues of sand extraction, protection of ancestral burials and protection of 6E laws.

Please remedy Ms. Hasfurther's error and halt and revoke this grading permit immediately. I also ask for an answer about how an extension of this permit could be granted and how you will be remedying this situation.

I also ask that you suspend any consideration of subdivision approvals for Maui Lani Phase 9, as I have not been given a opportunity to discuss the burials and care of ancestors ('iwi kupuna) on this site. The preliminary injunction and final court order also includes this same objection to the consideration of subdivision approvals.

I look forward to a timely reply.

Clare Apana

cc: Leslie Otani  
cc: Office of Planning  
cc: Kamana'o Crabbe PhD, Jocelyn Doane Esq OHA, Wayne Tanaka Esq OHA, Kai Markell Esq OHA  
cc: Hulu Lindsey OHA trustee , Maui

Attachments: Letter granting permit extension, Tanaka testimony, Malama Kakanilua - Preliminary Injunction, Letter to Mayor

January 4, 2018

Dear Ms Hasfurther,

I just wanted to make sure I understood what we spoke about yesterday. I have a few points .

When an extension of a grading permit or any permit is requested the requestor does not have to update the information on the permit, the requestor just asks a person in your office in the case of Maui Lani phase 9 it is you,

This permit has a volume specified 213,999 cubic yards of sand. An extension does not reflect that any volume of sand has been removed or graded. You stated that you do not quantify the volume that would have to be done by taking the contours and mapping it. You do not have the ability to do that. I might infer that you do not know how much of this large volume of sand you allowed on this permit has been taken.

You did know that Maui Lani had taken too much material from one part of the site and worked with them to put back material to fix this. This is what was happening in June 2-17. New measuring sticks were installed by the engineer, Mr Tanaka, I guess so that they would know when the correct amount of sand had been refilled on the site. This is one way of measuring the volume of sand and material moved on the site.

I am concerned about protecting all burials and especially those in the traditional burial ground of the inland sand dunes of Maui. As you stated, you do not know anything about burials or what they look like. The issue of burials and what happens to them is strictly up to SHPD.

In this case SHPD was consulted to start with the permit application process. You do not know as public works or engineering/permitting department what has become of burials. When burials are found, you do not change the application parameters by recording for instance that a sensitive area did not have any burials during archeological testing but now does. It does not matter to your department how many burials are uncovered as the area is graded.

Can SHPD stop your permit approval if any part of the 6E laws or any law for that matter, are violated such as grading too far down or not monitoring the sand being graded? iOnce a permit for grading is approved, it does not matter to your department if the conditions and agreements in the permit such as volume extracted, monitoring plans ate followed.

An applicant just asks you for an extension, you do not have to inform or get an ok from SH PD or any other pertinent agency. There is no requirement to communicate with any other departments you can and do give an extension because it was asked for and they did work on the site.

You stated that you have no process to revoke a permit. You also stated that because you gave an extension to the very controversial Phase 9 sand mining site grading permit , it doesn't mean any thing is happening there. But you admitted that Maui Lani could continue to grade with your extension. You indicated that you thought there were issues with burials, burial and council that occurred so no work was being done on the site. You also said that when Maui Lani resolves the problems they can use the extended grading permit and resume work.

I will be submitting information on burials found in this project so that you will know they exist and that the Maui Lanai Island Burial Council made a motion to preserve them in place in the Ppu'u they are in. You knew of the issue going to the burial council, you just did not find out what might affect you.

cc Adriane Raff-Corwin

cc Kai Markell OHA

cc Adam Dowmer Phd, Susan Lebo Phd, Maui office SHPD

January 4, 2018

Mahalo for the information and for taking the letter to Mr Goode also,  
Clare Apana. Wailuku resident

cc Adriane Raff-Corwin  
cc Kai Markell OHA  
cc Adam Dowmer Phd, Susan Lebo Phd, Maui office SHPD

**THIS MUST STOP**

**VOTE NO TO MAUI  
LANI EXEMPTION**

**VOTE YES TO**

**MORATORIUM**



**MAUI LANI**

**VIOLATES**

**GRADING PERMIT**

**ASKS FOR RENEWAL 11/2017**

**A PUBLIC WORKS GRANTS IT 12/08/2017**

**DESPITE**

**A COURT ORDER FOR PRELIMINARY  
INJUNCTION**

**AND ZONING VIOLATION WARNING**

**BURIAL COUNCIL RECOMMENDS**

**PRESERVE THE PU'U OF THE BURIALS**

January 4, 201

Dear Ms Hasfurther,

I just wanted to make sure I understood what we spoke about yesterday. I have a few points .

When an extension of a grading permit or any permit is requested the requestor does not have to update the information on the permit, the requestor just asks a person in your office in the case of Maui Lani phase 9 it is you,

This permit has a volume specified 213,999 cubic yards of sand. An extension does not reflect that any volume of sand has been removed or graded. You stated that you do not quantify the volume that would have to be done by taking the contours and mapping it. You do not have the ability to do that. I might infer that you do not know how much of this large volume of sand you allowed on this permit has been taken.

You did know that Maui Lani had taken too much material from one part of the site and worked with them to put back material to fix this. This is what was happening in June 2-17. New measuring sticks were installed by the engineer, Mr Tanaka, I guess so that they would know when the correct amount of sand had been refilled on the site. This is one way of measuring the volume of sand and material moved on the site.

I am concerned about protecting all burials and especially those in the traditional burial ground of the inland sand dunes of Maui. As you stated, you do not know anything about burials or what they look like. The issue of burials and what happens to them is strictly up to SHPD.

In this case SHPD was consulted to start with the permit application process. You do not know as public works or engineering/permitting department what has become of burials. When burials are found, you do not change the application parameters by recording for instance that a sensitive area did not have any burials during archeological testing but now does. It does not matter to your department how many burials are uncovered as the area is graded.

Can SHPD stop your permit approval if any part of the 6E laws or any law for that matter, are violated such as grading too far down or not monitoring the sand being graded? iOnce a permit for grading is approved, it does not matter to your department if the conditions and agreements in the permit such as volume extracted, monitoring plans ate followed.

An applicant just asks you for an extension, you do not have to inform or get an ok from SHPD or any other pertinent agency. There is no requirement to communicate with any other departments you can and do give an extension because it was asked for and they did work on the site.

You stated that you have no process to revoke a permit. You also stated that because you gave an extension to the very controversial Phase 9 sand mining site grading permit , it doesn't mean any thing is happening there. But you admitted that Maui Lani could continue to grade with your extension. You indicated that you thought there were issues with burials, burial and council that occurred so no work was being done on the site. You also said that when Maui Lani resolves the problems they can use the extended grading permit and resume work.

I will be submitting information on burials found in this project so that you will know they exist and that the Maui Lanai Island Burial Council made a motion to preserve them in place in the Ppu'u they are in. You knew of the issue going to the burial council, you just did not find out what might affect you.

cc Adrian Raff-Corwin

cc Kai Markell OHA

cc Adam Dpwmer Phd, Susan Lebo Phd, Maui office SHPD

# MAUI - Sand Mining Moratorium - LURF Testimony in Opposition (Council Mtg 01.05.18)

DA David Arakawa <darakawa@lurf.org>  
Wed 1/3/2018 1:20 PM  
To: County Clerk  
Cc: Wynde Yamamoto <wyamamoto@lurf.org> ^

Reply all |

Inbox

180102 Maui-Sand M...  
313 KB

Download Save to OneDrive - County of Maui Office of Council Services

RECEIVED  
2018 JAN -3 PM 2:05  
OFFICE OF THE  
COUNTY CLERK

Action Items

Aloha Maui County Clerk,

Attached is the testimony of the Land Use Research Foundation of Hawaii (LURF), in including **comments, concerns, opposition and a recommendation of deferral of Maui County Council Agenda Item K., Bill No. 117 (2017), FINAL READING** of a Proposed Bill Entitled "A Bill for an Ordinance Establishing a New Chapter 20.40, Maui County Code, Declaring a Moratorium on Sand Mining of Central Maui Inland Sand, which is on the **Maui County Council Agenda for Friday, January 5, 2018, at 9:00 a.m.**

Please accept the attached LURF testimony for Maui County Council records and distribute to the Maui County Council members.

Feel free to contact me, or LURF law partner, Wynde Yamamoto, if you have any questions.

Mahalo, Dave

David Z. Arakawa  
Executive Director  
Land Use Research Foundation  
of Hawaii  
1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
Telephone: (808) 521-4717  
Cellular: (808) 783-9407  
Fax: (808) 536-0132  
E-mail: [darakawa@lurf.org](mailto:darakawa@lurf.org)  
Website: [www.lurf.org](http://www.lurf.org)



LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

RECEIVED

2018 JAN -3 PM 2:05

OFFICE OF THE  
COUNTY CLERK

Via E-Mail

January 3, 2018

Honorable Mike White, Chair  
Honorable Robert Carroll, Vice-Chair,  
and Members of the County Council  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

**Comments Regarding “A Bill for an Ordinance Establishing a New Chapter 20.40, Maui County Code, Declaring a Moratorium on Sand Mining of Central Maui Inland Sand” (Item K. Bill No. 117 (2017) on the Council’s Agenda).**

**Friday, January 5, 2018, at 9:00 a.m. in the Council Chamber, Kalana O Maui Building, 8<sup>th</sup> Floor, 200 South High Street, Wailuku, Hawaii 96793**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

For final reading before this Council, is a proposed bill, the purpose of which is to declare a moratorium on mining of Central Maui inland sand.

**With all due respect to this Council, what LURF finds most distressing about this bill is that it is unnecessary, unwarranted, and it exposes Maui County to legal challenges due to the flagrant and inappropriate manipulation by its proponents, of the legislative process and misapplication of an extraordinary legal remedy (moratorium) to effectuate a result which appears intended only to further self-interests, as it otherwise clearly fails, both factually and legally, to address or satisfy any legitimate public concerns that reportedly underlie, and which allegedly prompted this measure. The facts are that there is no current sand mining; the bill fails to satisfy the legal standard for a moratorium; is ambiguous, overly broad and challenging to enforce; will have unintended negative consequences; and there are other, existing laws, rules, regulations and processes and legally supportable means to address the concerns that prompted this bill.**

**Background.** LURF understands that this bill was originally initiated due to concerns relating to the excavation, movement and exportation of inland sand, allegedly without proper permits. Contentions also existed regarding the possible mishandling of ancient 'oiwi encountered during the movement of inland sand.

This bill was first proposed as a measure to amend the comprehensive zoning ordinance (Title 19, Maui County Code [MCC]) to establish a moratorium on the exporting of sand off-island. Such a zoning measure would be procedurally subject to review by the County's three Planning Commissions, and final approval by this Council, as is proper for all land use-related matters. Decisions, however, were subsequently made by introducers to instead propose further adaptations of the bill as measures intended to protect the environment under Title 20, MCC - "Environmental Protection," reportedly so that the newly drafted versions of the ordinance could move quicker through the review process.

Even further revisions to the measure were subsequently made in response to legal and practical issues raised by stakeholders and the community, resulting in this final version of the ordinance. LURF continues to believe, however, that many, if not most of the same fundamental concerns relating to the original measure have continued to be overlooked by proponents of the bill, and have still been left unaddressed in its present form.

**LURF's Position.** LURF is not in any way opposed to measures intended to protect Maui's environment and natural resources, or to efforts made to respect and preserve native Hawaiian cultural, archeological or burial sites. LURF must, however, strongly caution against efforts made to further special interests by disregarding and circumventing proper requirements and procedures applicable to the enactment of land use laws and ordinances, including moratoria, particularly in cases where the deprivation of constitutional and vested rights of private landowners may be at stake.

With respect to the subject bill proposing to declare a moratorium on mining Central Maui inland sand, LURF has continued to have both procedural and substantive concerns with the measure, and once again respectfully requests this Council's serious consideration of the following issues:

#### **A. Procedural Concerns**

- 1. This Moratorium Bill Should Have Been Properly Introduced as an Amendment to the Zoning Ordinance (Title 19, MCC), and not as an Environmental Protection Measure (Under Title 20, MCC).**

A moratorium is a local law that takes immediate effect to temporarily prohibit a particular activity or process, so the locality may study the potential effects of the activity and establish new, permanent regulations of that activity. There are different types of moratoria, review and passage of which are subject to different legal authority and criteria, depending on the balance of interests between the municipality and the other parties involved.

LURF believes the proposed moratorium on mining Central Maui inland sand, despite now being characterized and labeled as an environmental protection measure, is in fact, a **land use moratorium**, the proper authority for which is "**zoning**" and not the general "**police power**."

Due to its interplay with, and potential effect on existing zoning ordinance provisions,<sup>1</sup> as well as the proposed imposition of restrictions upon land use and landowners, the proposed bill involving the mining of sand must be considered a **land use moratorium** which must be appropriately vetted via the process in place for the establishment of zoning laws and regulations. Mere removal of language/terms including “excavating” and “stockpiling” which were used in prior drafts and replacement of the same with generic language such as “removing” herein does not in and of itself excuse this proposed measure from proper review pursuant to and consistent with zoning laws and processes.

After review of an earlier draft of the subject ordinance, the County’s attorney itself had in fact commented that, “Mining (aka “resource extraction”) is generally governed within zoning codes across the country” and that “[c]larifying or strengthening the definition of ‘resource extraction’ in Chapter 19.04, MCC [the zoning ordinance], remains our recommendation...”<sup>2</sup> LURF therefore continues to contend that this proposal should be introduced as an amendment to the zoning ordinance (Title 19, MCC) instead of a measure intended to protect the environment under Title 20, MCC.

It is interesting to note that the drafters of this proposed Chapter 20.40, Title 20, MCC, have continued to exclude prior Section 20.40.070 from this final iteration of the ordinance, which expressly acknowledged that administrative enforcement of the new Chapter clearly comes within the purview of Title 19, MCC – Zoning, specifically Section 19.530.030, relating to administrative enforcement. The exclusion of said Section leaves the new Chapter void of enforcement rules or regulations unless such administrative rules are newly created and adopted by the director, which is particularly baffling since expanded penalty provisions for violations are now included in Section 20.40.040 of this bill. Moreover, this final version of the bill now expressly states, in any case, that violations may be prosecuted administratively as **zoning violations pursuant to Section 19.530.030**. LURF also believes it makes no sense to provide for the creation and adoption of separate administrative rules to implement this new chapter, since the stated term of this moratorium ordinance has been effectively reduced to six months (unless the measure is unlawfully expected to be reenacted upon expiration).

Amendments to the zoning ordinance properly require review and consideration by the three County Planning Commissions prior to presentation to the full Council.<sup>3</sup> As will be discussed below, LURF believes comprehensive review of the proposed measure is especially vital and mandatory in this case due to the potential violation of landowners’ constitutional and vested rights as a result of the imposition of such moratorium.

---

<sup>1</sup> See, e.g., definition of “resource extraction” contained in Section 19.04.040, MCC.

<sup>2</sup> See Memo dated September 13, 2017, from Richelle M. Thomson, Deputy Corporation Counsel, to Elle Cochran, Chair, Infrastructure and Environmental Management Committee.

<sup>3</sup> It should be noted that characterization of the proposed moratorium alternately as a “land use” bill rather than a “zoning” bill would still subject the measure to review by the three County Planning Commissions pursuant to Charter, County of Maui, Section 8-8.6, as is proper for the adoption of any land use ordinance.

**2. Imposition of Moratoria is Not Necessary and is Not the Appropriate Mechanism to Resolve the Professed Issue Since Question Exists as to Whether the Proposed Moratorium is Legally Justified.**

**General Police Power Moratoria vs. Land Use Moratoria**

The enactment of temporary restrictions or moratoria on certain activity, including land use, has been held by courts throughout the country to be a valid exercise of local police power only where the restrictions are **reasonable and related to public health, safety or general welfare.**

General Police Power Moratoria

Introducers of this bill propose to have this Council believe that this measure is suitable for passage as a **general police power moratorium** (the authority for which is the county's general "police power" pursuant to other forms of county laws or ordinances [in this case, environmental protection/preservation of historical, cultural, archaeological and burial sites], and **not zoning**), which are introduced to address situations wherein **immediate health and safety problems** are at issue.<sup>4</sup>

In such case, to justify a municipality's attempt to impose a **police power moratorium to temporarily interfere with the beneficial use of private property**, courts have held that the municipality must establish that:

1. It is acting in response to a **dire necessity**;
2. Its action is reasonably calculated to **alleviate or prevent a crisis condition**; and
3. It is **presently taking steps to rectify the problem.**

As far as LURF is presently aware, proponents of this bill have not produced sufficient (if any) evidence to meet the **emergency/crisis elements** of the above three-prong test which is required to justify the passage of the subject moratorium as a **legitimate general police power moratorium based on threats to health and safety.**

LURF believes there is in fact **no urgency or immediate need for a moratorium** in this case since the entities which had previously been involved in mining Central Maui inland sand have agreed to suspend such sand mining operations. In short, **sand mining operations are not currently being conducted on Maui.** Furthermore, LURF questions how there can be an urgency or immediate need for a moratorium for the bill's stated purpose "to conduct further analysis required to establish regulations for mining inland sand" - specifically including an update of the Maui Inland Sand Resource Quantification Study, when funding for such an update has not yet even been secured.

The fundamental elements required to justify a police power moratorium therefore do not even exist in this case.

---

<sup>4</sup> The asserted purpose of the proposed bill is "...to conduct further analysis required to establish regulations for mining inland sand to protect Maui's environment and limited natural resources and prevent the disturbance of Hawaiian historical, cultural, or archeological sites, and unmarked human burial sites."

### Land Use Moratoria

With respect to **land use moratoria**, this Council should be aware that courts have held that interference with the use of private property must be scrutinized through hearing procedures as prescribed by **zoning** laws, and must contain the following key elements in order to be considered legally defensible:

1. a **reasonable time frame** as measured by the action to be accomplished during the term;
2. a **valid public purpose** justifying the moratorium;
3. address a situation where the **burden imposed by the moratorium is being shared substantially by the public at large**;
4. **strict adherence to the procedure for passage/adoption**; and
5. a **time certain when the moratorium will expire**.

No valid public purpose justifying a moratorium presently exists in this case since LURF understands the entities which had previously been involved in mining Central Maui inland sand have suspended their sand mining operations, so that **no sand mining is currently being conducted**. Imposition of the proposed moratorium would therefore be contrary to any public purpose and would only create negative impacts on the needs of the community.

Of significant concern in this instance is the requirement that **the burden imposed by the moratorium be shared by the public at large, as opposed to being placed upon a minority of landowners**, as it would in this case. LURF believes that when the cost of a benefit is placed entirely upon particular land owners rather than spread throughout the jurisdiction, serious consideration must be given to review and discretion of the moratorium to avoid unconstitutional confiscation of private property.

This point is particularly troubling now that the ordinance specifically identifies lots and owners to which the moratorium will apply. LURF questions the process and methodology by which the affected areas and lots were determined, which is critical with respect to the imposition of any moratorium, particularly where the burden imposed is made to be shouldered by such a small sector of the public. And what may be so unique about "Central Maui inland sand" which justifies it being made the subject of this moratorium? Does "inland sand" exist anywhere outside of the designated area? If so, why isn't such Non-Central Maui inland sand, due only to its existence outside of the designated area, considered an equally important natural resource deserving of the same consideration as stated in the Purpose section (Section 20.40.010) of this bill?

LURF must also question the legitimacy and seriousness of the stated purposes of the proposed measure including the reported need to "preserve, and avoid the disturbance of Hawaiian historical, cultural, or archaeological sites and unmarked human burial sites," since such historical, cultural, archaeological and burial sites do not only exist in sand, and should more properly be protected by measures relevant to and inclusive of other sites and areas.

The County's Director of Planning has in fact responded to inquiries by the Infrastructure and Environmental Management (IEM) Committee regarding inland sand regulation and the monitoring and enforcement of resource extraction, reporting that the County's



Cultural Resources Commission has not designated any archaeological, historical, cultural or burial preservation sites in Central Maui.<sup>5</sup> The Director's response also appeared to confirm that no exigency currently exists with respect to the number of permits processed or pending for resource extraction.

And, in the present case, it is arguable that a reasonable time frame within which the specified action is to be accomplished, as well as a definite term or expiration date of the proposed moratorium has been set. While the term for the moratorium has now been shortened to six months, the stipulated time period still certainly appears random and even more unreasonable, especially since as mentioned above, the necessary funding for the anticipated update to the Maui Inland Sand Resource Quantification Study (2006) has not yet even been made available, and review of said Study is required prior to the Council's subsequent drafting and passage of the ordinance permanently regulating the mining of Central Maui inland sand.

Given the circumstances, reduction of the term of the proposed moratorium to six months is meaningless. The arbitrariness of the offered six-month repeal date is exacerbated by language in the draft ordinance allowing for reenactment of the moratorium ordinance by the Council should the stated action not be completed by that time. Therefore, as a legal matter, the measure would likely fail as a lawful land use moratorium since the term appears to have been shortened only to appease the public, and no "real" time certain has been designated within which the indicated action will be accomplished.

In view of these issues, LURF believes the validity of the subject bill and the proposed moratorium as drafted, even when scrutinized utilizing processes as appropriately prescribed and authorized under zoning laws, would be questionable at best. The measure is simply unwarranted and unnecessary; would set bad precedent; and would likely be subject to legal challenge.

## **B. Substantive Concerns**

### **1. Constitutional Concerns – The "Takings" Issue.**

The law and the courts have established strict rules, both as to the procedural (as discussed above) and the substantive requisites of moratoria. The substantive rules are based upon and embody the general principle **that any enactment affecting private property rights must bear a substantial relation to the public health, safety, or general welfare.**

In the event a land use regulation operates to deprive the owner of beneficial economic use of the property, there exists an issue as to whether that owner may be entitled to monetary compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution. And most significantly, as applied to the proposed moratorium, U.S. courts have recently even considered temporary land use controls such as moratoria, to amount to a deprivation of

---

<sup>5</sup> See correspondence dated June 30, 2017 from Mr. William Spence, Director, Department of Planning, to Mayor Alan M. Arakawa, For Transmittal to the IEM Committee.

beneficial use in the property (i.e., a “taking”), potentially entitling landowners to compensation.<sup>6</sup>

Importantly, what is at stake here is the constitutional and vested rights of private property owners, large and small, which should not be improperly manipulated unless the County can prove a proportionality between the effects of the activity sought to be prohibited and the County’s proposed uncompensated taking.<sup>7</sup> In the absence of such proof, the County may be subject to legal challenge and liability for “just compensation.” Such litigation is foreseeable and could likely cost the County substantial sums to defend.

## **2. The Proposed Moratorium Fails to Clearly Define the Activity Affected and the Manner in Which it is Affected.**

Despite additional specification of the geographic area to which this revised version of the moratorium is intended to apply, the provisions of the proposed ordinance remain unclear and overly broad, and fail to provide clear direction with respect to the activity sought to be prohibited and the way in which such activity would be prohibited as is required for any lawful moratorium.

Definitions of key terms including “sand mining” have been reworked to the point of contradicting itself as well as the alleged true intent of the measure. LURF believes the vague and confusing definitions and provisions contained in this draft bill will lead to many enforcement issues.

For example, as a practical matter, will the origin of sand on the lots in the designated area/lots now need to be confirmed prior to movement outside any lot, or is all sand existing on the identified lots assumed to be inland sand classified Qdo by USGS? The moratorium could also unreasonably preclude any type of movement (not only movement from the original, natural location) of inland sand (originating from, or otherwise placed on a lot), including activity such as landscaping, grading and construction on contiguous/multiple lots. LURF is unable to understand how such regulations can be found to be consistent with, and further the purposes of the bill which are supposedly to protect Maui’s environment and limited natural resources, and to prevent the disturbance of Hawaiian historical, cultural, and unmarked human burial sites.

Moreover, the subject moratorium is being proposed to be included into the MCC as a newly added Chapter (20.40) under Title 20. Despite inclusion of additional provisions, the new Chapter 20.40 is still sparsely drafted, containing language which provides minimal direction (contra to what is required to support moratoria), and potentially conflicts with existing ordinance provisions in other titles and chapters of the MCC, thereby easily lending itself to confusion and misinterpretation.

Without any attending provisions, there is a void of detail and direction in Chapter 20.40 required to support this type of overly stringent and unreasonable regulation which

---

<sup>6</sup> See, e.g., *Agins v. Tiburon*, 24 Cal.3d 266 (Sup. Ct. of Calif., 1979), aff’d on oth. grds., 447 U.S. 255 (1980).

<sup>7</sup> At issue specifically, is the constitutionally protected private property rights of landowners as well as the vested rights of property owners and others who have heretofore lawfully complied with necessary statutory and regulatory requirements relating to resource extraction, zoning, and land use.

potentially violates landowners' constitutional and vested rights, and amounts to unlawful confiscation of their property. without legal justification.

### **3. The Proposed Moratorium Would Likely Cause Unintended Negative Consequences.**

**The local community may suffer hardships due to the imposition of the proposed measure.** The proposed moratorium and the inability of individuals or entities to extract or move sand in any amount, for any purpose, may cause hardships for residents, companies, schools, plant nurseries, farms, and other organizations which rely on such activity and/or inland sand for household, business, playground, construction, and agricultural use, as well as for other needs and programs or purposes, many of which serve the community.

Public use and enjoyment of parks, beaches and other recreational and community facilities may also be significantly affected due to the proposed moratorium.

**The proposed measure may create disincentive for construction and have other negative economic impact on Maui/the State of Hawaii.** At a time when the County and the State are attempting to encourage business expansion in, and attract business operations to Hawaii, the proposed measure would exacerbate inefficiency, increase construction costs, and create a disincentive, having a negative impact on construction and development. Increased construction costs will be passed on to home buyers and will thus increase the price of homes and worsen the affordable housing problem in Maui and the State.

### **4. Additional Exemptions and/or Variances Should be Considered by Drafters of the Measure to Avoid Unintended Hardships and Consequences.**

While exceptions to the proposed moratorium were included in previous iterations of the subject ordinance, such exceptions no longer exist in this proposed bill. As expressed in prior testimony, LURF believes that at the very least, exemptions to, or variances from the proposed moratorium should be established and included to allow, for example, activity which may benefit the public, and activity that when completely precluded by the measure, may result in unintended negative consequences (as discussed above), or severe hardship.

Moratoria laws also often contain mechanisms that allow automatic exception, or application for relief from the moratorium. While the current draft of the proposed ordinance does contain a provision allowing adjustment of, or other relief from the moratorium upon approval of a resolution by two-thirds of the members of the County Council, the criteria for qualification of such adjustments (particularly criteria 20.40.060(B) which requires that the proposed activity does not conflict with the purposes of this chapter) is ambiguous and overly broad to allow easy denial or preclusion of any exceptions. Moreover, as discussed above, it is LURF's position that there is no valid purpose for this moratoria ordinance in the first place.

## Conclusion

LURF must once again respectfully caution that any government proposal or action which may potentially divest members of the public of their rights and private property, must not be made heedlessly, particularly where the underlying bases used to justify such proposals are subjective and unsupported by hard facts and clear evidence, and when current and future consequences to public and private property owners could be economically destructive. To support the pursuit of what may be an unnecessary and unwarranted moratorium, passage of such ordinance must be clearly defensible, with measurable benefits resulting therefrom that would sufficiently outweigh potential detriment to private and public property owners, business operators, community members and other stakeholders.

What is so troubling about this Council possibly taking such arbitrary action, especially via use of such an extraordinary legal remedy, is the poor example being set, and the bad precedent being laid, demonstrating the ease with which the county government may so easily elect to utilize its power and influence to overregulate private property without valid purpose or justification. The resulting real and greater danger is that such government overreaching may then be potentially interpreted and exploited by self-interest groups as precedent and support for further advancing improper efforts to regulate use of government and private property in their own favor.

Based on the procedural and substantive concerns articulated above, LURF believes it would be unreasonable, if not irresponsible for this Council to support this proposal as drafted without thorough review and analysis of currently available facts and information relating to the legality and appropriateness of the imposition of a moratorium for effectuating the alleged purposes of this bill<sup>8</sup>; legitimacy of the present need for a moratorium and the bill's true purpose; clearer articulation of the affected activity and contemplated regulation thereof; and further consideration of the potential unintended consequences of such a moratorium, and must therefore recommend **deferral of this proposed measure**.

Thank you for the opportunity to provide comments regarding this matter.

---

<sup>8</sup> While LURF understands that the alleged purpose of the proposed moratorium is, in part, to allow the conducting of further analysis of the sand mining issue, including an update to the 2006 Maui Inland Sand Resource Quantification Study, sufficient facts and information, as well as valid need for the measure must nevertheless presently exist to legally support the imposition of a moratorium, particularly in this type of situation where the potential deprivation of constitutional and vested rights is at stake.

**BILL 117 (2017)  
A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI  
COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL  
MAUI INLAND SAND**

**RANDALL ENDO  
A&B PROPERTIES  
ALEXANDER & BALDWIN, INC.**

**JANUARY 5, 2018**

OFFICE OF THE  
COUNTY CLERK

2018 JAN -4 AM 8:32

RECEIVED

Chair White and Members of the Maui County Council:

I am Randall Endo, testifying on behalf of A&B Properties (A&B) on BILL 117 (2017), "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND." We respectfully oppose this bill.

The stated purpose of this bill is to declare a moratorium on the mining of Central Maui inland sand. However, we are concerned that there may be other unforeseen or unintended consequences and impacts of the proposed bill that would negatively impact the basic needs of Maui's working public—the provision of housing, infrastructure, and other public facilities, as well as the associated jobs and economic benefits of such construction.

We understand that this bill will prohibit the extraction and removal of Central Maui inland sand from the lot where the sand originated. We are concerned that this provision may negatively impact lawfully authorized Maui County grading and grubbing permits. While it is envisioned that sand derived from construction excavation or grading will usually be retained on-site for other uses when possible, certain construction projects may necessitate the movement of sand beyond the boundary of the lot from which the sand originates. This may especially be true for larger

construction projects situated on multiple lots. In addition, when building homes, sometimes the material beneath the structural foundation, which in the Central Maui area may include inland sand, needs to be excavated, removed from the property, and replaced with suitable structural material. This sand mining moratorium would preclude that and therefore could preclude or make more difficult the construction of much needed workforce housing and other community or business facilities in Central Maui, where there are predominantly sandy soils. Similarly, State and County capital improvement projects such as roads and highways, community parks, schools, and other public facilities in Central Maui may also be impeded, due to the presence of inland sand, by the proposed moratorium. Additionally, secondary impacts to employment and economic and social development may also arise with the deferral of State/County capital improvement projects.

Farming and other agricultural operations on Maui could also be negatively impacted, with inland sand prevalent at existing agricultural parcels in Central Maui. Ground and soil preparation, essential activities prior to planting agricultural crops, may be impacted if the inland sand cannot be moved beyond the boundaries of its lot of origin. Thus, implementing diversified agricultural operations in Central Maui may also be impeded should this bill be passed.

The moratorium may also affect the availability of sand on Maui for other beneficial uses. Golf course maintenance and beach replenishment and nourishment are common uses of inland sand here in Maui County which may be negatively impacted by lack of available sand on Maui due to the moratorium.

We understand that a number of Central Maui land owners have requested exemptions from the proposed moratorium, citing various negative impacts that this moratorium will have on affordable/workforce housing projects, a light industrial project, a master planned country town development project, a new private school campus and church, and other development projects. However, it is very difficult to think of every project deserving of an exemption while drafting this bill. We believe it very likely that similar negative impacts may be imposed upon other land owners/development projects who are not granted exemptions from this moratorium, which may in turn have a negative impact on the construction of beneficial capital improvement projects for Maui County.

We view a moratorium as an extreme action that is generally considered in circumstances of dire, imminent harm. That is not the case here. We understand that currently no one is sand mining, as entities that have previously been doing so have unilaterally agreed to suspend their sand mining operations. Thus, we do not see the necessity of pursuing an extreme action such as a moratorium on sand mining at this time.

In addition, we understand that two bills have been introduced which impose various regulatory requirements that may amicably address the sand mining issue. We respectfully recommend that the moratorium on sand mining be deferred, and that discussion and deliberation instead be focused on the two above cited bills to implement additional regulatory requirements on sand mining to directly address this matter.

Please do not risk the imposition of unforeseen or unintended consequences with a sand mining moratorium when none is necessary.

Based on the foregoing, we respectfully request that this bill not be passed.

Thank you for the opportunity to testify.





**HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST**  
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: hilecet.org

RECEIVED  
2018 JAN -4 PM 12: 01

January 4, 2018  
OFFICE OF THE  
COUNTY CLERK

**TO: Maui County Council**

Regular Meeting of January 5, 2018, 9:00 AM, Council Chamber, 8th Floor,  
200 South High Street, Wailuku, Hawaii

**RE: TESTIMONY IN STRONG OPPOSITION OF BILL 117 (2017) - A BILL FOR AN  
ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE,  
DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND  
SAND**

**Honorable Mike White, Chair; Honorable Robert Carroll, Vice-Chair, and Members  
of the Maui County Council,**

The Hawaii Laborers-Employers Cooperation and Education Trust (LECET) is a labor-management partnership between the 5000+ members of the Hawaii Laborers Union and its 250+ unionized contractors.

**Hawaii LECET strongly opposes Bill 117 (2017).** Our Maui members and Maui contractors rely heavily on a healthy construction industry to survive. This bill is unnecessary and will drive the costs of construction up. It proposes a moratorium on lots owned by our unionized contractors, our development partners, and State and County departments.

Hawaii LECET has been a longtime supporter of developments that provide housing on all price points...including affordable, workforce, and rental housing. In order for this to be realized, a strong infrastructure is needed to support such endeavors. Placing a moratorium will only hurt to address these infrastructure development needs, our housing needs, and the future of Maui.

Thank You for the opportunity to testify in **STRONG OPPOSITION of Bill 117 (2017).**

Mahalo and aloha,

**Peter H. M. Lee**

Hawaii Laborers-Employers Cooperation  
and Education Trust

RECEIVED

2018 JAN -4 PM 2:18

OFFICE OF THE  
COUNTY CLERK

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

Council of the County of Maui  
Mike White, Council Chair  
Robert Carroll, Council Vice-Chair

BILL 117 (2018) - A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40 MAUI COUNTY CODE,  
DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND

Friday, January 5, 2018  
9:00 AM  
Council Chamber  
Kalana O Maui Building, 8<sup>th</sup> Floor  
200 South High Street  
Wailuku, Hawaii

Aloha Chair White, Vice-Chair Carroll and Members of the Council:

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents.

We respectfully oppose the proposed bill declaring a moratorium on sand mining of central Maui inland sand.

The sand mining moratorium could delay and potentially halt housing development in central Maui and in turn delay the County of Maui and the State of Hawaii's goals and objectives of increasing the supply of desperately needed housing to meet the needs of our growing population.

The moratorium is not needed as an environmental review process already exists - the State Historic Preservation Division of Department of Land and Natural Resources identifies significant historic properties in project areas and develops and executes plans to handle impacts to the significant historic properties in the public interest. The review process supports the policy of Chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.



RECEIVED

81 5 49 4 - 1111 1105

**(Continued From Page 1)**

For the reasons mentioned, we respectfully request that this proposed bill be held in Council. Thank you for the opportunity to share our opinion with you.



Honorable Mike White, Chair  
Honorable Robert Carroll, Vice-Chair,  
and Members of the County Council  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

**Go Maui, Inc. testimony on “A Bill for an Ordinance Establishing a New Chapter 20.40, Maui County Code, Declaring a Moratorium on Sand Mining of Central Maui Inland Sand” (Item K. Bill No. 117 (2017) on the Council’s Agenda).**

**Friday, January 5, 2018, at 9:00 a.m. in the Council Chamber, Kalana O Maui Building, 8<sup>th</sup> Floor, 200 South High Street, Wailuku, Hawaii 96793**

Dear Chair White, Vice-Chair Robert Carroll and Members of the Maui County Council

Go Maui is a non-profit non-partisan organization that advocates for affordable housing, necessary water use, good well-paying jobs, and a healthy economy.

Go Maui is a champion of good environmental stewardship and the protection of Native Hawaiian cultural sites. Unfortunately, the current sand mining proposal before you does none of these things. Instead, it creates unnecessary controversy and publicity that benefits almost no one and leaves the concern over sand mining lost in overly heated rhetoric.

We are respectfully requesting that the Council defer the proposed measure as we have previously testified when the proposal was in committee.

We remain concerned about the need and legality of a proposed moratorium. We are also concerned about the potential abuse of the county’s general police power and its use to avoid placing the proposal under the category of land use laws or zoning requiring an established procedure for review and council adjudication.

Since there is no sand now being mined in Central Maui why consider a legally dubious moratorium to ban it? What is the moratorium standard to legally allow its imposition? Is there an immediate and dire threat to life or property? What guarantee is there that funds will be included in the upcoming budget for an update of the existing sand mining study?

There are too many dark clouds swirling about this proposal. We will do better by waiting until the weather improves and the sky clears a bit.

Thank you for the opportunity to submit written testimony.

Tom Blackburn-Rodriguez  
Executive Consultant  
Go Maui, Inc.  
808-283-4570  
tominmaui@icloud.com

RECEIVED  
2018 JAN -4 PM 2:41  
OFFICE OF THE  
COUNTY CLERK



# MAUI

CHAMBER OF COMMERCE  
VOICE OF BUSINESS

RECEIVED  
2018 JAN -4 PM 3:43  
OFFICE OF THE  
COUNTY CLERK

**Testimony on Bill 117**  
Re: Moratorium on Sand Mining of Central Maui Inland Sand  
Friday, January 5, 2018

Dear Chair White, Vice Chair Carroll &  
Members of the County Council;

Aloha and Mahalo for the opportunity to provide testimony on this matter.

The Maui Chamber of Commerce opposes the current proposed ordinance to establish a moratorium on sand mining of Central Maui inland sand. We believe the protection of Maui sand is important and were deeply concerned (along with our members) about the exportation of Maui sand off island. We have always supported stopping the exportation of sand off island through this process, but the bill has strayed away from that original intent. The proposed bill in its current form goes above and beyond the original intent to stop the exportation of sand off island by preventing landowners from even moving sand off their lot, which only inhibits landowner's rights.

In addition, we appreciate that letters were sent to all landowners in the affected area informing them of the moratorium. While we understand that you are voting today on those who submitted documentation for exemption, we believe that if additional landowners come forward later, that they should be able to be taken off the list completely as well and not have to go through the waiver process which requires a resolution approved by two-thirds vote.

Lastly, while we appreciate that the moratorium is only for 6 months, we do not think that is enough time to complete the stated purpose of revising the Maui Inland Sand Resource Quantification Study. We are concerned that if the study takes longer than 6 months to complete, the moratorium will continue to be extended, causing further hardship to landowners. We want to ensure that if this bill passes, the moratorium is kept concretely to 6 months and Councilmembers look at other ways to address the issue of sand mining.

We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



# MAUI LANI A MILLS GROUP DEVELOPMENT RECEIVED

January 4, 2018

2018 JAN -5 AM 7:44

Honorable Mike White, Chair  
Maui County Council  
200 South High Street  
Wailuku, HI 96793

OFFICE OF THE  
COUNTY CLERK

Subject: Bill No. 117 (2017) – A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING

Dear Chair White and members of the Maui County Council:

This testimony is in opposition to the proposed Bill No. 117 due to inconsistencies with the proposed legislation and its stated purpose. According to the proposed bill, "The purpose of this chapter is to declare a moratorium on mining of central Maui inland sand to conduct further analysis required to establish regulations for mining inland sand to protect Maui's environment and limited natural resources and prevent the disturbance of Hawaiian historical, cultural, or archaeological sites..."

1. The Maui Inland Sand Resource Quantification Study 2006 concluded, "Much of the great Maui inland sand resources that were available 30 years ago are no longer available, due to development on, or preservation of the larger dunes."

The proposed legislation requires that all sand resources be left on the property and that construction and development occur on top of the resource. This is a **direct contradiction** to the purpose of the bill, and furthermore, concurs with the above-quoted conclusion from the inland sand study.

2. The proposed legislation has ZERO provisions to prevent the disturbance of Hawaiian historical, cultural, or archaeological sites. In addition, it fails to address the County's role as defined in Hawaii Administrative Rules Chapter 13-284, "Section 6E-42, Hawaii Revised Statutes, requires state and county agencies to afford the department an opportunity to comment on any such permit or approval. The following procedures in part define how agencies [the County] meet this statutory requirement." Chapter 13-284, which is enclosed for your reference, includes 23 pages of procedures which are currently not being managed by the County. County staffing and funding is the key to resolution of the community's historical and archaeological concerns.

We hope that the Council will reflect on the purpose of the proposed legislation in addressing community concerns.

Sincerely,

  
Leiane Paci, Partner  
Maui Lani Partners

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-284  
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-284, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review to Comment on Section 6E-42, HRS, Projects", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 284

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION  
REVIEW TO COMMENT ON SECTION 6E-42, HRS, PROJECTS

§13-284-1	Purpose, applicability, and participants
§13-284-2	Definitions
§13-284-3	Conducting a historic preservation review; generally
§13-284-4	Fees
§13-284-5	Identification and inventory of historic properties
§13-284-6	Evaluation of significance
§13-284-7	Determining effects to significant historic properties
§13-284-8	Mitigation
§13-284-9	Verification of completion of the detailed mitigation plan
§13-284-10	Conclusion of the historic preservation review process
§13-284-11	Review of Findings Based on Agency Requests
§13-284-12	Discovery of previously unknown historic properties during implementation of a project
§13-284-13	Penalty

§13-284-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of Hawaii by articulating a historic preservation review process for projects requiring the approval of a state or county agency for a permit, license, certificate, land use change, subdivision, or other entitlement to use. Section 6E-42, Hawaii Revised Statutes, requires state and county agencies to



afford the department an opportunity to comment on any such permit or approval. The following procedures in part define how agencies meet this statutory requirement. The goal of the review process is to identify significant historic properties in project areas, assess any effects, and then to develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore and maintain historic properties for future generations.

(b) This chapter itemizes the review process that the SHPD shall follow to make comments to state and county agencies on permits, licenses, certificates, land use changes, subdivisions, or other entitlements for use which may affect historic properties, thereby meeting the opportunity to comment under section 6E-42, HRS.

(c) Participants in the historic preservation review process.

(1) The primary participants in the process are DLNR, represented by the SHPD, the agency with jurisdiction over the project, and the person proposing the project. The agency has responsibility for initiating the historic preservation review process. The agency may have others prepare the review process items.

(2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties.

[Eff <sup>DEC 1, 2000</sup> ] (Auth: HRS §6E-3)  
(Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-2 Definitions. As used in this chapter unless the context requires otherwise:

"Adverse effects" means any alteration to the characteristics of a historic property.

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in

a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area, and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Comment" means the findings and recommendations of the department provided in writing to the agency.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the person.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form or forms of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the proposed project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff <sup>DEC 1, 2003</sup> ] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-3 Conducting a historic preservation review: generally. (a) A historic preservation review may involve up to six procedural steps, in order to determine if significant historic properties are present and, if so, to develop and execute a detailed mitigation plan and thereby satisfactorily take into account the impact of the project on such historic properties. Any agency involved in this review shall consult with the SHPD and shall obtain the written comments of the SHPD at each step of the review. In cases where any interim protection plans are adequately in place and any data recovery fieldwork has been adequately completed, the project may commence from a historic preservation perspective.

(b) The review steps, described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments which commit to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date shall be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this rule, or by a mutually agreed upon date. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to

concur with the agency's submittal.  
[Eff DEC 11 2003 ] (Auth: HRS §6E-3) (Imp: HRS  
§§6E-1, 6E-3, 6E-42)

§13-284-4 Fees. (a) Filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural, or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff DEC 11 2003 ] (Auth: HRS §§6E-3, 6E-16)  
(Imp: HRS §§6E-3, 6E-16)

§13-284-5 Identification and inventory of historic properties. (a) The agency shall ensure whether historic properties are present in the project area and, if so, it shall ensure that these properties are properly identified and inventoried.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to

undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the actual project. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances then the SHPD shall make this determination in the form of a "no historic properties affected" letter within thirty days; or
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days.
  - (A) If the SHPD finds that no significant historic properties are present, then the SHPD shall issue a written response to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
  - (B) If the SHPD finds historic properties may be present, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey.
- (3) The SHPD shall make all "no historic properties affected" comments available to interested persons by posting notice of all such "no historic properties affected" comments at the SHPD office and on the SHPD's website every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following

working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. During these thirty days, should historic properties be reported to the SHPD, the SHPD shall reconsider its response under the provisions of section 13-284-12.

- (4) If the SHPD indicates that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to the following section of this rule.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD shall indicate which category or combination of categories is needed.
  - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in chapter 13-276. A permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the

survey methodology as set forth in subsections 13-276-5(a) and (c).

- (B) An ethnographic survey may be undertaken when the SHPD concludes that historic properties which may be significant under criterion "e" of paragraph 13-284-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.
- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect, or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the SHPD may request an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5(a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as applicable, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be



- used in the archaeological field survey which shall include:
- (A) The name and qualifications of the principal investigator and investigators;
  - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
  - (C) The anticipated duration of time for the survey;
  - (D) The extent of survey coverage, if applicable. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
  - (E) A discussion of any factors which might limit the survey effort, if applicable;
  - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
  - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, if applicable, with the rationale for these techniques given; and to plot site location, if applicable; and
  - (H) The method to be used to plot site location, if applicable.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is requested, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the

information contained in the plan is adequate or inadequate.

- (1) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
  - (2) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.
- (e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report shall include a summary of the consultation process. The SHPD shall inform the agency within forty five days of SHPD receipt of the report, if the information contained in the report or archaeological assessment is adequate or inadequate.
- (1) If the SHPD determines that the survey, assessment or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey or archaeological assessment is inadequate. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the results.
  - (2) If the SHPD finds the report or archaeological assessment adequate, then the agency shall be sent a written notice of acceptance;
  - (3) Once the survey report or archaeological assessment is considered adequate, seven copies of the report or archaeological assessment shall be made available by the

agency to the public. Two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office libraries, one copy shall be sent to the University of Hawaii at Manoa's Hamilton Library's Pacific Collection, one copy shall be sent to the Bishop Museum's library, one copy shall be sent to the University of Hawaii at Hilo's library, one copy shall be sent to Maui Community College's library and one copy to Kauai Community College's library.

(f) If the SHPD finds the report or archaeological assessment adequate and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written "no historic properties affected" determination.

(g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff DEC 11 2003] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this initial assessment or delegate this assessment, in writing, to the SHPD. This information shall be submitted concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criteria:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or

- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e", to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

(1) The assessment shall:

- (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
- (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited; and
- (C) Evidence of any consultation shall be submitted with the assessment, to include:
- (i) A description of the consultation process used;
- (ii) A list of the individuals or organizations contacted; and
- (iii) A summary of the views and concerns expressed.
- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the

significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.

- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency.
- (4) Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then the historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff. DEC 11 2003 ] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will potentially be harmful. However, the person has agreed to mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental

visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review. These shall be submitted with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

(1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of receipt of the effect determinations. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the effect determinations.

(2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" letter.

(e) When the SHPD comments that the action shall not affect any significant historic properties, the historic preservation review ends. When the comment of the SHPD is that the project will have an "effect, with agreed upon mitigation commitments", then detailed mitigation plans shall be developed by the agency as discussed in the following section.

[Eff DEC 11 2003 ] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the

agency to the SHPD for review and approval. This proposed commitment shall be submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation may occur in five forms.
  - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
  - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure, or object prior to its alteration or destruction.
  - (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
  - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
  - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-284-6(b)(5) are involved, the agency shall initiate a consultation process with ethnic organizations or members of the ethnic group for whom the historic properties have

significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties which may be significant under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

- (3) This proposed mitigation commitment must include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation are proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
  - (B) Brief text justifying these proposed treatments; similar sites can be discussed together in this justification; and
  - (C) If properties which may have significance under criterion "e" are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the mitigation commitments. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for this type of historic property in the case of native Hawaiian burials, following chapter 6E-43, HRS, and section 13-300-33.

(e) After mitigation commitments are accepted the agency shall provide detailed plans for the mitigation work to the SHPD for review and approval. The approved plans shall serve as scopes of work for mitigation.



- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-277. Qualifications of the archaeologist who is the principal investigator for this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the archaeologist who is the principal investigator for the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans' photographic components shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications.
- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided in chapter 13-277 for archaeological properties and properties deemed significant under paragraph 13-284-6(b)(5) and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under criterion "e" as provided in paragraph 13-284-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-284-6(b)(5), the Office of Hawaiian Affairs shall be consulted. The plans shall describe the

- consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
  - (7) If a detailed mitigation plan is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the plan. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the plan.
  - (8) If a detailed mitigation plan is adequate, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once the plan is considered adequate, work can then proceed on the plan.
  - (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan.
- [Eff DEC 11 2003 ] (Auth: HRS §6E-3)  
 (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-9 Verification of completion of the detailed mitigation plan. (a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plan's tasks--usually in the form of a completion report, with one copy submitted.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the agency shall

consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, 2-step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

(1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the documentation.

(2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is adequate and that the historic preservation process is concluded. If the completion report is not adequate, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic properties is to occur, the

agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days to the agency stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-284-9(a-c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the person indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is adequate, the agency shall ensure that seven copies are made available to the same repositories as the survey report noted in paragraph 13-284-5(c)(3). [Eff <sup>DEC 1 1 2001</sup> ]  
 (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-10 Conclusion of the historic preservation review process. (a) The historic preservation review process ends when:

- (1) SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) SHPD agrees that the project shall have "no historic properties affected"; or
- (3) SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff <sup>DEC 1 1 2001</sup> ]  
 (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-11 Review of Findings Based on Agency Requests. (a) Upon the request of an agency the SHPD shall reconsider the findings under sections 13-284-5 (

adequate identification and inventory procedures), 13-284-6 (significance evaluations), 13-284-7 (determination of effects), and 13-284-8 (mitigation), should an agency believe new information has come forth regarding historic properties. To be considered, the inquiry must address specific problems in the findings with supportive new evidence presented. The person conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD shall not suspend action on a project, but the person and agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within 10 working days of receipt of the request at the SHPD office, the SHPD shall advise the person undertaking the project, and the agency involved, in writing of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD, the person undertaking the project, and the agency responsible for the permit or action shall attempt to reach agreement on how to correct the problem. [Eff DEC 1 1 2003 ]  
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

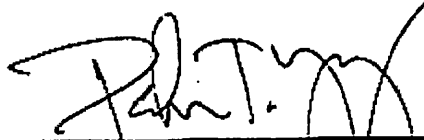
§13-284-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of an inventory report or during the implementation of a project, then the historic preservation review process shall be reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process shall be accelerated, following the procedures of 13-280. [Eff DEC 1 1 2003 ] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-13 Penalty. Failure to obtain the written comments of the SHPD in accordance with this chapter shall result in a SHPD comment to the agency not to proceed with the project. [Eff DEC 1 1 2003 ] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-10, 6E-11, 6E-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-284, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-284 shall take effect ten days after filing with the Office of the Lieutenant Governor.



Peter T. Young, Chairperson  
Board of Land and Natural  
Resources

APPROVED:



Linda Lingle, Governor  
State of Hawaii

Dated: NOV 25 2003

APPROVED AS TO FORM:



Deputy Attorney General

03 DEC -1 AM 54

LEUTENANT GOVERNOR  
OFFICE

Filed

# Sand Mining Moratorium

begoniabarry@gmail.com on behalf of Barbara Barry <gardenmeister@msn.com>

Fri 1/5/2018 8:56 AM

To: County Clerk <County.Clerk@mauicounty.us>;

Aloha Chair and Council Members,

When I read the following information, I clearly understood why certain members of our County Council were absent, stalling or raising issues that were devised to be stalling tactics. How dare the Dept. of Public Works issues an exemption to Maui Lani Partners Phase 9 Sand Mining without any representation from the State Historic Preservation Division!

The County would be wise to suspend this permit immediately or face numerous lawsuits for not upholding Judge Cardoza's preliminary injunction.

Stop this cultural genocide. Enact the moratorium with NO exceptions. No backroom deals allowing illegal sand mining and Iwi Kupuna desecration in these historic and culturally important sand dunes! The old ways of doing business in Maui County do not work or apply any more.

"This bill provides exemption from the moratorium to anyone with an already existing permit. On Dec. 8th, the Dept. of Public Works RENEWED Maui Lani Partners' permit for work in their Phase 9 site - even though a judge issued a preliminary injunction against all work in that area, stating "...disturbance of burial sites will produce substantial, irreparable harm."

Maui Lani Partners has been stopped from working by a Maui court of law but our own county government rubber stamped their request to continue - without talking to the State Historic Presentation Division either. This is just one glaring incident that shows how our permit system is broken and needs to be rectified immediately. Because of the Dept. of Public Work's actions, Maui Lani's Phase 9 site will be exempt from the sand mining moratorium - unless the county rescinds it".

Your job today is to immediately suspend this illegal permit and enforce the Sand Mining Moratorium until the existing dunes can be measured, the Iwi Kupuna protected and the State Historic Preservation Division heavily involved. Do your job!

The Maui Lani Burial Council also recommended at their last meeting that all work be suspended in this Pre Contact, culturally sensitive area until it can be measured and protected.

Mahalo Nui loa for making the right decision today. Your political future depends on it as many people are paying attention to your words and actions.

Ms. Barbara Barry

Ha'iku

RECEIVED  
2018 JAN -8 AM 8:11  
OFFICE OF THE  
COUNTY CLERK