

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

December 1, 2017

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, DECEMBER 1, 2017, BEGINNING AT 9:00 A.M., WITH CHAIR MICHAEL B. WHITE PRESIDING.

CHAIR WHITE: This meeting of the Maui County Council 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 9:02 a.m.)*

DEPUTY COUNTY CLERK JOSIAH K. NISHITA: Mr. Chair, there are eight Members "present", and one Member "excused". A quorum is present to conduct the business of the Council.

CHAIR WHITE: Thank you, Mr. Clerk.

For opening remarks this morning, we will go to Member Guzman.

## OPENING REMARKS

The opening remarks were offered by Councilmember Donald S. Guzman.

CHAIR WHITE: Thank you, Mr. Guzman.

Members and the audience, will you please rise and join me in the Pledge of Allegiance.

(Councilmember King arrived at the meeting at 9:02 a.m.)

## PLEDGE OF ALLEGIANCE

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

CHAIR WHITE: Thank you very much. And if you would all please turn off, turn your cellphones to vibrate and any other noisemaking devices you may have. And please bear with us this morning, as you can see we've got a few football players in the audience and so once, once they leave we'll have more than adequate seating for everybody. And we're happy to have them with us this morning.

And with that, Mr. Clerk, proceed.

DEPUTY COUNTY CLERK: Mr. Chair, proceeding with ceremonial resolutions.

## CEREMONIAL RESOLUTIONS

RESOLUTION  
NO. 17-166

CONGRATULATING THE LAHAINALUNA HIGH  
SCHOOL VARSITY FOOTBALL TEAM FOR  
WINNING THE 2017 FIRST HAWAIIAN BANK  
DIVISION II STATE FOOTBALL CHAMPIONSHIP

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you very much.

I MOVE TO ADOPT THE PROPOSED RESOLUTION ENTITLED "CONGRATULATING THE LAHAINALUNA HIGH SCHOOL VARSITY FOOTBALL TEAM FOR WINNING THE 2017 FIRST HAWAIIAN BANK DIVISION II STATE FOOTBALL CHAMPIONSHIP".

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and I believe the second came from Ms. King.

COUNCILMEMBER COCHRAN: Never had such an applause for a motion before. Thank you very much.

And so, Chair--

CHAIR WHITE: So was that an emotion that you made?

COUNCILMEMBER COCHRAN: --if you don't mind. May I have the Clerk read the resolution in its entirety.

CHAIR WHITE: Certainly.

Mr. Clerk.

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

CHAIR WHITE: Thank you, Mr. Clerk.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. Wow, that was telling that it really takes an entire village and beyond to, you know, raise, raise our families. And, I'm not going to repeat all the "WHEREAS" I think they stated how extraordinary and outstanding and just beyond. How successful this is and again it took, of course the, the players, the

coaches and the families and all the support behind them, you know, to take them to practice, to pick them up and, and it's just incredible. And I think the dedication on everyone's part has made this happen, but, you know, it's really that "Luna Pride" and that, that Lahaina has always had the highest, the, you know, the strongest team spirit of all the, all the districts, of all the high schools and it, it really, this is exemplifying that.

So, I really don't have a whole lot more to say, just that I think that you can feel the energy in the air and the game, of course, was as they stated the wildest game ever. And it was record breaking and history making, and everything else. So, I'm extremely, extremely, proud and honored to be here to present this resolution. And really looking forward to my fellow Members' support of it and to see them bring it home again and again. So, mahalo for this time. Aloha.

CHAIR WHITE: Thank you, Ms. Cochran.

Any further discussion?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you. I, I join, all of Maui County on behalf of our, our positions here as Councilmembers, and I come from the residency of Molokai, and we're very proud because there's a lot of connections with Lahainaluna High School and our island. And how many of our families also have been attending Lahainaluna High School.

But, thank you for giving me a rollercoaster ride. I'm not an athlete but I'm a good spectator and I can, I enjoyed the rollercoaster ride. And it just tells us that your, your dedication, your commitment, I know that you will continue to give that to our County in all that you do. Not only in the field of athletic performances, but as leaders of your school and of our youth. For you are not the future of tomorrow, you are of today. So, mahalo and congratulations to your families and coaches and your, your school. Wear that colors with pride and you have certainly done that. So mahalo.

CHAIR WHITE: Thank you, Ms. Crivello.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Coming from Hana, we always have a lot of Hana people going to Lahainaluna. My grandson use to play football over there. Some of my classmates and their children. And we've always been close. I have always enjoyed watching the games when I could make it up the hill, in stadium over there. I

hardly ever missed one. And we're very, very, very proud of them. They are not only just a school, they are such an important part of the community. Congratulations.

CHAIR WHITE: Thank you, Mr. Carroll.

Mr. Atay.

COUNCILMEMBER ATAY: Thank you, Chair. Before I move on I want to say mahalo to whoever invented Facebook Live because that is how I watched the, the game and thoroughly enjoyed it. And as I watched it, I, I heard, familiar names of various families throughout the entire County of Maui, throughout all the different islands, as well as Lahaina. And so beaming with pride, I want to say hulo hulo to the champions of Lahaina.

CHAIR WHITE: Thank you.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. I too want to express my congratulations and wow what a game. I think it, it was talked about for many days and I can proudly say that the praise "Once a Luna, Always a Luna" is so true. As, as you know the whole town celebrated when they returned and probably every single person was also watching them on, on TV, if they weren't at the game themselves.

And, I, I'm so fortunate to say that I experienced the ohana of Lahaina by going to their football, they have a football golf tournament during the summers. And, it is amazing, it's like sold out and it is to support the team members. And just seeing all, all the team members sitting here, the community comes out and all the alumni to, just to support them and make sure they have the right uniform and equipment and, you know, whatever, financial support they may need.

So truly, it is as Member Cochran said, it takes a village to, to raise a football team, and I support this 100 percent. Thank you.

CHAIR WHITE: Thank you.

Any further discussion?

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. Coming from the sister-island with the other LHS. We, you know, we take great pride in knowing that we've had a lot of close

relationships with West Maui and Lanai, historically, from the old days till now. And I take pride that there's many Lanai families who send their students, their children to Lahainaluna to participate in Lahainaluna activities through the years. And I think we still, still have a Lanai member on the football team also, in this championship team. So, we take great pride in the relationship that Lanai shares with Lahaina and Lahainaluna.

And of course, we take also great pride in their victory and their championship and how they have expressed themselves, held themselves up to statewide review on State TV and shown the sportsmanship and caliber of our youth that is a true reflection of not only their community but our County. So, as they say always, it's "Luna's Forever", and all I can say is "Go Luna's", cause we take pride in your victory. Mahalo.

CHAIR WHITE: Thank you, Mr. Hokama.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Just wanted to add my congratulations and of course I support the resolution. And I also wanted to say that it's times like these when I miss being on the State Board of Education because since there's only one member from Maui, that's where you get the full brunt of I don't want to say rub it in, but you know the pride of being from Maui and having your team take the State championship.

And, and I want to, and I hope, I hope my, my good friend Kili Namau`u who's our new Board of Education member and founder of Punana Leo appreciates, I'm sure she does appreciate it being from Maui and being able to take that pride with her to the State level. But thank you all for your hard work and for your comradery and your teamsmanship. And thank you to the coaches, and the school personnel who support these kinds of efforts.

CHAIR WHITE: Thank you.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. Chair, I also would like to join my colleagues in congratulating the Luna football team. It's basically when, when you uncover your true potential, you must first find your own limits and clearly this team has surpassed and blown past those limits. Football doesn't build character, it reveals character.

So, when I was playing football in those days, it took a lot of hard work, and I know that they sacrificed many hours on the field sweating and building that comradery among each other to build that trust in the team and furthermore take it to the State

championship. So, congratulations again to the Lunas. And I also thank their parents for all their support and glorious victories all to our Heavenly Father. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman.

I'll just add my congratulations for an incredible game and I hope all of you have taken the time to thank your parents for their support, thank your coaches for their support and nurturing because as you all know, a lot of people put a lot of time and energy into putting you on the field and making sure that you got the equipment, got the training, and you've got the practice.

You guys get all the credit for pulling it off, and boy what, what an incredible job. I don't think I've ever heard of seven overtimes and hopefully one of the coaches can share with us whether there had been other games anywhere that were a seven overtime victory. And, hopefully they'll be able to share with us how long the game was because endurance becomes a major factor when the game is that long. So, I take my hat off to all of you young men and especially to the coaches and to the parents for all their support. So, congratulations and "Imua Luna's".

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".

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you very much, Chair and Members. And so, Chair with your permission may I request to have I suppose the coaches and whoever else they'd care to bring down to the podium to receive their certificate and congratulations, and leis from all of us.

And I'll turn the podium over to the coaches and I guess these are your assistant, main, main men over here and the resolution to him.

COACH GARRET TIHADA: Just on behalf of the team, the coaches, and Lahainaluna, we want to thank the Council for recognizing the, these kids for the championship. But most of all I wanted to thank these kids because everybody just sees what they do on Friday and Saturday nights. We have a lot of our kids in, sitting down in this audience right now that from their sixth grade, seventh grade, eighth grade years they've been coming to the weight room at 5:45 in the morning and doing the things that nobody sees, which is what takes to win a championship. And I have just like the utmost respect for these kids because of what they, they do when nobody is watching to become champions. And I know I don't say this enough but, I love you guys. Thank you.

COUNCILMEMBER COCHRAN: No few words but you, you going, you wanted to share, oh, okay.

MR. BAILEY HONDA: We'd like, on behalf of the team we'd like to thank the Council again, we really appreciate for recognizing us. And also not only on our part but it was also, we'd like to thank the community and also the whole County of Maui as we know that we have a large community on our back that we want to support and we want to support you too, and we're very thankful again. Thank you.

COUNCILMEMBER COCHRAN: Thank you very much, Lahainaluna and everyone. And Chair, thank you for this opportunity too.

CHAIR WHITE: Would the--

COUNCILMEMBER COCHRAN: Chair, Chair asked when are the other--

CHAIR WHITE: --and we were, it was, it was suggested that you guys were going to do your haka or your chant, is that still on the agenda? I think there's a request for that if you, if you all are up for it. And if somebody needs to come down here to, so they can see, when to start.

*(The Lahainaluna Football team chanted the Oli Mahalo.)*

CHAIR WHITE: Mahalo to you all as well. Members, I think it's appropriate that we take a short recess to allow the, the team to make its way on their way and make room for the folks that have come to testify this morning. So, we'll be in recess to the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 9:28 A.M., AND WAS RECONVENED AT 9:41 A.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBER GUZMAN, EXCUSED.)

CHAIR WHITE: This meeting will please come back to order. For those of you in the gallery if you would please take your seats. Thank you very much.

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

DEPUTY COUNTY CLERK: For the record RESOLUTION 17-166.

RESOLUTION  
NO. 17-167

CONGRATULATING THE OFFICE OF  
ECONOMIC DEVELOPMENT FOR RECEIVING  
THE EXCELLENCE IN ECONOMIC  
DEVELOPMENT AWARD FROM THE  
INTERNATIONAL ECONOMIC DEVELOPMENT  
COUNCIL

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

I MOVE TO ADOPT THE RESOLUTION ENTITLED  
"CONGRATULATING THE OFFICE OF ECONOMIC  
DEVELOPMENT FOR RECEIVING THE EXCELLENCE IN  
ECONOMIC DEVELOPMENT AWARD FROM THE  
INTERNATIONAL ECONOMIC DEVELOPMENT COUNCIL".

COUNCILMEMBER CRIVELLO:

SECOND.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: May I ask the Clerk to read the resolution in its entirety, please.

CHAIR WHITE: Certainly.

Mr. Clerk.

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

(Councilmember Guzman returned to the meeting at 9:44 a.m.)

CHAIR WHITE: Thank you, Mr. Clerk.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

I'd like to just express my congratulations to the Office of Economic Development as well as the Maui Chamber of Commerce. Today we have Teena Rasmussen and Pam Tumpap also here from the Chamber. And as you know, this event was created with really the brainchild of these two ladies and their offices and it has grown which we saw. It's very exciting at the Maui Arts and Cultural Center with starting off with 60 vendors and now there are, you know, they are up to 240, which is, which was felt when you went shopping there to get ready for Christmas. So, I really congratulate them as well as putting this together, but the economic driver that it has created. So, thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura

Members, any further discussion?

Ms. Crivello, followed by Mr. Carroll.

COUNCILMEMBER CRIVELLO: Thank you, Chair. I, I also want to extend congratulation for the recognition of this award, but I'd also like to extend appreciation on behalf of the vendors that participate countywide. But you know, we also had 16 vendors from Molokai that participated and I think that helps to inoculate their creativity by having the exposure that comes about by being part of this Made In Maui Festival. So, I want to also say thank you and but most of all congratulations.

CHAIR WHITE: Thank you, Ms. Crivello.

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I congratulate them also on the amazing fact that to get an award like that for a place like Maui, how small we are is really extraordinary. And for myself, for Hana District, they have been just really, really invaluable to keeping our economy what it needs to be and helping our people with new businesses, helping existing businesses to expand. They are one of the most important tools that we have in East Maui to keep our economy vital and growing. And thank you so much to them. Mahalo.

CHAIR WHITE: Thank you, Mr. Carroll.

Mr. Atay.

COUNCILMEMBER ATAY: Thank you, Chair. I too would want to congratulate the staff of the Office of Economic Development and also recognizing the importance of the Office of Economic Development with the opportunity of inoculating mom and pop businesses and young entrepreneurs, and giving them opportunities to, to move forward with economic activities. Also, the staff hosting a special event and creating festivals that can bring businesses together and bring the community together which will also increase and create money making opportunities for these families. Congratulations.

CHAIR WHITE: Thank you.

Any further comment, Members?

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. I just wanted to add my appreciation and congratulations to both the Office of Economic Development and the Chamber of Commerce, and to share with the Council that this "Made In Maui" effort goes back to maybe 15 plus years. And I was involved in the original efforts with a very small group of local businesses that floundered until the festival was actually created and this, and it really put a mark on the "Made In Maui" brands.

So, I commend you, I actually have an employee who still works as a volunteer with the organization. And, happy to fund that because it's such a valuable asset to our community. And also, the growth of this festival has been pretty phenomenal for such a short period of time. So, thank you to Teena Rasmussen and Pam Tumpap for those efforts and for creating something that we can be really proud of. And I think the main thing right now is how to manage all the, the people who want to be involved in this festival so that there aren't so many that each one gets diminished. But I, I participated, or my company participated this year, it was extremely impressive.

CHAIR WHITE: Any further discussion, Members?

I would just like to add my congratulations to the two ladies who spearheaded this and say that we were very proud to have you guys at the helm of such a great event. So, congratulations for getting the recognition that you so greatly deserve. Mahalo for your efforts.

With that, Members, 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".

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. With your permission Chair, I would like to ask if Teena Rasmussen from the Office of Economic Development and Pam Tumpap from the Maui Chamber of Commerce can come to the podium.

CHAIR WHITE: Certainly. Please join us.

COUNCILMEMBER SUGIMURA: Mr. Chair, may I ask Teena and Pam to say a few words, please.

CHAIR WHITE: Certainly.

MS. TEENA RASMUSSEN: Well I just want to thank you so much for this recognition, it just means a lot to us and I, I know I speak for Pam and our whole group. It's, it's just been more than we could have ever imagined when we, when we came up with the idea. And the support we've gotten from the community and the fact that we've been able to get as many vendors from Molokai in, and from Hana. And Lanai this year, had four vendors for the first time.

We're just so thrilled that it has brought our whole County together the way it has. And we are moving the needle in entrepreneurship, and we are giving them a showcase for their products. And that's being recognized statewide and even far beyond that.

And so, somebody asked me, you must be exhausted after the festival was over. And I said you know physically maybe yes, but honestly, it's not like work because it just is so exhilarating seeing the activity that's going on. And it's just such a labor of love. And I, I feel that I'm so proud to be a part of it and to have the amazing team of people and dedication of the committee and all the partners we've brought together. And, I just want to humbly thank you as a Council for recognizing this. We, we are so grateful. Thank you.

MS. PAM TUMPAP: I too just want to say that we really want to thank the County Council for recognizing this amazing event, but also for your tremendous support. Your contribution to this event means that we can keep it very affordable. The majority of our companies who participate are very small companies. And you know, we always say Maui No Ka Oi, well Maui County No Ka Oi, we really bring the best of the best.

It's a juried show and people get to meet the entrepreneurs at the show and learn about their passions and find out what brought them to create these amazing products. And we take great pride in the products featured at the show each and every year. And as Teena said, the, the, the economic impact has been huge and we're seeing companies go from a hobby business to, to growing and creating jobs with the partners, with the buyers, wholesalers, and distributors.

And it has taken a village, it's taken all of you to help support it. It's taken the Office of Economic Development who we get to co-present this event with and their amazing team, and the Chamber staff, about a hundred volunteers at the event, and a core group of amazing business development people in our community who come together to make this a success and take it to higher and higher levels each and every year.

And, if you didn't get to go to the festival, you can look on the festival website to, to find out a little bit about the festival, [madeinmauicountyfestival.com](http://madeinmauicountyfestival.com). But also there's an ongoing marketplace where you can find locally made products that you know have been certified as being companies headquartered in Maui County and have 51 percent value added in the State of Hawaii and that is [madeinmauicounty.com](http://madeinmauicounty.com).

So, we encourage you to, to keep buying local, shop local, and thank you so much for helping the whole community for coming together and certainly this Council, and for the great recognition on the award. You've made it a success with us and we appreciate you. Thank you.

CHAIR WHITE: Thank you, ladies. Another round of applause.

Okay, before we proceed with public testimony, we want to hear from everyone who's here today, we have a number of issues that I'm sure everyone is bringing lots of passion for. And so we are going to, we have the ability to limit the timeframe and, but we choose not to limit it to two minutes or one minute like the County Council on Oahu does. We are going to leave it at the three-minute level, but we have at this point nearly 80 people signed up to testify. So I ask that you conclude at the three-minute mark, we are not going to allow the one additional minute to conclude, but we want to make sure that we hear as much from each of you as we can so we will allow the three minutes rather than limiting it any further.

I will ask that everybody not react to any testimony because when we have people on both sides of various issues, we want to show the appropriate level of respect so we will not be allowing clapping, remarking, or any kind of show of support or opposition from the gallery when folks are up here testifying. So we ask that you please provide the appropriate level of respect and aloha as we go through this process.

And with that, I ask that you all be ready to start as soon as you get up here. And the Clerk will be calling two names, the one that is up next and the one following. So if you are the one following, please make your way to this side of the room so that you can come right up after the previous testifier. And, with, Ms. Cochran.

COUNCILMEMBER CRIVELLO: Crivello.

CHAIR WHITE: Ms. Crivello, sorry.

COUNCILMEMBER CRIVELLO: Can you remind testifiers to identify themselves, as we're taking notes, that would be helpful.

CHAIR WHITE: Yeah, thank you. Yeah, just please make sure you identify yourself when you come up to provide your testimony and please be respectful of the time because we want to make sure that everyone that's here has an opportunity to testify. So at the three-minute mark, the red light will go off and there will be a beep, and I just ask that you conclude at that moment.

So with that, let's proceed and Mr. Clerk.

DEPUTY COUNTY CLERK: For the record RESOLUTION 17-167.

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

Individuals who wish to offer testimony from Lanai and Molokai should now sign up with District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located in the eighth-floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda.

When testifying, please state your name and the name of any organization you represent.

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

MS. DENISE FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai, and we currently have one testifier, that is Myles Saruwatari representing himself, testifying on CC 17-484.

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. MYLES SARUWATARI (testifying on County Communication No. 17-484):

Good morning, Council. Thank you for allowing me to testify today. My name is Myles Saruwatari, testifying as a citizen of Lanai. I'm testifying on this CC 17-484. I am not in favor of this amendment proposition because I believe it leaves too much discretionary power within the Council to determine the individual Councilmembers' staff.

And according to what, how this amendment is written, I don't like the language because it leaves too wide open as to why the person can be fired. There's nothing stated in there about ethics, conduct, mismanagement or anything, it's just majority vote to eliminate an aide to a Councilmember. I believe that aide to a Councilmember is the responsibility of the Councilmember himself. And if the Council wishes to change this ruling to be able to have the Councilmember fire that aide, I, I'm all in favor of that. But for the Council itself to fire an aide by majority vote, I do not like that at all because like I said, it leaves the door wide open to any interpretation of conduct or how the job's performed or anything to do with the aide itself. Thank you.

CHAIR WHITE: Thank you for your testimony. Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk and Members, I will not be asking if you need clarification so please just make a, make it known that you're, you have a need for clarification, let me know.

Mr. Clerk.

DEPUTY COUNTY CLERK: Molokai Office, please identify yourself and introduce your first testifier.

MS. ELLA ALCON: Good morning. This is Ella Alcon on Molokai and our first testifier is Makena Fernandez, testifying on CC 17-484, CC 17-472, and CC 17-481.

MR. MAKENA FERNANDEZ (testifying on County Communication Nos. 17-472, 17-481, and 17-484):

Aloha. My name is Makena Fernandez and I'll be testifying on three bills, CC 17-484, CC 17-472, and CC 17-481.

First, I am here to oppose CC 17-484. None of the nine Councilmembers should be dictating another Councilmember or his or her staff. Each Councilmember was voted in to represent their resident area, not to dictate other Councilmembers who represents their own resident area. Each nine Councilmembers' position are equally in value and not one Councilmember is higher than the other.

Mike White as Chair, your responsibility is to collaboratively work with the other Councilmembers for every committee each Councilmember is a part of. This does not mean you are a boss. As shown by your actions introducing this absurd resolution, you demonstrate at this very moment that you are not doing your job. With all the pressing matters happening in each committee, we are being derailed from working on these important issues and thus shows that you're not fulfilling your responsibilities as the Chair and wasting everybody's valuable time to handle these pressing matters to make Maui County a better place. I suggest to kill this resolution and get back to doing your job of handling these serious issues Maui County has going on right now.

Pat Wong, you are nobody's boss and this shows you are not a supportive attorney to all Councilmembers and you demonstrate discrimination against Councilmembers who you are supposed to help and support. File this away now.

Now for bill CC 17-472, I'm in support of CC 17-472. As a paddler and fisherman, I can see the negative impacts oxybenzone and octinoxate has on our reefs in Hawaii. We need to protect our reefs as much as we can for us and our future generations. Please support this bill.

Lastly, on CC 17-481, I oppose the appointment of Carl Adolpho to the Molokai Planning Commission. Mahalo.

CHAIR WHITE: Thank you for your testimony this morning.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, we have approximately 70 individuals who have signed up to testify in the Council chamber. The first person to testify in the Council chamber is Jeff Bagshaw, testifying on Committee Report 17-179. He will be followed by Stephen Beidner.

MR. JEFF BAGSHAW (testifying on Committee Report 17-179):

Good morning, aloha, Maui County Council. Those who have heard me before speak to the Committee are familiar with my testimony and I've provided a summary of those two testimonies before.

I'm with, I'm Jeff Bagshaw, I'm with `Ahihi-Kina`u Natural Area Reserve, which is a portion of Department of Land and Natural Resources. The Reserve is, we have the dubious distinction of being the only reef in the State of Hawaii that is not declining and I'll drive that home again for those who are concerned about Maui tourism. The only reef that's not dying currently.

So, as I've testified before, we know that these compounds are lethal at 62 parts per trillion. Our waters were tested at 1,084 parts per trillion, 18 times the lethal amount. We are losing the reef, it's the healthiest but we are losing it.

Now to those who would say that you just have to do more education, myself, volunteers, interns, have been doing this for two and a half years. We reach approximately 200 people a day out of 700 people a day who still go into the ocean. So, education is not enough. When we approach people, I, I'm, there's a lot of people doing education here in, there's a lot of people on the team doing this on Maui.

I think I'm pretty well qualified if you do the math of 200 people a day for two and a half years, about the barriers that people present to me about why they believe they can't use mineral based sunscreens. And, I haven't shared this in previous testimony but my, I think the number one, and I'll, because I thought it wasn't quite PC enough, but the number one barrier is vanity. It's two-fold, it's people my age who have to admit we need reading glasses, going into the stores to read labels.

And the people who present the greatest barrier are those who are wearing the tiniest swimsuits legal, to be honest. I have no other choice but to put this on, they not wearing swim shirts or tee-shirts. And this goes for even surfers. I can't reach my back, well dude, wear a rash guard, it's been done for generations. So, I believe those are the biggest barriers and I would question if fashion is more important than our reefs.

We've lost 30 to 50 percent of our reefs in 2018. This isn't going to solve everything, but it's a start. And, people all, everyday tell me they come to Maui to see the reefs. I'll just finish by saying tan, or pale, pale is the new tan, that's a tee-shirt I saw a woman wear, pale is the new tan. So, thank you very much.

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

Mr. Clerk.

DEPUTY COUNTY CLERK: The next person to testify is Stephen Beidner, testifying on County Communication 17-484, to be followed by Tom Cook.

MR. STEPHEN BEIDNER (testifying on County Communication No. 17-484):

Good morning, Chair and Councilmembers. My name is Stephen Beidner, I live in Kula. I'm here to testify against item 484. When I first heard about this proposal, this proposed bill, I really thought this had to be a joke. No Councilmember could seriously propose that an elected Councilmember's staff could be removed by other Members of the Council. When I realized that this was an actual real proposal, my next reaction was that this was either a complete and blatant dictatorial power grab or that someone seriously didn't understand or respect democracy and elections.

You were all elected at the same time, no one is more equal than the other. What's next, a proposal allowing majority of the Council to remove actual Councilmembers if they didn't like them or disagree with them.

Does anyone think that this flawed procedure should be inflicted on all legislative bodies, State and Federal? Does anyone think that Mitch McConnell and Paul Ryan should, and their Republican majority in Congress should be able to tell our Senators Schatz and Hirono and Representative Gabbard, who they should or shouldn't select as their trusted aides.

Let me remind you that power and majorities and coalitions can be fleeting. Those in the majority today may be in the minority after a future election. Do you really, does the people in the majority now really want other people vetoing their selections when they are not in the majority? If this bill passes, I'm confident it will wind up in court costing, costing all the taxpayers enormous amounts of money. The Council will wind up spending much of its time defending it and dealing with its ramifications and lots of ill will will be created.

With all the big issues facing Maui County and this Council, is this really how you want to spend your time on really petty politics as far as I'm concerned. I urge you to withdraw this proposal now and get on with the other items on the agenda and the people's business of making Maui a better place in the jobs you're elected to do. Thank you very much.

CHAIR WHITE: Thank you, Mr. Beidner.

Mr. Clerk.

DEPUTY COUNTY CLERK: The next person to testify is Tom Cook, testifying on County Communication 17-482, to be followed by Mark Sheehan.

MR. TOM COOK (testifying on County Communication No. 17-482):

Good day, good day, Council Chair, Councilmembers. My name is Tom Cook, I'm here today, I'm giving testimony today as an individual, I'm a local contractor. I urge you to retain Dave Taylor as the Director of Maui County Water Department. Attached to this testimony, I did pass you out my testimony, attached to this testimony is a hand drawn organizational chart done by Mr. Taylor when I met with him regarding the Mayor offering me the Deputy Director of the Department of Water Supply, when Paul Meyer retired in January.

Dave made this the night before we met at his office, so he could show me the various parts of the Department and the various mandatorial tasks required to run the Department. I was impressed with his total grasp of the entire Department which is extensive and multi-faceted. We discussed each aspect at length. He knows the

Department inside and out. He was very objective about my possibly taking the job. I determined I was not qualified for the job and that my passion was to work on the implementation of the MAPPS program and building permit improvement.

During his employment at the Department of Water Supply, Dave has worked with his staff and developed detailed spreadsheets outlining the time and money required for different funding scenarios. I watched him on Akaku give the Council Budget Committee, previous Council, three options for funding: 1) Basic fix things as they break; 2) Middle, keep the system working with some CIP upgrades; or 3) The general, implement the General Plan goals, invest a significant amount of money over a period of years to replace old pipes, develop necessary source for future growth and build the storage reservoirs and tanks required for Maui's planned growth. These suggestions were linked to the water rates and fees that the Department requires for their capital improvements.

Please keep in mind, the Department of Water Supply use to be an autonomous agency, not subject to control by the Mayor or the Council. It was structured that way to keep it from being political. It is our public utility and should be outside of the political decision-making process.

The Mayor's removal of Mr. Taylor is political. This Administration has one more year before our community votes for a new Mayor. The new Mayor will have the option to retain Mr. Taylor. If, if a new director is nominated and approved, it would be a structured professional transition for the Department. Not this administration leave dictated by the Mayor that is based on, not on any wrongdoing other than not agreeing with the Mayor on a water source purchase issue.

Thank you for the opportunity to give this testimony to you. Feel free to ask for any clarification. Thank you very much.

CHAIR WHITE: Thank you, Mr. Cook.

COUNCILMEMBER KING: Chair, I have a question.

CHAIR WHITE: Yes, Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Cook. Since you, you seem to have a good relationship with the Department of Water Supply, are you aware of any, and I would be asking the Mayor this except he's not here today, but are you aware of any other engineer that is ready to step up to that position because it is in the Charter that either the Director or the Deputy Director has to be an engineer. So do you have any knowledge of that, of what, what the replacement would be.

MR. COOK: My, my understanding is there was a recommendation from within the Department to promote from within to the Deputy Director position when Mr. Meyer retired and that was the Mayor in my conversations with him, they felt strongly that they needed to appoint someone. Part of my resistance was I didn't want to be a political appointee in an inappropriate position. And I felt it would be bad for morale for the Department. But, that didn't go over too good.

COUNCILMEMBER KING: Well, I appreciate your candor and I appreciate your attention to professionalism. Thank you.

MR. COOK: Thank you.

CHAIR WHITE: Thank you, Mr. Cook.

MR. COOK: Yeah, aloha.

CHAIR WHITE: Mr. Clerk.

DEPUTY COUNTY CLERK: The next person to testify is Mark Sheehan, testifying on County Communications 17-473, 17-480, 17-484, Committee Report 17-178, and Bill 92 (2017), to be followed by Deren Ash.

MR. MARK SHEEHAN [testifying on County Communication Nos. 17-473, 17-480, 17-484, Committee Report 17-178, and Bill No. 92 (2017)]:

Good morning, Council Chair, Councilmembers. My name is Mark Sheehan and I will try not to use up all my time here. It's not related to any of these bills but I wanted to point out to you that Hawaii Business has a 20-page special supplement on the environment that's very inspiring with a particular dedication by Nainoa Thompson using the analogy of our, how we approach our future. We can do it safely by staying tied to the dock, or sail out into the storm where there are greater risks. But it, there's more hopefulness and if we face those challenges and we are facing some serious challenges and we'll need a team of people who can cooperate and respect each other and work in concert to face those challenges.

With regard to oxybenzone, there must be a lot of money in sunscreens because I see there are some high-powered attorneys here to address that issue. But I want to use the analogy of hunting wild animals which is, it's been determined that those animals are worth far more alive than dead. If we say that and truly understand that the

environment is our economy, then the, the reef which is alive and, and, and fortunately we have a fairly healthy reef needs to be preserved.

And, as the, Mr. Bagshaw said, we can't really allow merely profits and vanity to prevent us from taking the necessary action to ban oxybenzone and sunscreens with it. So I hope you will approve that measure.

On Bill 92, the property tax per condos and raising it to the highest rate that can be charged. I'm afraid, I hope you will really look at this carefully because I'm concerned about the unintended consequences of raising rates on things, on condominiums, long-term condominiums that might motivate the owners to try to move them into short-term rentals and therefore depriving us of necessary units for the working people of this island.

That issue of affordable housing along with homelessness is something that should be on the agenda, every agenda, until those issues are really handled.

From that I would like to also move on to the Front Street Apartments. I would like to propose that we not assign this, ask the State to intervene and deal with this issue, but that we deal with it. These are our residents, the, there are 140 units there, so several hundred people will be turned out if we allow this to proceed to commercial sale.

And I think that the County has the ability, this has been appraised at \$8.7 million. I think the Council has the ability to acquire this via eminent domain. And if we were to pay \$9 or even \$10 million we'd be acquiring those units for somewhere between \$63 and \$70,000 per unit. You can't build those units for three times that amount.

So we can save a housing crisis, a crisis in those families by taking the action to solve this problem by exercising eminent domain and then having the County acquire it and thereby could be left in, in the long-term as a affordable housing. So, please consider that as the more courageous remedy for resolving this issue and not expecting the State to step in.

With regard to the Communication 17-48 *[sic]* about native Hawaiian burials and preservation of historic property. I think we're talking here, correct me if I'm wrong, with regard to the, the sand mining dunes. And once again, I really don't want to ask some State agency like the State Historical Preservation Division to deal with an issue like this. They are underfunded, I don't really have that, nor should you have that much confidence that the State is going to solve our problems. And I'm afraid that by asking the State to deal with the issue instead of dealing with it here at the Council, we're going to allow more people who have projects here on Maui to acquire their sand for

their projects. And instead of really making decisions, will defer decisions and allow more problems to develop. So I would encourage you to not, not do that.

And finally, with regard to issue 17-484. Please, in a, a month ago on a radio interview, President Trump lamented the fact that he didn't have the ability, even though he's President of the United States, to prosecute his enemies. If he doesn't have that ability, the, the Council shouldn't have that ability nor should the Chair of the Council have that ability. Please, so, you know democracy doesn't die with a sudden death, it dies, it dies with a thousand small cuts, decisions not made, the inability to really face up to the implications of decisions like this, and you have to look at the long-term implications.

What's behind this? Why, why does he have so much charge about this. What is it that Mr. Bardellini is really doing that is so offensive to the Chair of the Council that he can lock him out of the seventh floor, can make it difficult for Mr. Atay to reach and take advantage of Council Services. The Council Services in that budget is not the Chair of Council's own private piggy bank. It belongs to the entire Council and the Council Services are there to serve all of you.

So, if we start passing these kind of measures where the Chair can kind of terminate Mr. Atay's assistants, how long will it be before he gets offended by someone else and he wants Ms. Cochran's aides to, you know, remove themselves. Or will they all be looking over their shoulders and wondering what's going to happen to me next. Do I have to watch what I say; do I have to watch where I go? We don't want this level of intimidation in this Council.

This is not how, why we elected you. We elected you to work together and support each other and to respect each other's assistants. So, you know, there are freedom of speech implications here and I hope you will respect the fact that, that these deeper issues are, are very, very significant and so please file this measure and, and do the right thing. We don't want that kind of power invested either in the majority on the Council or the Chair. Thank you.

CHAIR WHITE: Thank you, Mr. Sheehan.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Deren Ash, testifying on Committee Report 17-182, to be followed by Carlos Gutierrez.

MR. DEREN ASH (testifying on Committee Report 17-182):

Morning, Chair and Members and thanks for the opportunity to testify in favor of 17-182, the proposed resolution to include enforcement of Victims Bill of Rights in the Legislative Package. Most of you heard me testify in Committee about why we need enforcement of 801D, that's the Statute titled, Basic Bill of Rights for Victims and Witnesses. We all know 801D is inadequate and its biggest inadequacy is its complete lack of enforcement and that's what this bill would fix.

So, if we listen to our Prosecutor JD Kim, everybody's doing a perfect job of following 801D. So I want to share an example, a pretty nasty one that proves that that's not actually the case. So I know you've also all heard of the Charli Scott case. What you may not know is that one of the key pieces of evidence was Charli's remains, some small bones, a jaw bone, a finger bone. Now 801D, so since they're just small body parts, small remains, they're not considered a body, they are considered property. And as next of kin, Charli's mom, Kim Scott, is the owner of that property.

801D says that evidence must be expeditiously returned when no longer needed as evidence. Deputy Prosecutor Rivera specifically told Charli's mom that that was no longer useful as evidence because it had been left unrefrigerated for six months. So you'd expect then, following 801D, for that to be immediately followed by, we'll return that to you, right. No, he pretty much said, nope, we're not going to return it to you. Completely flaunted 801D, I don't know if it's Rivera's fault, or JD Kim's fault, or the Judge's fault for not signing off on it.

But you can bet that if 801D was enforceable, if the Prosecutor knew that he could be sued for it or there would be repercussions, that he would have seen to it that Charli's remains were returned to her mother so that she could bury her.

So, Chairman White, you brought up a good point in Committee that it's tough to support something that opens the County up to liability. But I also want to remind everybody that pretty much any other law, if a County employee violates it, if anyone in this room violates it, that you'll be held accountable. If you cause a traffic accident and you're on the clock and somebody gets hurt, you'll be sued, and the County will be sued if you're on the clock.

So, why shouldn't there be accountability for 801D, something that's supposed to be carried out by attorneys who should know the law. That's their job but they know there's no consequence so they're going to flaunt it. So maybe there's a better solution than civil liability, but, or maybe a layer in between before it gets to that but we still need the civil liability so that victims can take it into their own hands. If it gets to that point,

they've already been victimized at least twice, once by the crime, again by the Prosecutor, so we need this. Thank you.

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

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Carlos Gutierrez, testifying on Committee Report 17-179, to be followed by Jay Sirois.

MR. CARLOS GUTIERREZ (testifying on Committee Report 17-179):

Thank you, Mr. Chairman and Members of the Council. My name is Carlos Gutierrez, I'm the Vice President of State and Local Government Affairs for the Consumer Healthcare Products Association. We're the national trade organization representing the makers of oxybenzone sunscreen.

I'm here to speak in opposition to 17-179, and not because we don't value the, the reef and the health of the coral reef, but, you know, we all want healthy coral. I guess what we fear is the unintended consequences to the health of the people of Maui, it's tourist, especially given that oxybenzone is not a major reason for reef decline.

I guess the bottom line for us is sunscreen saves lives. There's no debate about that. The USFDA, the Centers for Disease Control, US Surgeon General, the American Academy of Dermatology, Skin Cancer Foundation, many others all agree that sunscreens play a critical role in a safe sun regiment. I think that's really important here in Hawaii as the CDC claims that almost 20 people out of every 100,000 will develop or die of melanoma every single year. And that's not surprising because Hawaii does rate at the highest level of the UV index, to the point where the USEPA suggests that every resident or anyone in Hawaii should really be using sunscreen every two hours, even on cloudy days.

So without a doubt oxybenzone has a health benefit. And that's why the vast majority of sunscreens on the market today have it. That's why a lot of consumer care products have it as well. This ordinance, what we fear is that will limit that ability, that ability to protect many people. Leave the facility with mineral sunscreens, there's far fewer of those on the market. And we don't know the unintended consequences of those products either. As it is, the CDC says that only 37 percent of women, only 16 percent of men, regularly use sunscreen. We worry that by limiting access you'll make those numbers go up.

And I do want to emphasize that there's no such thing as reef safe sunscreen. No governmental body has ever defined that term. No governmental body has ever awarded that designation. So I think there are sunscreens that are marketing themselves as that, and, but that's not just me saying it, Hawaii's own DLNR has also made that statement about cautioning about reef safe sunscreen.

So, our opposition lies on how this translates as health policy for people. I think we do have some questions on some of the science that was presented in Committee. I think there's questions on how this would even be enforced. And I can say finally, Mr. Chairman, that we have retained legal counsel both in Washington DC and here in Hawaii, all of which agree wholeheartedly with your Corporation Counsel findings.

CHAIR WHITE: Thank you very much for your testimony.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Jay Sirois, testifying on Committee Report 17-179, to be followed by Margery Bronster.

DR. JAY SIROIS (testifying on Committee Report 17-179):

Thank you, Mr. Chairman, for the opportunity to comment on the important issue being considered here this morning. My name is Dr. Jay Sirois, I'm the Senior Director of Regulatory & Scientific Affairs at the Consumer Healthcare Products Association, the 136-year-old association representing manufacturers of over-the-counter drugs including those that market sunscreen products. I have a PhD in Pharmacology and Toxicology as well as Environmental Toxicology.

While my comments today are in opposition to the proposed ban on SPF sunscreen products, let me first state that I currently reside in Florida near the beach and appreciate the value that a healthy and diverse ecosystem provides to a community, particularly one as scenic as Maui.

Regular sunscreen use is a proven method of reducing the skin damaging effects of UV radiation and can prevent melanoma, and other melanoma, other, excuse me, non-melanoma related skin cancers. Numerous professional and medical organizations including the American Cancer Society, the American Academy of Dermatology, and the CDC recommend the use of a broad-spectrum sunscreen, or one that protects against both UVA and UVB radiation. Dermatologists agree that the best sunscreen is the one that is used on a regular basis. Factors contributing to effective use of sunscreen include cost, cosmetic elegance, and product performance.

In the US, a limited number of sunscreen active ingredients are available which provide broad spectrum protection. One of these, oxybenzone is critical for providing the needed SPF protection broad-spectrum coverage and stabilization of avobenzone, another very effective broad-spectrum ingredient. Consumer preference is an important determinant of use and reducing the number of available sunscreens is very likely to result in reduced use.

When translating science into governmental policy, decisions should be based on sound science and not popularity or fear. We believe that when viewed in its entirety, the currently available evidence on the causes of coral reef bleaching and mortality both in Hawaii as well as the world over, overwhelmingly demonstrates that climate change, ocean acidification and runoff are primarily responsible. The study underlying this proposed ban evaluated the effects of oxybenzone on coral health in a lab setting and is yet to be replicated in real world conditions. A much larger body of work exists, demonstrating reef bleaching occurs irrespective of whether an area experiences high level of human activity, strongly suggesting sunscreens are not causing a problem.

Indeed, a recent study from the Hawaii Institute of Marine Biology noted that elevated ocean temperature was more influential in coral reef bleaching compared to visitor use. Even the author of the oxybenzone study has noted that climate change and runoff contribute more to coral bleaching. And some, banning individual sunscreen ingredients would likely result in no significant benefit to coral reef populations while conversely creating the potential for significant public health implications associated with enhanced exposure to UV radiation.

We welcome continued discussion on the topic and would be happy to answer any questions or provide additional input.

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

DR. SIROIS: Thank you.

COUNCILMEMBER KING: I have a question, Chair.

CHAIR WHITE: Mr. Clerk.

Oh, I'm sorry. You have a question, Ms. King.

COUNCILMEMBER KING: Thank you. Thank you for being here. For yourself and previous testifier, I'm not sure if you're taking the same position that the DLNR says that there are no reef safe sunscreens that was mentioned previously. Is that your position?

DR. SIROIS: Yes, I did, I had that in my comments but unfortunately--

COUNCILMEMBER KING: Have you seen the flyer that is being handed out by the DLNR out at `Ahihi-Kina`u that Jeff Bagshaw referred to earlier? It says right in it, but there are products that can protect your skin without damaging the reefs. So this is a position of the DLNR.

DR. SIROIS: I'm, I'm basing my opinion on the, the science that is available. I have seen the flyer but I am not aware of any study that's compared the reef safety of mineral sunscreen ingredients to chemicals.

COUNCILMEMBER KING: So you're, you're, I just want to make it clear you're debating the studies that they referred to in this flyer then. So, I, you know, you're, you apparently believe the, the science of climate change, but not the science, I mean there's, there's different, and I agree there is difference, different data but I'm just, you know, hoping that you will maybe take into account that there is data that does say that that is effective. So, that will be provided later on when we take this up. Thank you.

DR. SIROIS: Thank you.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR WHITE: Okay, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. Just a basic question, the ordinance provides for an exception for prescription sunscreen. Are you aware of any type of prescription type of sunscreens?

DR. SIROIS: I am not, I know the vast majority of sunscreens that are available in the market, the ingredients are regulated under the, the NDA monograph. There's, I think, 16 separate ingredients that are under the FDA monograph, there's one that was an approved product. But of those there's only maybe a little less than half that are actually used, and I'm not aware, not saying there aren't prescription products, but I'm just not aware of them.

COUNCILMEMBER GUZMAN: Okay, thank you, Chair.

CHAIR WHITE: Ms. Sugimura. And again I'm, I'm assuming these gentlemen will be around later on, but, please proceed.

COUNCILMEMBER SUGIMURA: I just have one question. So, I wonder if you have an opinion regarding the Federal Commerce Clause and how this legislation may impact the Federal Commerce Clause.

DR. SIROIS: I, I--

COUNCILMEMBER SUGIMURA: Are, are you the wrong--

DR. SIROIS: I'm unfortunately the wrong person to ask that question. I'm a scientist and very unskilled in the law.

COUNCILMEMBER SUGIMURA: Okay, thank you.

DR. SIROIS: I would have to defer to my colleagues on that one.

COUNCILMEMBER SUGIMURA: Thank you.

DR. SIROIS: Apologize. Thank you very much.

CHAIR WHITE: Thank you for being here this morning.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Margery Bronster, testifying on Committee Report 17-179, to be followed by Rose Marie Duey.

MS. MARGERY BRONSTER (testifying on Committee Report 17-179):

Good morning, Mr. Chair and Councilmembers. I am Margery Bronster and I'm here to testify against 17-179. And the focus of my testimony is on the legal infirmities of this bill.

As the Council is well aware, we are a State that has limited delegation of responsibility to the Counties. And as such, the County may only exercise regulatory authority over areas that have been delegated to the Counties. And in this case, there is no delegation of authority to the Counties with respect to the reefs, or with respect to drugs. So, in addition to a Commerce Clause problems that I will touch on very briefly, the primary concern that I looked at was the question of State preemption. And I believe that your Corporation Counsel has also looked at this issue and has also noted that there are serious concerns about whether or not the County may act in these areas.

Now in this case, you have to look at the fact that the State Constitution and the State Legislature have expressed an intent to place the regulation of aquatic resources in the DLNR. And specifically, the State reserves the authority from the upper reaches of the surf all the way out to the extent of the State police power and management authority. And that is exclusive. As such, if you pass a bill like this, it could be subject to challenge and we believe would not be sustainable.

In addition, the State also placed exclusive regulatory authority over the sale and use of over the counter drugs to the Department of Health. And this bill actually reminds us of a set of cases in 2014 regarding bans or proposed bans on GMO seeds where it was established and found by not only the District Courts locally, but also the Ninth Circuit that the State had a comprehensive statutory scheme which was intended to be uniform and exclusive throughout the State. In that case, it was placed within the Department of Health, I'm, I'm sorry, the Department of Ag. We believe that these same issues relate here where the State has given the authority to the Department of Health with respect to drugs, and to the DLNR with respect to aquatic life and the reefs.

My time, I think is about up and so this is an issue that could be debated for hours on the legal issues, and if the bill is passed we're afraid that we may have to do that. But I think that the Commerce Clause issues, preemption issues--

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

MS. BRONSTER: --do raise serious concerns. Thank you.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Hold on, Ms. Bronster.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you very much, Ms. Bronster. Are, are you currently retained by anybody or any entity.

MS. BRONSTER: Yes, I have been retained by the Consumer Healthcare Products Association.

COUNCILMEMBER GUZMAN: Okay, thank you.

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

CHAIR WHITE: Oh, I'm sorry.

Ms. King.

COUNCILMEMBER KING: Ms. Bronster, is tobacco considered a drug, under FDA?

MS. BRONSTER: Um, yes and no. I mean, it's, it's a complicated issue as to whether or not tobacco is a drug for purposes of, of the FDA regulation. But we do know that the oxybenzone is a, an element that has been approved by the FDA for use in sunscreen, and as such, any regulation against that would be contrary--

COUNCILMEMBER KING: Right, but that wasn't my question.

MS. BRONSTER: --to the, I understand, I understand that--

COUNCILMEMBER KING: My question was about tobacco because this, this body approved a ban of tobacco from our beaches and we haven't had a legal challenge. You anticipate a legal challenge on that?

MS. BRONSTER: I, I don't know. I don't know. But I will--

COUNCILMEMBER KING: Thank you, Chair.

MS. BRONSTER: But I will say that the ban that you're proposing here is a result, also has a potential problem because the nexus between the ban, which would be Countywide, and not limited to the beaches. There's a serious question as to whether or not that deals with the problem in, in a manner that would not violate the Federal Commerce Clause because it is not, it is not narrowly tailored. That raises another issue. But there are, there are many, many issues that we could discuss.

COUNCILMEMBER KING: Yeah, I have, I, I have a response to that but I'll save it for the later debate. Chair, thank you.

CHAIR WHITE: Mr. Atay, did you want.

Mr. Atay.

COUNCILMEMBER ATAY: Thank you, Chair. Thank you, Ms. Bronster for being here. I just got little bit confused of your recitations of laws. So, what, what I want to try to be clear about is do you recognize native Hawaiian gathering rights.

MS. BRONSTER: Well are they recognized, absolutely.

COUNCILMEMBER ATAY: Yeah, and so I'm trying to follow because in, in, in earlier opining from counsel, we recognize the existence of old law superseding new law. And, so the affects that I look at is the gathering rights that, that changes the gathering of our limu and our fish that's on our reef, that is harmed by these chemicals. So the protection of the old law, the gatherers of the indigenous rights supersedes all of those things that you are bringing up. So I just want to get clarification, do you agree with that.

MS. BRONSTER: No, I do not.

COUNCILMEMBER ATAY: Okay.

MS. BRONSTER: I think the Supreme Court--

CHAIR WHITE: Members--

COUNCILMEMBER ATAY: Okay, thank you.

CHAIR WHITE: No reaction, no raising of hands, the lady in the front row, please.

Thank you, Mr. Atay.

Ms. Sugimura.

We're back in session.

COUNCILMEMBER SUGIMURA: Thank you. So, I would like to ask you that if you could share with us your comment which we didn't get to because of time limits, I think regarding the Commerce, Federal Commerce Clause.

MS. BRONSTER: Essentially this Federal Commerce Clause is a clause which prevents the State's from taking action, the State's and any subdivisions from taking any action that would interfere with commerce between the States, between and amongst the States. And if you are in an area where you can interfere with Interstate Commerce, then the law that you pass must be narrowly tailored in the most limited way in order to make sure that it has the least impact on Interstate Commerce.

So, we believe, I, in looking at this, it looks as though it does have an interference with Interstate Commerce in terms of the bringing in, the sale, the distribution of over the counter drugs that have been approved by the, the FDA and are sold both throughout

the State and here in Maui County. And it also has a problem because it is not narrowly tailored. If, you're not preventing just the use of sunscreens on the beach, you're preventing it in the mountains, you're preventing it in your backyard. And so these are issues that if it got to court, we believe would have to be analyzed in much greater depth than the few moments that you kindly granted me today.

COUNCILMEMBER SUGIMURA: Thank you

CHAIR WHITE: Thank you for being here this morning.

MS. BRONSTER: You're very welcome.

CHAIR WHITE: Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Rose Marie Duey, testifying on County Communication 17-482, to be followed by John Duey.

MS. ROSE MARIE DUEY (testifying on County Communication No. 17-482):

Aloha, Mr. White. Aloha, Councilmembers. As you see I've gotten older so I need . . . some glasses. I've missed you folks, I mean truly have. I've been on the mainland in Michigan, and my husband is from Indiana, but his family is from there. So, I've been gone at least three months, last summer was six months, so I really miss home. Any way I miss you all.

I'm here to talk about the County Communication 17-482 because that is dearest to my husband and our family's concern. My name is Rose Marie Duey, I was born in Lahaina and a resident of Lao Valley for 48 years. I would like to speak about the County Communication 17-482, the Department of Water Director. I don't want you playing with this as politics. This is so important to us.

So, I want to ditto because most of the things I would say here is exactly what Mr. Tom Cook said. So, I'll just ditto what he said and I, in closing I will say that please do not use this for politics. Water is a very important issue to the Na Wai Eha and if water becomes a bouncing ball, that water will disappear I'm sure. So unless there is any wrongdoing by Mr. Taylor, I'm for all, I'm for him staying. Thank you.

CHAIR WHITE: Thank you, Ms. Duey.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is John Duey, testifying on County Communication 17-482, to be followed by Grant Chun.

MR. JOHN DUEY (testifying on County Communication No. 17-482):

Good morning, Chair White, Councilmembers, members of the gallery, galley, whoever you are. I am here to speak on Communication 17-482, the Water Director. I'm going to use my iPad, I'm, you young whippersnappers been using these things for a while so I'm going to use mine. My name is John V. Duey, owner and resident of Iao Valley since 1969.

As most of you know I've been involved in the water issues on Maui for the past 14 years, mostly having to do with Na Wai Eha. During that time, I had the opportunity to work with three different Directors of Water Supply. I understand that Mr. Taylor is, is, the Mayor wants to dismiss, dismiss Mr. Taylor. I also understand that he has done nothing wrong except to not totally agree with the Mayor. This is where you folks and the public can be involved. I have not always agreed with Dave, but I respect him for his job he was tasked with, and how he went about doing his job. I think he respects me for my interest in instream flow standards, upholding the law, T&C traditional and customary practices. We have a mutual understanding.

I have set the, I have sat through more than one of his presentations, his technical skill of how and why things happen and what has to happen, the long-term has always impressed me. He understands the system, don't disrupt things now. There being only one more year in this Administration in which the Mayor will be gone, and maybe Dave would be gone, so don't, don't remove him for unknown things. Mahalo for listening, Merry Christmas, and have a Happy New Year.

CHAIR WHITE: Thank you, Mr. Duey.

MR. DUEY: You're welcome.

CHAIR WHITE: Good to see you back.

MR. DUEY: Thank you.

CHAIR WHITE: Mr. Clerk, after the next testifier we will take our morning break.

DEPUTY COUNTY CLERK: Next testifier is Grant Chun, testifying on Committee Report 17-167.

MR. GRANT CHUN (testifying on Committee Report No. 17-167):

Good morning, Chair. Good morning, Members of the Council. I am Grant Chun, here on behalf of A&B Properties. I just would like to take this opportunity to wish you all Happy Holidays and to share a few thoughts on the proposed bill pertaining to a moratorium on sand mining.

I have submitted written testimony which I will not read into the record as I have previously offered testimony on this matter in July, August, October, and November, and I suspect I'm starting to repeat myself. So this morning I'd just like to offer up a couple of points for consideration.

I have always understood the legal vehicle of a moratorium to be an extraordinary measure that is generally employed only in circumstances of dire eminent harm. We are currently in a situation where no one is sand mining, and the organization that had previously been doing so has unilaterally agreed to suspend their sand mining operation. So I don't see the urgency or necessity of pursuing an extreme measure like a moratorium.

Also, the point has been made that the proposal is for a six-month period; however, the stated purpose of the ordinance is to establish an ordinance regulating sand mining and to update a Sand Resource Study. The question then becomes whether anyone realistically thinks that these two actions will occur within six months. And if they do not, then the likelihood exists that this wouldn't be a six-month moratorium at all, but one that would be extended indefinitely thereby potentially stagnating our housing market and local economy.

Finally, Councilmember Guzman has offered up a set of regulations that are, that are now making their way through the Planning Commissions for consideration. It would be appropriate under the circumstances to allow those proposals to receive the review and consideration that they deserve without taking this drastic measure. Please don't take action where none is necessary. Thank you very much for this opportunity to offer my thoughts.

CHAIR WHITE: Thank you very much.

And with that Members, we will take a ten-minute break. Please be back in your seats by 11:00.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:47 A.M., AND WAS RECONVENED AT 11:00 A.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBERS ATAY, CRIVELLO, AND GUZMAN, EXCUSED.)

CHAIR WHITE: If you would like to continue your conversation, please step out into the lobby.

Mr. Clerk, let's proceed.

DEPUTY COUNTY CLERK: Molokai District Office, please introduce your next testifier.

MS. ALCON: Our next testifier is Keani Rawlins Fernandez, testifying on CC 17-472, 484, 180, 181, 182, 481, and 167.

(Councilmembers Atay and Crivello returned to the meeting at 11:01 a.m.)

MS. KEANI RAWLINS FERNANDEZ (testifying on County Communication Nos. 17-472, 17-480, 17-481, and 17-484, and Committee Report Nos. 17-167, 17-180, 17-181, and 17-182):

Aloha and good morning, County Council. I am testifying on my own behalf. My name is Keani Rawlins Fernandez, I was born and raised on Molokai. Mahalo for this opportunity to testify in support of CC 17-472, in opposition of CC 17-480, in opposition to CC 17-481, in opposition to CC 17-484, in support of CR 17-180, in support of CR 17-181, in support of CR 17-182, and in support of CR 17-167.

I know there are a lot of people here to testify so I will try to be quick. I'm in strong support of CC 17-472, prohibiting the sale and use of SPF sunscreen containing oxybenzone and octinoxate. The Council has received substantial scientific evidence and reasons to support this measure. With the stress our reef experience from years of sediment runoff during the pineapple and sugar cane plantation era, we must help to reduce the impact of, that human activity is having.

Molokai has the only fringing reefs in our pae `aina and our community relies on our reefs for subsistence, and native Hawaiian traditional and customary practices such as the gathering of marine life for food. It has, it is our kuleana that we malama her.

I understand that there are questions about reef safe sunscreen costing more. Sunscreens with oxybenzone and octinoxate may seem to cost less because the price we pay for the . . . are not obvious to us. Just like with anything else, we pay at the front end, or we pay at the back end, such as physical health. We can pay, we can

pay to prevent damage, or we can pay to fix the damage, and that always costs more. No matter which you choose, we will pay.

I also heard claims by testifiers that reef safe sunscreen is difficult to find. I personally have never had trouble finding an abundance of reef safe sunscreen options. I strongly, strongly urge you to choose protection over destruction. Please pass CC 17-472.

Next, I'm in opposition to CC 17-480, relating to the preservation of historic properties and native Hawaiian burials. I expected our elected officials to take a stand and do what's right for our people, not pass the responsibility to some other agency. We all know what the, what these agencies responsibilities are and obviously they struggle to fund, to get funding and staffing to be able to carry out these legal mandates. We elected you to take action, please do not pass the buck, by passing this proposed resolution.

Next, I'm in opposition of CC 17-481, relating to the appointment of Carl Adolpho III to the Molokai Planning Commission. I find it very troubling that the PEA Chair would move this resolution to the full Council before the Committee even took action on it. I don't understand why the Chair would deviate from normal practice for this particular resolution. The Chair took a vote and was unable to get enough votes to recommend adoption for this resolution.

I oppose this nomination to the Molokai Planning Commission because our community need commissioners who will commit to be at every meeting, who will do their due diligence in critically reviewing the meeting materials prior to the meeting, and who will be adequately prepared to discuss concerns cited by the community members. These commissioners must have independent critical thinking skills that help them to balance the needs of today with the needs of tomorrow. And while this element is often overlooked, I believe it is paramount that commissioners be welcoming to testifiers and encourage public participation. After all, that is the reason the Molokai Planning Commission exists.

It is important that we look at the makeup of the Commission and insure that it has balance: gender, geographic, background, work experience. The Molokai Planning Commission meets twice a month and currently does not have, does not have an attendance policy that would result in the removal of a commissioner if she or he misses a certain number of meetings.

This year, 25 percent of their meetings were cancelled because they lacked quorum. And when they did meet, many of their meetings consisted of bare quorum. This

makes it difficult to take action on agenda items because they had to come to consensus. This proved to be difficult resulting in deferral of a number items.

Some County permits have a deadline of 120 days after the first public hearing to take action, and if no action is taken, are approved by default. This underscores the importance of attendance. Permits the community opposes should be, should not be automatically approved.

For this reason, I am testifying in opposition to nomination of Carl Adolpho III. He served on the Community Plan Advisory Committee in 2015 as it states on his application. During this time he only attended four of the eighteen meetings of which he was a member. This means that he was absent for 78 percent of the meetings. This is significant. Please, I have great concern that his attendance records of serving on CPAC is an indication of his attendance if he is confirmed to serve on the Molokai Planning Commission. If this concern proves to be correct, it will be near impossible to have him removed.

Next, I strongly oppose CC 17-484, pertaining to the legislative branch organization. When we elected our leaders into office, we said with our vote that we trust them to make decisions to serve the community and that including, included managing a staff that would help them do just that. Passing this bill would have profound, would be a profound disservice to our community. It is insulting that this bill would attempt to erode democracy from our County, from our people. It is insulting that the maker of this bill would think he could get away with passing such a draconian law. Our community is watching, do not allow it to be referred to committee. I strongly urge you file this bill today.

Next, I am in support of CR 17-180, approving the designation of Laakea Poepoe as the Native Hawaiian traditional and customary practice expert to the Molokai Planning Commission.

Next, I am in support of CR 17-181, disapproving the appointment of Lu Ann Lankford-Faborito to the Molokai Planning Commission. I would like to thank Ms. Faborito for respectfully withdrawing her nomination until such time that she is a full-time resident and is more involved in our community here.

Next, I am in strong support of CR 17-182, approving for inclusion in the 2018 Maui County Legislative Package a proposed State bill relating to enforcement of the Basic Bill of Rights for Victims and Witnesses.

(Councilmember Guzman returned to the meeting at 11:08 a.m.)

MS. RAWLINS FERNANDEZ: And lastly, I am in strong support of CR 17-167, declaring a moratorium on sand mining of central Maui inland sand. On November 4, 2017 at its 58<sup>th</sup> Annual Convention, the Association of Hawaiian Civic Clubs passed a resolution entitled "URGING THE MAUI COUNTY COUNCIL TO PROHIBIT THE RESOURCE EXTRACTION OF SAND FROM PU`U ONE SAND DUNES". This resolution was drafted by Daryl Fujiwara of Lahaina Hawaiian Civic Club in collaboration with Benton Pang of Hawaiian Civic Club of Honolulu.

The Association of Hawaiian Civic Clubs is the oldest Hawaiian community based grassroots organization founded in 1918 by Prince Kuhio Kalaniana`ole. It consists of over 2,000 members from 58 Civic Clubs across the US and State of Hawaii.

The Maui Council includes Central Maui Hawaiian Civic Club, Ho`olehua, Hulu Mamo, Kuini Pi`olani, and Lahaina.

I would like to read some excerpts from the resolution since it would take longer than three minutes to read it in its entirety.

WHEREAS, millions of tons of sand from Central Maui's, Central Maui dunes have been mined and shipped off the island since mid-80's;

WHEREAS, the Central Maui Sand Dunes stretching from Kahului Harbor to Waikapu is also known as the Pu`u One Sand Dunes;

WHEREAS, Maui Chief Kahekili met with invading warriors of Chief Kalani`opu`u at Hawaii, at, of Hawaii at the sandhills of Kama`oma`o...between Wailuku and Waikapu and this battle, and this 1776 Battle of Kakanilua occurred near the sand dunes of Waikapu killing 800 warriors; and

WHEREAS, in, a 2006 study of the Pu`u One Sand Dunes, informed Maui County that current mining/shipping rates stated the resource would be depleted by 2011;

WHEREAS, shared ownership interests connected to Maui Lani developer Bill Mills, excavated company Honolulu Construction & Draying (HC&D), the sand barge Quinault, Pohaku Paa and Ameron sold \$30 million worth of cement in just one year alone to the Honolulu rail project; and

WHEREAS, the county had issued notice to Maui Lani to pause and apply for permit; and

WHEREAS, a lawsuit brought by Malama Kakanilua was filed in Environmental Court on August 2, 2017, to halt the Maui Lani site saying the Maui, the mining disrupts Hawaiian burials, violates county grading permits, and county zoning laws; and

WHEREAS, the Maui Lani Partner Archaeological Monitoring Plan that has been approved by the SHPD provides "all grading activities will be monitored full-time...no sand will be excavated directly out of the ground and loaded into trucks" and the protocol requires "one archaeological monitor per piece of ground disturbing equipment"; and

WHEREAS, in 2016, the Maui Lani report, reported at least three inadvertent discoveries of burials to the SHPD;

WHEREAS, OHA is calling for the grading to stop immediately to give county and state regulations time to sort out zoning, permits and iwi preservation.

DEPUTY COUNTY CLERK: Three minutes.

CHAIR WHITE: Please, please move on to your next item.

MS. RAWLINS FERNANDEZ: Okay, mahalo for this opportunity to testify.

CHAIR WHITE: Does that conclude your testimony. Okay.

Mr. Clerk.

MS. ALCON: The next testifier is Artice Swingle.

COUNCILMEMBER COCHRAN: Chair, Chair, Chair, sorry, real quick. Sorry.

CHAIR WHITE: Hold on just a second.

Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Just wanted to know if that, the testifier can send that in, in written, or email it to us, or, or has it been.

CHAIR WHITE: I don't know.

COUNCILMEMBER COCHRAN: Like the reso from Hawaiian Civic Clubs and stuff.

CHAIR WHITE: Ms. Rawlins have you sent in your testimony in writing or can you, it's a request from Ms. Cochran.

MS. RAWLINS FERNANDEZ: Yes, I can submit my testimony in writing and the resolution that I had presented from the Association of Hawaiian Civic Clubs was submitted with testimony from Daryl Fujiwara last night.

CHAIR WHITE: Okay, thank you. So, it should be in our--

MS. RAWLINS FERNANDEZ: Thank you.

CHAIR WHITE: --in our file.

Okay, next testifier, please.

MS. ALCON: Our next testifier is Artice Swingle, testifying on CC 17-484, 472, 167, and 481.

MS. ARTICE SWINGLE (testifying on County Communication Nos. 17-472, 17-481, and 17-484, and Committee Report No. 17-167):

My name is Artice Swingle, I'm a current resident full-time on Molokai, have been here for 16 years.

On CC 17-484, I am shocked to even hear about this proposal. And I would like to see the whole thing withdrawn. We have elected our County Councilmembers and we trust them to pick their own aides and there is no way that we would support the Chair or anybody else removing or making a hard time for anyone's personal choice of an aide to work with them on the job that they have. So I am very much in opposition.

On CC 17-472, I support the ban on the sunscreen, the ban on the drugs. Again, this has a wide effect on our reefs.

On CR 17-167, I am support of stopping the sand mining.

And then on CR 17-481 *[sic]*, I oppose the appointment of Carl Adolpho III. I think that his performance in not attending the CPAC meetings lets us know that this is someone who is not present, who is not going to meet our island needs. Okay, thank you.

CHAIR WHITE: Thank you very much.

Mr. Clerk.

DEPUTY COUNTY CLERK: Molokai District Office, please introduce your next testifier.

MS. ALCON: Our next testifier is John Worden, testifying on CC 17-484, 472, 167, and 481.

MR. JOHN WORDEN (testifying on County Communication Nos. 17-472, 17-481, and 17-484, and Committee Report No. 17-167):

Good morning. My name is John Worden. I've been a resident of the island of Molokai for the last 16 years. I am opposed to 17-484, and I am in support of a ban on sunscreen for 17-472.

And I am opposed, I support 17-167 about sand mining. I've seen the devastation here on the island of Molokai of what sand removal has done to this island, serious economic, serious ecological damage has been done, and it's never going to be reversed. So I'm opposed to sand mining.

And we're opposed to the appointment of Carl Adolpho, 17-481. Thank you.

CHAIR WHITE: Thank you for your testimony.

Mr. Clerk.

DEPUTY COUNTY CLERK: Molokai District Office, please introduce your next testifier.

MS. ALCON: Our next testifier is Bridget Mowat, testifying on CC 17-472, 842 [sic], 484, 181, and 167.

MS. BRIDGET MOWAT (testifying on County Communication Nos. 17-472, 17-482, and 17-484, and Committee Report Nos. 17-167 and 17-181):

Good morning. This is Bridget Mowat. Hello and I appreciate you allowing us time to give testimony on some of your business.

I, I support 17-472, prohibiting the, or, or, pushing the ban for the oxybenzone and octinoxate, or whatever that is called. Anyway, to me it's like it, it doesn't take a rocket

scientist to figure that out if it's damaging our reefs and it's been proven, then we should cut it out. I mean that is our kaukau out there and if the reefs are damaged, we're, we're working really hard to try to restore our reefs and adding more chemicals that destroy it is, is, is like so simple, I mean. So I support it 100 percent.

My next one is 17-482, I don't know why the Mayor is proposing to remove Mr. Taylor from the, as Director of the Water Supply, but you know, I really, I really think he's doing a great job and I support him. So, I, I, do not support the Mayor's proposed resolution to, to have him removed.

The next one I want to testify on is 17-484. And I don't understand, I mean doesn't seem like, what the County Council Chair doesn't have enough work to do already that he has to monitor other staff. And, and I really feel that it's something more than just, there's something more. And it, and it, it, again reminds me how this, the table is slighted.

And this even gives more power to the Chair. And how is that the majority of the County Council to, to control the County Council and their decisions. I really feel that the, the Chair and the County Council as a whole should not interfere with the individual County Councilmembers and their staff. That's their kuleana, you folks take care your own kuleana. Okay, so I, I'm, I'm very against that one and I don't know what White, the Chairman White and, and the others who support this are trying to do but it's pretty obvious to me and the rest of us. So, we, we, we really watching this one.

Okay, on the 17-180, I, I, I'm in support of the designation of Laakea Poepoe as the Native Hawaiian traditional and customary practice expert to the Maui Planning Commission [*sic*]. So that one's pretty simple for me.

Another one is the 17-181, recommending the disapproval of Lu Ann Lankford-Faborito, because I know she is not a resident of Molokai and we want people that are going to represent us as a whole.

I support 17-167, the declaring the moratorium and for, for reasons listed by many before me. It is a resource that should stay on island and we need to prevent, protect it and, and the iwi. Keani was not able to read, or finish reading the, the pretty important points on the Civic Club, so I want to read it.

WHEREAS, on April 2017, Mayor Alan Arakawa called for a sand export moratorium.

AND NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 58<sup>th</sup> Annual Convention in Seattle, Washington, in malama of

ʻIkuwa and the rising of Mahealani, this 4<sup>th</sup> day of November 2017, urging the Maui County Council to prohibit the resource extraction of sand from the Pu`u One Sand Dunes.

Okay.

CHAIR WHITE: Thank you, Ms. Mowat.

Mr. Clerk.

DEPUTY COUNTY CLERK: Molokai District Office, please introduce your last testifier.

MS. ALCON: Our last testifier is Judy Caparida, testifying on CC 17-484, 472, 167, and 481.

MS. JUDY CAPARIDA (testifying on County Communication Nos. 17-472, 17-481, and 17-484, and Committee Report No. 17-167):

Aloha, everybody. I thank you for getting a chance to read my stuff over here. I oppose to the firing of a staff member. I oppose it. That's the CC 17-484.

I support the CC 17-472, that is to stop putting poison in our reefs, in our water, because that's where we eat, that's where we get our food from. Everybody's getting so desperate to make money, they don't care about lives anymore.

Okay, I support the banning of the removing of the sand. We had that, we had a thing on Molokai, we experienced it. All the sand and all the rocks went to Honolulu for build up everything over there. And I say, you know what, now they finding the sand where all our iwi's are at now. They trying to remove all the iwi's so that they can have the sand. I oppose it. Okay, now we, I, I am in support of banning it, the removal of the sand.

And CC 17-481, I oppose the Mayor's making a choice of getting someone to appoint someone to the board that we no need. We need somebody that can make a full commitment to the needs of our island.

I really thank you folks for that, I can get this time for say my piece because we are on Molokai, we are part of the community and of Maui County. So we got to say to everything that pass them in there, if it happens here, we got to get, make a say and even if it doesn't happen here, before it happens, we letting you know, we opposing it. Okay, thank you guys, aloha.

CHAIR WHITE: Mahalo for your manao this morning.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Oriana Kalama, testifying on Committee Report 17-179, Committee Report 17-167, and County Communication 17-484. Oriana will be followed by David Ardvant.

MS. ORIANA KALAMA (testifying on Committee Report Nos. 17-167, 17-179, and County Communication No. 17-484):

Good morning, everyone. Mahalo for the opportunity to speak. I will be speaking in behalf of Ocean Defender Foundation, which is a Maui grassroots organization. We've been around for about four years now but our first experience here was in 2011, banning the aquarium collection. So, we, part of our work is on social media, reaching over 800,000 people daily. I believe that Maui in, in many circumstances is leading the world by example. Okay, in 2011, we banned aquarium fish collecting. We have banned plastic bags, we've banned Styrofoam, and now oxybenzone. It's like a slam dunk. We deserve to protect our reefs, we deserve to protect our people.

It's just, there's countless researches done on, on the effects of oxybenzone and now lately it's proven to cause cancer. So, we're hurting ourselves, we're hurting the reefs, we're hurting our ecosystem, so I, it's a no.

Also, we're in Hawaii, this is the tropics. If, if, if tourist want to come and enjoy your weather, be ready to wear a long rash guard, protect yourself from the sun. People from the tropic, we have brown skin, you know, we live in the tropics, we don't really need sunscreen. I mean coconut oil has an SPF of five and there is many other things you can do to protect yourself from the sun.

CHAIR WHITE: Please, please address the Chair, not the audience.

MS. KALAMA: Oh, sorry, we don't need to, to use chemicals in our bodies.

The second issue is sand mining. Totally oppose to it because sand like, like the reefs are, they are not infinite resources, they are finite resources, you know. There is an end to it and we need to protect that.

Third point is the proposal to, excuse me, to amend the County Code. So, I'm going to give this proposal a "D". A "D" because I'm disappointed, it's like a red flag. Why are you trying to tie the hands of the people who wants to help us behind their backs?

Why are you doing this. I find it disrespectful not only to the County Councilmembers, but to us the voters. It took us years of hard work to rally the people to actually put somebody that we trust, and now you're trying to hinder all of our good work.

I, I don't understand what's the purpose behind this. I find it detrimental and a step backwards to all the progressive work we've been doing on Maui. Come on let's keep it progressive, let's be conscious. I find it degrading as well to, you know, have to go to the extent of calling the public to defend the people that we put here in power. And I ask myself why, why. So I'm thinking, well maybe it's because we're going to have so much land open that developments are going to want to come, and if we don't have our land and ocean protectors, it will be easier for people to come and take advantage of our resources and our island. Thank you.

CHAIR WHITE: Thank you for your testimony, Ms. Kalama.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is David Ardvant *[sic]*, testifying on Committee Report 17-167, to be followed by Lucy Feinberg.

MR. DAVID ARAKAWA, LAND USE RESEARCH FOUNDATION OF HAWAII (testifying on Committee Report No. 17-167):

Mr. Chair and Members of the Maui Council, I apologize for my bad handwriting. My name is David Arakawa, and I'm with the Land Use Research Foundation of Hawaii and I'm testifying on item No. 17-167. By way of introduction, I was the prior Corporation Counsel for the City and County of Honolulu for eight years so my testimony, Mr. Chair and Members of the Council is based on a legal analysis of the bill.

We understand that they were legitimate concerns underlying the bill. We just feel that this bill, the moratorium, the issue of a moratorium and the section that it's in is not legally defensible. We do appreciate the number of revisions, numerous revisions that were made, that were made to this bill, but that's the point, the reason for those numerous revisions were because this is the wrong, wrong vehicle to get to the, the intent of the bill.

We understand Councilmember Guzman has a bill and we've looked at that bill and that looks like a more reasonable bill. It's put in the administrative process, the existing administrative process that has enforcement and penalties, and so we feel that, that

would be just as effective. Again, we feel that this, this bill or addressing this should be in Chapter 19, the Zoning regulations rather than the, in a brand new section.

It's interesting because this current draft calls for expanded penalty provisions, but there is no enforcement provisions in this new chapter, Title 20. So it's, it doesn't make sense. It's inconsistent, and instead this bill says well, you know if you want to enforce it, go back to the zoning code and that's where they took it out of in the first place, you know. So, there are a number of inconsistencies, technical and legal inconsistencies.

Factually the second point factually is that right now the moratoria is not necessary and we've already talked about it, may not be the proper mechanism. There are three legal criteria and your Corporation Counsel can address this: is acting in response to a dire necessity; the action is reasonably calculated to alleviate or prevent a crisis condition; and 3) that the County is presently taking steps to rectify the problem. And, based on the testimony that's come forth and the information that's come forth in numerous hearings, those three criteria are not satisfied.

So, you know, that's our, that's our testimony. Was that the, 30 seconds more, is that it?

CHAIR WHITE: Yes.

MR. ARAKAWA: Okay, you know the bill is also inconsistent, it only attacks sand in Central Maui. If there are those kinds of concerns about taking sand off, off island or protection of cultural, archaeological, the iwi, that occurs in sand all over the County. Why only Central Maui. The other thing is these situations occur everywhere, on mountains, in caves, etc. Thank you.

CHAIR WHITE: Thank you very much.

COUNCILMEMBER KING: Just a quick question, Chair.

CHAIR WHITE: Yes, hold on.

COUNCILMEMBER KING: Sorry, sorry, Mr. Arakawa. I think I missed who you were representing.

MR. ARAKAWA: Oh, our members, we represent Land Use Research Foundation, our members are the large landowners across the State. On Maui the landowners we represent are Kamehameha Schools, A&B, Gentry Homes, Maui Land & Pine. There might be others, Stanford Carr is a member, I'm not sure if he has any more, any other project, active projects on Maui.

COUNCILMEMBER KING: Okay, thank you.

MR. ARAKAWA: But it's on our website, who we represent, it's on our website. Thank you.

CHAIR WHITE: Thank you, Mr. Arakawa.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Lucy Feinberg, testifying on Committee Report 17-179 and County Communication 17-484, to be followed by Tracy Stice. Last call Lucy Feinberg. Next testifier is Tracy Stice.

CHAIR WHITE: He's coming. Call the next one.

DEPUTY COUNTY CLERK: Testifying on Committee Report 17-147 *[sic]*, to be followed by Brad Ventura.

MR. TRACY STICE [testifying Bill No. 92 (2017)]:

Good morning, Council Chair White and fellow Councilmembers. My name is Tracy Stice. I've been a realtor on Maui for 39 years and I'm here to testify in opposition to the present form of Bill 92, which would change the status of properties that are presently zoned Apartment and put them into a category of Short-Term Rentals. And the reason I'm opposed, I've given you written testimony but I'll go into a few details.

It's going to drive up the cost of affordable housing for people that are renting. It's going to be, what it will do is it's going to take a whole bunch of properties out of, that are presently being rented to long-term people and basically compel the owners to make a choice to either raise their rent based on the higher cost of the taxes that are going to, that are going to come from this bill or it's going to take those units out of Apartment use and force them into Long-Term, into a Short-Term use.

The example I use, I actually took a, two Kihei Shores units that are two-bedroom, two-bath units, that are essentially identical. And, one is taxed right now at \$1392 a year and that's in Apartment zoning, I mean that's the Short-Term Resort zoning and the other one is taxed at \$700 a month, and that makes a \$700 a month difference per year, which isn't a lot on a monthly basis.

But if you're an owner that is going to be compelled to go through a ten-year restriction taking your property, going through this process that requires it to be recorded on a

deed for ten years, with rollback on it, and, and all of the inquisition you're going to have to go through with the Finance Department, no owner is going to go through that process to save \$700. They're either going to raise the rent, or it's going to go under Short-Term Rental. I mean it's a pretty simple thing.

And so what I'm suggesting is that there's an easier way to do this. You already have a process, there's 20,000 apartment owners that have to register the use, that's why one of these is a Hotel now and one is Apartment zoned because it's already going through a process that exists. This just creates a whole another layer in my opinion that's totally unneeded.

It's going to be a huge burden on the Finance Department because they are going to have to hire more staff to scour through these and vet them. And, if you take a look, I use an example of the recent move to collect \$3.00 on vehicles at the dump. Every time I go to the dump, there's two people collecting \$3.00. My guess is that's driven up the cost of that to a point where it's a negative return.

So I suggest that you just have owners bring in a six-month lease, bring in their GET tax return and let them keep going as they're going. It'll save everybody a lot of time and money and reduce staffing that won't be needed. Thank you.

CHAIR WHITE: Thank you, Mr. Stice.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Brad Ventura, testifying on County Communication 17-457, to be followed by Kimberlyn Scott.

CAPTAIN BRAD VENTURA (testifying County Communication No. 17-457):

Good morning, Council. Good morning, Chair. My name is Brad Ventura, I'm representing our Fire Chief this morning in regards Communication 17-457, and that's in regards to a grant that we're receiving. And we're using that grant for vehicle extrication equipment. The grant is given to us by the Department of Transportation and I'm here for any questions you have.

CHAIR WHITE: Evidently not. Thank you for being here this morning.

CAPTAIN VENTURA: Okay, no problem. Thank you.

CHAIR WHITE: Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Kimberlyn Scott, testifying on Committee Report 17-182, to be followed by Benny Ramos.

MS. KIMBERLYN SCOTT (testifying on Committee Report No. 17-182):

Aloha, Councilmembers. My name is Kimberlyn Scott and I am here again to ask you to vote yes on agenda item 17-182, relating to the enforcement of Victims Rights as they are stated in Hawaii Statute 801D.

I have personally spoken to the majority of you on this subject. Every one of you have agreed that there are issues with the inability to enforce Victims Rights in our State. And yet, if JD Kim, the head of Maui County Prosecutor's is to be believed, his office leads our State in the enforcement of 801D. But 801D has never been used in a court to enforce Victims Rights, not once since its creation over 30 years ago. So, either not one victim in our State in 30 plus years has needed to enforce their rights or JD Kim's assessment of the situation is incorrect.

He also claims in his letter to this Council that he cannot see the "necessity" of a bill to enforce Victims Rights. But his own employee Robert Rivera released a press statement at the close of my daughter's murder trial, recent murder trial, apologizing to my family because we had been subjected "subjected to a judicial system that is completely defendant focused and not victim centered in any way". Whether JD Kim perceives a need or not, there is one.

The enforcement of Victims Rights does not affect victims alone. An example of this is the recent escaped mental patient. If current administration were enough, that patient would likely not have been able to get as far as he did. If the current administration were forced by law to protect victims, and in effect the public by enforcing Victims Rights, the family of the victim of the escaped mental patient would have had to be notified right away. This could have compelled authorities to notify Police much sooner than they did, and the escapee might not have made it out of our State.

Victims are like canaries in coal mines, they warn everyone of danger. If victims cannot enforce their rights, the public is also in jeopardy. I am asking in the voice of all Hawaii's victims, past, present and future that you vote yes for victims and begin the process which will enable victims to enforce their rights. Thank you.

CHAIR WHITE: Thank you, Ms. Scott. Thank you for being here this morning.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Benny Ramos, testifying on County Communication 17-484, to be followed by Claudia Castillo.

CHAIR WHITE: Okay, Mr. Ramos, before you start, let me just say the, the attack warning siren is going to go off at about 8:45, I'm sorry 11:45, so I don't know if we'll be able to hear it in here. But just in case you all are bothered by this, I want to let you know it's coming down.

Please proceed.

MR. BENNY RAMOS (testifying on County Communication No. 17-484):

Good morning, Chair. Good morning, Council. Aloha, everyone. My name is Benny Ramos, I'm here to oppose 17-484. I'm here to speak . . . people of Maui Nui Akama. Chair White, I believe your tactics are bullying. It's not fair to all Councilmembers for the people that they voted for, upon their staff and their Members. And, to all those that, that is for this bill, upon with you, just remember the next voting that will come up, the people will remember on this, this bill that you're trying to pass. I, I just want to try to make this brief and only reason why I'm here is because I'm laid off from work.

For those of you that are true to their people, Elle Cochran, Uncle Alike Atay, I look forward for campaigning for you guys for the next upcoming votes. And what you're trying to do is bunch of BS. People don't deserve that, people voted people in their seats so that they could do their job and treat everybody fairly. It's very discriminating, I'll end it at that. Thank you very much and aloha everyone.

CHAIR WHITE: Thank you, Mr. Ramos. No clapping, please. Thank you for being here.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Claudia Castillo, testifying on Committee Report 17-179. Last call Claudia Castillo. Next person to testify is Beau Hawkes. Last call Beau Hawkes.

CHAIR WHITE: I think I heard him outside.

DEPUTY COUNTY CLERK: Beau Hawkes has signed up for every item on the agenda. Following Beau Hawkes will be Curt Eaton.

MR. BEAU HAWKES (testifying on all items on the agenda):

Aloha, guys, ohana. It's good to be here today. A privilege to be alive in this day and age. I'm going, turning the camera around.

CHAIR WHITE: Mr. Hawkes, you need to face the Chair, please.

MR. HAWKES: No, I'm actually here facing the people. Who do, who do you work for Mike?

CHAIR WHITE: The rules are that you address the Chair, not the--

MR. HAWKES: So we can't ask questions?

CHAIR WHITE: Mr. Hawkes, if, if you would please address at least the Councilmembers or myself, not the audience.

MR. HAWKES: I've sat here and watched all these people come up and share little layers of that shedding of democracy that Mr. Sheehan talked about earlier. And it's just one thing after the other. And so the, there's an underlying thing going on here, it's a systemic thing and if you guys will all hear it, I'll be happy to share it and expose some things that a lot of people would rather me not. But--

CHAIR WHITE: Could you identify which topic you're addressing?

MR. HAWKES: Well, first, so the people understand why, why I picked all of the issues, there's 51 issues up for discussion here, 51 we're supposed to decide on and give our public opinion to an obvious corrupt system. So three minutes times 51 is a little over two and a half hours. So I intend to take every minute of it until I can say what I want to say or until the people ask me Beau, thanks for sharing.

Okay, well I'll at least go for about ten minutes, so give me that.

CHAIR WHITE: Okay, you need to identify which item, specific item you're talking about so that we can start the timer and provide you your three minutes.

MR. HAWKES: Okay, let's, the, we'll, we'll start with the, the sunscreen. We heard the gentleman giving us some statistics from the CDC on, on sun exposure. And I wanted to add to those statistics by letting you guys know that the CDC also said that

99 percent of all statistics are made up and only 30 percent of people realize that. Not too funny, I guess.

Anyway, let me get to the heart of it because we know about sunscreen. The people don't want it, let's not pollute, let's, let's not serve the, the corporate agenda. So--

CHAIR WHITE: Which is your next item, please.

MR. HAWKES: The next item is the mining of the sands. We should not mine the sands. So, if you'd quit interrupting me it would make more sense and it would be more cohesive and I would appreciate it, Mike, okay, thanks.

Our County government has been hijacked from us and has now been federalized. We have people like Mike White, like Riki, like others that have been, Mr. Arakawa among them that we the people didn't vote in, but they were appointed, and they were appointed by an organization called the National Association of Counties, and that's a Federal entity that Riki has served as the President of, who now serves I believe as the--

CHAIR WHITE: Mr. Hawkes, you--

MR. HAWKES: --Councilmember for Lanai.

CHAIR WHITE: --you asked to, you said that you were talking about sand mining, so would you please refer to the--

MR. HAWKES: I, I stated what I, I, I said about that and I'm expanding on it. And again Mike, the fact that you won't just let me talk as a, as a community member, as a father, as somebody who's willing to take time out of my day and not get paid to come down here and make a fool of myself. Could you quit interrupting me.

CHAIR WHITE: I'm going to try to keep you on point, Mr. Hawkes. In, in respect of the other people's time, Mr. Hawkes.

MR. HAWKES: I don't need, I don't need the rhetoric. Exposing corruption here, the corruption that is the--

CHAIR WHITE: Okay, we're going to take, we're going to take a little bit of a recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:47 A.M., AND WAS RECONVENED AT 11:52 A.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBERS COCHRAN, GUZMAN, AND VICE-CHAIR CARROLL, EXCUSED.)

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

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

DEPUTY COUNTY CLERK: Next testifier is Curt Eaton, testifying on County Communication 17-482, to be followed by Napua Greig-Nakasone.

CHAIR WHITE: Please proceed.

(Councilmembers Cochran, Guzman and Vice-Chair Carroll returned to the meeting at 11:53 a.m.)

MR. CURT EATON (testifying on County Communication No. 17-482):

Good morning. My name is Curt Eaton. I am a licensed engineer with the Water Department. I'm speaking on 17-482, the potential dismissal of Director Dave Taylor from our Department. I'm here on my own will and on my own time. I have nothing to gain by being here. I have just the Department's best interest in mind.

My testimony is in regards to the potential dismissal of Dave Taylor, the Director of Water Supply.

If Mr. Taylor is dismissed as Director, I am concerned about the effect that this has on the Department. As everyone knows, the Water Department is very controversial. Everything is an issue, from lack of water source, to understanding, undersized outdated infrastructure, to water meter lists, and to meter fees and on, and on, and on. You've heard it for years.

What I've seen Dave Taylor, what I've seen Director Taylor do is to educate. He educated staff, public, governmental officials on the issues facing the Water Department and what is required to rectify those issues.

For example, the Upcountry Water Meter List. The solution to the water list is to develop new source and improve a portion of the infrastructure so that the water can be transmitted from the source to your faucet. The vocal very minority blocks every attempt to develop water source and at the same time complain that they cannot get a meter. It is a no win position, Director Taylor has.

Director Taylor recognized that a lot of the people on the water meter list do not need a full complement of fixture counts that a meter upgrade would provide. They just need

a few extra fixture counts so they could expand their home or add an ohana. Director Taylor, Director Taylor started a program allowing customers to purchase just the number of fixture counts they need. This frees up the remaining fixture units for someone else to use. I would call it fixture unit sharing. And most important, it removes people from the meter list.

Director Taylor has also educated the community in water demand versus supply. He has educated us on the true cost for the County to provide water. Director Taylor has made himself available to speak and to educate various community associations and various stakeholder groups.

I got to talk faster. Director Taylor has educated the community in water demand versus supply. Oh, I said that one. Director Taylor has made himself available for community planning efforts. He went to Molokai to explain the County's water infrastructure issues. He suggested policies and implementation actions to address those challenges in the community plan. Recently, he participated in public meetings regarding the West Maui Community Plan and to help explain existing water infrastructure and potential for infill development.

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

MR. EATON: Could I just add my bottom here? What I'd like to say is I recommend that you vote to keep Dave Taylor. He's been good for our Department.

CHAIR WHITE: Thank you very much.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Oh, I'm sorry, Mr. Eaton.

MR. EATON: Yes.

CHAIR WHITE: Mr. Atay, has a question for you.

COUNCILMEMBER ATAY: Thank you for coming forward--

MR. EATON: Thank you.

COUNCILMEMBER ATAY: --knowing that you're an engineer in the Department--

MR. EATON: Yes.

COUNCILMEMBER ATAY: --were you able to conclude and, and express all of your thoughts that, cause I, I would value your input and sharing.

MR. EATON: Okay, I did, I did put a copy of my paper up when I--

COUNCILMEMBER ATAY: Okay.

MR. EATON: --there so you could read it, if not.

COUNCILMEMBER ATAY: Thank you. Okay, thank you.

MR. EATON: Yeah, thank you.

COUNCILMEMBER ATAY: Thank you, Chair.

CHAIR WHITE: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Napua Greig-Nakasone, testifying on Committee Report 17-167, to be followed by Nalani Kaninau, testifying on County Communication 17-484.

MS. NAPUA GREIG-NAKASONE (testifying on Committee Report No. 17-167):

Aloha kakahiaka, our esteemed Council. I'm Napua Greig-Nakasone and extremely nervous to be here today because this is an, a topic that is very emotional for me and I try to keep that out of testimonies. But I'm here to testify and really beg you to pass the bill declaring a moratorium on sand mining.

For three years I served on the State Land Use Commission and I was privy to testimony regarding the area that we're, we're speaking of, or the area, the neighboring area Waiale. And I'd like to make special note that those here opposing the moratorium are here because they have special development interest. I'm here with no interest, but to preserve our, our histories, to respect our sacred places, and to maintain our connection as kanaka maoli to this aina.

In an archaeology inventory conducting by, conducted by . . . including work done in conjunction with Hawaiian Cements sand mining activities, I heard testimony from archaeologist testifying that in just the test digs, they found over 400 sets of remains in the, in the Waiale area. They testified to some of these remains being those of our

ali'i. And when asked by the State attorney, what led them to this conclusion, they very nonchalantly said that they found these iwi buried with kahili, lei niho palaoa, and intended to move these iwi to a pu'u, a hill, make a nice sidewalk and a signage, we're going to plant natives and this is our cultural preserve.

Sadly, I was the only commissioner to vote against the, the petition and in my deliverance of my decision, I told them that the cultural preserve plan showed their ignorance to our culture and really made me literally sick. I went home and cried, and I had to throw up because I was so bothered by what was happening and it continues to happen.

It's important for us to note that SHPD and the Burial Council are advisory boards. When I asked the SHPD people that were there how many times has this department actually gone back to a petition to see if they've complied with the advisements, zero, they've never gone back. So they're, they are totally underfunded, and this has been a problematic forever.

And, a resolution holds no weight, a resolution asking our Governor to fund them, to adequately fund them doesn't hold any weight and I'd like to urge you and, and remind you, or say that the buck stops here with you and with us. You have it in your power to control and stop the mining of our natural resources, to stop the desecration of our kupuna and keiki.

CHAIR WHITE: Thank you very much, you'll have to conclude.

MS. GREIG-NAKASONE: And stop the attack on our identity as kanaka and our right to lay peacefully forever in the sands of our birth. Mahalo.

CHAIR WHITE: Thank you, thank you for being here today.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: No clapping.

DEPUTY COUNTY CLERK: Next testier is--

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Just a minute, I've asked you not to raise your hands, so please don't do it again.

MR. SHEEHAN: Don't be so suppressive.

CHAIR WHITE: No I'm just, look I'm trying to make sure that everyone is equally respected--

MR. SHEEHAN: People have feeling, you know, it's okay.

CHAIR WHITE: I understand that.

MR. SHEEHAN: It's okay, you know--

CHAIR WHITE: Would you, would you please stop Mr. Sheehan?

MR. SHEEHAN: Well, would you stop suppressing people all the time.

CHAIR WHITE: Proceed with the next testifier.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Oh, I'm sorry, go ahead, Mr. Atay.

COUNCILMEMBER ATAY: Thank you for your testimony. I wanted to back up. So, so, when you mention that the archaeological digs found 400 sets of kupuna iwi, what year was that.

MS. GREIG-NAKASONE: That was in 2012.

COUNCILMEMBER ATAY: 2012, they've known that well over 400 sets existed.

MS. GREIG-NAKASONE: And this is just in the test digs.

COUNCILMEMBER ATAY: Right, testing--

MS. GREIG-NAKASONE: So the, the magnitude of iwi that are in this area are way greater than 400.

COUNCILMEMBER ATAY: Yes, so I wanted to get clarification. From a cultural, Hawaiian cultural practitioner understanding, when you find bones that are laden with kahili and palaoa, what does that mean.

MS. GREIG-NAKASONE: That they are bones of our ali`i.

COUNCILMEMBER ATAY: Ali`i, what is ali`i.

MS. GREIG-NAKASONE: Ali`i are our chiefs, our leaders, our rulers, those we hold in the highest esteem.

COUNCILMEMBER ATAY: So in your, your testimony, your explanation understanding the findings of these bones, findings of what these ornaments represent, do you think it's just and fair for they to be treated, to be shipped off, to be made into columns of a rail.

MS. GREIG-NAKASONE: It is, it's sickening. It's not fair. I also urge the people there that they too realize that just because our burial traditions aren't like yours. We don't put headstones and we don't, you know, go visit with flowers because that's not our tradition. It doesn't make our traditions any less legitimate, and even more sacred because we are the indigenous peoples of this place.

COUNCILMEMBER ATAY: Mahalo.

MS. GREIG-NAKASONE: Mahalo.

COUNCILMEMBER ATAY: Mahalo for your deep manao.

Thank you, Chair.

CHAIR WHITE: With that Members, we are going to take our lunch break. The Chair's feeling is we should come back at one, but if some of you have responsibilities, 1:30? Okay, 1:30 it is. Please return by 1:30.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:03 A.M., AND WAS RECONVENED AT 1:35 P.M., WITH ALL MEMBERS PRESENT.)

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

Mr. Clerk, let's proceed with testimony.

DEPUTY COUNTY CLERK: Next person to testify in the chamber is Nalani Kaninau, testifying on County Communication 17-484, to be followed by Lawrence Carnicelli.

MS. NALANI KANINAU (testifying on County Communication No. 17-484):

Aloha kakou, Nalani Kaninau is my name, I'm testifying against 17-484, the legislative branch organization. And I also am encouraging that this be filed without further discussion. You know, I have never been political in my entire life but you know, watching the events on the national stage unfold I feel this legislation mirrors that same shenanigans. And it will also start to . . . away at the very process of our democracy.

Chair White, I think your kuleana is to be sure that all processes are able to be run smoothly as those on the wall behind us have done. I think that trying to push this through is offensive to all of those of us that are here that are trying to participate in this process. Something I found on the internet this morning, it says, "A`ohe pau ka `ike i ka halau ho`okahi" which means "All knowledge is not taught in one school of thought."

With the end of sugar, I feel that Maui is at such a pivotal point in our future and that we are up to our makas in luxury resorts and housing, luxury resorts, luxury housing. I also feel that this is somehow clouding the judgement, or clouding the vision of some of our Members. We need to get back to basics. We need affordable housing, we need food, we need clean water. And we need our ocean to be clean, that feeds us.

I would hope that we would not allow a few to hobble the work of those with a different school of thought. Mahalo.

CHAIR WHITE: Thank you for your testimony.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Lawrence Carnicelli, testifying on Bills 91 and 92, to be followed by Lauren Zirbel.

MR. LAWRENCE CARNICELLI [testifying on Bills 91 (2017) and 92 (2017)]:

Good afternoon, Chair, Members. Lawrence Carnicelli, submitting testimony as the Government Affairs Director for the Realtors Association of Maui and the 213 folks that emailed you about this Bill 92, that we are in opposition to, which attempts to move the real property tax classification of condos from actual use to highest and best use.

And if you go to the committee report, highest and best use is defined as a tax valuation with which the means is the highest legal permissible use of a real property that will

generate the highest revenue. So basically Bill 92, the way that it actually reads though, it doesn't go from actual to highest and best, because not everybody is going to go to highest and best.

Right now, how the function works is, it's reported to the Real Property Tax Office. The management companies report to the property tax office, and then that's how they are deemed to be put into a certain class. So it's going from reported to actually discretion of the Director, because not everybody is going to go to highest and best.

Well, as two testifiers said earlier, Mark Sheehan and Tracy Stice, our, our concern is that this is going to affect long-term rentals. If you got a short-term rental condo that you got a long-term tenant in, and you're now being charged the short-term rate, you're either going to raise the rent, or you're going to kick the tenant out. Now when I brought this up in Committee, a provision was put into the bill to allow for a long-term designation.

But in that it says okay, the lease has to be recorded with the Bureau of Conveyances. Then you have to petition the Director, the Director gives you a declaration for a ten-year declaration. It creates a forfeiture on the part of an owner to change the use, even if you want to change it to homeowner. If you fail to comply for ten years, you get retroactive taxes back, plus a ten percent fee, which shall be paramount to a lien, quote unquote, in the statute. And because of the way our property taxes work, the soonest you'll be able to take advantage of this is August of 2019. So we're already going to lose a year and half of this, even if this does pass.

So again, I just go to, okay we're either going, the landlords are either going to raise the rent, they're going to change the tenants into short-term, you know, or basically, or they're going just to agree to say I'm going to do this ten-year lien. Which, I don't know any landlords that will.

So from the committee report, though again, I'm going to say, all condominiums, this is from the committee report, all condominiums would be affected regardless of their location. Also, the Committee requested how many units are long-term and short-term? The department was unable to provide that specific information.

Now there's also some legal issues. Bill 91 and 92 are in conflict with each other. Bill 92 says shall, this new, these things, these condos shall be classified as hotel or resort. Bill 91 says shall be classified as short-term rental and there are some other legal opinions that we've had.

CHAIR WHITE: Move, move to your next item.

MR. CARNICELLI: Okay, so, Bill 91 is, we are also in opposition to and what this does is this is creating a new tax classification called short-term rental. And it puts all condos and STRH, legal STRH homes into this new bucket, is what we're calling it, right. Well, I'm going to start where I always start, we start talking about enforcement and, and charging these folks, you know, more money is until we get enforcement under wraps, then what we're doing is we're incentivizing people to do this illegally. That's what we're doing, we're saying, hey listen we're going to punish the people that have jumped through all the hoops and you know we're going to go ahead and give an advantage to those that do it illegally.

Now, part of how this came to be was we want, earlier in the year, we were talking about moving STRH's into hotel and resort, and some folks raised their hands and said we're not hotel and resort. And so we said okay, we'll make this short-term rental, you're that. And now we're going, well we're not that either. And so part of the reason why we're saying we're not that is condos are a business, they can be bought and sold. Condos share the tax burden among numerous units.

STRH's have to go through an arduous permitting process. STRH's have to pay annual fees. STRH's have to have a million dollars of liability insurance to the County. STRH's actually have to have a real operating farm, if they're on ag. STRH's have restrictions which prohibit visitors, and STRH's have also have occupancy limits.

So, we're saying that basically STRH's aren't the same as condos. So, to kind of maybe make this equitable and say like okay, you are but you aren't, what if we split it and said okay the land, we'll leave it your underlying zoning. But the building, cause, you know the tax departments assesses both the land and the building separately. We're going to tax the land portion at the value of the underlying zoning and the building's valuation, we'll tax that at the STRH level. This seems like that would be a little bit more fair and equitable. And if this does pass, you know, maybe a consideration of grandfathering those folks which have already gone through the process and already exist. So, that's all I have on 91. Thank you, Chair.

CHAIR WHITE: Thank you for your testimony. Looks like no questions.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is.

CHAIR WHITE: Oh, actually, actually hold on a second.

I did have a question. You mention the, that we didn't have the, the numbers of, of long-term versus short-term in some of the condo developments. Do you have those numbers or--

MR. CARNICELLI: Oh, what I, what I called out of your, out of the Committee's report is they said 2100 condos would generate \$8.3 million, of which 500 of those would generate \$6 million. So that means 500 condos would generate 6 million bucks. If you do the math, it's basically \$4 million condos. So then you go like okay what are these other 1600? They are going to generate \$2.3 million. And again if you do the math backwards, that's condos that are less than \$450,000. Their going, their tax is going to be raised pushing \$1500 a year. So that, that's, those are the people that are actually tenants. I mean that's the, you know, long-term tenants, I'm sorry. So from the report itself, I'm saying, we're, it's going to affect 1600 condos potentially that are long-term tenants.

CHAIR WHITE: That are currently long-term.

MR. CARNICELLI: That are currently long-term tenants, yes. And you know, like, is the, you know, and, and again there's other legal opinions that RAM's gotten that are flaws that I've included in, in my written testimony, which you guys I think all have a stack like this of written testimony, so it's in there somewhere.

CHAIR WHITE: Thank you very much.

MR. CARNICELLI: Sure.

CHAIR WHITE: Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Lauren Zirbel, testifying on Committee Report 17-179, to be followed by Michael Reiley.

MS. LAUREN ZIRBEL (testifying on Committee Report No. 17-179):

Thank you, Councilmembers. I am here on behalf of Hawaii Food Industry Association which submitted written comments on this measure. Hawaii Food Industry Association represents 200 retailers, suppliers, and producers.

HFIA proposes that since this bill may ban many products that are used to prevent skin cancer, that a higher standard of review should be conducted in order to ensure the action taken would improve outcomes for reefs. The State of Hawaii recently conducted an informational review from Hawaii's top scientist studying our reefs. And the presentation discussed water temperature, run-off, sewage and overfishing. However, not one of the scientist mentioned sunscreen.

We are, we do care about offering products individuals feel comfortable using on a daily basis to prevent skin cancer. And this bill does impact federally approved and regulated healthcare products. If there is an abundance of peer-reviewed science to make a conclusion on this issue, then we would hope that the Federal government would be the best entity to make that determination.

And thank you so much for the opportunity to testify.

CHAIR WHITE: Thank you, Ms. Zirbel

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Michael Reiley. Last call Michael Reiley. The next individual to testify is Sam Small, testifying on County Communication 17-484, and 17-466. To be followed by Carmel Lay.

MR. SAM SMALL (testifying on County Communication Nos. 17-466 and 17-484):

As always, thank you for the opportunity to participate in the Democratic process. My name is Sam Small. I have an organization called "Maui Causes", some of you have been on my television show on Akaku and we promote progressive, environmental and not for profit causes here in Maui County.

On the agenda today is 17-466, no one's really spoken about the Managing Director is, has an item there about abolishing of positions. He's not actually abolishing a position here; his position statement is actually looking to reinstate a coordinator for capital improvement projects. That's a good thing. Capital improvement projects represent a huge portion of the County's budget. That was our tax dollars at work, building sidewalks, roadway, drainage, so we don't damage the shoreline every time there's a heavy rain.

The problem is our County operates in a culture of leniency. The politically appointed planning commission and department directors take their cue from the Mayor, and who's perfectly willing to violate Federal clean laws with this injections wells. So, the

lack of respect for the environment translates to, lacks administration of shoreline management area permits, SMA permits, majors and minors, where directors look the other way so wealthy developers can skirt around zoning and environmental laws.

They accept unchallenged falsified order of magnitude statements and overlapping infrastructure deferral agreements. Mr. Regan who was the Director of Finance actually oversaw multiple overlapping agreements, knowing full well that by law they were supposed to be a onetime only deal and that there was no plan in place ever to collect on them.

The Planning Director uses his enormous discretion to exempt developers from having to commit land for County road widening. The, to move the Pali Highway, we just paid \$4 million to buy back land that should have been ours for free. All of this systematically sucks our money out of the budget to the benefit of private developers. We pay the bills, and the environment sustains ongoing harm.

So this infrastructure coordinator, will they be able to get Corporation Counsel to rule whether these deferral agreements for example are collectable. Will the funds tied up there, our money, ever be accounted for in an annual budget. That's another law that Corporation Counsel encourages the, the County to, to break.

Years ago, Ms. Cochran tried to get a determination made and Corporation Counsel refused, that's five years ago. I think they're stalling to hide corruption, where falsified estimates were actually approved by the individual who got hired by the County. He got to approve his own falsified estimates.

CHAIR WHITE: Okay, please move to your next item, Mr. Small.

MR. SMALL: Okay, to wrap that up, Maui Causes is launching a public petition to call upon our independent County Auditor to assess the financial loss to the public and close the loopholes that hide these ongoing corruption--

CHAIR WHITE: Mr. Small.

MR. SMALL: --and environmental harm. Thank you.

CHAIR WHITE: Thank you.

MR. SMALL: Additionally, I would like, Mr. White, to speak out, I'm sorry, against your proposed amendment. This, the changes that you want to make are . . . or worse. It's probably unlawful. It's not based on any genuine qualifications, but simply on the prevailing majority of the Council at any given time to fire any employee. It's not why I

voted for these people. So to let you fire their staff, I know who their staff was going to be. I, I voted for them because I knew who they would put on their staff. We want those people here, it's not up to you to fire them.

And be careful what you do because next time, once we do get progressives that are running Maui County, the minority, if you do this, then the minority will not have any power either, so this will definitely come back and bite you in the ass.

This should be filed. If however, you do manage to take this to committee, we want to offer a different idea. I've passed out a, a, some proposed legislation that advances the public interest, not to retards it. What we're proposing is that there be much like what we've finally got forward, Directors, there be some minimum job requirements, so that if you are the Chair of a Committee, that you are required to have on staff either part-time or full-time somebody who has experience in the area of your committee. That that be a part of your hiring practice.

We have a revolving door where experts, you know, come in, people, professionals come in. We had a demonstration here this, this afternoon, this morning that was absolutely, you know, picture perfect. Margery Bronster, a professional attorney, Ex-Attorney General, knows better than to stand here and represent herself when she's actually being paid by a professional organization. That goes on all the time, no, nobody gets disclosure. People get hired that have conflicts. Your procurement is faulty, you're guilty of, of, of, of misusing our County procedures. This kind of stuff has to stop and this, you know, is one area where you can do it. You're taking it in the wrong direction, but if you're opening the door, let's use this process to the advantage of the public, not to its disadvantage. Thank you.

CHAIR WHITE: Thank you, Mr. Small.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Carmel Lay. Last call Carmel Lay. The next individual to testify is Jasmine Kilborn, testifying on Committee Report 17-179. To be followed by Gabriel Paul Beeson-McArdle.

MS. JASMINE KIILBORN (testifying on Committee Report No. 17-179):

Aloha, to all. My name is Jasmine Kilborn, I am a lifetime resident of Maui. I come here to greatly support the chemical sunscreen ban. Scientific labs have confirmed that oxybenzone deforms coral larvae by trapping them in their own skeleton. The EWG, that's the Environmental Working Group, a nonprofit organization that does

research on all kinds of cosmetics says that oxybenzone on a scale of one to ten, is rated as an eight. It is one of the most toxic ingredients in our cosmetic industry.

The Hawaii Tourism Authority stated that for the first three quarters of 2017, Maui welcomed seven million visitors to the island, seven million, the first three quarters of this year. If I have conservative estimates, if I say 25 percent of those seven million visitors were beachgoers, or went to our streams to enjoy our waterfalls, then this means that 1,750,000 people are likely using chemical sunscreens, 1,750,000 people this year.

I own a private tour company here on the island, we, three years ago said to all of our visitors that come with us, our guests, you may not use sunscreen, we provide the sunscreen. Out and about when we visit the beaches, we visit the streams, especially in summertime, everything pools, and you can see the sunscreen hanging out on the side. People there at the streams, all spraying it on, so all floating over everything. Heartbreaking. I go to them, I say excuse me, I love you, I love this place, but you shouldn't be using this. They're like what do you mean? They have no idea.

A lot of these times these visitors come from areas that are not here, they are not surrounded by water, they are not surrounded by mountains where water runs through the land and heads to the ocean. Maybe they come from places landlocked and have never had to use sunscreen in their life. They have no idea, I blow their mind. I tell them, this is what you're using, and this is what it does. They can't believe it. I say please don't buy it.

This fall, I, I happened to go on a staycation here at the Westin Resort in Kaanapali. I forgot my sunscreen at home. I went to the sundry shop in the lobby, wouldn't you know, 56 bottles of sunscreen, I have a picture if you want to see it, I will send it to you. Fifty-six bottles, not a single one didn't contain oxybenzone. I blew my mind, I told the lady at the counter how could this be, who owns this place. She's like, I don't know. You know, can I take a photo? I took a photo.

I called my friend who makes sunscreen here on the island, say, ho, you gotta come down here. You know, there's a market over here, nobody's selling reef safe, you know sunscreen. So I went down by the pool, I said for sure down by the pool they gotta have it. They didn't have it there either. I blew my mind, I couldn't believe it.

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

MS. KILBORN: One second, please. There is an abundance--

CHAIR WHITE: A concluding remark.

MS. KILBORN: --but we started the day with Made In Maui, a beautiful ceremony for Made In Maui, all this effort and celebration of things made here. We have so many people that make sunscreen here--

CHAIR WHITE: Ms. Kilborn.

MS. KILBORN: --we can open the market for people here--

CHAIR WHITE: Ms. Kilborn, your time is up. Thank you very much.

MS. KILBORN: --and to Ms. Bronster who says interstate trade and what not--

CHAIR WHITE: Mr. Clerk, call the next testifier.

MS. KILBORN: --let's open it up to the market for Maui people. Let's enrich Maui--

DEPUTY COUNTY CLERK: Next testifier is Gabriel Paul Beeson-McArdle.

CHAIR WHITE: No clapping, please.

DEPUTY COUNTY CLERK: Testifying on County Communication 17-484, Committee Report 17-179, and Committee Report 17-167. To be followed by Ryan Churchill.

MR. GABRIEL PAUL BEESON-MCARDLE (testifying on County Communication No. 17-484, and Committee Report Nos. 17-179 and 17-167):

Aloha, Councilmembers. Aloha kakou. My name is Gabriel Paul Beeson-McArdle. Thank you for hearing my testimony today. I'm here this morning, this afternoon, to testify for multiple resolutions that I find very important to the aloha here.

I am strongly opposed to CR 17-484, which is now attempting to undermine everyone's testimony and all the Councilmembers' hard work on the rest of these concerning issues that face our community. It's insulting to the people's intelligence. Did you really think you could pass, introduce this resolution like this and it would just slip by without notice? People are legitimately concerned about what is going on and what decisions are being made here on Maui.

Decisions such as mining of the sand. This is not just sand. These are sacred burial sites. This, this is the heart of Maui. This is the desecration of the iwi kupuna, our ancestors that have lived before us. Have we no respect. This is their land we are on. They have never left. They are here right now.

Many of these decisions should be reconsidered. We have been enduring mismanagement of the East Maui waters; GMO testing here in paradise, on Maui of all places; mining of the iwi kupuna; oxybenzone and octinoxate poisoning of the oceans and reefs. Schools are getting set on fire, bodies are being found at our schools.

You would think there is more than enough work to keep Mr. White and Mr. Hokama, and the other Councilmembers busy. But no, they apparently have time to play hide and seek at the Clerk's Office, Clue with their colleagues' email inbox, really redirecting emails. I don't remember when I took government class, them ever teaching us how to lock a door so they couldn't turn in their paperwork, or how to erase emails. Seems to be the thing these days.

Even writing this legislation is a grave waste of time. I mean locking people out of the Clerk's Office and keeping public employees from actually working is concerning. These actions, if true also present security issues. Is this because there is momentum gaining for these various progressive movements here on Maui? And Mr. White and Mr. Hokama and the others are resorting to less than favorable tactics to hold onto their illusions. Do you not see the damage these decisions have had and are sure to have?

Now my concern is that the people can see what is taking place. They have motivated and elected some honest, hardworking representatives. For those representatives that now being, now those representatives are being harassed and threatened because of different, differing points of view. Threatened with their job, their income, their security. Who do you think you are? They are staff of elected officials, elected by the people to.

CHAIR WHITE: Excuse me, let me--

MR. BEESON-MCARDLE: Okay.

CHAIR WHITE: Let me, no let me just check with the Clerk, because you signed up I believe for three items.

MR. BEESON-MCARDLE: And these two take longer than my third, last.

CHAIR WHITE: Yeah, I, I just want to be sure that--

MR. BEESON-MCARDLE: Okay.

CHAIR WHITE: --we had--

DEPUTY COUNTY CLERK: Yeah, Mr. Chair, if he could just identify the next item he's moving on to.

CHAIR WHITE: Yeah, yeah you have one more.

MR. BEESON-MCARDLE: Oh, yeah, the next item is CR 17-179.

CHAIR WHITE: Please proceed.

MR. BEESON-MCARDLE: Okay, thank you. This is what you're, they are staff of elected officials elected by the people to represent the people. That is what you are supposed to be doing.

But, hey you are obviously doing what you do and it's not popular. What's interesting is when somebody does the right thing, they don't have to cheat. Isn't that weird? This is not representative of democracy and you should be ashamed for insulting your colleagues' intelligence and compromising the trust of the people with such ridiculous legislation. How can Maui be the best, Maui No Ka Oi, when we are acting like the rest of the country with the same principles of greed, corruption, and exploitation apply.

Get back in the game, stop cheating and if you don't win, maybe you weren't supposed to. Has anyone testified in favor of this resolution? I know one thing, the people are fed up with the lies and deceit, and they want change. Enough already.

I'm in favor, also in favor of resolution CR 17-179, the resolution to ban the sale and use of oxybenzone and octinoxate containing sunscreen. I have been paddling, diving, and fishing the waters of West Maui since the early eighties. What a pristine, beautiful ecosystem we had back then. And what a shame to see it change so quickly and so drastically. It's literally heartbreaking.

You might be more concerned if you have been watching the decline for 30 years. This situation is desperate. These gentlemen that have testified before me claim that there are no, there are no reef safe sunscreens. So that must mean that their sunscreens are not reef safe. But then, in the next breath, they state that even the most toxic chemicals in their sunscreens are safe, and not to blame for the declining and bleaching of the reef. Well, which one is it? Are there no reef safe sunscreens? Or are your chemicals, chemical based sunscreens causing damage to the reefs after all.

If we are stalling on this because of the money in sunscreen, I'm not an accountant or a mathematician, but it seems this is a dangerous, this is dangerous to be playing games with our economy and food supply for a few extra bucks today. Of course, there are many various alternative options, the problem isn't lack of options, it is the suppression of said options by all this money and chemicals.

Does the owner of the sunscreen company live here on Maui? I doubt it, but I do and this affects me and my ohana. All these attorneys with their paychecks could care less about the local issues we the people of Maui face. They keep saying the FDA approved this so it's safe. Well they also approved oxycontin for 11-year olds and claim cigarettes were good for your health for years.

How would the ancestors feel if they could see people coming here from elsewhere and digging up their bones and selling, and stealing the water from the locals.

CHAIR WHITE: Thank very much, Mr. McArdle for your testimony.

MR. BEESON-MCARDLE: Well I have a third one, is that true or not.

CHAIR WHITE: That, that was your third--

MR. BEESON-MCARDLE: Oh, okay, well thank you very much.

CHAIR WHITE: --your third timeslot. Thank you very much.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Ryan Churchill, testifying on Committee Report 17-167, to be followed by Richard Nelson.

MR. RYAN CHURCHILL (testifying on Committee Report No. 17-167):

Good afternoon, Chair, Members of the County Council. My name is Ryan Churchill, representing Waiko Industrial Investment and we would like to reiterate our opposition to the proposed moratorium for reasons we previously outlined in testimony submitted on November 15, 2017. The moratorium would have a significant adverse impact on our light industrial project.

As outlined in our previous testimony, we have relied on the numerous discretionary approvals that we have received since 2010 and have vested rights to proceed with

the project. We request the project's area identified by TMK: (2) 3-8-7:102 be excluded from this moratorium. Thank you.

CHAIR WHITE: Thank you, Mr. Churchill.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Richard Nelson, testifying on Committee Report 17-179, to be followed by Tom Creagh.

MR. RICHARD NELSON (testifying on Committee Report No. 17-179):

Aloha, Mr. Chair, Committee Members. My name is Richard Nelson, I'm a retired director of marine operations for UCLA, and am fortunate enough now to make my home on Maui. I'm here to lend my voice and support to the bill banning the sale and use of SPF sunscreen containing oxybenzone in Maui County as its been shown to contribute to the assault on our reefs.

Coral reefs are the most productive marine ecosystem and are critical to the ecological balance of our world's oceans, and support commercial and recreational fishing and tourism. The environmental work group has tested hundreds of beach and sports sunscreens and have found that 59 percent, correction 56 percent of the sunscreen tested contain the chemical oxybenzone.

A team of international scientist which includes the University of Central Florida, the, the team's findings published in, in a archive of environmental contaminations and toxicology has shown that it, all it takes is one drop of this stuff in four million gallons of seawater to contaminate and cause problems with the coral. That's one drop, that's, that's equivalent to six Olympic size swimming pools.

Everyday Maui residents and visitors have an estimated 55, an estimated 55 gallons of sunscreen in the water. That's about 20,000 gallons of sunscreen that contaminates our reefs every year. And that doesn't include the, the oxybenzone that makes its way from the sea, from the people who don't go into the, to the ocean. They, sunscreen on, they, they put the stuff on and they lay out in the sun, maybe on the beach, perhaps in their backyards. And, they take a shower and the stuff finds its way down, down to the ocean.

So, I strongly urge the Maui County Council to ban the sale of this stuff. Thank you, mahalo.

CHAIR WHITE: Thank you, Mr. Nelson.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Tom Creagh. Last call Tom Creagh. Next testifier is Hannah Bernard, testifying on County Communication 17-484, and Committee Reports 17-167 and 17-179. Ms. Bernard will be followed by Deborah Mader.

MS. HANNAH BERNARD (testifying on County Communication No. 17-484, and Committee Report Nos. 17-167 and 17-179):

Good afternoon, Chair, Councilmembers. And Happy Holidays. Boy, heavy in here today. It's been quite a day. Thank you for your leadership, all of you. Maui has led the way in taking care of our aina and now we have some things before us, we can continue to lead the way.

I'd like to start with; however, the proposal 17-484, because it's relevant for everything. I like what Mark Sheehan said this morning that democracy dies by the death of a thousand cuts, not that I like that. But that, that is the truth and when we empower the majority without protecting the minority, we actually sever an artery in our democracy. And, that's what we would be doing, if we allowed a majority to decide who gets to work for our Councilmembers. The, like the gentleman said earlier, I haven't heard one person in support of that. This doesn't sound right to any of us.

As my mother always said, and I think it's Abraham Lincoln's quote "Absolute power corrupts absolutely". We're certainly seeing that in this day and age, sadly. So let's not contribute to that. Let's not, let's not move in that direction.

For whatever good might, good intentions might have come from the decision to come up with that plan, you need to take it back and think about it and think about how nobody has supported it today and we're very concerned about it from all walks.

Then I'd like to also speak to, I, I know I'm under time for that first proposal, but now I'd like to switch to the sand mining moratorium. Do we start over? Okay. So, this is another example of our democracy failing to protect the minority. That's not a democracy. Watching Napua Greig-Nakasone speak earlier today about the disrespect for the iwi kupuna, she said it made her sick what she learned about how many remains were in the sand dunes of Waiale. And, it makes me sick too. And it makes me cry to think about the disrespect and disregard for the ancestors of this place.

The bill just asks for a moratorium while sand resources are assessed. Not only are our dunes rich with Hawaiian cultural heritage, but there are important and rare ecological features that should not be sold off and removed. Where is this Maui sand going anyway? Beach replenishment in Waikiki? Development? Honestly, this is something that needs time to really look at. I'm, I definitely in support of the moratorium on sand mining.

To disturb the resting place of the iwi kupuna, the ancestors of whom knew that coral was a living creature. 2000 years ago, in kumu lipo, it was documented as one of the most primitive organisms. And this was at a time when European ancestors thought that coral was just a rock. So this to me is the epitome of, of the hubris and the lack of understanding of the ancient knowledge that resides in places like Hawaii and the continued desecration of the iwi kupuna is. It's a symbol, it's not just desecration of the culture, it's desecration of the aina, of the bones of this place, the bones of the ancestors and the place.

Which brings me to the third item that I wanted to talk about, and that's the proposal to ban oxybenzone in sunscreens. Of course, as the Director of Hawaii Wildlife Fund, a nonprofit organization dedicated to the recovery, protection, and restoration of habitat or our native wildlife. Of course, I'm in support of a ban on a chemical that actually deforms coral larvae, preventing it from being able to move. It can actually swim freely, coral larvae. Prevents it from being able to fall down onto the sea floor and attach itself.

It's actually killing our larvae, is killing our future. It's killing any chances of recovery for the coral reefs which we've lost significantly. Fifty percent in one year. 2015, we had a massive loss, massive bleaching episode around the world, the third global bleaching episode in written history. And, yeah, we have a heatwave, and its caused by us. Global warming.

Yes, the sunscreen contributes. It's not the only problem, sedimentation is a problem. But what we can change, we must. We, we, we should, when we know better, we must do better. So taking the oxybenzone out of the sunscreen is just one small step that we can take. Maybe we can't stop global warming on a global scale at this day and age, in this time, not yet, maybe incrementally we can work on that issue. But that's how we do it. Things that we can take care of locally we must take care of.

Maui has been the leader in taking care of our aina with our bag ban, our polystyrene ban, and now if we ban oxybenzone in our sunscreens, the whole world will continue to see Maui as the leader in the environmental movement. Maui taking the stand for our place, for caring for our place. So I urge you to support that ban on oxybenzone.

I witnessed this decline myself in the 26 years that I've been diving and teaching about our reefs.

I've already spoken to the 50 percent decline that's been documented by DLNR and just to sort of reinforce what Ms. King was talking about earlier, she's trying to get to the point that, was being a little bit misrepresented. DLNR, a year ago came out with a statement saying avoid oxybenzone containing sunscreens. That is their position. It's also the position of the International Coral Reef Symposium of 2016 and the IUCN International Symposium held for the first time in the U.S. here in Hawaii, a year ago. And, the Iron Man contest for the last two years at our urging. So, please keep Maui No Ka Oi. Keep up the good work. Mahalo.

CHAIR WHITE: Thank you, Ms. Bernard.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Deborah Mader, testifying on Committee Report 17-472 *[sic]*, Committee Report 17-167, County Communication 17-484 and possibly one other item. I apologize I can't read that.

(Councilmember Crivello was excused from the meeting at 2:17 p.m.)

MS. DEBORAH MADER (testifying on County Communication Nos. 17-472 and 17-484, and Committee Report Nos. 17-167 and 17-182):

Victims' rights. Aloha, Councilmembers. Good day. First the good stuff. Mahalo to Mayor, sorry Councilwoman Elle Cochran for putting forth the bill prohibiting oxybenzone sunscreens. I'm in favor of this bill. We should take any and all actions to save our reefs. This bill is a great start. Please listen to the people who have come before you today that live here, not ones paid here by a cosmetic company based elsewhere.

I live in Kihei, so we're at the beach all the time. And I'm the typical person, the posterchild for sunburn. I have freckles, I have Irish ancestry, light eyes, and I've been burned a lot as a child. I also have three small children. And I'll say that when I first heard about the dangers of these chemicals on the reef, I checked my sunscreen when we use it, we often use clothing to protect ourselves from the sun, but, and it luckily didn't have anything in it, it's mineral based.

This is an example and I'm not being endorsed by this company at all, but I just want to show you because the cosmetic people make it seem so difficult. It only takes a tiny

little bit on your hand, you rub it in, and it protects your skin from the sun. And it's not greasy and all these other cosmetic things they worried about. Super easy, find it everywhere. I found it in Whole Foods, in Mana, and Hawaiian Moons, a lot of local shops in Kihei.

The other thing I'd like to point out is living in Kihei we live with tourist. I've, I've even worked in the industry for a while. And most tourist are generally good people. They fall in love with Maui, they want to do right by Maui and its people. So, with the plastic bag ban, everyone was jumping onboard, yeah, no problem, you know, I'll use the canvas or whatever. They adapted.

I think the same is with this and with smoking on the beaches. Everyone adapted. If you said to somebody hey we just passed a law, you know, you can't smoke cigarettes right here, oh sorry, no problem, let me go over here. It's going to be the same with the sunscreen. So I think we can easily do this, we should do it, it's a great precedent and we shouldn't pass the buck up to anyone else because this is Maui.

Okay, moving on next. So, thank you, Elle Cochran for that.

Item 17-167, I think the sand moratorium. Please pass it. It's cultural genocide on the Hawaiian people. And how you can listen to Napua and other natives, and not be moved by them is beyond me. My, my stepfather-in-law is buried here. And I never have to worry about him being bulldozed over, because he was drafted and he served in, in the Army years and years and years ago, and he's got that protection. So, he's at peace and he's safe.

How the heck is it fair that people who are born and of this island and have been raised here and this is their family, can just be bulldozed over, moved, whatever. It's, it's just wrong. It's wrong. And so the moratorium would be a great effort to say hey, time out, let's reassess, let's look this over, and not just pass it off to the State because we know the State doesn't solve our problems on Maui.

(Councilmember Crivello returned to the meeting at 2:20 p.m.)

MS. MADER: So, my family and I are, are very much in favor of this. My husband Tom wanted to testify, couldn't, had to pick up the kids, so on his behalf as well, please pass the moratorium.

Okay, moving on. Victim's rights. I think it was labeled PEA 4-1, this is a really serious issue and I know there's been some talk that this is just affecting one family but it's not. I have a good friend whose brother was murdered and the, her family was very much the victims and going through similar yet different things, as, as Charli's mom has gone

through. So, I, I think it's definitely, victims need a lot more attention and I think this bill will definitely, just to enforce the laws we already have because what, what Charli's mom has had to go through is, is really bad. As a mother, so anyway, please pass that bill.

So, a new three minutes, finally. 17-484 regarding Council Chair White bill. I don't even know where to start with this one sir. You as a General Manager of the Kaanapali Beach Resort, you know about managing employees. Would you allow another hotel to fire your employees? Of course not.

This is, this bill is bad business for the County, it's also bad for the Councilmembers that we elect. Now, we elected Mr. Atay because he's a leader, because of the work he's done as a farmer, as an educator for the youth of our community. A loving man, a caring man, a man that just gets the community to come together and, and, and make Maui better, working together. He's opened up his heart and his family and his doors to a lot of people. That's why we elected him, because he makes good decisions.

So, why are you targeting his office specifically? And what I can't wrap my head around is that you're the General Manager of Hawaii's most Hawaiian hotel. You've made millions of dollars off of the Hawaiian culture and using that for profit from tourist. And you come to work here, and you're equal, Uncle Alika is your equal. You sent him a letter and tell him fire this person by Friday or else. In your letter to Mr. Atay, you had the audacity to lecture him about aloha. I have no right to lecture anyone about that, but you sir, don't either. So, it's okay for you to profit off the Hawaiian culture but when you come to work here you get to pick their staff, you get to tell them what to do, and I don't think that's right.

Passing this bill would mean that five people could control all of the Councilmembers' offices. Trinette Furtado is also part of Mr. Alika Atay's staff. She happened to run against you last election, hopefully she'll run against you again. What's to say you can't use this bill to simply fire her for no reason. You get four of your buddies on board, boom, she's gone. Who's next, Elle Cochran's assistants? Hard to say.

Back to Brian, I know Brian, Brian's been mentioned a few times, Alika's assistant and I just want to share with you, I met, I know Brian personally, I met him through the Hawaii Farmers Union. He's always been very kind, very knowledgeable, very energetic and passionate. Wants the best for this community, great with my kids. Very, very, very awesome person and I can see where you would be afraid of him and want him fired because he's smart and he's a truth seeker. So, I oppose this bill. Please file it. Mahalo.

CHAIR WHITE: Thank you very much. Thank you for being here, Ms. Mader.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Tina Wildberger, testifying on Committee Report 17-179, to be followed by Carmen Hulu Lindsey.

MS. TINA WILDBERGER (testifying on Committee Report No. 17-179):

Aloha, Chair. Aloha, Council. Thank you for the opportunity. I've been dressed like this all day. My name is Tina Wildberger, I'm a marine tourism professional with my husband, we operate a six-pack sailing vessel called Shadowfax out of Maalaea Harbor. We offer our patrons reef safe sunscreen when they come aboard with dangerous products.

I'd like to present to you here, now the only reef safe sunscreen. Our reefs are our economy, a couple have said that already today. I'm an unapologetic environmentalist. On the fifth floor, I don't know how many of you all take the stairs, but on the fifth floor it says "e malama i ka wai", "To care for our waters". And I present perhaps a addition to that, "e malama i ka kai", we need to take care of our oceans also.

A couple weeks ago I was on Trilogy's Blue`aina trip with the Maui Nui Marine Resource Council. I use to work full-time in marine tourism taking guests snorkeling in Olowalu Reef, Maui County's mother reef, newly designated as an important reef globally. I can personally attest to those corals are dying. Big giant yellow lobe corals that were hundreds of years old are now turning black and covered with fuzzy algae. They're dying, we need to do everything we can.

At Cove Park, limu use to be abundant and there is no more limu at Cove Park.

I want to also remind because a lot of the testimony, I'm sorry the gentleman that came out of Committee a couple weeks ago, I watched on Akaku was, his testimony was compelling. And I want to remind and have on record for today that the Committee voted unanimously to move this bill forward. And I'd like to thank the Council Committee for that because it's not so often that we get unanimous votes on especially environmental considerations. So, that gentleman was extremely compelling and he talked about how there is no correlation between sunscreen use and cancer prevention. He also talked about the incidence of endocrine disruption with the use of these dangerous chemicals.

So, you know, my Dr. Martin, my dermatologist, has told me to cover up, it's pretty easy. While sunscreens are labeled duplicitously to say they are waterproof, they are not salt waterproof. We have too many dissolved solids in our ocean and these cosmetic companies and their professional representatives are not doing individuals any favor by telling them they can slather and reapply, and slather and go get in the salt water where that sunscreen comes off and their children get burns that do cause them cancer when they grow up. I thank you for the time.

CHAIR WHITE: Thank you, Ms. Wildberger.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Carmen Hulu Lindsey, testifying on Committee Report 17-167, to be followed by Michael Pasco.

MS. CARMEN HULU LINDSEY, OFFICE OF HAWAIIAN AFFAIRS (testifying on Committee Report No. 17-167):

Aloha, Chair and distinguished Members of our County Council. I have been here before on the same initiative and I'm here again. My name is Hulu Lindsey and I am your Maui Trustee for the Office of Hawaiian Affairs, representing the beneficiaries of the Island of Maui. I also serve as the Chair of the Board of Trustees Resource Management Committee.

The Office of Hawaiian Affairs have done extensive research on this issue and have submitted many pages of testimony to the Council, so I come to you today and I'd like to make two points in my testimony.

Firstly, this Council needs to protect our ancestral connection to this land. That connection is with our iwi kupuna, the bones of our ancestors. The community hurts greatly when iwi kupuna are disturbed and desecrated because we believe our bones that linger on this pae `aina possess the mana of a person forever. It is an ancient belief that we still hold dear. I urge you to uphold the value we place on our iwi kupuna.

Secondly, while the sand dunes hold not only immense cultural value, it is an extremely valuable natural resource that has been depleted over time. According to Maui County Code, Mining and Resource Extraction, are listed special uses. Specifically allowed only in the Agricultural District, subject to a special use permit. No other County zoning district, including the Maui Lani district maintains mining and resource extraction as a permissible or special use.

Earlier today Grant Chun from A&B testified that there is no urgency. If there is no urgency, why then would a moratorium of six months not be acceptable to you Councilmen. I implore you to uphold the laws for those who have violated them and to protect our cultural and, and ancestral heritage of our iwi kupuna. Thank you.

CHAIR WHITE: Thank you for being here this morning or this afternoon, I guess it is now--

MS. LINDSEY: Thank you.

CHAIR WHITE: --for your testimony.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Michael Pasco, testifying on Committee Report 17-179 and County Communication 17-484, to be followed by Paul Meyer.

MR. MICHAEL PASCO (testifying on Committee Report No. 17-179 and County Communication Nos. 17-482 and 17-484):

I have some brief remarks on CR 17-179, regarding the oxybenzone ban. I myself, I'm Michael Pasco, a surfer, former triathlete, former landscaper, trail guide for visitors. I spent a lot of time in the outdoors and similar to the demonstration we had moments ago, I can attestify to the effectiveness of the oxybenzone free sunscreens and their wide availability.

I also, have, since this issue has become more and more in the public eye, I found myself at the valet desk at the Grand Wailea recently and I noticed that they have sunscreen dispensers there for their guests. And I asked about that to the staff, and apparently what the, what the staff has been told is that their sunscreen there is oxybenzone free formulation that is actually used at all the Hilton Resort properties all around the world because in Mexico, they don't allow you to use those types of sunscreens. And so what happen is the businesses, they just adapted. And that's what will happen here as well. People will adapt and use the reef safe products.

So that's just one thing I wanted to, to add. We all know the, the remarks of Mr. Bagshaw and, and the, the work of bodies like the Maui Nui Marine Resource Council that continually reports on the, the state of our reef here in Maui and gives them in recent years failing grade after failing grade after failing grade. So we need to take every possible measure, even if it might, even possibly be a little bit overkill, we need to take every possible measure to protect these limited reef ecosystems.

(Councilmember Sugimura was excused from the meeting at 2:33 p.m.)

MR. PASCO: Using my last minute there, I just want to mention just real briefly, if I can, on CC 17-482, that I just want to ask that the, just based upon discussions had in these, in these building here today, if it, if it certainly is true as it appears to be that the removal of the head of the Board of Water is an act of political retribution, I would just please ask this body not to be complicit in anything like that.

The last item that I signed up for, CC 17-484, childish, petty, undemocratic. Those are the three words that come to mind first. The other three: conflict, ethical, concerns. To think that with a simple majority vote, the staff member or members, plural of a political opponent could be fired without cause and without due process. Keep in mind that this could be used to terminate the staff of a Councilmember who for instance got thousands more votes than the person that introduced this amendment got when they were elected. It could be used to, to fire some of their staff, or many members of their staff. Potentially, it could gut the staff of a political opponent leading up to an election. It's really not what Maui deserves. That's shameful.

This could even be used to try to silence the staff member of one of these duly elected Councilmembers if they were asking questions. Questions that perhaps Members of this, of this Council didn't want the people of Maui to have answered. That's not what Maui deserves. Maui deserves much better than that. And to put this in human terms, the positions that we're talking about, these staff positions oftentimes what we're talking about are working mothers, sometimes single mothers, the sole provider for their families, and you're asking for the power to terminate their job without cause and without due process. That is shameful. It is childish, it is petty, and it is undemocratic.

CHAIR WHITE: Thank you, Mr. Pasco.

Mr. Clerk.

(Councilmember Sugimura returned to the meeting at 2:36 p.m.)

(Councilmember Guzman was excused from the meeting at 2:36 p.m.)

DEPUTY COUNTY CLERK: Next testifier is Paul Meyer. Last call Paul Meyer. Next testifier is--

CHAIR WHITE: Wait, he was, he was here just a short while ago. Doesn't appear to be here. Go ahead.

DEPUTY COUNTY CLERK: Next testifier is Pamela Tumpap. Last call Pamela Tumpap. Next testifier is Bruce Douglas, testifying on Committee Report 17-179 and Committee Report 17-167, as well as County Communication 17-484, to be followed by Gregory Kugle.

MR. BRUCE DOUGLAS (testifying on Committee Report Nos. 17-167 and 17-179 and County Communication No. 17-484):

Aloha. I think it's fantastic that Maui has the, I'm going to start with the oxybenzone. I think it's fantastic that Maui has the potential to be a leader in the world because the whole world watches Maui, the whole world looks at Maui as this gem in the ocean when they come here and vacation here. That we become the leaders to inform people, to educate people about this component of oxybenzone and it being an endocrine disruptor and what it's doing to the reefs. And I'm equally concerned about it was to the people who put it on their bodies. We talk about the reef, cause that's what we can point to, but what smearing endocrine disruptors on your body does is equally as destructive.

So we have the chance to be a leader and educate the world in what's going on. So I encourage you, don't be afraid of the bullying from the industry, who's threatening you with lawsuits and saying all the various things they are saying. Don't go, don't follow that bullying type of stuff. Stand your ground with this one, because even if they do knock it out in courts, and we know the court system is rigged, so even if they did manage to do that, we have still won because we've educated the whole world about this product, and we've took a stand for our reefs and we've done something positive.

(Councilmember Guzman returned to the meeting at 2:38 p.m.)

MR. DOUGLAS: So win or lose in the courts, we still win because we've educated and raised the consciousness. And what we're really trying to do here is bring a whole new level of consciousness cause that's part of what Maui represents to the world. So I encourage you to do the right thing and pass that. It's a brilliant thing, it's really well timed, and it's really important that we step forward and educate the world that comes here. And that we will be a leader and they will be looking to us saying wow, Maui did it, maybe we could do the same thing. And yes, you will be threatened by the industry, we know how it is when you try to do moratoriums and the industry steps in.

But it didn't really matter, even with the GMO moratorium we educated a whole island who didn't know anything about it. What's a GMO, and suddenly it's, it's common

knowledge. We flushed them out. So it's a beautiful thing to have that ability. So, I encourage you to go forth.

What's my next one--

CHAIR WHITE: Pardon?

MR. DOUGLAS: The sand mining. That's another good leadership thing, that we really stand for the kupuna and the burials. My grandfather is buried here in Wailuku, not too far from this building, in a Christian ceremony, Christian cemetery. Would we dig up that if we found sand underneath it? Would we dig up a Christian cemetery, and put 'um off over here and a little plaque? Would we do that to a Christian cemetery?

You know, it's beautiful that I can go visit my grandfather's burial, my father grew up here in Maui as a kid. And, so I have those roots here and I have my grandfather here. And that's a beautiful thing and no one would touch that cause it's Christian. So we need to give equal rights, especially to the Hawaiian ancestors who's land we are on, on occupying and sharing.

The moratorium for six months, that's a very minor thing. It's a very logical thing that you want to study something for a while and have some time to study it. That's perfect, that should be. That's like a no-brainer. Just six months to study it, that's a very simple thing to ask for. In the meantime, we can really understand, cause we all know we can't keep mining our sand cause most of our sand reserves are underneath houses now. We're going to move the houses in the future in order to get sand for Maui? We all know that the sand is going to be a crisis in years from now because we've allowed housing to be over our sand resources. So to be digging up sand and exporting it to Oahu is something basically wrong to begin with.

So I encourage you to again not be bullied by local interests who have the big money and are contributing to certain people's election campaigns, and do the right thing.

And as for that bill Mike, it's brilliant, I love it. I think you should go for it with full gusto and try to fire other people's staff. It's, you really, especially in an election year, you want your opponent to do something really, really, really stupid and show everybody exactly who they are and what they're made out of. You know, so, I encourage you, go for it dude. Boom, knock 'em out. And you're really showing the people who you are and what you're made out of deep inside, cause that's such a cowardly thing to do. Oh my god, and it's brilliant, so go for it, dude.

You know, the best thing in the world during the moratorium, we watched Monsanto come out with those outrageous commercials, you know, and really pissed everybody off. And we're going yeah, Monsanto, fantastic, go for it, piss everybody off, show `um who you are. So you want them to do that, so you're really doing a perfect thing. Well timed, brilliantly executed, go for it.

And as for our water person, braindead, head of the Water Department. He is one of the only people who's not a crony of the Mayor. All of the other department heads are basically cronies of the Mayor. He's the only one who really came through the crowd, came through the Water Department, earned that right to be the head of that Department because he worked there for years, he's worked a long time. He's brilliant at it, he's got a good mind, he's earned that position. What about all of our other department heads? Mayoral cronies? Head of our Parks Department, really? You guys approved that?

If this becomes a vote of the five versus the four, what have we really attained? More division? I mean we already have enough division as it is. We need to learn to work together for what we really need to do, and not start voting on the five versus the four. That's really childish and not what people were voted to do, to vote on party lines, and rather their conscious. So I really encourage each one of you to deep, deep in your conscious and don't be bullied by certain people who've got the power right now. Cause that's going to change, and then you're going to be on the wrong side of the tracks. It will change and the people who show themselves who they are will be removed from office, and everything is changing.

And we're growing up and people's consciousness about it is rising, people getting more organized and interested, and more and more people are coming forth. And social media is getting out there and so people are paying attention. So do the right thing. Don't vote on party lines for these things just because one bully is able to twist your arm into it. And each one of you know who that is, who would be affected by that. Thank you.

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

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Gregory Kugle, testifying on Committee Report 17-167, to be followed by Ki'i Kaho`ohanohano.

MR. GREGORY KUGLE (testifying on Committee Report No. 17-167 and County Communication No. 17-480):

Good afternoon, Chair White, Councilmembers. My name is Greg Kugle, I'm an attorney, and I represent Maui Lani Partners. And I'm here to provide some testimony in opposition to the, what's been referred to the sand mining bill. We did submit written testimony on November 16, 2017, and stand by that. Today I just want to highlight a few points about why the bill as proposed is not constitutional, cannot be passed, should not be passed, and would be subject to challenge if it is.

I want to hit on first, the concept of inverse condemnations and takings, which is also related to vested rights which you heard about earlier. When property, property owners have rights in their property, and to use their property. Hawaii State law specifically says that sand and soil and other things under the ground are in fact private property and do in fact have value. And so, an ordinance that would attempt to freeze that, and freeze that use runs the risk of what's called a temporary taking at a minimum, which is what the moratorium would be. And a temporary taking is what the United States Supreme Court said in the first English case in 1978, said that even when the government only takes all use of property for a limited amount of time, that it must pay just compensation for doing so.

You have heard some testimony from people suggesting that well this is just a six-month moratorium, that's not very long, that's no big deal. Well constitutional scholars have a thing called rolling moratoriums. It's kind of like a tax increase, like on Oahu we have the rail tax increase that keeps getting extended. Well moratoriums, particularly short ones like this have the same tendency, they get extended from six months, to another six months, to another six months.

There are Supreme Court cases where they go on for years and years. And that simply compounds the time and the damage that the County ultimately would have to pay for taking private property. Vested rights similarly, like the Maui Lani Partners project in Maui Lani is a fully entitled project with permits in place, and for any government agency or official to interfere with those permits and try to suspend or destroy those, Hawaii's appellate courts have said that is unconstitutional and that can be a taking of property as well.

Let me turn to a different point which is the Charter. And that is, I think this bill as proposed is an attempt to do an end run around public participation which is afforded for any zoning ordinance, which is really what this is, which has to be presented to the Planning Commissions on each of the, the three jurisdictions, the three Planning Commissions.

The Corporation Counsel opinion as well as the committee report itself points out that this is an end run around that process in short circuiting the public participation. Third I would say that the preemption.

CHAIR WHITE: Mr. Kugle, you have conclude your remarks.

MR. KUGLE: Thank you. And I could also offer testimony on Communication No. 17-480 as well.

CHAIR WHITE: Please proceed.

MR. KUGLE: I'll wrap up quickly. Preemption, Chapter, HRS 6E, the State has a complete regulatory scheme to regulate historic property, archaeological sites--

CHAIR WHITE: I'm sorry, Mr. Kugle, you've, you've exhausted your three minutes on the first item, so if you would like to speak on the second one that's fine.

MR. KUGLE: Thank you. I would, this goes to the DLNR, SHPD in its enforcement of Chapter 6E. The Board of Land and Natural Resources has a complete scheme under Chapter 6E to investigate violations of Chapter 6E and the regulations under it, to prosecute those, to impose fines, to order corrections. The State like the GMO cases has occupied the field doesn't leave the counties room to regulate burials.

And then lastly, I would say that this, the proposal really targets landowners. If the purpose is to protect sand resources in Maui County, there are large sand deposits on the islands of Lanai, Molokai, and also elsewhere on Maui County that are not subject to the proposed moratorium. In fact, from its initial proposal till now, it's been narrowed down till it only affects several corporate landowners, most of whom are engaged in land development activities. This targeting raises the question of equal protection and discrimination.

And as I mentioned I do represent Maui Lani Properties, Partners, excuse me, and I have heard the lawsuit been described to you, it's been grossly mischaracterized from what you've heard, I certainly can respond to clarification if you'd like. But the court did throw out the violation of zoning claim, violation of grading claim, and the court's recent preliminary injunction ruling allows grading to continue pursuant to the grading permit that was issued, provided HRS 6E, continues to be complied with as Maui Lani Partners has always done. Thank you, Mr. Chair, Councilmembers for the opportunity this morning.

CHAIR WHITE: Thank you, Mr. Kugle.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Yeah, thank you, Mr. Kugle. I'm just trying to get some clarification.

MR. KUGLE: Yes, sir.

COUNCILMEMBER ATAY: I kind of got lost in some of the words, but I'll try interpret. You mentioned something about inverse takings in that any property that's underground is your property.

MR. KUGLE: I, I said two different things. Yes, I did talk about inverse condemnation and takings. I also said that there's a Hawaii Statute that says that while State of Hawaii has reserved to itself minerals such as gold, oil, or other resources below the ground, it has specifically excluded things like sand, soil, and gravel from State ownership, meaning those are owned by the subsurface property owner.

COUNCILMEMBER ATAY: I don't know if you were present from an earlier testimony from a former land use, State Land Use Commissioner testifying that through your company's testings, they found some 400 sets of bones.

MR. KUGLE: I think she was referring to, my client is Maui Lani Partners, I think that was an Alexander & Baldwin property, that's a different property than what I'm talking about. I don't know anything about the sets of bones, although I understand that that was not actual sets, but rather in some cases just partial remains, each one of which was identified as a specific find. So, but I don't know anything about that.

COUNCILMEMBER ATAY: Okay. If it was Maui Lani, I would further the question, but thank you.

CHAIR WHITE: Thank you, Mr. Atay.

Thank you, Mr. Kugle.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Oh, I'm sorry, Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah, you referenced a Corporation Counsel opinion.

MR. KUGLE: I, I--

COUNCILMEMBER GUZMAN: I'm not aware of one that came out.

MR. KUGLE: It was, I'm sorry, I might have been wrong when I called it an opinion, it was a Corporation Counsel letter which I cited in the written testimony that was submitted at the IEM level, which, that was talking with respect to whether this was a zoning ordinance--

COUNCILMEMBER GUZMAN: Okay.

MR. KUGLE: --or a grading ordinance. And I think--

COUNCILMEMBER GUZMAN: I just wanted to make sure that that wasn't an opinion versus a statement.

MR. KUGLE: Yeah, I'm sorry, yeah, I think it was the--

COUNCILMEMBER GUZMAN: Thank you.

MR. KUGLE: --written testimony. Thank you.

COUNCILMEMBER GUZMAN: Thank you.

MR. KUGLE: Thank you.

CHAIR WHITE: Okay, thank you, Mr. Kugle.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Ki'i Kaho`ohanohano, testifying on Committee Report 17-179 and Committee Report 17-167, in addition to County Communication 17-484. To be followed by Kay Bergstrom.

MS. KI'I KAHO`OHANO HANO (testifying on Committee Report Nos. 17-167 and 17-179, and County Communication No. 17-484):

Aloha, thank you for the opportunity to share today. I honestly contemplate just walking out of this room cause all I can do is cry, so kala mai in advance. This is some pretty serious issues we have here today.

I'd like to start first and foremost with our iwi kupuna and the sand mining moratorium that's being proposed. I'm in full support for a multitude of reasons that have been repeated to you throughout the day. Bottom line is, is destruction of our cultural heritage and our kupuna, and I'm just going to beg you today to please have concern for that over profit, and building, and development, and all the things that would urge you to push it forward.

As far as, I'm going to move forward, the sunscreen issue. I'm in full support of banning the sunscreens that are full of toxins that not only poison our reefs and our limu and our sea life, which is also our kupuna. But I am a health care practitioner for many years, over 20 years. I actually use to sell sunscreen about 15 - 20 years ago and it was an aloe based product. Didn't have any of the chemicals in it and the reason I chose to work for that company was because of that. That company was around in Maui for years. And so it obviously works well, cause they would not have survived.

I have four keiki of my own, we're religiously in the oceans, hiking up the mountains, all over. And I am obviously poi haole looking, light skin, fair, freckles everything. I only use those kinds of sunscreens because I am aware of the toxins and the pollutants that are not only bad for our reefs and our aina, but also for my own kino, my own body. We fail to remember that our skin is our largest organ and so not only are we poisoning our aina, and our oceans, and our streams for that matter, but we are also poisoning our own kino, our own body. And when we put these products on top of our bodies, we ingest them.

I'm coming from a, an Irish, Scottish grandfather who was a sailor his whole entire life, had spots of sun cancer, skin cancer removed his whole life and his later years after so much sun exposure. He used all those chemical based sunscreens and he still got those cancers. So that's another point, I think is that even using those things religiously, didn't protect my grandpa, yeah.

And, my family, fair skin and all, we have no issues and we are also taking care of our internal bodies by choosing things that are more supportive for not only our bodies but our aina.

Okay, lastly, I'm really excited that there's all these other issues going on today because what I really came for was to tell you, I don't know what you're thinking. Alike Atay and his staff, particularly, are good people working for Maui. They are righteous, they are good people, honorable people and I came for him and his staff more than anything today. Cleared by schedule, lost money that I can't afford to lose. This is unfair. This is not good politics and I am so appalled that someone of your leadership and your status would even think, even think it, yeah, let alone put mana to it and put words.

I urge you folks to please not support this bill that can fire with no particular cause or whatever the wording is, it's illegal. You guys do your homework, I didn't bring the, the numbers, but we looked it up, it's illegal, this is BS. So I urge you to please vote appropriately, use your good conscience. You guys is all supposed to be here to represent us. You have to be good working team players. Yeah, we started with Lahainaluna here, yeah, they're all team players, they didn't get that status by not working together. So remember that. And I cannot do anything but second Mr. Hawaiian Hotel, brah, okay, that's it.

CHAIR WHITE: Thank you, Ms. Kaho'ohanohano.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Kay Bergstrom, testifying on Committee Report 17-179, to be followed by Dick Mayer.

MS. KAY BERGSTROM (testifying on Committee Report No. 17-179):

Yeah, hi, I'm Kay Bergstrom and I have been a skincare esthetician for the last 20 years, I'm licensed here in Hawaii and I've worked in the resort spas. So, I've been around the whole tourism using sunscreens. I'm just here to tell you that I really have, in theory I support a ban, but I am, got a lot of concerns on how this is going to be implemented and how you're going to enforce this.

First thing, I just really wonder how you're going to keep people from ordering sunscreens online, ordering, bringing them into Maui. The second thing is how is this working with tourist bringing in their own products. Is there going to be TSA going to be looking for these, I mean are they going to be confiscated this type of thing. You know, I mean this, and I realize, you know, this is sort of reality, people bring their own products.

Knowing about sunscreens is that sunscreen is a personal body product, I mean it's used for both you face and your skin, it's antiaging. People are kind of, they, they like their sunscreens because it's, it affects their appearance. They don't like certain items because they're greasy or zinc, because sometimes because of the white film. So you're not dealing with the same thing as like a plastic bag versus a brown paper bag. These are things that people do have some, some feelings about it.

Skincare professionals, your dermatologists are some of the best educators on this, on what products to use. So I am not saying that I, you know, do not want to ban this, but I am saying that I think that the best thing right now is maybe the County could do some kind of resolution on educating the public about the whole problem that's going on. You know really getting it out there, doing some kind of public service announcements, doing it the airport, explaining to the people, especially the tourist, even before they come that this is something that we're really, you know, recommending them not use.

I think, actually education does work, they will, you've got an incredible resource with the spas and the resorts just as they mentioned before about the sunscreens that they can find that are mineral based. These are all things that you can do because I, I don't know how this whole ban will be enforced and I think doing education first without banning is a better idea. So, thank you very much.

CHAIR WHITE: Thank you, Ms. Bergstrom.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Dick Mayer, testifying on County Communication 17-484, Committee Report 17-167 and 17-179, to be followed by Jillian Wirt.

MR. DICK MAYER (testifying on County Communication No. 17-484 and Committee Report Nos. 17-167 and 17-179):

Thank you, Mr. Chair. My name is Dick Mayer. I'd like to testify on the, the staff removal item, the sand mining, and the sunscreen.

First for the, with regard the staff removal item, I think this is a, a very improper thing to do. I think it's being done vindictively and I think that you can see in the exact wording of the proposed amendment exactly what's intended. It would, adding the words "or by a vote of the council" that's in 2.08.050, which is where the change is.

But if you look at that same ordinance, just above there, on 2.08.01, you'll see a very different phrase used when it talks about removing members of the Council staff, the Council Services staff. There it states very clearly, I'm going to read the whole paragraph "The term of employment for the director and staff shall coincide with the term of office of the council, unless sooner terminated for cause by vote of six or more members of the council."

That could have been used in this case here, but it was not used. Rather, it says only "or by a vote of the council". It doesn't say by cause, there's no cause given, it's just a vote of five Members of the Council as opposed to six. That's a significant difference as you know, by the makeup of your Council. It should be consistent, why should one group of people possibly be terminated versus another group of people who have a different standard be held, one is that no cause needs to be shown and secondly, it's a mere vote of five.

I urge you to table this amendment, don't bring it up to, waste your time, there's so many other issues as you see on your agenda today, there's dozens and dozens of issues that are there. Mr. Chair, I would urge you to recommend to the body that they kill this bill and do not put it to a Committee, and have to go through a whole series of, of meetings hereafter.

With regard to the second item that I want to talk about, and that is the sand mining issue. Mr. Kugle just came up a few minutes ago, the attorney for the company that's involved there. He wrote a long letter to you describing the arguments for the, for the developer of that land. There's also another letter that retorts each of those items that he presented very clearly by another attorney, and that's by Lance Collins, Maui man who went to high school here on Maui, St. Anthony, went to college, was one of my students at Maui Community College, years ago.

And he wrote an excellent retort of each of those points about the takings, about the zoning issues, about each of those issues. I would urge you before you take action on that item, to read his responses, which I think clearly indicate that there's some faulty logic in what Mr. Kugle was saying and I think it's an issue that needs to be looked at. I don't think the, the liabilities and all the other things that he's talking about are there.

With regard to the last item the sunscreen issue. And here, I think there's a dual opportunity. The dual opportunity is one, is protecting the reefs. The second is protecting Maui's tourism industry. Maui for decades has been very proud to say we're the number one island, over and over again, Condé Nast has given us that ranking, and we've very proud of it and use it as a, as an advertising gimmick in the, in the industry among, across the country.

We now know that there are other areas that are also competing with us more and more, and not that I'm saying that we need to increase the tourism industry, but we want to protect what we have. And by doing this measure on banning these substances in sunscreens, we can make a statement that goes along with other positive action groups we have on our island, our beautiful culture, our beautiful

scenery, and we can also say we are one of the safest environmental areas that people could go to.

Tourist around the, I can't imagine any potential tourist whether they be in Canada, Japan, or New York, or Omaha, or California who would think oh I don't want to go to Maui because it's environmentally clean. They would want to come to a place that is clean and is cleaner than other places. By making this statement that we are protecting our reefs, that we are doing what we can to make sure that the, that the reefs the tourist will come to see are going to be there "a" and be there protected and, and in healthy condition, I think it will make a very positive statement.

As for the threats that the, that Ms. Bronster mentioned about the Federal Commerce Clause, your own attorney Ms. Thomson wrote you a letter, and in that letter she indicated clearly that you have the right to make a special provision where the local interests are greater than the national norm that's out there. And she gave several examples, and several cases where that's the case, where that can be done.

And in this case, we have a special thing, we have our industry here that by far the biggest industry and the most, the one we all depend upon is no longer sugar, it's tourism. And by threatening tourism, we are, have a very special interest to protect that industry over the long term.

So I urge you, please, adopt the restrictions on the use of these chemicals. There are other sunscreens out there that can be utilized, we do not have to put things in the water that make, could endanger our coral reefs. And I would also urge you to consider the fact that it mentions several times that the FDA approved it. I would urge you to write a letter to the FDA and ask them, did they test that, those chemicals on coral reefs. My guess is they never made any such statement, they were talking about human health, it may or may not be healthy, I'm not a judge of that. But they never tested it on coral reefs, and that's what you're doing, you have a special interest to protect our industry, the jobs of our employees here on this island and the quality of life that we all wish to have here. Thank you.

CHAIR WHITE: Thank you, Mr. Mayer.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Jillian Wirt, testifying on Committee Report 17-179, to be followed by Cody Lang.

MS. JILLIAN WIRT (testifying on Committee Report No. 17-179):

Good afternoon, everybody. I'm also going to be testifying on behalf of my friend Morgan, I have her written testimony here, she wanted it to be spoken, so I'll go ahead and do mine and then I will do hers next, so.

My name is Jillian Wirt.

CHAIR WHITE: If it, if it, I'm sorry but if it's going to be on the same item, you'll have to put hers together with yours within the three minutes.

MS. WIRT: Okay, I think I can do it.

CHAIR WHITE: If you could start the timer over, Mr. Clerk.

Thank you.

MS. WIRT: Okay, thank you. I support the bill to prohibit the sale and use of oxybenzone and octinoxate SPF sunscreens and I would like to read a little bit about what oxybenzone does to coral and what it is.

So oxybenzone is a photo-toxicant; adverse effects are exacerbated in the light. Whether in darkness or light, oxybenzone transforms coral planulae from a motile state to a deformed, sessile condition. Planulae exhibited increasing rates of coral bleaching in response to increasing concentrations of oxybenzone.

Oxybenzone is a genotoxicant to corals, exhibiting a positive relationship between DNA lesions and increasing oxybenzone concentrations. Oxybenzone is a skeletal endocrine disruptor; it induces ossification of the planula, encasing the entire planula in its own skeleton.

Our corals are already under a lot of stress, so taking out this stresser would be a huge help to our coral reefs. With the passing of this bill, I think we would also see a much bigger market for mineral based and reef safe sunscreen, while also increasing awareness and education of the frailty of our coral reefs. I encourage you to pass this bill and continue to be leaders in protecting our aina and our oceans.

And from Morgan, she supports the bill to ban oxybenzone based sunscreens. As silly as it may be, to quote Dr. Seuss in this setting, he once wrote, "I speak for the trees, for the trees have no tongues." And she says we must speak for the coral, for the coral has no tongues.

Our coral reefs and the animals that inhabit them depend on the passing of this bill. Tourist travel from around the world just to see our reefs and all the animals living in our coral reef ecosystem. We therefore must do everything in our power to protect our reef ecosystems, and in turn our economy. Mahalo in advance for passing the bill prohibiting the sale of sunscreen containing oxybenzone and coral damaging substances. Thank you.

CHAIR WHITE: Thank you, Ms. Wirt.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Cody Lang, testifying on Committee Report 17-179, to be followed by Emily Johnson.

MR. CODY LANG (testifying on Committee Report No. 17-179):

Good afternoon, everyone. I'm going to keep it short and sweet. I mean a lot of us here, everyone here is for Maui, you know, we all live here and this place is beautiful. There's been a lot of testimonies that have, you know, covered pretty much everything that should have unanimous decision to vote yes on this bill and yeah, just to, that's about it. Simple, love Maui.

CHAIR WHITE: Thank you, Mr. Lang.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Emily Johnson. Last call Emily Johnson. Next testifier is Nick Drance, testifying on County Communication 17-472, 482, 483, and 484, to be followed by Thomas Hallagan.

MR. NICK DRANCE (testifying on County Communication Nos. 17-472, 17-482, 17-483, and 17-484):

Aloha, thank you first for all the great work that you do in protecting the island and looking after the interests of the residents here. I see that of course as your primary function, to look after us and I'm grateful for all the hard work that you do. I'll keep my comments short because there have been so many more eloquent statements of my point of view.

Let's see the first one I wanted to talk about was 17-482. I saw a "Chasing Coral" presentation at Lahaina Mall, I thought that was interesting and I was surprised to see five or six young scientists there from the National Oceanic Institute and the Sierra Club and they were almost crying, these poor kids about the damage that's happening to our coral reefs and specifically they talked about the sunscreen chemical. The other benefit of this resolution, it's really good business for Maui.

Bruce Douglas mentioned that whether we prevail in this or not, it builds awareness, but it also helps to establish our leadership position globally with environmental concerns, and once again looking after our people.

Regarding 17-482, Dave Taylor, I read that the Mayor's stated purpose was Mr. Taylor's unwillingness to plan correctly right now for the anticipated doubling and tripling size of the island population. I'm thinking to myself, okay, doubling and tripling, that means 450,000 people on the island of Maui. I'm not really thinking that in the year 2017, with the residents that live here today, that they're thinking that this is in their best interest. And of course, you're charged with the responsibility of looking after our best interest and, and protecting the aina. So I think the Mayor is maybe, with all due respect, confused as to what is best for the island if he is going to terminate somebody who won't plan for 450,000 people being on the island.

The other point that I wanted to make is that that reasoning seems absurd given the, given the fact that we're unable to sustain ourselves now. The current population of Maui, we can't feed ourselves, we have water issues that we talked about, our sewage treatment isn't adequate. I don't mind planning for the future, the number of people is absurd, but to disregard the fact that our current needs are not being met is, it's, it just, it makes no sense and it actually, there's, I won't say any more, about that.

Okay, the next item I wanted to talk about was the now infamous 17-484. You know, I think that, I have a romanticized idealized vision of what I think the County Councilmembers and the Chairman, Corporate Counsel, I have an idealized romantic vision of how you see your jobs. And I have to say that I feel a little bit naïve and foolish standing up here, echoing these reasons that everybody has given about something, you know, so obvious.

And so I would say that on a, on a moral ground, it's so obvious to everyone that this is an inappropriate thing to do and I would appeal to your individual values, Councilmembers and Chair to do the right thing and remember, you work for us. Your primary job is to look after us and to protect us, and you have a primary responsibility to work together to that end. This becomes really a personal issue. I can't stand up here and cite all the same reasons that everyone else has done, but it's really a matter

of moral principle, the sort of thing that's a key part of Hawaii and the values of this, of the State.

The last thing, just to quickly mention this, that being said, it's probably ridiculous for me to mention anything about the Maui County plan and the stated core values of the Maui County Plan. But it does say Maui Island will be environmentally, economically, and culturally sustainable with clean, safe, and livable communities and small towns that will protect and perpetuate a pono lifestyle for the future. This is something that I think should be your guiding light as you conduct your affairs and specifically there were two other parts of that, retain and enhance the unique identity and sense of place. The other one was respect and acknowledge the dignity of those who live on Maui, it's not saying respect the dignity and, of another 300,000 people that aren't even here yet. So, I thank you for listening, and wish that you'll take my comments to heart and consider them--

CHAIR WHITE: Thank you, Mr. Drance.

MR. DRANCE: Thank you.

CHAIR WHITE: Thank you for being here.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Thomas Hallagan, testifying on Committee Report 17-179. Thomas Hallagan, last call. Next testifier is Michael Aston. Last call Michael Aston. Next testifier is Daniel Kraver, testifying on Committee Report 17-179, to be followed by Helene Kau.

MR. DANIEL KRAVER (testifying on Committee Report No. 17-179):

Good morning. My name is Dan, fulltime resident of Maui. I have worked with marine resources all over the world, the Caribbean, Australia, Thailand, Israel, and Egypt. I worked for the Department of Environmental Protection and I've worked with some of the most cited and well-respected coral reef biologists in all the world. There is not a single person who I have ever talked to who does not believe that the sale and use of oxybenzone and other harmful chemicals in our sunscreen are not, are contributing to decline of coral reefs.

The talking heads in the suits that have come to this room this morning, who have been paid thousands of dollars while other of us have taken the day off of work to come and voice our opinion, I think that our opinion should mean something to you guys. We live

here, we are the resource users, we are not getting paid to be here. I promise you I could turn my opinion on a 180 degree turn if you guys paid me some money, I'd do it. But, that's not the point. The point is that Maui should be a sustainability leader, not only in the Hawaiian Islands, but throughout the United States and we should take that further throughout the whole world.

One of the reasons why I decided to move to Maui is because I thought I could make a difference. Small communities like this usually empower people rather than diluting their voices in larger cities throughout the world. So I hope that the rhetoric of these FDA claims and other reasons, kind of passing the buck, but we all know that the climate is changing. And we all know that coral reefs are in decline from a numerous amounts of reasons whether that be sedimentation, pollution, warming oceans, etc. Just because that's the case doesn't mean we should sit back idly and do nothing. It means that we should be proactive. We are already being too reactive, we need to be proactive, and we need to do this for not only us and our future generations, but for their future generations.

There is a statistic that by 2050 all coral reefs in the world will be dead, dead. I'm not saying dying, I'm talking dead. We're almost too late, if not too late, and I think that to not pass this bill in favor of corporate interests would make certain people like me, I know Bruce who I just met at a lunch, and the people who I associate with quite angry and not supportive of whatever City Council measures are passed thereafter. So I hope you guys choose to put this on the bill and ban the sale of oxybenzone sunscreens in Maui County. Thank you. Happy Hanukkah.

CHAIR WHITE: Thank you, Mr. Kraver.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Helene Kau, testifying on County Communication 17-482, to be followed by Tasha Kama.

MS. HELENE KAU (testifying on County Communication No. 17-482):

Good afternoon. I'm Helene Kau and I'm testifying on item 17-482. In January of 2011, I returned to the Water Department after four years in the Budget Office. Dave Taylor was the new Director of Water Supply and I returned to my position as the Assistant Fiscal Officer. Within the first week of working together Dave and I had a lunch meeting to discuss how to proceed with the systematic evaluation of the Department's resources including our staff, our general state of finances, infrastructure, etc.

Director Taylor would lead us in performing an assessment of where we were, and he had a vision of where the Department of Water Supply needed to be. Director Taylor made it clear to those of us within the Department and to the general public that our purpose over the long-term is to provide necessary reliable high-quality water at the lowest possible cost. Our Director has always been customer focused.

Within the first three months of 2011, I was tasked with forecasting over 20 years' worth of water rates necessary to fund varying levels of annual capital improvements. I prepared similar analysis for the water system development fees. Engineering was simultaneously working on long range planning, they prepared Gantt charts of CIP for the ensuing 20 to 30 years. The charts were color coded. We differentiated between absolute necessities, other plan maintenance and responsible growth, and some desirable, but not critically necessary products, projects.

We addressed the need to provide our County's administrative and legislative branches with logical and reasonable choices related to our water infrastructure and the financial impact that these choices would have upon all of our customers. In my involvement with CIP, I have seen the evolution of a clearer direction as we address critical needs versus annual wants. We replaced aging infrastructure before it's failure, provided additional source, and we've improved the quality and increased the reliability of our water supply to our customers.

Our County's drinking water comes from deep aquifer wells and surface streams. It's filtered via microfiltration or activated carbon, charcoal. Through the years as we've balanced need, reliability, and quality, balancing those against low cost has been challenging. Director Taylor has tenaciously worked with all of us to development common goals to define expectation and to provide a clear direction. I am proud to say that our residents enjoy some of the best water in the State, at some of the lowest rates in Hawaii. Thanks, Dave. Thank you.

CHAIR WHITE: Thank you, Ms. Kau.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Thank you for being here.

MS. KAU: Thank you.

COUNCILMEMBER ATAY: So, so, I'm trying to get clear here. You want us still to keep Director Dave Taylor in place.

MS. KAU: Yes.

COUNCILMEMBER ATAY: Thank you.

MS. KAU: Thank you.

CHAIR WHITE: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Tasha Kama, testifying on County Communication 17-484. Last call Tasha Kama. Next testifier is Blaire Reddish, testifying on County Communication 17-484, and Committee Report 17-167 and Committee Report 17-179, to be followed by John Gerry.

MS. BLAIRE REDDISH (testifying on County Communication No. 17-484, and Committee Report Nos. 17-167 and 17-179):

Good afternoon. Thank you so much, I appreciate you taking the time to hear testimony today. I actually would like to take a moment to just tell you how important it is that you do take this time to hear testimony, and that we should keep in mind that testimony of these individuals that create our community, some of which do not, should not be weighted by how professionally they speak, or where they went to school, or how much money they have in their back pockets or what nice shoes they have.

Testimony should be weighted on what their need of the community, and what they are giving to the community. We have selected you to give something to this community, to give us the honor, the protection, and the integrity that we deserve. We are here to testify what that means to us so that you can represent it. I live here, I've lived here for nine years, I have two children here and Maui has been a home to me when there has been nowhere else in the world that has been a home. As an African American, I have been constituted a continent to call my ancestry. And yet it is here that I have been witnessed and here that I witness the power and the honor of what is Hawaii Nei.

I call you to remember, to remember what it is that we do in Maui and how we take care because some things are a cause for concern. I would like to talk about Bill No. 17-179, the sunscreen bill. I simply want to say that I understood that one of the opposition spoke and said something about, and this may not be exactly verbatim, it's, would be considered a temporary taking and would cause them to, the government to

pay just compensation for the property under their homes. And that he was concerned a moratorium would cause more time and damage and that the County would have to pay. Are you hearing what I'm hearing, are you here to hear our testify, our testimony. He's concerned about compensation, he's concerned about who's getting paid. He's trying to threaten you, the County, oh, you're going to have to pay us, you're taking what's ours. First of all, it's not his, okay, this idea of property and landownership needs to be looked at again, but not to address that today, to simply say that if he's so concerned about the, excuse me, I'm mixing ideas, I get so excited.

The sunscreen, what we need to do is to take care of our oceans, we are certain that his oxybenzone is causing problems. I'm sorry that some gentleman that spoke earlier wasn't aware of what those problems are. You can research them, I suggest you do so as our protectors. If it is not safe, then you need to prove that it is safe. This shouldn't be a question of whether or not it's allowed, it should be a question of why is it allowed. We need to set the role model here now, and continue to associate Maui and your names, our leaders, with what is right and just. Have some honor, have some integrity, please.

On the measure of, I'm sorry, let me see here, the sand. And this is when I got a little cross haired there. No. 17-167, as I was saying before, it was a concern of compensation. What he was justifying, what he was standing up for was whether or not he would get paid for the sand that was underneath his house, as it was not specifically allocated to the County but to him, unlike gold as he specifically pointed out. Well first of all, the sand in the beach is County, it belongs to everyone. It is your jobs to protect that as County that belongs to everyone.

I'm here to testify, I'm here to give voice to the nature that cannot give voice. I want to thank you for getting us this far. At least it's on the table, can we go to a moratorium. That means you're starting to make the right choices, you're starting to go where your gut is guiding you. So thank you, thank you, I know it's not easy, I know you have some wave going against you and probably a lot of money on the line. And it's easy to ignore me, to look away, but you know what you need to do. And we are waking up, we are taking the time and we will continue to do so, so thank you. Bruce was absolutely right about that.

When it comes to the sand and the iwi kupuna, and I hope I'm saying that right, because I have been sitting here all day with my son, trying to get childcare, doing the best that I can to show up for my community. And I've been listening to what you've all been saying, thank you everyone for saying what you're saying, for taking the time. So important. I want to know what's important to you. And I hope that you do too, right.

Well, one of the things that was said was the iwi kupuna, I'm learning about this new term, that it means that they possess the mana of the bones of the people forever. It is the bones of the ancestors. So I'm here to learn about what is important to my community, I hope you are too. Because if this was on the line, and I'm standing on Hawaiian ground, I can't imagine a greater atrocity to attach my name to.

There was a woman who spoke earlier, Kay Bergstrom, and I spoke with her outside. She complimented my skin, thank you. You know, I was blessed with more melanin than some of you here. But that alone does not protect me. I've had to find ways to work with what the aina has to offer and it's been incredibly successful, if that relates to sand somehow. Oh, is that what the other guy did earlier, did you notice that, by the way.

On the final agenda of Mike White, on Bill 17-484, honestly, this doesn't even deserve the three minutes of time for me to tell you how ridiculous it is. I'm concerned about throwing any more negative energy towards you about that because I know that somewhere inside you really need help and we are here to help you, you are a part of our community and we are going to do our best to help you.

So on that measure I would like to read this poem that I wrote while sitting in your stands. It's called "Heard"

To change minds, change roads, change ways, a global part contributor. And when we know better, must needs we do better. Do you smell that? Yeah, that's me. And do you know what you smell like? It's not natural, it's not even you. Do you even remember you under all that disgust? Dis guts. Listen to your womb center. Find center, find center, find center, find home. You have, you have, you have a home, not the building. Find center, it'll be okay, it's going to be okay. You can still come home, it's going to be okay, you know what you have to do. Don Guzman I'm speaking to you. I saw you come in late, I saw you not listening, I'm speaking to you. Take just one small step and then just trust. I know how scary, I know how scary. Othering is not wise. I'm on your side, I'm on your side Mike White, you don't have to fire someone over it. Find center, breath belly, touch and be touched, your heart, from your heart, not your head. Are you still listening? Are you awake yet? It's time.

Thank you for hearing my testimony today. I'm here to receive questions if you should have any.

CHAIR WHITE: Thank you, Ms. Reddish.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is John Gerry. Last call. Next testifier is Cody Tuivaiti, testifying on County Communication 17-484, and Committee Report 17-167, to be followed by Donnie Becker.

MR. CODY TUIVAITI (testifying on County Communication No. 17-484, and Committee Report No. 17-167):

Aloha. Mahalo, for having me today. I am against item No. 17-479 [sic], to unanimously decide whether certain assistants should be fired or not. These assistants are hired by their chosen Councilmembers to provide awareness and support throughout the process of our procedures and issues. These assistants offer the community great comfort in knowing that they are providing information from the people, for the people to speak, share, encourage our concerns and issues to our chosen Councilmembers.

With all the red tape that keeps our Councilmembers busy, we rely on their chosen assistants to create a dialogue and relationship with the community in efforts of developing an open communication with our Councilmembers. To deny them a seat at the table is to deny the people a seat at the table. The job of the Council is to be the voice of the people, not to dictate your own concerns or agendas. The blatant disregard for our voice to be heard is becoming more clear. And what is true justice, what is true justice when there is no just in actions of our chosen representatives. Please disregard this bill so we can move on to more important issues with our time.

And then, I'm in support of CR 17-167, of a moratorium for sand dunes. Our sand plays a valuable role to our natural infrastructure. Hawaii has some of the most diverse ecosystems in the world. Uncle Arthur Medeiros of the Hawaii Restoration Effort says there can only be one Hawaii that exists, and that is because Hawaii is a perfect storm of elements creating what we have before us today.

To obliterate our natural infrastructure is to cause major effects to this balance. Can you say definitively that we know what those affects are. The community is obviously concerned, it's all over social media headlining our newspapers, has been the top story on our news on more than one occasion. If your job is to speak on behalf of our community, then you will create this moratorium to show the people, they acknowledge a future for Hawaii, not the demand of the present genocide taking place.

A demand means it never ends. With the demand of our sand comes the greed and corruption that follows. Sand and gravel are now the most extracted materials in the world, exceeding fossil fuels and biomass. In 2010, nations mined about 11 billion tons

of sand just for construction. Extraction rates were highest the Asia Pacific region, followed by Europe and North American. In the United States alone, production and use of construction sand and gravel was valued at 8.9 billion in 2016. Production has increased by 24 percent in the past five years.

Extensive sand extraction physically alters rivers and coastal ecosystems, increases suspended sediments and causes major erosion. Increased erosion resulting from extensive mining makes our communities vulnerable to floods, storm surges, and tsunamis. As long as regulations are lightly enforced, harmful effects will continue to occur environmentally and culturally.

And by cultural, I mean the separate issue that involves the remains of ancient kupuna that are being uprooted. To uproot the remains of human bones is to have complete disregard of not just human life, but of our host culture. This practice of uprooting bones is cultural genocide, creating a new mindset amongst our community and young generations that it is okay to dig up bones, disregard cultural views, and ignore the laws put in place to safeguard these areas as long as it provides homes and jobs.

A life is a life, and all life should be honored and respected, especially when the bones portray a last living testament to the direct identity of the host culture. Mahalo.

CHAIR WHITE: Thank you for your testimony today. Members, we're going to take our mid-afternoon break.

(THE MEETING WAS RECESSED BY THE CHAIR AT 3:39 P.M., AND WAS RECONVENED AT 3:55 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER GUZMAN AND COUNCIL CHAIR WHITE, EXCUSED.)

VICE-CHAIR CARROLL: This meeting of the Maui County Council is now back in session.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Donnie Becker, testifying on Committee Report 17-167, 17-179, and County Communication 17-484, to be followed by Kaniloa Kamaunu.

VICE-CHAIR CARROLL: And when you do reach the podium, please give your name and if you represent any organization, please list that organization. Thank you.

MR. DONNIE BECKER (testifying on County Communication No. 17-484, and Committee Report Nos. 17-167 and 17-179):

My name is Donnie Becker and I'm here to save Maui. I, I would hope, I need to do that, I guess. Doesn't seem like a lot of people here are thinking about the ways that are, the ways that we need to start changing this stuff.

But anyways, Mike White just happens to leave when I'm here to actually speak directly to him. Okay, I'm speaking out against Mr. White's proposed amendment 2.08.050. This is an unlawful legislation because it seeks to deprive each elected representative the ability to employ and chose their own staff and is not based upon a set of genuine qualifications, but based upon the prevailing majority of the Council at any moment in time.

(Councilmember Guzman returned to the meeting at 3:57 p.m.)

MR. BECKER: As such, it lacks an unreasonable objective, legislative intent, except of course, to cause the majority of the Councilmembers the ability to terminate/fire any staff member that they do not agree with, and without just cause. Perhaps, for an improper political purpose also. It seems to come at a time when we're already seeing allegations of his exact hostile workplace environment that has already been created by none other than the sponsor of this legislation, Mike White.

It appears that the motivation for the amendment is clearly to terminate particular individuals presently working for particular Councilmembers. So in other words, the intent of the amendment is to misuse the legislative process to advance a personal agenda aka, the good old boy agenda. This agenda seems to be the result from some of our humble Maui County Council executive assistants calling to account for past wrongdoings behind the scenes at our Maui County Council.

So I'm going to speak without reading. What I feel is happening here is that if somebody can't get along with somebody, they think that they should have the power to fire somebody. As an example, all you Councilmembers hired the best representative to assist you in doing your job. And, why would it be okay for another Councilmember that has a gripe with your employee, when you are the one that's allowed yourself to be represented by that executive assistant. This executive assistant is substantially the same person that you are and speaking through your words, and for Mike White to not even think of another way of solving this problem, I'm, I'm clueless. So that's about, about Mike White.

Second thing is about the sand. Sand on this island is, it's like the Mayor saying that the rocks at Iao Valley were not precious to the past history of Hawaiians that have lived here. The sand is mountains, and, and the next that would happen, if we're allowing sand to be removed, the next thing that would happen is we would start removing our mountains here. What's to stop that, the dirt, the soil, and you know, and, and then we don't have any, any dirt here anymore. I mean the reality is that this is absurd. So I hope that everybody will vote against the removal of sand.

The third thing is the oxybenzone. The oxybenzone to me is, is a slam dunk. We, there's a word called, let me read it, precautionary principle. And what that means is that we should be more involved with understanding that if there's any chance that we're killing the fish and the wildlife that are along our shores, that we don't have that right, you know. It's, it's not our right to decide that, that these chemical companies that produce the oxybenzones, and all that, it's not up to them to decide that it's okay for them to do this and kill our reef life.

We should precautionary, precaution means that we have to make sure that somebody's not doing danger and damage to an ecosystem that will not rebuild itself. I mean we all know this. I mean if I would say to you I'm here testifying because our reefs are so fantastically growing and, and, and everything is maturing and multiplying, then we'd have a different subject here. But we, we know our reefs are getting, you know, destroyed.

And it's, you know, the tourist industry is so important and that's something else that we're not even talking about is that the people that come here and snorkel, they don't really come here to snorkel any more cause there's not much left to be, you know, to see.

So I thank you guys for, you know, stepping up and taking this job and the responsibility of what you guys are doing, but I feel that, you know, we got to start doing things without having to defend pono. Pono's something that we should all be doing. We shouldn't have to defend it though, and the reality is everybody that's talked today is, we're all on the defense of saying that we're trying to defend Mother Nature and defend the sand and defend the right of somebody firing somebody for, for having no reason at all, just because the majority rules that wants it.

So thank you again for, for letting me, allowing me to speak and, one last thing. And take a breath everybody cause, you know, there's, there's things going on in this world that, you know, are going to affect all of us and we're not even allowing us to have the effect that we need here locally. So you know, we got to make sure our home is, you know, is, is well taken care of. And thank you again.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Kaniloa Kamaunu, testifying on Bill 92, Committee Reports 17-167, 17-179, and County Communication 17-484, to be followed by Gary Kubota.

MR. KANILOA KAMAUNU (testifying on Bill No. 92 (2017), County Communication Nos. 17-480 and 17-484, and Committee Report Nos. 17-167 and 17-179):

Aloha mai ka kou. My name is Kaniloa Kamaunu, from Waihee Valley. Today I stand in as participant in the Aha Moku of Wailuku, which is under Act 212.

And, you know, I guess to mention about, of course the sunscreen. I mean it's not rocket science, there's enough people that have, have said much, many things about the effects, ill-effects. I, you know, I don't think consciously you guys cannot make the right decision, you know, I mean, so no sense beating a dead horse, we know it's not the right thing to do. And there's things, better things that can be done and better alternative. So that's on that part.

And then on the one as far as concerning Mr., Councilmember White's proposal. I also think that you're wise enough to understand that there is, it's a double edge sword, it can work for you when you need it to work, and it can cut your head off when it doesn't work for you. So, you know, I don't think you guys need any more explanation, or even belittling of Mr. White. I mean you can make that decision for yourself.

So, the actually two amendments I'd speak on, actually I didn't put this down and I didn't see it till later, so if you don't mind, the one on, on, on real property tax, I would like to give that up, if you don't mind and, and institute County Communication 17-480, and that is on the recommendation by Councilmember Sugimura. You know, it's a good point. The thing is, what they keep telling us on this issue, as far as them regulating and being, being able to interact, they're saying because, unless you as a County, your permitting process changes. It doesn't allow them to interact unless you allow them to interact.

So if you want this to be exercised, you have to look at the legislation which will give SHPD, DLNR, the authority to step in without the permission of the County being present at the time, to interact. So, what has been proposed here by Councilwoman is correct, they should be interactive. But they keep saying their hands are tied because of the permitting process that they're locked into with the County Council, with

the County. So that has to be looked at, so the moratorium that we talk about becomes important because to be able to add this into legislation has to be talked about.

So, as far as I can see, that needs to be addressed. If you guys want SHPD to be able to come in and interact as what we were saying, or as being proposed here, because they cannot interact cause they blowing it back on you or the County that you're at fault because you guys don't allow them to interact. So if you want to give them teeth, you have to provide them that pathway to interact on the subject matter as far as coming in for the archaeological.

And, cause we had this problem with Home Maid Bakery and we went running around and we had to, it took us a bit of time to get them to actually interact. But even then, today, all they could actually do was write a letter specifying that according to them, the AG doesn't allow them to interact on that measure because it's in the hands of the County.

So if it's going to be in the hands of the County, either the County has to, legislation which gives you the power to interact on behalf of SHPD. If you don't want that responsibility, then you have to pass that responsibility or legislation that allows them to do such a thing. Otherwise, what is being proposed here in County Communication No. 17-480, it again, doesn't do anything, it's nullified. It's a good suggestion, but has no teeth or power. So you must empower with letting go of your power to the State.

And then of course my last one is on the moratorium. You know, it took several of us many, many years, we have fought to protect our iwi kupuna. My wife Johanna Kamaunu made a statement which was profounding to me. She says they call this the Central Plains. When you read the history, it was mountains, Puuone, yeah. Some of these, even ranging anywhere from two to three hundred feet high.

When you read the account of Kamakau, that played a significant part in the battle between Kahekili, who is our Moi of Maui and Kalaniopuu, the Moi, actually he was the Nui, he was the big chief Hawaii, from Hawaii Island. When he came to battle, he was forewarned, do not battle at this time, you not going win. But he forgoed what his councilors told him, he came to Maui to battle, not only to battle, but to occupy Maui. So when you read the account, they came with an armada of canoes, not just couple canoes to come fight. They came with armadas, and they had the House of I, the House of Mahi, they was coming to populate the island cause he was going to be successful.

Kahekili's advisors said bring them in like the fish into the sluice and we will close the gate behind and we will win. And that's what they do, they use the Puuone, bring them in, they fight. And the account is they fought uphill all day, 24 hours in a day, uphill all

day was the fight. And, Kalaniopuu was being successful, many of the warriors from Maui died. So did his, until they came one mile outside of Wailuku, or to drink the waters. And they were brought into that sluice, brought into the area where they were stuck. Oahu, comes from behind, closes the gate and they slaughter them all, leaving only two to go home with the message to their King.

And they left those bodies as is. They did not touch the nakoa of Hawaii Island. It was to make a statement, come to my island, this is what going happen to you. And those bodies remain there, never to be covered. That's why when accounts come for people taking tourist into the sand dunes, they talk about picking up the po`o, the heads, and they took `um, they took `um to give `um to the museum and make money. They took the capes, they took the spears, they took tourist so they could gather these artifacts and take them. That's why today you don't see a lot of them. But the account is there.

So again, I leave it to your common sense. And the, and I don't care how much they cut `um out, Kugle them said oh that's not the same area. The Puuone is one Puuone, twelve miles long ranging from Waikapu to . . . Mahalo.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Gary--

COUNCILMEMBER COCHRAN: Chair.

VICE-CHAIR CARROLL: Oh, I'm sorry, excuse, one moment.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Mr. Kamaunu. Thank you, Mr. Kamaunu and that paints a real vivid picture for me so thank you. But, and I know you've come time and time again for this subject matter. But, I'm just trying to get a little more highlight on concerns you have that may not be the Maui Lani per se, concerns, but having to do with the, the iwi and Puuone.

MR. KAMAUNU: From our area, Waihee Valley, we have burials on the Puuone. So I connect to the burials. In this area of where Safeway is, I find kupuna Kekahuna, who testifies to have land in . . . and he has eight loi, so I connect myself to these areas.

You know, and, and talking about Home Maid Bakery, they have an extensive history of running into iwi kupuna. But a lot of those that are on the, that drive, what is that,

Lower Main, anywhere, where Home Maid Bakery they had problems over there. Up on the, what is the development is above them, they found it there too. You know, so, and with the recent one about two years ago, I believe in the new County baseyard, they found burials over there too.

So, you know, it, and, my, my concern is everything now is trying to cut it up, saying that, you know, oh this Maui Lani development doesn't connect to Waihee, doesn't connect to Waiehu. But they all connect. It's one massive land feature. It's not cut up. Even though they get name places, these people interacting together. The life in the sand dunes, there was life in the sand dunes. Not as being proposed, so my concern is every time people speak about it as being different parcels, it is incorrect, it was one huge massive feature. So to cut them up to me is very, you know, discerning because that's not what the thing is historically, yeah.

COUNCILMEMBER COCHRAN: Thank you. Thank you, Chair.

VICE-CHAIR CARROLL: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Mr. Kamaunu. So going back to 17-480. In your statement where you're saying DLNR needs to be allowed to interact. So can you explain what that means.

MR. KAMAUNU: Okay, when we called upon SHPD to come into play, they say well, unless there is a permit provided by Public Works, they cannot come in. They cannot act, even though they know. And they, I guess I should refer to this last incident with Home Maid Bakery, even though they had history since 1994. And they had special, specified things that they wanted Home Maid Bakery to take care of. They couldn't interact on this point even though they already made some conclusions. They couldn't interact because they said the County didn't give them a permit, so we are out because we don't have a purpose there.

This is coming from SHPD. They couldn't, and this is coming from Mr., their new archaeologist, Mr. Barker. He said he couldn't interact. Didn't mean he didn't send information to your Public Works supervisor of the permits, he did. But when we asked her, she said well that's not us, that's the State. And we tried to say to her that the State not going interact unless you guys provide them a way to interact.

But Mr. Barker did send in that information, which was pertinent because one of the things that they actually removed was specified in a recommendation by SHPD to be left there until they had monitored it, until they had gotten archaeologists come in to sift that pile of sand, to make sure there was no iwi. Because SHPD suspected there

was, that that was to remain and was to be actually cordoned off, and nobody is to go on there, nobody is to do anything.

Well with what happens is that's actually taken out cause SHPD couldn't interact.

COUNCILMEMBER SUGIMURA: Thank you. I think Mr. Guzman has introduced a reso which may help you with that, the interact part, so--

MR. KAMAUNU: Right.

COUNCILMEMBER SUGIMURA: --thank you for that explanation.

COUNCILMEMBER GUZMAN: Chair, Chair, I just wanted to clarify. It's a bill.

COUNCILMEMBER SUGIMURA: It's a bill.

VICE-CHAIR CARROLL: Thank you.

COUNCILMEMBER GUZMAN: Yeah, I have the bill that actually puts teeth in there.

MR. KAMAUNU: Thank you. Mahalo. Mele Kalikimaka.

VICE-CHAIR CARROLL: Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Gary Kubota, testifying on Committee Report 17-178, to be followed by Autumn Ness.

MR. GARY KUBOTA (testifying on Committee Report Nos. 17-1798):

Hi, good afternoon, Councilmembers, Co-Council Chair Robert Carroll, Housing Chair Stacy Crivello. I want to thank you for passing the resolution out of Committee. It's a, I understand the language is general. It was reviewed by Roz Baker and Angus McKelvey with the idea and, and also approved and shaped by the tenants group at Front Street.

The idea is basically to indicate that there's at least, a kind of moral support for this, to support the Front Street Tenant's group and try to keep them where they are in, in that affordable low-income housing.

Just kind of general overview in terms of where they are located. They are located within walking distance of Lahaina Town, the shopping center area. So it's very

convenient for workers there, about 70 to 80 percent of the people there have jobs and are working, 75 to 80 percent of the units occupied there are people, include people who work there. Many of them, two or more jobs. And a lot of them can't be here today and weren't even there for the Committee meeting because they were afraid that they'd lose their job frankly. And others have a hard time just walking across the parking lot, you know, to, to get to a meeting for the general meeting of the association.

What I'd like to do is basically say that, you know, these people are a part of the community. They're the part where, you don't get, they don't get the high wages, but they're still a part of the community. They're the part that sometimes are in transition, with single moms and supporting children. A single dad supporting two children, I know. And they're trying to get a foothold on where they are. And a lot of them do move out of this transitional housing and find better jobs, and find better housing. So it's not just people staying where they are.

Secondly, something I didn't point out before is that these people do pay rent, they may not pay the rent fully, but some of them do. And, the range is such that if you look on, if you look on average at \$600 a month, it amounts with 140 tenants, it amounts to a million dollars a year. So it's a million dollars of revenue to the developer for this project, subsidized rent and personal payment of rent by the tenants. And that's part of their contribution as well, and that's in addition to what the County has done, you know, in terms of several million dollars. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Autumn Ness, testifying on Committee Report 17-179, to be followed by Amy Halas.

MS. AUTUMN NESS (testifying on County Communication No. 17-484 and Committee Report No. 17-179):

Aloha, Council. Thanks for hearing all of us today. I want to testify on the sunscreen regulation. A team of us consulted with various other Council about this bill, all of whom agree that this is completely within the County's authority. The two most commonly mentioned arguments I'll cover here, and I have, you have a packet of the case law that I'm referring to that you can reference for yourself.

Number one is the 2006 Hawaii Supreme Court decision Kelly v. 1250 Oceanside Partners, you have that in front of you I hope. This case was about soil and sediment

erosion, and water pollution. In this case the County argued that because of the powers of the DLNR are to "manage, administer, and exercise control over the water and coastal areas", they were not responsible for water pollution that occurred in this situation, the County or the State.

The court decided very, very differently. The court decided on page one of your copy "the County had an affirmative duty, under the public trust doctrine, to protect coastal waters adjacent to developer's property from storm water pollution". Not just authority, but affirmative duty.

The court said on page 30 of your copy, it's highlighted, "contrary to the County's position, the plain language of article XI, section 1 mandates that the County does have an obligation to conserve and protect the State's natural resources. Coupled with the State's power to create and delegate duties and responsibilities to the various counties through the enactment of statutes, the County's duty to conserve and protect is clear."

On page 30 it explains that the County in this case relies on the last sentence of article XI, which reads that "all public natural resources are held in trust by the State for the benefit of the people". But it explains over the next few pages how the court came to the conclusion that "the proponents of amendments to article XI intended to impose upon the State and its political subdivision an affirmative duty to preserve and protect the State's water resources. The County has duty, as a political subdivision of the State, to protect the waters located adjacent to this property." Nowhere in State law is DLNR granted the sole authority to manage these resources. Authority and sole authority are very different.

Number 2, the Commerce Clause, all of the outside counsel including a Deputy Attorney General of the State agrees that this whole, would hold up to a Commerce Clause challenge. I was referred to the short primer that you have in front of you that I handed out on the Commerce Clause by an attorney, and it states clearly on page 2, that any law which affects Interstate Commerce must not discriminate against out of state actors or out of state competition, or have the effect of favoring in-state economic actors. This law does not do so. It applies equally to all actors or competitors.

Number 2, it must not be unduly burdensome. The court will balance whether the effects of the State, the benefits of the State's interest are outweighed by burden. This, since this is the first, I want to, I only got three seconds left. The benefit of the County whose ecosystem, culture, and economy are so intertwined with our coral reefs to regulate these chemicals largely outweighs any burden to Interstate Commerce. You have the case law in front of you, you can refer to it.

I want to just, one more item that I didn't put on my thing, really quickly. Item 17-484, this item, the only reason to fire a staffer of someone who is an elected official is because their behavior would be like illegal, or threatening, or harassment, or something like that. And there are existing legal systems to deal with that. Any member of this public, if they are being threatened or harassed or feel unsafe would call the police and there would be an investigation and due process and all of that.

And if this body doesn't trust in that existing system, so, in so much that they have to pass a law, then we can't pass a law that applies just to us. We should pass a law that makes it better for the entire community. There's no other reason that, that a staffer should be fired from the staff of a Councilmember except for that. To pass one law that would affect this entire body if someone is feeling threatened because they don't trust the existing system means that maybe we should look at criminal justice reform in our police systems, police departments, investigative strategies or pass things like victim's rights bills. But to pass something that's so narrow, because of something that already, you know what I'm trying to say, anyway, I'm done. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Amy Halas, testifying on Committee Report 17-182, 17-167, and County Communication 17-480, 17-484. She will be followed by Alicia Rittenberry.

MS. AMY HALAS (testifying on County Communication Nos. 17-480 and 17-484, and Committee Report Nos. 17-182 and 17-167):

Aloha auinala, to the elected County Councilmembers. I oppose County Council 17-484, which would allow the County Councilmembers to fire another Councilmember's administrative staff. The contract between the employer and the employee is a sacred trust which is not to be interfered with by anyone outside this relationship. I encourage the County Council executive assistants to immediately unionize in order to safeguard your jobs from unscrupulous ulterior motives of others.

I support County resolution 17-182, and urge the County Council to vote yes on this resolution in support of the legislative package which allows for more stringent enforcement of the Basic Bill of Rights for Victims and Witnesses by hold, by holding implementing parties accountable. Hawaii Revised Statutes, Section 801D-1 states that the Legislature's intent of the basic bill of rights for victims and witnesses is to

ensure that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity. So, please, please pass that.

I question the intent and motivation of CC 17-480, as this is somewhat redundant, impotent, and ineffectual resolution in consideration of the fact that Yuki Lei is a voting member of the Infrastructure and Environmental Management Committee, of which there were eight meetings over a six-month period, in which 12 drafts were deliberated and modified and edited.

As you will recall, on June 22, we were honored with the presence of two Trustees from the Office of Hawaiian Affairs. In addition, we had representation from the State Historic Preservation Division, who testified that they themselves cannot access the burials and the burial sites on the so-called private lands without the express permission of the so-called landowners.

So, I, I do thank Ms. Sugimura for introducing the legislation; however, we're, we're at a point, I'm constantly emailing the State Historic Preservation Division, I constantly am contacting Public Works, I'm emailing, I'm calling and I continue to hit walls. I invite you, Ms. Sugimura, to join us, we're now holding signs in front of Town Island Homes, active construction zone on Maui Lani Parkway, right across from the Maui Lani Regional Park. There are burials, there is no archaeological monitor present and we have confirmed this with, with the developer.

So that's where we're at, which brings me to CR 17-167. I urge you to pass this ordinance on the first reading. We were shocked to see it deferred at the last County Council meeting on November 17. Mike White, who is a Member of the Infrastructure and Environmental Management Committee, his call for more due diligence and his need to assess comfort levels of other individuals was very insulting. Mike is a voting Member of the IEM Committee and he failed to attend the majority of the eight meetings as again, they were held over a six-month period.

Time and time again we see the rights of the so-called private landowner superseding those of the people buried in the countless pre-contact burials, who under the 1860 Hawaiian Kingdom penal code would be in violation of the law. In light of the extreme staff shortage at the Maui State Historic Preservation Division office of which there is only one full time staff archaeologist in the office at this time, we need to do something. And Lance Collins represented Malama Kakanilua in the lawsuit against Maui Lani in regards to Phase IX.

Well guess what, Town Island Homes Development is on Phase VI, which is right around the corner from Phase IX. Phase VI has some of the highest concentrations of iwi kupuna and burial sites including the 1984 human remains, the burials found by

Dr. Earl Neller. These are State inventory of historic places, sites and how tragic that the legislation, the protections in the Hawaii Revised Statutes 6E cannot be enforced.

The purpose of the sand mining moratorium 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 archaeological sites and unmarked human burial sites. I, I beg you to please pass this ordinance to which I refer, which is CC 17-480. Mahalo for listening. Mahalo for your time.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Alicia Rittenberry, testifying on Committee Report 17-179, to be followed by Claire Kellerman.

MS. ALICIA RITTENBERRY (testifying on Committee Report No. 17-179):

Aloha. Thank you for listening and giving us passionate citizens the full three minutes to speak about these issues that concern us. My name is Alicia Rittenberry, and I'm here representing the Student Ohana for Sustainability and to testify in favor of the bill to prohibit the sale and use of SPF sunscreen containing oxybenzone and octinoxate.

At this point, the science is clear, the oxybenzone and octinoxate negatively impact the health of our coral reefs and other marine organisms as well, as Dr. Craig Downs explained when he presented to the Infrastructure and Environmental Management Committee. We also note that education can only go so far as Jeff Bagshaw steward of `Ahihi Natural Reserve has testified to.

In recent years, Jeff, the SOS Club, the Sierra Club, and many other organizations have made efforts to educate the public on the effects of these sunscreen ingredients. And yet, testing for these chemicals done this past summer actually shows an increase from 2015. It is time for legislation. They're all, there are safer alternatives that can protect the health of the people on our shores, such as clothing and zinc sunscreens.

Zinc oxide by the way is the only FDA approved sunscreen ingredient to offer completely full protection from both UVB and UVA rays. So as to the question of how well alternative products using this ingredient work, the answer is very well. As to the question of how available these products are, there are multiple stores that are able to exclusively carry sunscreens without oxybenzone and octinoxate already, such as

Down to Earth, Hawaiian Moons, Mana Foods, and several and surf and snorkels shops, as well as snorkel boats.

The companies produce, the companies that produce toxic sunscreens reap the benefits of profits, yet we the community are paying the consequences. The environment not only provides us with our basic needs of survival, but is the backbone of our tourist, tourism based economy, provides leisure activities that we all enjoy and gives many a spiritual connection to something greater than themselves.

My question that I please ask you to consider is what is the benefit to our community to continue to allow the sale and use of products that poison the environment on which we depend, when there are alternative products available. I hope you can find a way to make this bill work and show the world that on Maui, we value the health of our ecosystems and community. Thank you for your consideration.

And then, I also have this to give you, it's a legal opinion from attorney Lance Collins on the, supporting, that the County Council has the jurisdiction to pass this bill. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

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

VICE-CHAIR CARROLL: Oh, I'm sorry, Ms. King.

MS. RITTENBERRY: Yes, Ms. King.

COUNCILMEMBER KING: Thank you, no I just wanted to address something you said that, you said that zinc oxide was the only mineral. I was under the impression that titanium oxide was just as effective. But--

MS. RITTENBERRY: It is, it almost offers as much protection. I submitted something in, via email, I don't, I'm sure a million other people did too. But it just, if the, the FDA's website has all the ingredients and how much coverage they offer. So for example, zinc oxide offers full protection for UVA and UVB. It, it's the most comprehensive. And then titanium oxide offers full protection from UVB and partial protection from UVA.

COUNCILMEMBER KING: Oh, okay. Thank you. Appreciate that.

MS. RITTENBERRY: Of course. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Claire Kellerman, testifying on Committee Report 17-167, 17-179, and County Communication 17-484. To be followed by Caitlin Maratea.

MS. CLAIRE KELLERMAN (testifying on County Communication No. 17-484, and Committee Report Nos. 17-167 and 17-179):

Mahalo. Aloha. My name is Claire Malibu Sand Kellerman, actually, which is funny. I'm here to testify on three points. My middle name being Sand is interesting, I was given that name by Groucho Marx, so needless to say I have a very interesting and colorful life which has led me to be very passionate about permaculture.

And I bring that up now because it seems to me that all three points that I want to speak to would be, the decisions on these, that I'm testifying about would be guided by permaculture principles would be very helpful and that is that, let's see we have the first one on sand, CR 17-167.

I stopped using sunscreen when I was 14, I have glow in the dark Scottish skin and I do that by enjoying the shade, enjoying twilight in the early hours, the later sunset hours, as well as creating things that I can cover up with, hand painted and embroidered and beaded whatever. But my point is I would do anything not to poison the reefs. Anything at all because I've been privileged to learn permaculture all over the world and to work with and teach, with architecture in all the countries that were mentioned earlier, Australia, Fiji, Tahiti, Egypt, Israel, Canada, Italy. Literally there's not one ecovillage on the planet that would backup poisoning a reef.

Or more importantly I've been studying for eight years with a Celtic mystic and learning what our ancestors still have to say because all of life forces, really energy and whatever hasn't healed is still in our bones and our blood. And you do not want to move ancestors' bones, you don't want to disrespect the aina in any way, shape or form, especially the ones who are from this sacred land where I've been privileged to live for 12 years.

And I did leave for one year recently and go to Scotland and Ireland, to walk with my ancestors and to learn more about what am I doing on this planet and what is my grounding and my . . . cause my Scottish father born in Shetland Islands had me in

California. And being from America, it's really easy to feel like a floating, lost seed and not feel your connection to the aina. So I'm so grateful for all that I've learned and heard here today in testimony that is inviting us all to remember that we are one global family as well.

And permaculture, the, if you learn the principles and the ethics of it, the first thing is care of the earth. There are three ethics: care of the earth, care of the people is second, so it seems to me that, and then the third one is sharing the surplus. But there is no surplus if all the people, if all the concerns about their profits and money get away with everything by stealing and lying and being criminal and corrupt.

And the other thing that I'm very concerned about, and why I wanted to stand here today and testify is because I personally have been very affected lately about the corruption on Maui in the last two years. I've been trying to light up the truth about certain situations and so to hear about, that people could be fired with no due process was exactly what happened to me two years ago. I was given a gorgeous employee handbook, I read every word of it, it was incredible, it said aloha is more than just a word. And then to hear that someone would introduce something that would just wipe out even the hope that there might be something in place that would protect employees. I am devastated, I am truly traumatized by being told by my boss, we're firing you for things we imagined. So, I said I didn't do them and they said we've heard enough from you and I hadn't said one word yet.

So I'm just pointing out that there's just so much room for us to come together around what's actually true. What's true is that we are nature. We are not separate from it. So we have to stand up for the bones, we have to stand up for the sand, we have to let these reefs survive. And it's not because it's our economy people, it's our family, right. It's who we are. I mean, we've been sitting here all day, and god bless you all, thank you for being here, for your patience, for listening, for the genius and intelligence and brilliance that came and testified today and taught me so much to be able to listen, I'm so grateful.

But there is no excuse for poisoning the reef, there is no excuse for disturbing the ancestors. We need to be listening, we need to be quiet. I need to be quiet more and more, and just listen. There is so much to learn, there is so much love in this world that is not being tapped, people, you know. The drugs, the alcohol, it's so people can shut the pain down. What if we heard the pain, did you hear the fires, the earthquake, did you hear the hurricanes and the floods. Mother Nature isn't pissed.

Masanobu Fukuoka, a Japanese natural farmer and philosopher says nature is in perfect balance when left alone. Leave the bones alone, leave the sand alone, leave the reefs alone, and I want to stick the "F" word in there, but I won't out of respect to

all of you being here and being in suits and things. Thank you for being here and thank you for the love that is in this room.

Let's keep growing it, igniting it and learning about permaculture cause permaculture is permanent culture and permanent agriculture, no poison is involved. No raping the earth is necessary. The Hawaiians were doing it, and we can do it now, again, together. There's a whole new world available to us, and that's why I wanted to come out here today. Thank you for being here and to Mike White, no, wherever you are, no Mike, because mutual respect and unity is the only way we're moving forward. Thank you. Mahalo and Aloha. Aloha, thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Caitlin Maratea, testifying on Committee Report 17-179, to be followed by Riki Torres-Pestana.

MS. CAITLIN MARATEA (testifying on Committee Report No. 17-179):

Good afternoon, early evening, actually. Thank you, Chair and Councilmembers for hearing my testimony today. My name is Caitlin Maratea and testifying as a concerned citizen in favor of No. 17-179, to ban the sale of sunscreens containing oxybenzone. I know we've talked at length about this today, so I'm going to be brief, I promise.

Firstly, I would like to applaud the Council for making the health of Maui's coral reefs a priority and I hope you will continue to do so. I am a dive instructor and am underwater almost daily at various sites along Maui's west coast. I am an eye witness to the degradation of Maui's reefs that have declined severely over the years that I've been diving here. I recently had a diver that had just last been diving on Maui in the early eighties and he was horrified and brought to tears actually, by the change that he saw from then to now.

My experience pales in comparison to the generations of residents that have witnessed the decline of their coastal ecosystems. According to a 2004 study, the value of Hawaii's coastal reefs were estimated at almost \$10 billion, with an average annual value \$364 million. Eighty-five percent of this value is attributed to tourism. I imagine those numbers are higher today. Any action that we as a community can take to preserve this valuable resource should be taken. It is invaluable actually and thus any threat of lawsuit against the measures, the measures this body decides to take in my humble opinion should frankly be ignored.

There is, we've heard already speakers talk about the definitive scientific research done by Craig Downs, so I won't talk too much about that. But, we do know that this is a problem. Mexico has already banned the use of oxybenzone sunscreen in marine protected areas, so yes, it can be done. Why, because there are alternatives. A previous speaker mentioned local artisans that are meeting the demand for reef safe sunscreen. Just because we ban the use of oxybenzone containing sunscreens does not mean that people are going to stop applying sunscreen.

This move could even serve to educate residents and visitors on a wide scale about the damaging effects of chemicals being applied to their bodies, absorbing into their systems and leaching into the coastal waters. In a national political climate where climate change is embarrassingly still the subject of debate, let Hawaii and specifically Maui be the leader in enacting substantial environmental change, legislation. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

COUNCILMEMBER GUZMAN: Chair, I have a follow-up question.

VICE-CHAIR CARROLL: Oh, excuse me, could you come back down.

Mr. Guzman.

COUNCILMEMBER GUZMAN: I don't think we have very many divers that have testified. I, I just wanted, from your background experience, are you, yourself using the mineral screen, sunscreen?

MS. MARATEA: Absolutely not.

COUNCILMEMBER GUZMAN: Oh, okay, so what do you use when you're diving?

MS. MARATEA: Oh, you mean mineral sunscreen like the zinc and yes--

COUNCILMEMBER GUZMAN: Yes, yes, yes.

MS. MARATEA: Yes, I, I use the sunscreen called Blue Lizard, it's from Australia.

COUNCILMEMBER GUZMAN: Do you have to reapply after so many hours, or underwater?

MS. MARATEA: Yes, I mean that's true for any sunscreen really, you should be reapplying it. But, frankly I'm in a wetsuit all day.

COUNCILMEMBER GUZMAN: Oh, okay.

MS. MARATEA: So, I, I get a lot of sun protection from that, but my face, yes, I apply reef safe sunscreen and we, my husband and I own a small dive company, we don't allow our guests to use any spray sunscreens or oxybenzone containing sunscreens as well.

COUNCILMEMBER GUZMAN: Okay, thank you.

MS. MARATEA: Thank you.

COUNCILMEMBER GUZMAN: Thank you, Chair.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Riki Torres-Pestana, testifying on Committee Report 17-179, to be followed by Bill Frampton.

MR. RIKKI TORRES-PESTANA (testifying on Committee Report No. 17-179):

Malama O Ke Kai. Malama O Ke Kai. Malama O Ke Kai. Kumulipo, that's why. A chant of creation. It's more than these chemicals you calling all these fancy kind names. Ever since a little boy, the honu has been, I've been blessed with the honu. Hookipa, the honu, and the people who study honu tell me this is one of the places that they get, the only place that they gather is in these islands. Hookipa is one of those places. On the Big Island is one place. No other place in the world are they gathering. They're telling us something.

Have you ever seen the eye of a turtle? On the Big Island where I'm from, there's a bay called Maka O Honu, the Eye of the Turtle. Kamehameha gathered there, that's where he originally had his council at Maka O Honu. I use to be in charge of a 30-foot catamaran. A kahuna named . . . in the storm go over there, tie the canoe, tie this boat to one coconut tree and the other one to some pohaku.

The pohaku was shaped like a honu. They covered the Kailua Pier, is covered, the honu on that. There's three or four of them showing, you can see when you awake and you can talk to nature like my kupunas did. Many of them had to go to Kaneohe

Hospital cause the white man told them they were crazy for talking to nature. There you can see that there.

The honu at Hookipa, when you look up at the cliff, there's honu in those rocks. A kahuna came from Aotearoa five weeks ago. I showed him those honu. He stepped back, he almost fall back in the water. The honu is coming, they coming for something, they coming to tell the western culture nuff, nuff destruction of Mother Earth, nuff.

To me suntan lotion is a white man problem. All my life, I'm, I'm a waterman, I'm a kai kane. I don't remember my mom putting on stuff on me. I never, mahalo. Malama O Ke Kai. Malama O Ke Kai. Kumulipo, that's why.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Bill Frampton, testifying on Committee Report 17-167, to be followed by Marni Perelman.

MR. BILL FRAMPTON (testifying on Committee Report No. 17-167):

Good afternoon, Chair and Councilmembers. My name is Bill Frampton and I'm here speaking on item 17-167. I'm here representing Waikapu Development Venture, LLC, as, I had submitted a letter couple days ago to the Council in regards to the subject matter.

I also am able to mention, just make a quick note for Emmanuel Lutheran Church of Maui, Mike Riley, who was here earlier this morning, wasn't able to stick around all day. He's president of Emmanuel Luther Church, but we're working together in joint, jointly on this item.

And what, what it is is Emmanuel Lutheran Church several years ago, back in 2009, they received their final approval for their property out here on Waiale Road to do a new campus for a school and for a new church. It's taken them a while, the economy, what not, they've had some challenges.

In that interim time, they got together with us and we are, we have a sales agreement to purchase partial, a portion of their property to do a 100 percent affordable housing project right next to that. That will be down the road, we'll be coming back to the Council for discussions on that.

But in doing so, Emmanuel Lutheran Church did do archaeological inventory survey that was accepted and approved by SHPD. And it did require a monitoring plan be submitted as well because of the location and the underlining materials. What we've been trying to follow along with the proposed ordinance for the moratorium on sand mining and I have to admit, it, I one commend you for the discussions there, it's a very difficult matter.

I, I happen to be very lucky, I was able to serve for eight years as a member on the Maui/Lanai Island Burial Council. And, as a resident, I've lived here, my family for over 47 years and I've got to work as a professional planner for just over 25 years, eight of those years I was on the Council. And it was very eye opening and very, at sometimes challenging or painful experience to learn of what's gone on. And I appreciate and respect what you're trying to do.

But what we were, so as we followed it, what we wanted to do was we've submitted in our letter, we've respectfully requesting to, the property would be removed from the list of proposed, on the moratorium list because we believe if we were left on, it could have an impact on Emmanuel Lutheran Church's plans to do the school and the church and the affordable housing project that we're proposing to do.

But, we also, I'll just conclude by saying I respect again what you're trying to do and I'm, we're open to making sure that we work with Council as well as the rest of the members in the community to make certain that they've been heard. I think that's so much of the issue until now, even when I was on the Council, was seeing the pain, a lot of the times was when the family, when they weren't listened to and plans were approved and burials were disturbed or anyways. I thank you for the time, thank you for this long day, you've had a huge agenda. Appreciate the opportunity to speak.

VICE-CHAIR CARROLL: Thank you.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

And thank you, Mr. Frampton for being here. So, in reference to the entity you're speaking about for a school, church, and affordable housing. Is that due to break ground in the next six months?

MR. FRAMPTON: No, it would be, again like, yes, it would not be.

VICE-CHAIR CARROLL: Thank you very much.

MR. FRAMPTON: Okay, thank you.

VICE-CHAIR CARROLL: Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Marni Perelman. Last call. Next testifier is Deborah Smith, testifying on County Communication 17-484 and Committee Report 17-179 and 167, to be followed by Jennifer Noelani Ahia.

MS. DEBORAH SMITH (testifying on County Communication No. 17-484, and Committee Report Nos. 17-179 and 17-167):

Hi, County Councilmembers. Thank you all for the opportunity to speak. Everyone has been brilliantly saying and, saying what they believe so dear to their hearts today. And it's the end of the day, I want to be quick and brief.

I beg for you please to protect our lands, our waters, our iwi kupuna. Please, just like we as parents and teachers, we protect our children before they're really ready to make the decisions for themselves. We can't let these greedy corporations come in and just take away our land for our future generations. Please protect our reefs. This is to me unbelievable that there's a big, such a big deal out of it. Of course, we have to not put chemicals into our oceans.

I mean, I've been out there and watched over the turtle nests out on Big Beach. The same mother comes back year after year. This particular one that I'm speaking of lives on Oahu and comes here to Big Beach every year to lay her eggs. I mean, she cannot live without the reefs.

Just as our people can't live without their, their seaweeds. These are valuable foods for those of us who live on our earth. And we can't destroy our Mother Earth unless we want to go live on some other, in some other universe somewhere. This is what we've got, this is our mother, we have to protect her.

Please, do not let them take anymore sand out of, I mean so many places on earth when they remove the sand, it, the, the salt water can come in, it can disturb the quality of our drinking water, the tsunami's then can come in. If, I mean, it's very, very important, a lot of these corporations they don't care. Their bottom line are their shareholders. Their bottom line is making a profit.

We have to be the parents. We have elected you, our public servants, our taxes pay your salaries. We are begging you, all of us here, we are begging you please to make the decisions that are going to protect our earth and protect our future generations

here, our skies, our water. I mean, please, this is, this is our life, please don't sell it down, sell us down the river. Please, and thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Jennifer Noelani Ahia, testifying on Committee Report 17-167, and County Communication 17-484 and 17-480, to be followed by Joseph Kohn.

MS. JENNIFER NOELANI AHIA (testifying on County Communication Nos. 17-480 and 17-484, and Committee Report Nos. 17-167, 17-179, and 17-182):

Aloha and mahalo. My name is Jennifer Noelani Ahia.

*(Spoke in Hawaiian.)*

Haloa, haloa is sacred and we are the ancestor of haloa, we are the younger sibling. And we have a kuleana to protect our aina. As our Scottish sister shared with us, we are related, we are all interconnected and interdependent with our aina, with that which feeds us. It's in our oldest stories like Uncle Rikki shared, the kumulipo. Kapu Ka Haloa that chant is from the kumulipo. That is our creation chant.

In regards to 17-167, I support this legislation for the sand mining moratorium. You have heard many kanaka oiwi, hoa`aina, give testimony after testimony, for months on end. And in that same amount of time, this moratorium could have come and gone, and the study could have been completed in this six months that we've been talking about this. But instead, the voices of developers have been drowning out the voice of the people.

Our Queen Liliuokalani said the voice of the people is the voice of god. The voice of the people is the voice of god. I want to remind the Council that the community plan already called for the preservation of the Pu`u One sand dunes. I really don't care if the developers lose money, as they were not supposed to be able to develop here in the first place, much less ship the sand away for profit, \$30 million in 2016 alone.

This area as you all know from the extensive testimony is an ancient burial ground and the site of a historic battle, the Battle of Kakanilua, that my ancestors fought and died in. And the ancestors of probably every kanaka oiwi here. The only people who have come to deny that battle work for the developers, and that have a financial stake in that

false narrative. The continued desecration of our burials is the continued desecration of us as a people. And this is part of the continuation of settler, colonial racism. The destroy and replace system that's been oppressing kanaka maoli since 1893.

Speaking of settler colonial racism, item 17-484, Mike White's proposal for the legislative branch organization. I strongly oppose this legislation and would like to point out the supremacist nature of such legislation that seeks to disempower a kanaka maoli member of the Council. It is part of an ongoing legacy of structural racism, with the white man at the top. If anyone had any doubt as to the corruption in this County government, this very legislation is the smoking gun. Say no to Mike White's supremacy.

In response to 17-480, thank you Ms. Sugimura, I do support this although I don't see it as having any real teeth to make any change in regards to the State and their, their handling of the 6E law. And I hope that this does not become a tool or a reason for not passing the sand mining moratorium.

I also support the oxybenzone ban, that is a no brainer.

And I support 17-182, for more protections for victims of violence. Thank you for your time. Aloha and mahalo.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Joseph Kohn. Last call. Next testifier is C. Rose Reilly. Last call, oh, testifying on County Communication 17-484, and Committee Reports 17-167 and 17-179, to be followed by Kaimaile Makekau.

MS. C. ROSE REILLY (testifying on County Communication No. 17-484, and Committee Report Nos. 17-167, 17-179, and 17-182):

Aloha, my name is C. Rose Reilly, Cecelia Rose Reilly. I am a resident of Haiku, I've lived in warm places my entire life practically, and even in the snow you need to protect yourself and the skin when you're as white, or the sun as white as I am. So I hadn't bought any of that commercial sunscreen for probably five years at least. Like I am out in the sun regularly enough. I use a carrot seed oil which has an SPF of 50, mixed with other oils that are regenerative for the skin.

So one of the main problems that I have with commercial sunscreen is the blocking of Vitamin D, which is extremely important for cellular regeneration. So one of the body's main defenses against cancer is to regenerate cells, right, so they kill cancer cells and they regenerate healthy cells. So by blocking the sun in that way and keeping the Vitamin D is not helpful, as well as the chemical contamination to the cell which has to recover from by cleansing in order to make a healthy new cell.

So, I definitely see if I was to use sunscreen that the zinc is my most effective ally, as far as not getting burned. And, to say like, okay, the aging and the burning, but UVC, I've not heard of a sunscreen that blocks UVC, is that, so I, I don't understand, and that's the cancer causing. So the statements about how sunscreen is so important for keeping people from getting skin cancer, I think is totally bogus. So, yeah, I'm definitely for support of banning that, for the health of everybody.

As far as the sand mining moratorium, I've been doing a lot of research on construction for housing and what are effective materials. And there's really innovative, amazing concrete that is available. And so I think that a sand mining moratorium is not only good for protecting the culture, which is so important to all of us, but also for protecting resources. Because they are wasting, and methods that they're using are old methods, they're not spending their time to do research. They need to be stopped, they need to be brought to a point where they need to, you know, use resources in a very akamai way, not just sloppy, any kine, that's the old way that I got shown.

Okay, and as far as Mike White being able to fire any of your staff, I think that's terrible and I don't think that anybody here would support that any of you would want to fire someone else's staff.

And I would like to say that I think it's important if Charli's mom has come forward and this legislation is here to protect victims that that be taken into account and that all victims in the future are protected in ways that they can get their family remains back. Like, so I think that's four, thank you guys so much.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Kaimaile Makekai, testifying on Committee Reports 17-176 and 17-178, Bill 92 (2017), and County Communication 17-469, 471, 484, 483, 482, to be followed by M.J. Partin.

MS. KAIMAILE MAKEKAU [testifying on County Communication Nos. 17-469, 17-471, 17-482, 17-483, and 17-484, Committee Report Nos. 17-176 and 17-178, and Bill 92 (2017)]:

Aloha, Chair. Aloha, Council. Thank you for hearing me out today. So I am here to pretty much speak about the iwi of course. I have nothing much more to say besides everything that everybody else had said, but it's a shame and I am really hoping that you guys just stop this already.

As to where the bodies are being found already, I would, I would expect that bodies were found in the river, which was already removed and then placed in different areas for building by A&B. So I would think that where they actually are placed right now is probably not where they were laying before. But anyways, I'm completely against the moving of the iwis any much longer. It's against our culture and there are curses. I believe quite greatly that anybody involved in that should be getting cursed because it's just completely kapu.

Also, I would like to speak about Mr. White and him going against the people working for the Councilmembers. I'm hoping that he doesn't go through with that because these people are, you know comfortable with working with these people, they have worked together from the beginning of their campaign and I don't really see any reason why they should be getting fired. If they, if the County Councilmembers feel that they don't need them, then, and if they're not threatening anybody and if they're just working alongside the County Councilmembers, that they should not be bothered.

As for the victim, Mrs. Scott, and everything that she has said about this victim bill, that definitely should be looked upon because that guy who was walking around out of the mental facility was obviously danger to all of us, your children, my children.

And, and I also wanted to speak, new agenda about the housing. I'm living at the homeless shelter right, they're, I'm, I have a part time job, I have a three-month-old baby and I'm looking for housing right now and there is none. Looking for childcare that can take care of my son, which the childcare is about 500 to 1200 bucks a month, on a part time salary. And the living at the homeless shelter they only give you a minimum time of three months, which they are extending for a few more months, but it's not very much for me to find a home, a job, that can pay for that.

And I've been looking. There's none, there's no affordable housing, I don't know what's happening right now. But they are kicking men, women, and children out of the homeless shelter left and right, and something needs to be done about this because these people, they need help. I need help, you know. At least I am coherent enough

to find a job that I can actually, you know, maybe get a chance of finding a home. But there's a lot of people there who aren't very educated in this world to find a job that can help them.

They need integration programs, they need an opportunity to find a lifestyle to work. I mean these people that are at the shelter that I've seen, they, they not only need work and homes, they need, they need help to find work. They need, they need an education system. They, they, you guys can't just kick these, over six families just this past month, men, women, and children, have been kicked out of the homeless shelter and they have no place to go. And these people are having a hard time finding a job because they aren't educated enough to do so.

And if, if you guys can do anything, these people are getting kicked out at Christmas time and it's sad. And the children are there now living on the beaches and I don't, I live on \$400 of welfare and food stamps. I don't make anything, but I am using my money to give to those children that are living on the beach right now and it's so sad, it's so sad to see. And if you guys can please do anything to help the people that have no housing. I mean even the people that are working two jobs with a mother and a father that are working are having a hard time.

You guys have more Filipino homesteads than you do Hawaiian homesteads. And due to the sewage problem, I don't know who okayed for the Hawaiian Homes to be rezoned next to the sewage plant or the hospital to be next to the sewage plant, but it's completely inhumane and unsanitary. I don't know what's going on with everything in the zoning, but this is like a big problem, like, please. There's enough Filipino homesteads, they're bringing their whole families here from Philippines.

Where's the Hawaiian homesteads and you guys are rezoning the prestigious lands of the Hawaiian homesteads, giving it to the billion dollar homes and then rezoning the Hawaiian Homes next to the sewage plant. It's completely irrational. You guys are literally giving the Hawaiians shirt, and it's not cool. So I don't know what you guys are doing, but please help with the housing situation.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is M.J. Partin, testifying on County Communication 17-484, Bills 91 and 92, and Committee Report 17-182, to be followed by Clare Apana.

MR. M.J. PARTIN [testifying on County Communication No. 17-484, Committee Report No. 17-182, and Bills 91 (2017) and 92 (2017)]:

Aloha, Maui County Council. Thank you for your time and all of your efforts. My name is M.J. Partin, I am the owner of Maui Jo Coffee Company and I am the current Treasurer on the Board of Directors for Maui Search and Rescue. I apologize that for my first two testimonies I don't have written testimony to give to you cause I just found out about them last night.

CC 17-484, I oppose that power be given to any one Councilmember to terminate staff of any other Councilmember period. The amount of people testifying today on behalf of Maui is proof positive that it is what the people who live here want from our Council. Fifty-one agenda items to choose from today. So many things to dilute why I'm here. 484 most of all has wasted far too much time today so I will move on.

To Bill 91 and 92, something I know a little more about. I was President of the Maui Mermaid AOA, which is the HOA of condo owners. About eight or nine years ago the board voted unanimously to ban short-term rentals due to security concerns. Most of the owners, and all of the board members except for myself were residents in that building. To blanket tax all condos as short-term rental is ridiculous and certainly isn't going to help the housing situation for that young struggling mother.

One board member in particular was born on Maui, lived here her entire life and retired here. She's over 70 years old now and on a fixed income. An unsubstantiated raise in tax of \$70 a month, doesn't seem like much, would cause a major life strain on her.

So much had diluted what I'm really here for today. And I have submitted written testimony in regard to CR 17-182. I am here in support of 17-182 and to encourage all of you to vote to approve the inclusion of, of the, for inclusion to the 2018 Maui County Legislative Package a State bill relating to enforcement of the Basic Bill of Rights for Victims and Witnesses. Also to encourage you to adopt it at the County level.

The, excuse me, the Judicial system is setup so that ten guilty people may go free to prevent one innocent person from being incarcerated. I understand and I appreciate this.

However, when a subject has been convicted, and a victim, victims, or victim's family and friends have been mistreated, excluded, condemned, undermined, etc., when the victims are revictimized, this is criminal.

J.D. Kim, the head of the Maui County Prosecutor's Office wrote comments pertaining to this issue at the request of Committee Chair Yuki Lei Sugimura. J.D. Kim states that "it would be irresponsible for the Department of Prosecutors to support such a bill". Later in his statement he says, "I personally cannot see the necessity nor the propriety of subjecting our Department employees to civil liability at the whim of a witness or victim who feels that they have been treated unfairly by the criminal justice system."

I agree, there needs to be an end to frivolous lawsuits; however, when there is evidence of wrongdoing as in any criminal or civil case, then the final decision should be given to a jury of one's peers, a judge or a mediator. When there isn't any evidence, there isn't a case. But when there is evidence of prosecutorial mishandling of evidence, information, etc., that person or group of people should be held liable.

J.D. Kim goes on to say that "As attorneys, our Prosecutors are held to a higher standard than the other licensed attorneys. We have a duty to seek justice. We do have, we do not have clients, we are considered part of the justice system and governed by an extra set of ethics."

With this in mind, the Prosecutor's Office should have nothing to worry about and no reason to oppose CR 17-182.

Confident that all of you are familiar with the attorney, former Attorney General Janet Reno who stated while testifying on behalf of victims rights, "Prosecutors know how to do the job and enforce the Constitution and when they don't, there should be remedies."

I hope none of you find out firsthand what it's like to be a victim and then revictimized. Thank you again, Maui County Council for your time and all of your efforts.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

Oh, excuse me, did you want--

COUNCILMEMBER ATAY: Mr. Chair.

VICE-CHAIR CARROLL: Mr. Atay.

COUNCILMEMBER ATAY: Chair, if I could address the Chair. I want a, it's fifteen after the hour of five, I want to, I want to kind of know what the Chair's intentions are of how many other testifiers there are or, you know, what's are future going forward.

VICE-CHAIR CARROLL: My intention was to continue hearing public testimony as long as I have a quorum, that is my intention. Hopefully we can finish with public testimony today and then I have six people that have said they can meet Monday morning at 9:00 a.m., and then we can get down to taking action on all of the concerns that have been brought forward today. And that is the Chair's intent. If somebody has to leave, I can understand, it's late and I know people have obligations and families. But as long as we have five people present, I would like to continue as long as possible. Because people have been waiting outside here for a long time, and that is the Chair's intent.

Excuse me, Mr. Clerk.

DEPUTY COUNTY CLERK: And Mr. Chair, just for the Members information we have about 20 more individuals signed up to provide testimony, assuming that they're all still here.

VICE-CHAIR CARROLL: Alright, thank you. Thank you, Mr. Atay.

Mr. Clerk.

(Councilmembers Crivello and Guzman were excused from the meeting at 5:16 p.m.)

DEPUTY COUNTY CLERK: Next testifier is Clare Apana, testifying on Committee Report 17-167, to be followed by Mike Moran.

MS. CLARE APANA (testifying on Committee Report No. 17-167):

Chair, I respectfully ask if Vicki Kaluna-Palafox can read for me cause I can't read the prints too small. I just have certain sections that I need to have read, and I won't take extra time.

VICE-CHAIR CARROLL: Proceed.

MS. APANA: Okay, first bill I want to talk about is the suntan lotion. And I heard a lot of great testimony on suntan lotion and I also heard people who are cultural practitioners, Hawaiian cultural practitioners, kanakas who came up to say don't degrade the reef. Don't ruin the limu. I use that for subsistence, we use it for medicine. And this issue, I think kind of got overshadowed by all the different people. And this issue should not be overshadowed because that is our right in this place, to have cultural practice and our traditions honored. And do you know whose job it is to insure that right? It is any body of the State and the County's, which includes you.

(Councilmember Guzman returned to the meeting at 5:18 p.m.)

MS. APANA: There was a case that went to the Supreme Court for a decision, and that case is called Ka Pa`akai v. the Land Use Commission. The cultural practitioners won that case and the result of that was a very simple three steps for how you might as a body, and as an individual Councilmember be able to see if your action or any action that you are planning to do, is going to harm me as a cultural person, as a cultural practitioner, my traditions and my culture. I'm going to ask Ms. Kaluna to read that first.

(Councilmember Crivello returned to the meeting at 5:19 p.m.)

MS. VICKI KALUNA-PALAFIX: Mahalo, good evening Council.

Ka Pa`akai process simplified. The Hawaii Supreme Court in Ka Pa`akai O Ka`aina v. Land Use Commission 2000, provided an analytical framework to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonable accommodation competing private property interests. The court enumerated three tests for agencies to protect traditional and customary Hawaiian practices to the extent feasible. Under this framework, State and County agencies must independently assess the following when reviewing land use applications.

VICE-CHAIR CARROLL: Have you concluded?

MS. APANA: And so, then I'm about out of time. I would like to move to the homeless shelter in Lahaina. A good deal of my time is spent doing something called the Ku`e Petition continues. It is the continuation of the petition of 1897 where our kupuna signed a petition that went to Congress and to the Senate, it is almost at 120<sup>th</sup> year that it has been accepted. But what it did was speak for our people, the Hawaiian Kingdom, the Hawaiian people, the kanaka people and people who are citizens. And they were really afraid that they would become homeless. It is outlined in the memorial statement that is associated with the people who signed this petition that went on to the United States Senate to, and it, I must tell you defeated the only annexation bill that was ever produced and voted upon in the United States Congress.

And when I see people testifying about being homeless in this land, our homeland, it is heartbreaking. You should do whatever you can to see that the people that you are entrusted to protect their rights, I think living is a right. You are entrusted to protect our rights, to see that they have a place and shelter in this place that was once our country, and it still is our country, by the actions of the people of Ku`e Petition. I spend a good deal of my time trying to connect people to who we are and the truth of history. And I, enlist you to do your job in protecting those rights of the kanaka maoli.

And the third, that I would like to speak about is about the sand mining moratorium. It has been many years that I have come to speak here, and it's been many years that I have brought you this Ka Pa`akai case and my rights. And I have not seen consideration of this come from you. I will say that Mr. Kugle presented the findings of fact of the case quite incorrectly and I am going to turn in the findings of fact to you. And, in the findings of fact, there is a paragraph about me, and I would ask Vicki to read that now.

MS. KALUNA-PALAFIX: Plaintiff Clare H. Apana is kanaka moali, conducts cultural practices at Kalua, Sandhills. Those practices are related to a responsibility to family, are connected through cultural education our family, and involve taking responsibility or care for the location. Apana has taken responsibility for speaking for the protection, of the protection of iwi kupuna and for the culture in the area that she lives in. Apana is a trained practitioner of native Hawaiian traditional customary practices associated with this land spiritually, and resolution of cultural and spiritual disturbances.

MS. APANA: Thank you. So, in your consideration of this sand mining moratorium, I have never heard the Council Chair ask me what I thought, or ask me how I might be harmed. This is your duty as a County Council to know those answers, to find those answers. There are three simple steps that you are mandated by the decision of the Supreme Court of Hawaii to follow, and I am asking you to do that, I am demanding you do that.

When I hear people like Bill Frampton come in here knowing that he sat on Burial Council, and knowing that when we went to the Waiale Project, which you heard Ms. Napua Nakasone speak of, he testified that there were no impacts to burials. But again, he was testifying for a different developer. Emmanuel Lutheran is in the middle of the sand dunes. It needs to be very carefully looked at. That is partially why they got that land. All of these developers, they knew what they were buying and they just hoped that they would be able to keep getting away with breaking the law.

VICE-CHAIR CARROLL: Please conclude.

MS. APANA: So, I would like to say at the very end, this is the last thing I'm going to ask Vicki to read. It's not just me, it's not just us saying this, but here is a press release for a resolution from the Association of Hawaii Civic Clubs.

VICE-CHAIR CARROLL: Excuse me, excuse me. You told me that you would not take any extra time, and I allowed two people, which is not our usual process.

MS. APANA: I have not taken, I still have forty something second here. Have I taken more time than I supposed to.

VICE-CHAIR CARROLL: Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, we're at four minutes now for the current item, over the three minutes allotted other individuals.

MS. APANA: I'm really sorry, I see one minute on the clock here.

VICE-CHAIR CARROLL: I'm, proceed then. Thank you.

MS. KALUNA-PALAFIX: The Association of Hawaiian Civic Clubs just adopted the following resolution at their 58<sup>th</sup> Annual Convention in Seattle, Washington urging the Maui County Council to prohibit the extraction of sand from the Pu`u One Sand Dunes and asking the Honolulu County Council to prohibit the importation of sand from the Central Maui Sand Dunes for the Honolulu Rail Project.

A bill to place a moratorium on sand mining of the Central Maui Dunes is on Maui County Council agenda for this Friday, December 2. The Malama Kakanilua group have been actively advocating for the last ten years to protect the hundreds of ancient Hawaiian burials found throughout the Central Maui Sand Dunes as they have been developed by Maui Lani Partners.

The resolution supporting the proposed moratorium was presented to the National Association of the Lahaina and Oahu Hawaiian Civic Clubs and was giving overwhelming support of the National organization. The Association of Hawaiian Civic Clubs founded in 1918 by Prince Kuhio, consists of over 2,000 members from 58 Hawaiian Civic Clubs throughout the United States. Members of Malama Kakanilua are grateful for their support in the ongoing efforts to safeguard our iwi kupuna.

MS. APANA: Thank you, Chair. I'm sorry if I went over.

VICE-CHAIR CARROLL: That's fine. Thank you very much for coming.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Mike Moran, testifying on County Communication 17-

COUNCILMEMBER ATAY: Chair.

VICE-CHAIR CARROLL: Oh, I'm sorry, you had a question for the testifier.

COUNCILMEMBER ATAY: No, no questions. But I just do want to let, inform the Chair that I, I do need to excuse myself, and I apologize to the community for leaving this meeting. I have a prior family engagement, but I do want to emphasize that I will be present Monday morning on a continuation of this 9:00. Thank you.

VICE-CHAIR CARROLL: Yes, and thank you very much. And we understand, and I understand if anybody else has a problem. And again, we'll keep on going as long as we have five Members.

Thank you, Mr. Atay.

(Councilmember Atay was excused from the meeting at 5:29 p.m.)

VICE-CHAIR CARROLL: Mr. Moran, you may proceed.

MR. MIKE MORAN, KIHEI COMMUNITY ASSOCIATION (testifying on County Communication Nos. 17-473, 17-482, and 17-84, and Committee Report Nos. 17-167 and 17-179):

Aloha, Vice Chair and Councilmembers. Mike Moran for the Kihei Community Association. Long grueling day for all of you. When we looked at this agenda, we try and pick out a few items, we can't take them all, we're all volunteers so we don't have, so we just try and pick out first are there any South Maui issues, that's, that's our responsibility. If not, are there environmental issues, that's our next responsibility. And then just go generally through the list.

So, we, we felt that there was going to be a lot of turnout today and somebody used the term, well this is a perfect storm agenda, you're going to have a ton of people out. And we did, and of course that's good, and it's tough for everybody, but it's good you get the community out here. We were very glad to see a lot of young people come out to testify. So you're hearing from the community, of course we also hear from, one gentleman as far away as Florida, but they're getting paid to come. So, we know that you're aware of the difference.

So, the items that we picked out, the oxybenzone one. KCA was pretty early learning about this just by happenstance, years ago we went to a meeting and State meeting and Jeff Bagshaw gave, I guess one of his first presentations about this that, what they were doing at `Ahihi and the 55-gallon drum, I think you've all heard all that. So we

got the information, we posted it on our website and we try to keep following through on the issue.

We were very disappointed that the State Legislators dropped the ball on it, we felt, so we were very proud of again the Maui County Council coming out and taking on the issue. We think it's, it, you heard all the science, you've heard all the reason. There seems to be no reason, to please just get this through. You've worked for, diligently on it, it's just time to say enough, let's do it, let's do it. Let Maui lead on this, so please pass this, this one, finalize it, get it done so we can move on to other issues.

The next item that we were aware of because it was in the Maui News was the issue with the Mayor firing, if that's the right term of Dave Taylor. And KCA, we've worked with Dave for many, many years, going back to when he was on wastewater. And we felt he was always professional and we don't have enough knowledge to know what is the outcome of something like this. What happens cause it, we think, to us it's something brand new, what happens if he's forced out. Does the, the next person in line, former Councilmember Gladys Baisa, does she take over. So we just hope that you'll look at this carefully and make a prudent decision cause this seems like it's very important. He certainly was a knowledgeable, is a knowledgeable man on this topic and we hope it's not just politics.

Next item is the sand mining. Again, this seems to be something that's dragged on for way too long. We've heard testimony after testimony asking about a six-month moratorium. Good grief, yes, let's stop this for six months, we can do this. Many of you know way better than, than I do, or that KCA does about all that's involved, but it certainly seems like it's time for a six-month moratorium on this.

The last issue was one that caught us completely unaware and I've listening today, this is the 484. I can tell you honestly, I'm charged by our Board to go through these and I read it, and I thought I'm not quite sure what this is, what, what is the Chair White doing here. And we read through it again and I asked some other people. They said you, what I think I'm reading here is that Chair White is saying I don't like, I'll take our South Maui representative, I don't like her EA Susan, and we think Susan's wonderful, she's helped us out extensively, I don't like her so let's knock her out. And I'm like, is that really what this is about. It doesn't seem, that's, that's what it is about. And, gee, what about Morris, I've worked with Morris for a decade, I think, great guy, and most helpful, so all these people are in jeopardy because somebody is unhappy with somebody else. And then I'm hearing today, through testimony that it's, it's Alika Atay's people like bringing on the challenge.

But this just seems like I think what so many other folks say, let's get rid of this thing, what are we thinking of. There's no aloha here, there's no pono here. We have all

these Christian holiday decorations up, it's a time of goodwill, please let's bury this thing. And, our reading on it first it was kind of discouraging once we read it, and then very disappointing that Chair White was bringing this up. And somebody said to me, well Mike, what's your letter, what's your "D" letter. I said it's disgusting, god get rid of this thing. So please let's bury that, there's so many more important things to do.

And again, thank you very much for sticking in with this all day and I know you've got more and then coming back Monday morning. So mahalo.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Erin Pinto, testifying on Committee Report 17-171 and 17-167, as well as County Communication 17-472. To be followed by Ann Pitcaithley.

MS. ERIN PINTO (testifying on County Communication No. 17-472 and Committee Report Nos. 17-167 and 17-171):

Good evening, Council and Chair. I just wanted to, my name is Erin Pinto, I just wanted to start by saying that because there are so many agenda items today, there are many people who could not stay and speak. And I think that this, I commend you for all the important issues you're raising, but I, I think this is a unfortunate situation for the public not to be able to fully participate.

I'll speak first on the item for removal of Council staff. I am really shocked and appalled that this has even been brought forward. I think it's shameful, unethical, and possibly illegal. It should be put aside. To me it's more like the actions of a dictator or a fascist.

Second item is, I believe it's No. 471 regarding the feral pigs. And I would like to take this opportunity to be a voice for the voiceless. There are feral populations on the island of pigs, white access deer, and goats. And they are all being hunted and shot. And these animals suffer a great deal of pain and fear. They have families that are left orphaned. The babies are left orphaned and it's also a public safety issue to have hunters around the island going after these animals.

And, I had an experience where my husband and I were at `Ahihi about a year and a half ago with some family members, and the DLNR was actually shooting wild goats right behind us while we were on the beach snorkeling. And it was very distressing, very upsetting. And I think of tourists coming to visit and being exposed to hunting of,

of animals in this manner and I just, I would really like to encourage the Council to enact legislation that requires humane methods of population control for these feral animals. And one example is a vaccine to prevent pregnancy called PZP.

Moving on to the oxybenzone issue. I am in support of the sunscreen ban. I think that we need to take responsibility to protect our reefs here on Maui. It's disingenuous for the promoters of the oxybenzone products to say that people won't be protected and they'll get cancer. As we know there's many alternatives. And I also think that this, the reefs, I've been snorkeling and diving around the Pacific quite a bit and the reefs here are in very, very, very bad condition. And, I think we need to do all we can to protect them, and allowing the oxybenzone use to continue is like putting a nail in the coffin for these reefs.

(Councilmember Sugimura was excused from the meeting at 5:40 p.m.)

MS. PINTO: And then lastly on the sand issue, I just wanted to say that I am in support of the moratorium because of the ancient burial grounds and also for environmental and cultural practice reasons, and I'll leave it at that. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Just real quick, real quick follow-up on the--

VICE-CHAIR CARROLL: One moment. Mr. Guzman.

COUNCILMEMBER GUZMAN: --the vaccine that you're talking about, is that used in other jurisdictions, for the feral pigs. Is it PC--

MS. PINTO: PZP.

COUNCILMEMBER GUZMAN: PZP.

MS. PINTO: Yes, I, I believe it has been used on the wild horse populations in the west.

COUNCILMEMBER GUZMAN: Okay.

MS. PINTO: And it may not be currently in use but it, it is effective.

COUNCILMEMBER GUZMAN: Okay, thank you. Thank you, Chair.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Ann Pitcaithley. Last call. Next testifier is Anna Barbeau, testifying on County Communication 17-484, and Committee Reports 17-178 and 17-179, to be followed by Barbara Henny.

MS. ANNA BARBEAU (testifying on County Communication No. 17-484 and Committee Report Nos. 17-178 and 17-179):

Aloha, I came here only to speak on this one CR 17-178, in support of the recommendation to adopt a resolution to support affordable housing Front Street Apartments. I'm in definite support of this CR 17-178 in order to house residents who support our economy and need to reside on the west side.

But after looking at this potpourri, this buffet of, of agenda here, it's incredible so now I'm going to go onto CR 17-179. I think it's all grouped together with CC 17-473 and CC 17-472. I am in support of banning the harmful ingredients contained in sunscreens, which are and have been harming our reefs and natural environments.

I'm going to be quick, there's just so many, had to comment on every single. I do oppose CR 17-167, the removal of sand.

And I also oppose the removal of Director of Water Supply Dave Taylor. Just from what I've heard today, he sounds like a wonderful person and knowledgeable and good in his position, that's CC 17-482.

On the sand issue, you know, this isn't on the agenda but if Maui County would just bloody grow hemp and have a very strong building material, they could leave the sand alone for the cement. Okay, cause that's, outlasts structural sand and mortar situation, we wouldn't have to even touch the sand.

I also would like to stand with the community of Molokai in opposing the appointment of Carl Adolpho to the Molokai Planning Commission, this is just hearing people talk in testimony today, that's CC 17-481.

And I'll close with opposing CC 17-484. Thank you.

(Councilmember Sugimura returned to the meeting at 5:43 p.m.)

DEPUTY COUNTY CLERK: Next testifier is Barbara Henny, testifying on Committee Report 17-178 and County Communication 17-484, to be followed by Kathryn Snyder.

MS. BARBARA HENNY (testifying on County Communication No. 17-484 and Committee Report No. 17-178):

Good evening, Council Chair, Housing Chairwoman Stacy Crivello, Vice-Chair of the Housing Committee Robert Carroll, and all Members of the Council Committee. I would like to take this opportunity to thank you for your time and participation during this and previous meetings. My name is Barbara Henny, Co-Chair of the Front Street Apartments Tenants group. I am in support of CR 17-178, and I am here to plead for your favorable consideration in recommending the adoption of a resolution urging the Governor and the Hawaii State Legislature to support the affordable housing at Front Street Apartments.

As you are well aware from earlier testimony presented by many of the tenants and others in the community, we think the public deserves to have a chance to recoup their investment to the development of Front Street Apartments from the property owners. Several million dollars in benefits and tax exemptions were given to the property owners with the understanding that the lease would be for 50 years. The building owner is using an IRS loophole in trying to renege on its promise saying the lease rent on the land in 2015 increased. What this resolution does is ask the State Administration and State Legislature to make this a priority in the 2018 Legislative Session. The resolution also supports the efforts of State Legislators in Maui County to support the problem.

Please support this resolution and help us remain proud, independent, responsible, rent paying tenants. We love our homes and community at Front Street Apartments. And of course as earlier people have testified, there is very difficult problem with affordable housing here in Maui and elsewhere. It seems to me there are no avenues to pursue, except to learn of particular construction taking place, but most places won't be available for quite a few years. So, we are simply asking that we and my other tenants and neighbors can stay safely there without having to seek alternative accommodation. Thank you for the chance to testify.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Kathryn Snyder, testifying on Committee Report 17-178, to be followed by Mary Ann Pahukoa.

MS. KATHRYN SNYDER (testifying on Committee Report No. 17-178):

Thank you, Councilmembers, for staying at this late date, I know it's been a long day for everybody, including me. My name is Kathryn Snyder, I've lived at Front Street Apartments for 12 years. I retired in Maui 22 years ago and, to help my daughter who is a single mother, to raise my granddaughter. And by the way she had a, my granddaughter that I helped raise, got a full ride scholarship to Cornell University where she graduated.

Where I live, I love, it's a lovely location, I can walk to stores. It's a short drive to the, the senior center and the pool. And, my income is the same as it was when I retired 22 years ago. So it's not feasible for me to rent a market priced apartment. And I don't want to be homeless at the age of 84. I felt for this young woman that talked about being in the, in the homeless shelter and not having any place to go because I'm beginning to feel that feeling that I may be homeless and I don't like that feeling. Thank you for listening to me.

VICE-CHAIR CARROLL: Thank you. Members, we have about 15 more testifiers. Does anybody need a short break right now? You know, we'll take a short recess right now to--

COUNCILMEMBER GUZMAN: Chair, I just wanted to apologize to the public and to the Councilmembers, I need to leave, my, my daughter has a Honors Program in Kihei.

VICE-CHAIR CARROLL: We understand.

COUNCILMEMBER GUZMAN: Thank you. I'll be here Monday.

VICE-CHAIR CARROLL: Okay, short recess, try to . . . about 10 minutes please. We are in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 5:49 P.M., AND WAS RECONVENED AT 6:04 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBERS ATAY, CRIVELLO, GUZMAN, AND COUNCIL CHAIR WHITE, EXCUSED.)

VICE-CHAIR CARROLL: This Land Use Committee [*sic*] is reconvened. Ms. King has informed me that she has to leave shortly. How shortly? Alright, when you do have to leave, please raise your hand and then we shall recess the meeting.

Mr. Clerk.

COUNCILMEMBER KING: Chair.

VICE-CHAIR CARROLL: I'm sorry.

COUNCILMEMBER KING: Do we have Ms. Crivello, or did we lose Ms. Crivello too?

VICE-CHAIR CARROLL: We have quorum, five people.

COUNCILMEMBER KING: Right, no, no, I just wondered if we had, if I leave if we have, still have a quorum.

DEPUTY COUNTY CLERK: Mr. Chair, our staff will be tracking down Ms. Crivello right now, but my understanding is that she'll still be here for the meeting.

VICE-CHAIR CARROLL: Oh, okay. Alright, shall we proceed.

DEPUTY COUNTY CLERK: Next testifier is Mary Ann Pahukoa, testifying on Committee Report 17-179 and County Communication 17-484. Last call Mary Ann Pahukoa. Next testifier is Rosemary Robbins. Rosemary Robbins will be testifying on County Communication 17-457, 17-480, 483, and Committee Report 17-178, Bill 101 (2017), followed by Dr. Joe Ritter.

(Councilmember Crivello returned to the meeting at 6:05 p.m.)

MS. ROSEMARY ROBBINS [testifying on County Communication Nos. 17-457, 17-480, and 17-483, Committee Report No. 17-178, and Bill 101 (2017)]:

Good morning, afternoon and evening, everybody. Rosemary Robbins, concerned citizen. A lot has happened over the past year and I want the public to be able to be aware of that.

(Councilmember King was excused from the meeting at 6:06 p.m.)

MS. ROBBINS: At this time last year, we had some new Members to the Council appointed, some new Members having been, not having served before. And, that was one of the things and we worked with the budget stuff into the middle of the night, right after Christmas, this past year. So we're working with familiar people, non-familiar people, and dealing with the financing approval, which is the responsibility of this Council.

One of the things I was pleased to see on page 2 of our agenda for today was that people who hadn't gone after money or equipment before, had done so. And one of them was the Fire Department that went after money in order to be able to get the jaws of life for extricating people from automobile accidents or other traumas. And I'm familiar with somebody who was extricated from the trunk of that citizen's car because a eucalyptus tree had fallen and pinned her into the car. And without that jaws of life to get her out, who knows. So, so I was pleased to see that, and to know that the Fire Department had gone after that. They had shuffled some other stuff around in their budgets to be able to do that.

My major point today, I think nobody has spoken on this and it's 17-3, oops, I'm sorry, this has been pulled all over the place today. It had to do with 17-83 [sic], has to do with a land swap Upcountry from, this is what was so perplexing. I got a hold of that material and went through it, went through it, and through it again, and it is talking about the fact that the, one of the ranches Upcountry was going to be dealing with a land swap. But when I went through the materials, it reads that it's the Department of Water, that is the owner of the land and the Department of Water that is the recipient of it. So it's the Water Department, versus the Water Department. So news to me that that could be. I got a hold of the material, went over and I'm familiar with the geography, I live up in that area of the island. But this, this was just incredible.

(Councilmember King returned to the meeting at 6:09 p.m.)

MS. ROBBINS: It talks on the top pages of every one of these, and I leave this for us, says that the borrower is the County of Maui Department of Water Supply. And the person from whom that water supply person would be taking it is also the Department of Water Supply. Something, somethings not right about that.

So, I read through all of the pages on here and it talks about the fact that this was going to be a value, a monetary value of \$40,000 that turns out just to be land. And when you have the access to the water, that the land is zoned agricultural, that the water setup turns out to be in the hundreds of thousands. What's up with that? By the Department of Water Supply, from the Department of Water Supply. Folks need to read that, please don't let that go anywhere with the inconsistencies that are in this. It also talks about two different addresses, one of them is Kula Highway, one of them is Crater Road. Lots of people on Maui, let alone our other two islands, are not familiar with how that works. So please don't take any action without there being a real thorough examination of all of this, please. Nobody's going to win on that, it will come back to haunt us. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Dr. Joe Ritter, testifying on County Communication 17-472, 480, and 484, to be followed by Paul Solomon.

DR. JOE RITTER (testifying on County Communication Nos. 17-472, 17-480, and 17-484):

Esteemed Councilmembers. Thank you for taking your evenings again, to testify. I offer three testimonies tonight, on three issues, maybe a fourth if there is time.

First, I offer testimony in support of CC 17-472. I am deeply grateful to Elle Cochran, Chair of the Infrastructure and Management Committee for transmitting a bill for an ordinance establishing a new Chapter 20.40 of Maui County Code, prohibiting the sale of sunscreens containing oxybenzone and octinoxate. There is no debate among real scientists, not paid lobbyist like we saw earlier today, but there's no debate among real scientists that oxybenzone kills reefs. How am I qualified to say that?

Well I first came to Maui as a physicist and satellite oceanographer working on the University of Hawaii Moana Wave, a research vessel doing oceanography. I was employed by a university in Florida on a NASA funded satellite effort with the national, in conjunction with the National Oceanic and Atmospheric Administration (NOAA), to measure ocean Phytoplankton distributions around the globe.

In this effort I deployed a device, I invented a Multispectral Imaging Solar Aureole Radiometer, to measure optical scattering, to calibrate these satellites. And the purpose was to measure Phytoplankton and measure plants and other things in the ocean so that we could measure things, for example, reef bleaching, and reef. We were looking at Phytoplankton in particular because we were using my invention for radio transfer climate models. But the satellite calibrations were also applicable to reefs.

The paid lobbyists, scientist said earlier he was unaware of any science that showed that, did I say scientists, paid lobbyists, at least, that he's unaware of any science showing oxybenzone killed reefs. I've emailed you each a copy of this paper here, which I encourage you to get your staff to print out, if they don't get fired by Mike, on purely economic grounds, and, and this, this paper is called "Toxicopathological Effects of Sunscreen UV Filter, Oxybenzone, on Coral, etc., etc." There's real science showing that there is damage from this.

On purely economic grounds, you must pass this bill. Our environment is our economy. Destroy our reefs and ocean plants and you destroy more than fish, more than sea creatures, more than the earth's largest CO<sup>2</sup> absorbing system, which is what the ocean is. Destroy the ocean, you destroy jobs, you destroy tourism, you destroy the lives of those who depend on the ocean. When over 80 percent of our economy is dependent on tourism. I urge you not to pass this bill *[sic]*.

I offer my testimony against CC 14, sorry, wrong, wrong bill. I offer my testimony on 17-480, burial sites and 17-167 moratorium on sand mining. Esteemed Councilmembers, let me tell you a story. I grew up on a farm what was previously a small Native American village. Near our creek was a burial site. I was amazed when some local yahoo racist defiled the grave with paint and stole items. But they were uneducated racist pigs who were taught to act that way.

So I was shocked, truly shocked to find out that here on Maui, people are defiling graves daily with impunity. This is not a back country isolated incident, nor is Maui a third world country, I thought. If defiling graves is an accepted part of development on Maui, well accepted by developers, but not by me, not by kanaka, and not by many other citizens. Just because I'm of Euro descent, not kanaka, doesn't make me less outraged. I'm a human, and I take offense at this treatment of dead bodies. My voice is but one of many voters who would say the same.

How would you feel if they were digging up your grandmother? How would you feel if your religion was violated? How would you like to have your relative's bodies dug up? So, I'm against 17-480, for giving all of the power to the State to do this. I am for 17-167, the moratorium that Elle Cochran proposed. So, we need a moratorium on sand mining, but we can't just let a Councilmember pass the buck with a resolution saying, oh this should be enforced by DLNR. This can be enforced by both, State and County officials. So we can't just pass the buck on this one. We need a moratorium on sand mining, you Council can stop profiteers from defiling graves. It's a continuation of racist colonialism and cultural genocide. Moreover, it's amoral and it's disgusting. Leave the bodies in the graves, please work to end this disgusting amoral practice. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DR. RITTER: I now offer testimony on the third item.

VICE-CHAIR CARROLL: Excuse me, I thought you were done.

DR. RITTER: That's quite alright, thank you, Chair for your time.

VICE-CHAIR CARROLL: Continue, you may proceed.

DR. RITTER: Thank you. Alright for my testimony against CC 17-484, an attempt to legalize illegal firing of Council staff or what I'd like to call the if you can't beat them, fire them bill. If this type of bill was passed in the U.S. Senate, Democrats would have no staff, soon our system would disintegrate into pure fascism and dictatorship. Is this what you want for Maui? A yes vote means yes.

I'm no stranger to a hostile work environment, I worked for the State of Hawaii. This bill put forward by Council Chair White would stifle whistleblowing, and even worse stifle discussion, and likely as intended stifle dissent against those who dare to differ with the Council Chair. Such gross intimidation tactics are beneath this distinguished office. I'm truly saddened and disappointed to see tactics unworthy of this esteemed office being used.

Further, a yes vote will have set us up to pay for another lawsuit against the County simply to consolidate the Council Chair's powers which are being misused. Let's talk about the law. There are many people that are aware of millions of dollars that are misspent.

But, under the law, under Hawaii Revised Statute 378-61, the "Whistleblowers' Protection Act", an employee may not be discharged for a reason that violates a clear mandate of public policy, specifically there are three general categories of activities that are protected in this policy. In particular here legally we are concerned with "performing an important public obligation". I encourage you to look up the law on this, it's in my email to you. And that important public obligation is working for staff of Councilmembers and supporting staff needs.

To be very clear, this is the law. Employees have the right not to suffer from any adverse employment action because they participated in an investigation, hearing or inquiry, conducted by a government agency. You're all government employers, our Council staff, our freedom fighters who work for the common good by performing such an important public obligation. Such a dismissal without good cause would result in yet more paid leave and lawsuits against the County, likely with Councilmembers as codefendants.

In case Counsel Wong hasn't told you, Hawaii law recognizes the common law statutory public policy, exception to the at-will employment doctrine *[sic]*. This cowardly

bill put forward by a power-hungry Councilmember undermines the Hawaii Whistleblowing Statute. Only an enemy of democracy would propose such an action.

Brian Bardellini is a gentleman, a scholar, and my friend, and I stand by my friend. Councilmember Alike Atay is my friend, and a friend to all the honest people on Maui. This attack is disgusting. Councilmembers, I urge you not to be complicit and legally a part of this illegal and immoral action. If you have any doubts this would be illegal, please read my, the law that I sent you in my email. Thank you very much.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Paul Solomon, testifying on County Communication 17-484, to be followed by Tiare Lawrence.

MR. PAUL SOLOMON (testifying on County Communication No. 17-484 and Committee Report Nos. 17-167, 17-179, and 17-182):

Aloha. I, when I first came in I didn't realize there were so many different bills, so I have a few more I want to talk about. The first thing I do want to say is please in the future, do not put so many items on the agenda for one day. I took off, I'm self-employed, I took off a whole day of work to come here because I felt it was important. And I know we're all tired. So, please give us a little less each time. Okay.

First of all, 17-179, is the sunscreen ban, please vote yes on that, people have already talked about it, I'm not going to talk more about it. Please let's save our reefs, let's save our, they are so important to us, okay.

17-167, the sand mining moratorium, please yes again. It's a grave, we're exporting our sand, you're on an island. They have other things you can use. Someone said hemp concrete, please, let's, let's, let's look into this. Okay.

Two other bills, 17-182, the Bill of Rights for Victims and Witnesses. Please support this. I work as a psychotherapist, I've been working as a psychotherapist for 28 years. And I specialize in working with victims and people with posttraumatic stress disorder. And I work with so many people who are afraid to go and use the criminal justice system because they're afraid they're going to get revictimized. I worked with people who have worked and gone through the criminal justice system as victims and have felt revictimized.

We need to let them know that this, our system is going to help them and support them, and they need to feel safe. They don't feel safe coming forward. And if they know that they have a bill of rights, that they have a sense that they are going to be treated not just fairly, but that they trust, that they are not going to get revictimized, they're willing, they're going to be more willing to come forward. And it's going to help them, not just get justice, but to heal from the trauma of what they've gone through. So I please ask you to support that.

There was the other one about the Front Street housing. Please adopt this. You know, the rentals here is, is such a problem. I have friends who are getting kicked out of their long-term rentals because their landlords want to turn them into short-term vacation rentals and make lots of money. We have a real housing problem on here and it's not just Front Street, I, please vote for that, but we need to deal with the illegal short-term rental situation, the illegal Airbnb because people who live here and pay their taxes and work here in the backbones community are losing their homes, their rents. And we can't afford it any more. So, please, please help us on that.

And lastly, 17-484, please, please vote no on this. You know, I stood up here when you all first, in January, when we had the whole situation about Mike White becoming Chair and about the five against the four, and the whole thing. And I said to all of you, I said look, we all need to work together. And if everybody on this Council was willing to work with all the people who came here, we would extend our hand with aloha and work with you.

And I also said look, if, if Members of this Council or the Mayor are going to abuse their power, we're going to do everything we can legally and morally to stand up and say no. I wasn't make a threat, I wasn't making a joke. This is a democracy. This County and this Nation runs on laws that are here to protect people and to provide for our welfare. This action undermines everything that this Council is supposed to be doing. It's petty, it's dictatorial, it threatens.

We, you know, a member of someone's staff is investigating the possibility of mismanagement of taxes, funds and we get the Corporate Counsel working with the Chairman who unfortunately is not here, I can't talk to him, to say that now we can fire them because we don't, because maybe somethings going to be uncovered that people don't want uncovered. We're aware of the corruption that's been going on in this County for 125 years. We're not stupid. So you're going to fire somebody and send a message to every other staff member, every other Council, and every other government employee if you try to correct mismanagement, if you try to seek out corruption, you're going to get fired.

Is that the message you want to send? Cause that's the message that this is sending and you know, you send that message, you're going to have a lot more people in this room than just us because everybody in this, in this County is going to know what's going on. This is illegal, this is immoral, this is undemocratic, and I wish all the Councilmembers were here to hear what I have to say. But, please, let's stop this now. Let's clean up things, we have too much to work on here, we have too many issues, and we need to work together and stop this. Mahalo for your time.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Tiare Lawrence, testifying on Committee Report 17-179, to be followed by Tamara Paltin.

MS. TIARE LAWRENCE (testifying on County Communication No. 17-480 and Committee Report Nos. 17-167 and 17-179):

E kala mai if I'm a little bit delirious. Stoked you guys stayed, proud of you guys. I'm actually going to testify on three different items. I'm, my name is Tiare Lawrence, I work for the Hawaii Alliance for Progressive Action, I'm also one of the founders of Malama Olowalu. I'm here to support 17-179, 17-167 and 17-480 with reservations.

It's no surprise that the only people who testified in person were paid, testified in person for the, the, against the oxybenzone were paid attorneys and lobbyist, so I urge you to side with the people of Maui, but most importantly our ocean and her resources. I'm here because I love Olowalu with all of my heart and really with all of my being. I grew up picking pipipi and kupe`e on the shores. My brothers would dive and fish, and it's also the place where I learned how to swim and surf.

I have personally witnessed the decline of our reef and resources there. I was involved in trying to get the Hope Spot designation at Olowalu recently through Sylvia Earle and her foundation. And so, thank, thankful, thankfully with the efforts we were able to get a Hope Spot. The first Hope Spot in Hawaii.

And as a marine biologist and National Geographic Society Explorer-in-Residence, Dr. Sylvia Earle said at the IUCN World Conservation Congress, "We should be caring for the natural world as if our lives depended on it, because our lives do depend on it."

The UK based environmental group MarineSafe estimates that up to 16,000 tons of sunscreen are introduced into coral reef habitats around the world each year. On Maui,

it's no coincidence that more than 2.25 million visitors slathered in sunscreen visit Kaanapali Beach each year and there has been a 40 percent decline in coral cover in the last 15 years.

Since there are ecofriendly sunscreens on the market now, a total ban hurts no one. Protect Maui's tourism industry. Hawaii's reef are valued at \$33 billion. Hawaii's reef generate between \$360 million to \$800 million annually. Ocean tourism in Hawaii generates \$225 million. Maui's snorkeling industry generates 67 million and nearly one thousand jobs.

I also believe by, by supporting this bill, that this will open up a lot of small business opportunities locally. We have many inspiring entrepreneurs making organic all-natural reef sunscreen.

And so to the sand mining issue. I urge you all to thoroughly read Lance Collins' rebutting all, of all the issues that was raised by Maui Land's attorney, Maui Lani's attorney. And, I just want to state for the record that I'm opposed to any of our resources leaving Maui, and that is why I heavily oppose the NextEra project in Kahikinui to send our energy via underwater cable to Oahu and also why I heavily oppose the County mining and pillaging pohaku out of our sacred Wailuku River for materials for County use.

Enough damage has been done and it's time to preserve little of these rare sand dunes, whatever we have left of these rare sand dunes. The moratorium would be a great effort to help stop the continued cultural genocide and oppression to our people.

In regards to the resolution proposed by Councilmember Sugimura, I, I, I state support, but with reservations because I do believe that the moratorium should go hand in hand. As you all know, the Department of Land and Natural Resources is severely mismanaged and underfunded. And the State Historic Preservation Office is also underfunded and understaffed. So technically they can't take, take on any type of enforcement efforts and I think that would be a horrible idea.

I want to end and say that I'm proud of our Council for sticking it out today, and, you know, you folks have made significant strides over the years by passing the plastic bag ban and the polystyrene ban proved that you guys have what it takes to make progressive decisions here on Maui and to help make Maui a better. So I urge you to do it again by banning oxybenzone. The other islands are watching us, and they're following your lead. And also to stop the further extraction of iwi kupuna on Maui. Mahalo.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next person to testify is Tamara Paltin. Last call Tamara Paltin.

COUNCILMEMBER KING: Chair, just a personal privilege.

VICE-CHAIR CARROLL: Ms. King.

COUNCILMEMBER KING: Sorry, I do have to leave, so I apologize to the Council and to the audience here. I need to . . . I need to leave, but I think you have a quorum still.

VICE-CHAIR CARROLL: We, we understand. Thank you very much. We still have quorum.

COUNCILMEMBER KING: Thank you.

(Councilmember King was excused from the meeting at 6:32 p.m.)

VICE-CHAIR CARROLL: Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Paul Fenelon, testifying on Committee Report 17-179, 167, and County Communication 17-484, to be followed by Ke`eaumoku Kapu.

MR. PAUL FENELON (testifying on County Communication Nos. 17-482 and 17-484 and Committee Report Nos. 17-167 and 17-179):

Good evening, Chair, Council. I'm going to echo what Paul Solomon said, pardon me, about having all of these issues, knowing that they were hot buttons and that we wouldn't be able to actually discuss the many of them that there are. I signed up to testify for three issues and then sitting here all day I found out that there were several more that I was interested in sharing. I'm going to keep it brief.

Communication 17-458 through 463, I see just a brief synopsis that there's \$700,000 in grants. I'll come back to that. I'll no longer discuss that. But I'm coming back to that figure.

17-482, the Mayor dismissal of Dave Taylor. I do not support that.

No. 17-484, Council Chair White with the Legislative branch organization. This is eliminating competition. It seems to me that, we earlier in the day celebrated the football team that worked together and were successful. That I would encourage to follow the model of our children to be able to do that as an example, as the adults in this community. I see that there is a claim of five generations of Hawaii by Chairman White who's not here to hear this. However, his actions do not seem to be evidence of that.

To CC 17-178, the housing. The housing issue is pretty important. People who don't own property, those who have the gold make the rules. They are unfortunately abusing that and they are looking to grab money. I see more and more traffic in Kihei. I see license plates from out of State every single day on the road. So these growth percentages that they're saying, I think they're grossly undermeasured.

I personally was homeless here on Maui. And I actually lived in the homeless shelter at the Salvation Army for two months of November and December of 2010. So I have a personal experience with it. It's very, very difficult now. I hear people saying oh get a room for \$500, get a room for \$600. You can't even get a room in a two-bedroom cottage of under \$1200 and the person that's renting it to you is just subletting it and they're paying 1400.

So we have to come up with some issues because we do know it's affecting more than people who have just moved here, and when I say here, I'm not talking about earth. Now I have testified before, before this Council and I say that I'm a local on earth, we're all earthlings. It's great that we get the chance to live on the most beautiful place in the world. And it's very unfortunate and very sad that it's the money interests that are pushing everyone out. Much like Aspen, is pushing the millionaires out, the billionaires are pushing the millionaires out.

Now we're having a serious situation with the homeless and one of the statistics that's being swept under the carpet is the locals suicide rate. I encourage you guys to look that up because it is a fact that is being swept under the carpet. People are feeling hopeless and when you have no hope, you just give up. And that's really sad because it's the local people who are being affected by that.

To CC 17-179, the sunscreen, we've talked about that a lot. I'll tell you my personal experience. I grew up on the New Jersey shore, I was privileged enough to be able to spend summers there. They slathered that crap on me and I can say I'm a cancer survivor, but that would be silly, they were just basil cell carcinomas. Granted one was right on my neck and it was invading. But with most surgery they were able to remove that and four others on my body. I have since stopped using that sunscreen. And

since I've been here for 12 years on Maui, I haven't had a problem with any of that. And I use normal coverup because I'm smart, I put a hat on, I put a shirt on.

Now if covering with SPF-50 shirts were in place and it was the big monied interest and someone came in and said hey, you don't have to buy fabric, we'll just slather this ointment on you. You would bet that you would have lobbyist for those people who make those shirts to say we don't want that slathery stuff, we don't want the spray on stuff. We want everybody to wear the clothes that we've been making profits from. We don't want anybody to cut into the profits. In fact, we'll sue you because you're cutting into the profits. That sounds like TPP to me, that we hopefully defeated, but it's going to keep growing like ivy that you cut off at the ground. So it's pretty important for us to look down the road and not just kick the can down the road.

What happened to kukui oil? I mean, that's local. Hemp seed oil? We don't know, or do know that it actually can be used as a base product for some kind of sunscreen that's not going to poison your body. Now your, your, your skin is a pretty large organ as is are your lungs. Now, we didn't use to have this spray before, but if I'm on the beach and someone decides, and I'm downwind and they want to spray themselves, I have to cover my, and protect myself from these sunscreens that other people are using. It's getting to be to the point where it's ridiculous.

I did attend Dr. Down's presentation at the Maui Ocean Center and it really did open my eyes. And the esquire lobbyist who were here earlier in the day, they were just basically slathering fear porn on us. Oh, it's going to cost us money, we can't. So we know what that's about. So, we, we really need to make sure that we're protecting our reefs.

I was diving at, in front of Kealani and I saw a tridents trumpet, and the thing had to weigh 45 pounds, the spire itself was four inches. I was told by the dive instructors at the Fairmont that I was hallucinating, that there is no such thing as a tridents trumpet still alive in our reefs. Well I saw one, and the only reason I was there was because I had a guest in town. We, he dragged me into the ocean, was pretty amazing.

So we have to protect what life exists. That's a kupuna, that's a ali'i trident trumpet that weighs 45 pounds. It was astonishing, I didn't touch it, but it was alive and it was on the wall. It was amazing. And I recently saw someone boiling one, for the, it was much smaller. But it was, I didn't know at the time, I thought there was plenty of them, apparently not.

To 17-167, infrastructure, environment, well I want to know that this moratorium on the sand mining, someone brought up hempcrete, why aren't we exploring that. We have all this land, stuff grows like weeds, in fact, it is a weed. Why don't we just have

hemcrete. At least a temporary practice, see what it's like. See if it will work? We could lead the world in hemp products. I'm not talking about everyone getting high, this is something that doesn't have those chemical in them that we use for medicinal purposes.

Now the question is who profits from the sand? Well, I heard a figure of \$30 million in sand. Now if you guys have never seen sand wars, it's a full length on YouTube, and it talks about these places like Morocco and other places that people go to, to go to the beach, there is no beach anymore. And the locals are scooping them up out of cracks with their hands, shipping it off because somebody's developer is trying to build it. Hemcrete would replace that.

So, as far as disregarding the bones, I mean this talks about another one, but please release the bones that are being held hostage. Thank you.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Ke`eaumoku Kapu. Last call. Next testifier is Annette Heu. Last call. Next testifier is Eliana Halas. Last call. Next testifier is Kahu Alalani Hill, testifying on Committee Report 17-179, to be followed by Noelani Hessler.

KAHU ALALANI HILL (testifying on County Communication No. 17-480 and Committee Report Nos. 17-167 and 17-179):

Aloha, ahiahi. Thank you guys for sticking it out and listening to everyone today. Mahalo. I wanted to share on 17-179. My Kupuna Papa David Ka`alakea was a great kahuna, Kahuna La`au Lapa`au and Ho`oponopono. He taught me so much about limu and I gathered for years, and preparing, making La`au Lapa`au for so many kinds of things. Learning . . . Lipoa, Manaua, even, even in that with Ogo learning the female from the man, male knowing their faces, what I could take, what I couldn't take. Working with huluhuluwaena and the different, the different limus and the coral, the relationship.

You know, I have been with even Alika when we were all in white, in 40 wa`as, 40 canoes coming in wai wearing that because we represented the coral, where life began. It is part of the genealogy and some of what is believed by the Hawaiians where they began in the kumulipo, from the coral, and from there came up onto the land, to the shores, and evolved. It's part of the religion. It's part of the beliefs.

I very much support in protecting everything we can do to protect the ocean, protect the moana, protect the kai. We are connected, we are not separate. It's an extension, it's part of us. Nature is part of us. We are here under Akua to connect between the ocean land mounds and air.

I would come down learning of Hina Lau Limu Kala, supposed to be a relative, connected a goddess. I would ask her can I have some Limu Kala for ho`oponopono, for ho`oma`ima`i to make a lei, to help cleanse somebody coming to the ocean. And she would give, and she would take it from their neck if they were pono, if they were clean. It's our kuleana, we have to take care. So I believe it's so important.

I was walking there today looking at all those bones, the coral and going where are they. I cannot gather what I did 15 years ago. I cannot find them. I cannot find the seaweeds and the Limu like I did. So I'm asking us to prepare and to malama, take care of our ocean.

On 17-167 and 17-480, we must protect the iwi kupuna and also not to take the sand. Papa was on the Burial Council, he taught me a lot and we have to protect, we have to continue on. So mahalo for hearing everything today and letting me speak. Mele Kalikimaka to you guys, yeah. Mahalo.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Noelani Hessler, testifying on County Communication 17-480, to be followed by Tom Croly.

MS. NOELANI HESSLER (testifying on County Communication No. 17-480):

Aloha, Honorable Members of the Council that are still here. Thank you. My name is Noelani Hessler, I reside within the Wailuku and Hamakuapoko district. The purpose of my presentation today is to support the Council's proposed action of CC 17-480, of resolution to mandate the Department of Land and Natural Resources Division of Conservation and Resources Enforcement to proactively administer the State statutes relating to the preservation of historic properties and native Hawaiian burials.

I urge DOCARE to proactively enforce against violations of Hawaii Revised Statutes Chapter 6E, including violations related to failing to adhere to conditions set forth in approved archaeological monitoring and preservation plans. The Department of Land

and Natural Resources receives less than one percent of the State's annual budget. Of this DOCARE receives a disconcertingly small amount of operating funds that is grossly disproportionate when compared to the revenue generation of our natural resources in the State, which does not account for their ecosystem services, cultural value, and countless other benefits to our residents.

For example, on populous Oahu, there are just 20, or excuse me 42 DOCARE officers compared to over 2,000 police officers. This is a poor reflection of how we value our natural resources, in part owing to our inadequate investment and enforcement, our natural reefs are in decline. Logically we cannot expect the officers to properly manage our natural resources if we cannot properly enforce the laws intended to protect them. So while we all recognize DOCARE is doing the best that they can, we can see that it is just not enough. If we could step up and start by restoring their budget through proactive and demnification of their clauses, so that they can then focus more on improving the protection of our natural resources, this in part will help to protect the foundation of our cultural, physical, and financial wellbeing.

There needs to be proactive enforcement mandating that any site or human skeletal remains are discovered with their associated burial goods, that they not be moved without the notification of the SHPD and the involvement of the Island Burial Council and the burial treatment process.

Over the nine years of personal and, excuse me, over the nine years of personal involvement in archaeology in Hawaii, I have not seen enough enforcement of SHPD requirements. There needs to be critical active enforcement for these shortcomings, whether it is on a Federal, State, County, or private landowner level. There also needs to be more transparent communication from agency to agency, specifically regarding the County Planning Department and the SHPD. I respectfully urge the Committee to pass the proposed item and enforce the State statutes relating to the preservation of historic properties and native Hawaiian burials. Mahalo for your time.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Tom Croly, testifying on Bills 91, 92 (2017), Committee Report 17-178, and County Communication 17-482, to be followed by Robin Knox who's the last individual who has signed up to testify in the Council chamber.

MR. TOM CROLY [testifying on County Communication No. 17-482, Committee Report No. 17-178, and Bill Nos. 91 (2017) and 92 (2017)]:

Aloha, Council Vice-Chair, and Councilmembers. Thank you for remaining to hear everyone. And I hope I have some good news for you that will make it worth your while having remained to this point. I'm Tom Croly and I'm testifying on three items today.

The first of which is Committee Report 17-178, and I give this testimony on my own behalf. I've closely followed this issue of Front Street Apartments over the past year and a half, both because I've been trying to learn more about utilizing low income housing tax credits to create affordable housing and because it indeed would be a tragedy to allow a project like Front Street Apartments that utilize these tax credits as well as a host of County and State incentives to become a market priced housing project.

I believe the representatives of the housing, the Hawaii Housing Finance and Development Corporation who have addressed this Council on three occasions do not appear to have done their job with regard to this project and have been negligent in their responsibilities to enforce the terms of the affordable housing agreement. This agreement calls for a 51-year affordable period, specifically it calls for 36 years beyond the 15-year compliance period. That's where we are right now.

The HHFDC has told the Council that the owner is invoking an early termination provision in the IRS Code that allows them to end the IRS required affordable period after 15 years, provided that no contract could be secured to purchase the project before the end of the 15-year compliance period. But the provisions that they are stating have a specific exception, and I can't believe they haven't noticed this. The exception specifically says unless the agreement, this agreement or State law, has more stringent requirements. Thirty-six years is a more stringent requirement than 15 years. There is no doubt whatsoever.

I'm not a lawyer, but the provisions in Section 43 of the, of the Housing, of the IRS Code and what's in this Housing agreement are both very clear. They can't opt out of this. But even let's say their lawyers are good, and they can opt out of the recapture of the tax credits that were granted by the IRS, even if the IRS says it's okay, they still made representations to this Council when they were granted the 201G. And they made representations to the State when they were given what they did and those are memorialized in this agreement. They can't walk away from this agreement.

So what this Council has to do, or what someone has to do on behalf of the tenants of, of Front Street Apartments is have a court enforce this agreement. I'll stop on, on that

topic there, Chair and I'd like to talk about the other topics unless there are any questions about that testimony.

VICE-CHAIR CARROLL: Proceed.

MR. CROLY: Okay. The second item that I would like to testify on is Bill 91. And on Bill 91 I speak on behalf of the Maui Vacation Rental Association. The Maui Vacation Rental Association is a fully volunteer organization, whose mission is to effectively regulate vacation rentals to allow them to continue to exist in Maui County. This item, Bill 91, was brought forward, supposedly to create consistency and fairness in our tax classifications. And I continue to maintain that it does neither.

Recently our President put forward a proposal to defund Medicaid expansion and said this has nothing to do with, with Obamacare. Obamacare is going to fail on its own. But we all know that defunding the Medicaid expansion is going to expedite the failure of Obamacare.

Just as taxing the folks who go through the process to properly get permitted for short-term rentals, unjustly and, and, and the way this goes about it is going to make the short-term rental ordinance fail in, in the same way. These folks currently pay 25 percent higher property tax than they would otherwise pay without a permit. And then they have to, they're challenged by the fact that many of their competitors don't have permits, so therefore pay less tax. But this bill would come, go ahead and say no, 25 percent isn't enough, we want you to pay 60 percent more in property tax. And that just isn't fair.

The, what they get as far as what the permit grants them is a very limited use. They are not allowed to do many of the things that are, are allowed to be done in the zoning, where zoning gives you the ability to do your short-term rental apartment zoning for, in the case of these condominium units. So, again, I urge you, Bill 91 should not be passed on second and final reading. I would be happy to work with you when it goes back to committee to come up with something that's better.

And, I want to move on to Bill 92. Bill 92 conflicts with Bill 91 and there's no way, there is no way, that you should be passing these two bills at this meeting because one overwrites the other. And you might think that well, we know how to make those changes, but that would be patently wrong for you to pass law, pass something into law that states one thing over here and states something conflicting over here, and then let's somebody afterwards try to figure out what goes with what. So, there is no way that you should pass Bill 91 and Bill 92 together today.

Bill 92 is going to affect 2700 condominium owners. Some of those condominium owners are renting their, their units out long-term to folks. There's a provision in that bill that says, well if you dedicate to long-term rental, then you can stay in that classification. No one, no one will be able to make use of that provision because there's no way you can do that dedication between now and the end of the year. So, so, those folks are going to see that 50 percent tax increase and then maybe they could do the dedication next year, but that just wouldn't be fair right up front. And what's going to happen in the meantime, what you already heard. The folks are either going to raise the rent on them, or they're going to go to short-term rental.

Now I recognize that we're trying to make the most of revenues that, that we can bring into the County, and that many of those units that we're targeting are second homes. And quite frankly I think they should be taxed the same as a short-term rental because essentially they're, they're, they're functioning the same way. They are someone's home that sits there empty most of the year, and then the person uses it for some portion of the year.

In fact, the short-term rentals should get a lower rate than them. You know why, cause the short-term rentals are bringing people in to use those properties and money is being, being spent on the island and generated there. So if you want to get to like who's the bad guy here, it's the guy with the second home that's just sitting on it and not using it most of the year. So I have no problem with you raising that guys taxes.

But, the problem with this particular measure is it's going to, without any question, affect, I don't know, 500, a thousand, long-term rentals, and I just can't see you doing that, raising the rent on people for their long-term rentals.

There are a great many things that neither of these bills address very clearly. And I don't want to leave it up to the administrator to decide these things, like what would the tax rate be for a single-family home in the Hotel District that is not used for short-term rental? What would the tax rate be for a single-family home in the Hotel District that is used for a short-term rental? What should the tax rate be for a home built prior to 1998 in the Apartment District, where short-term rental is allowed? But right now nobody taxes that at a higher rate. What about a short-term rental or a hotel where the owner lives in that hotel? Okay, we have someone who gets homeowner rate for that, today, okay.

So there's so many things that we haven't addressed in this bill. I want it to go back to Committee--

VICE-CHAIR CARROLL: Conclude, please.

MR. CROLY: --I'd be happy to work with you. And, that does conclude my testimony, Chair, thank you.

VICE-CHAIR CARROLL: Thank you very much.

Mr. Clerk.

DEPUTY COUNTY CLERK: Next testifier is Robin Knox, testifying on County Communication 17-482, 484, and Committee Report 17-179. Ms. Knox is the last individual who has signed up to testify in the Council chamber.

VICE-CHAIR CARROLL: If there's anybody else in the chamber that hasn't given testimony that wishes to, please sign up at the desk outside.

MS. ROBIN KNOX (testifying on County Communication Nos. 17-482 and 17-484, and Committee Report No. 17-179):

Aloha. Aloha, Members and Chair, thank you for staying so late, I'll try to make it short. Item number one, Mike White's proposal, I oppose this. I think it's unnecessary, I think if anyone's unprofessional or not doing their job you have existing HR rules and policies to get rid of them. I think it puts too much power in the hands of the Council without appropriate checks and balances. And, I think we really need to protect, excuse me, we need to protect professionals doing their jobs from professional back, blackballing, and other problems. And lastly protect the voice of the minority and the resources of the Council people who speak for the minority.

Dave Taylor, I oppose firing him because the Mayor disagrees with him. The fact that this item even exists supports the case for a County Manager and Civil Service protection for department heads. I can empathize with the Mayor because I couldn't, you know, I'm a person who disagrees a lot with Dave Taylor, but I would not fire him. He's a highly skilled professional, he's extremely skilled at systems analysis, which is very important to all of our County infrastructure. Again, respect, protect professionals from political ramifications, from people who disagree with their professional opinions.

Next item, the iwi kupuna. Again respect, respect the law, follow it, respect the culture, fix the law if it's not protecting the culture. And also respect the aina and these resources as natural resources, all of the sediments, sand, rocks, everything.

Last item, oxybenzone. When you're considering your public trust duty, please know that when I went to your Craig Downs talk, he said that the LC50, which is a measure of toxicity was being exceeded in the ocean waters. This means there's toxic

substance in toxic amounts. That is a violation of the narrative criteria under State water quality standards. Those water quality standards are promulgated under the Clean Water Act, so that's probably a violation of Federal law as well. So, you know, other testifiers have said that you have an actual duty here to act. So I do want you to consider that when you consider your public trust duties. And that's all I had, thank you very much for your time.

VICE-CHAIR CARROLL: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, there is no further individuals in the District Offices nor the chamber who wish to offer testimony.

VICE-CHAIR CARROLL: If there's no objection, we will close public testimony.

MEMBERS VOICED NO OBJECTION.

VICE-CHAIR CARROLL: Public testimony is now closed.

And is there any objection to our receiving written testimony.

MEMBERS VOICED NO OBJECTION.

VICE-CHAIR CARROLL: So be it, written testimony is accepted.

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

1. Jeff Bagshaw;
2. Tom Cook;
3. Mark Sheehan;
4. Carlos Gutierrez, Consumer Healthcare Products Association;
5. Grant Chun, A&B Properties;
6. David Arakawa, Land Use Research Foundation of Hawaii;
7. Lucy Feinberg;
8. Tracy Stice;
9. Claudia Castillo;
10. Curt Eaton;
11. Lauren Zirbel, Hawaii Food Industry Association;
12. Michael Reiley, Emmanuel Lutheran Church and Schools;

13. Sam Small;
14. Gabriel Beeson-McArdle;
15. Ryan Churchill, Waiko Industrial Investment, LLC;
16. Hannah Bernard, Hawaii Wildlife Fund;
17. Pamela Tumpap, Maui Chamber of Commerce;
18. Jill Wirt;
19. Cody Lang;
20. Emily Johnson;
21. Michael Aston;
22. William Frampton, Waikapu Development Venture, LLC;
23. Joseph Kohn;
24. M.J. Partin;
25. Ann Pitcaithley;
26. Kathryn Snyder;
27. Joe Ritter;
28. Tamara Paltin;
29. Tom Croly;
30. Thorne Abbott;
31. Alithea Adachi;
32. Lily Ahia;
33. Aidan Akamine;
34. Yasamin Alarab;
35. Danielle Allen;
36. Edwin Alvarado;
37. Annelle C. Amaral, Association of Hawaiian Civic Clubs;
38. Lisa L. Anderson;
39. Patricia Anderson;
40. Tash Anderson;
41. Marluy Andrade;
42. Christine Andrews;
43. Nathan Andrews;
44. Maren Anka;
45. Marsha Arak;
46. Lingli Arakaki;
47. Margaret Arbo;
48. Spencer Archuleta;
49. Michael Arnone;
50. Rebecca Austin;
51. Courtney Avichouser;
52. S. Bailey;
53. Brian Gareth Baird;
54. Joseph Baldwin;

55. David Balfour;
56. Dylan Barber;
57. Jerry Barclay;
58. Dennis Barger;
59. Barbara Barry;
60. Alex Beers;
61. Clifford Benjamin;
62. Afton Bennett;
63. Joan Berman;
64. Douglas Berry;
65. Bill Best;
66. Bobbie Best;
67. Sarah Betcher;
68. Chris Bettis;
69. Amanda Bierbaum;
70. Heidi Bigelow, Waiale Road 201 LLC;
71. Evelyn B. Billington;
72. Autumn Blum;
73. Christel and John Blumer-Buell;
74. Reverend Bodhi Be;
75. Sallyjane Bodnar;
76. Susan Bohannon;
77. Ted Bohlen;
78. Ryan Bollhorst;
79. Lindsey Bolton;
80. Marjorie Bonar;
81. Sarah Bonneson;
82. Douglas Bonney;
83. Remy Boprey;
84. Daniel Boren;
85. Sharyl Boren;
86. William Boteler;
87. Sue Brittdall;
88. Maryann Broyles;
89. Courtney Bruch;
90. George Burnette;
91. Jayne Bush;
92. Patricia Buskirk;
93. Nicole Busto;
94. Hope Busto-Keyes;
95. Susan Byrne;
96. Tova Callender;

97. Miranda Camp;
98. Jeremy Canche;
99. Rob Cantwell;
100. Carol Carolan;
101. Marcy Cayton;
102. Tatyana Cerullo;
103. Julia Chambers;
104. Shay Chan Hodges;
105. Christina Chang;
106. Roland Chang;
107. Dale Ann Chappell;
108. Emily Charles;
109. Andrea Charuk;
110. Faith Chase;
111. John Cheetham;
112. Kate Cheney;
113. Ryan Christopher;
114. Karen Chun;
115. Beth Clapper;
116. Vivian Cohen;
117. Stuart Coleman;
118. Lance Collins;
119. Rodrigo Colpas;
120. Alia Congdon;
121. Maha Conyers;
122. Ryan Cook;
123. Rochelle Coop;
124. Lorry Cornish;
125. Nina Cote;
126. Nicole Cowin;
127. Angelia Crim;
128. James Crowe;
129. Leslieanne Cummings;
130. Dominique Cupa;
131. Michael Daddario;
132. Lila Danielle;
133. Pam Daoust;
134. Lisa Darcy;
135. Annette Davidsson;
136. Jennifer Day;
137. Lena Deike;
138. Christopher Delaunay, Pacific Resource Partnership;

139. Deborah Dennison;
140. Claire D'Gaia;
141. Erika Lechuga DiSalvo;
142. Alexis Distad;
143. Angela Domagalski;
144. Greg Donovan;
145. Debra Dorn;
146. Karen Dorrsnce;
147. Susan Douglas;
148. Marc Drehsen;
149. Rebecca D'Souza;
150. Caroline Duell, All Good Products;
151. Angela Dunning;
152. Torsten Durkan;
153. Reagan Dutton;
154. Linda Eger;
155. Paul Ehman;
156. Moema Elias;
157. Jill Engledow;
158. Sarina Erstad;
159. Alan Espiritu;
160. Sedona Estomo;
161. Brianna Estrada;
162. Ann Evans;
163. Judith Evans;
164. Ashley Famera;
165. Faye Field;
166. Gina Fiore;
167. Jeremy Fishinger;
168. Christopher Fishkin;
169. Annie Flick;
170. Elizabeth Flick;
171. Jen Fordyce;
172. Steven Forman;
173. Konnie Fox;
174. Sarah Franklin;
175. James Frazier;
176. Steven Freid;
177. Lauri Fritsch;
178. Kirsten Fujitani;
179. Daryl Fujiwara;
180. Michael Gach;

181. Robin Gaffney;
182. Eduardo Gandolfo;
183. JoAnn Garay;
184. Patricia Gardner;
185. Elise Garrigue;
186. Sue Gears;
187. Barbara Geary;
188. John Gelert;
189. Linda Gentiluomo and Stan Walerczyk;
190. Marta Getty;
191. James Getz;
192. Bob Glorptknck;
193. Brett Gobar;
194. Paul Gomez;
195. Natalie Gonder;
196. Krzysztof Goralski;
197. Desiree Gouveia;
198. Daniel Grantham;
199. Laura Gray;
200. Rebecca Greenband;
201. Marta Greenleaf;
202. William Greenleaf;
203. Lois Greenwood;
204. C. Growette;
205. P. Growette;
206. Gregg Gruwell;
207. Colette Guadagnino;
208. Kuulei Gunderson;
209. Chi Guyer;
210. Kaleigh Hair;
211. Annalisa Hall;
212. Michele Halligan;
213. Chloe Hanken;
214. Kinee Hanson;
215. Hege Hanssen;
216. Dustin Harber;
217. Dan Harrang;
218. Nicole Harrell;
219. Chloe Harris;
220. Clifton Hasegawa;
221. Patti Hawkins;
222. Li Hay;

223. Joseph Head;
224. Karen Heifetz;
225. Kai Hemmitt;
226. Kaia Hill;
227. Timothy Hills;
228. Trevor Howard;
229. Olivia Hsu;
230. Catherine Huffer;
231. Lisa Husch;
232. Sandi Ioakimi;
233. Andrew Isoda;
234. Phylleen Jackson;
235. Sulara James;
236. Megan Jio;
237. Gabe Johnson;
238. Kristen Jones;
239. Chloe Jones-Livingstone;
240. Lynn Jordan;
241. Sol Kaho`ohalahala;
242. Momi Kaikala;
243. Mo Kanaio;
244. Francis Kane;
245. Barbara Kaneshige;
246. Jerome Karzen;
247. La`akea Kaufman;
248. Donna Kauhane;
249. Katie Keast;
250. Jean Keating;
251. Nathan Kellogg;
252. Denise Key;
253. Erica Kim;
254. Kelly Kim;
255. Cheryl King;
256. Patti Kitchin;
257. David Klein;
258. Franklin Knowlton;
259. Robin Kory;
260. Arnie Koss;
261. Arnie Kotler;
262. Amy Kurisko;
263. Denise LaBarre;
264. Megan Lamson;

265. Virginia Lande;
266. Hilary Langdon;
267. Gordon Lange;
268. Carrie Larita;
269. Deborah Lawson;
270. Don Lax;
271. Jennifer Lee;
272. Logan Lee;
273. Adelle Lennox;
274. Ilana Amar Leshem;
275. Dillyn Lietzke;
276. Pat Lindquist;
277. Daniel Logtenberg;
278. Kelli Lundgren;
279. Linda Lyerly;
280. Mark MacKay;
281. Michel Mader;
282. Nesrine Majzoub;
283. Bonnie Marsh;
284. Martha Martin;
285. Marty Martins;
286. John Massa;
287. Barbara Mattson;
288. Melissa Mau;
289. Ian Maulhardt;
290. Deborah May;
291. Mark McDill;
292. John Mcdonald;
293. Kathy McDuff;
294. Julia McGovern;
295. Pahnelopi Mckenzie;
296. Laurie McKeon;
297. Charlotte McLaughlin;
298. Peter Mellen;
299. Angelica Melone;
300. Javier Mendez;
301. Chris Mentzel;
302. Janet Mercer;
303. Marina Michel;
304. Malama Minn;
305. Richard Monarch;
306. Emma Moore;

- 307. Matt Moore;
- 308. Katharyn Morgan;
- 309. Marissa Morris;
- 310. Bridget Mowat;
- 311. Kirsten Moy;
- 312. Matthew Murasko;
- 313. Thomas Myers, Personal Care Products Council;
- 314. Eileen Naaman;
- 315. Kyle Nakanelua;
- 316. John Naylor;
- 317. Mele Nelson;
- 318. Robin Newbold, Maui Nui Marine Resource Council;
- 319. Konnie Newbro;
- 320. Michael Newbro;
- 321. Bonnie Newman;
- 322. Kai Nishiki;
- 323. Debra Nix;
- 324. John Nix;
- 325. Raphiell Nolin;
- 326. Keane Nunan;
- 327. Ashli Nuzum;
- 328. Jamie Nygren;
- 329. Tracen Oania;
- 330. Charlotte OBrien;
- 331. Sisca Oleiwan;
- 332. Mavis Oliveira-Medeiros;
- 333. Abiola Oluwatimilehin;
- 334. Carol Onuma;
- 335. Alicia Ortiz;
- 336. Mike & Jodi Ottman;
- 337. Kalysta Owen;
- 338. Fay Pacheco;
- 339. Kamalani Pahukoa;
- 340. Tera Paleka;
- 341. Pam Palencia;
- 342. Benton Pang;
- 343. Victor Pang;
- 344. Jess Park;
- 345. Laura Parks;
- 346. Tony Pastore;
- 347. Todd Patterson;
- 348. Katy Paun;

- 349. Sue Perley;
- 350. Carol Philips;
- 351. Nansy Phleger;
- 352. Anne Pierce;
- 353. Noelle Pierce;
- 354. Pao Pimentel;
- 355. Amanda Ploski;
- 356. Pamela Polland;
- 357. Brooke Porter;
- 358. Debra Post;
- 359. Jean Power;
- 360. Harry Prince;
- 361. Helen Radow;
- 362. Niki Ragan;
- 363. Michael Rains;
- 364. Keith Ranney;
- 365. Laurie Rawlins;
- 366. Dana Reed;
- 367. Ashleigh Reid;
- 368. Howard Rentzer;
- 369. Kate Resell;
- 370. Ryan Rich;
- 371. Joel Richman;
- 372. Jerry Rittenberry;
- 373. Jerry Riverstone;
- 374. Celia Roberts;
- 375. Phyllis Robinson;
- 376. Jackie Rodgers;
- 377. Jack Rollens;
- 378. Kahu Anela Rosa;
- 379. Alana Ross;
- 380. Tanek Rucynski;
- 381. Shannon Rudolph;
- 382. Tal Saarony;
- 383. Giulai Salaparuta;
- 384. Jade Salazar;
- 385. Robert Smailjan;
- 386. Dhyan Sandhya;
- 387. Reinier Paul Santiago;
- 388. Rhonda Santos;
- 389. Robert Schmidt;
- 390. Mark Shaw;

391. Teri Sherrow;
392. Jim Sims;
393. Baldev Singh;
394. Jacqui Skill;
395. Jette Slater;
396. Steven Slater;
397. Frederick Smith;
398. Johann Smith;
399. Kim Smith;
400. Lilly Smith;
401. Ikaika Soares;
402. Stacy Soderholm;
403. Linda Somera;
404. Amy Sophiella;
405. Carmie Spellman;
406. William Staley;
407. Micki Stash;
408. David Stein;
409. Amy Stephens;
410. Larry Stevens;
411. Mele Stokesberry;
412. Ken Stover;
413. Ann Strong;
414. Luke Sundquist;
415. Tedd Surman;
416. Daren Suzuki, Maui Lani Partners;
417. Susan Sweet;
418. Brad Tarr;
419. Kristin Taylor;
420. Maribeth Theisen;
421. Hau`olli Thielk;
422. Breanna Thunholm;
423. Kathy Thunholm;
424. Anne Thurston;
425. Margit Tolman;
426. Kim Toomey;
427. Sara Trayser;
428. Josh Tremblay;
429. Nancy Trippel;
430. Gita Tucker;
431. Melodie Ulman;
432. Kay Vallejo;

433. Melissa Verbena;
434. Susan Vickery;
435. Anya Vierra;
436. Vinayak;
437. Emily Vizena;
438. Hoku Volkmann;
439. Fiana Von Schuetze;
440. Erroll von Tempsky;
441. Jamie Walker;
442. Carol Wall;
443. Liko Wallace;
444. Aerie Waters;
445. Sanoë Watt;
446. Edie Weintraub-Danovitz;
447. Valerie Weiss;
448. Brendan Welch;
449. Maggie Welker;
450. Ellen Welsh;
451. Carole Wentworth;
452. Kara Whitaker;
453. Emily White;
454. Liz Whiteley;
455. Paul Wills;
456. Mary Wind;
457. Harriet Witt;
458. Julie Ybarra;
459. Scott Young;
460. Keri Zacher;
461. Petra Zoeller;
462. Brianna Zurlo;
463. [responsible\\_citizenry@hushmail.com](mailto:responsible_citizenry@hushmail.com); and
464. Joe Dinardo.

VICE-CHAIR CARROLL: Members, I would like to recess this meeting until Monday, December 4, at 9:00 a.m. This meeting will stand recess until then. We are now in recess.

**THE REGULAR MEETING DECEMBER 1, 2017 WAS RECESSED BY THE CHAIR AT 6:59 P.M., AND WAS RECONVENED BY THE CHAIR ON DECEMBER 4, 2017 AT 9:07 A.M.)**

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, G. RIKI HOKAMA, DONALD S. GUZMAN, KELLY T. KING, YUKI LEI K. SUGIMURA, S. STACY CRIVELLO, VICE-CHAIR ROBERT CARROLL, AND CHAIR MICHAEL B. WHITE.

EXCUSED: NONE.

DEPUTY COUNTY CLERK JOSIAH NISHITA: Mr. Chair, there are nine Members present. A quorum is present to conduct the business of the Council.

CHAIR WHITE: Okay, thank you, Mr. Clerk. And, Members, this is a continuation of our Friday meeting, which was recessed till this morning. So with that, we'll pick up on the agenda, where we left off, and that would be, I believe at the approval of minutes.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, proceeding with minutes.

### MINUTES

The minutes of the Council of the County of Maui's regular meeting of October 20, 2017, were presented at this time.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT THE MINUTES OF THE REGULAR MEETING OF OCTOBER 20, 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: Members, any 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.

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

### COUNTY COMMUNICATIONS

NO. 17-453 - CAROL K. REIMANN, DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated November 8, 2017)

Notifying of intended voluntary contributions for Fiscal Year 2018 received from the Healthy Aging Program participants totaling \$45,000 with no Letter of Intent.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, with no objections from the Members, I would ask the Clerk to bring up all Communications at this time up to 17-463.

CHAIR WHITE: Any objections, Members?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

NO. 17-454 - DON MEDEIROS, DIRECTOR OF TRANSPORTATION,  
(dated November 13, 2017)

Transmitting the notice of grant award for the Maui Metropolitan Planning Organization FY 2018 Unified Planning Work Program in the amount of \$200,000.

NO. 17-455 - MARK R. WALKER, ACTING DIRECTOR OF FINANCE,  
(dated November 14, 2017)

Relating to the transfer of \$94,089.01 in Monthly Base and Percentage Rent to the Hawaiian Cultural Restoration Revolving Fund.

NO. 17-456 - JOHN D. KIM, PROSECUTING ATTORNEY,  
(dated November 20, 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 Career Criminal Prosecution Program, in the amounts of \$144,736 for both FY 2018 and FY 2019.

NO. 17-457 - JEFFREY A. MURRAY, FIRE CHIEF,  
(dated November 17, 2017)

Informing of the receipt of a grant from the State of Hawaii, Department of Transportation, in the amount of \$17,344.08 to purchase auto extrication equipment to assist in automobile accidents.

NO. 17-458 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 9, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Speed Enforcement Grant in the amount of \$203,600.50.

NO. 17-459 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 9, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Seat Belt Enforcement Grant in the amount of \$105,850.

NO. 17-460 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 9, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Traffic Records Grant in the amount of \$90,080.

NO. 17-461 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 16, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Traffic Services Grant in the amount of \$105,433.

NO. 17-462 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 16, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Distracted Driving Enforcement Grant in the amount of \$68,248.84.

NO. 17-463 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated November 16, 2017)

Transmitting a copy of the grant agreement with the State of Hawaii, Department of Transportation for the MPD Child Restraint Grant in the amount of \$62,100.

CHAIR WHITE: Thank you, Mr. Clerk.

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, and a second from Ms. Sugimura.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Just one note for the Members, document 17-461 and 462, the backup documents were inadvertently switched, but it makes no impact on the motion on the floor, Chairman.

CHAIR WHITE: Thank you. 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", and, nine "ayes", zeros "noes".

Mr. Clerk.

NO. 17-464 - MARK R. WALKER, ACTING DIRECTOR OF FINANCE,  
(dated November 14, 2017)

Transmitting 78 contracts/grants for October 2017.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: With no objections, the, Chairman, would also request that 466 be brought up by the Clerk at this time.

CHAIR WHITE: Any objections, Members?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Okay, 466, Mr. Clerk.

NO. 17-466 - KEITH A. REGAN, MANAGING DIRECTOR,  
(dated November 8, 2017)

Relating to the abolishment of positions.

CHAIR WHITE: Okay, Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chairman.

I MOVE TO FILE COUNTY COMMUNICATIONS 17-464, EXCEPT AND, UNLESS THE OTHER MEMBERS MAY HAVE SOME REQUESTS, CHAIRMAN, CONTRACT 6336 ON THE WAIHEE SHUTTLE BE REFERRED TO BUDGET AND FINANCE, AS WELL AS THE FILING OF 17-466.

COUNCILMEMBER CRIVELLO:

SECOND.

CHAIR WHITE: Okay, we have a motion from Mr. Hokama and a second from Ms. Crivello. Any further requests for referrals?

COUNCILMEMBER KING: Chair, yeah.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING:

CHAIR, I'D LIKE TO PULL OUT CONTRACT C3360-3, WHICH IS THE KIHEI DRAINAGE MASTER PLAN CONTRACT AND HAVE IT REFERRED TO IEM.

CHAIR WHITE: Did you hear that staff, the number? Okay, thank you.

Okay, any other request? Okay, you've heard the contracts that have been requested to be referred to Committee. 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: All those opposed say "no".

NOES: NONE.

CHAIR WHITE: Measure passes with nine "ayes".

Mr. Clerk.

NO. 17-465 - ALAN M. ARAKAWA, MAYOR,  
(dated November 20, 2017)

Informing of a vacancy on the Liquor Control Commission due to the resignation of Brenda Lee on November 20, 2017.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

I MOVE TO FILE COUNTY COMMUNICATION 17-465.

COUNCILMEMBER CRIVELLO:

SECOND.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. The Mayor in his letter dated November 20, 2017, received notice of Brenda Lee's resignation from the Liquor Control Commission on November 9, 2017 due to personal reasons. We wish Ms. Lee the best in her future endeavors and thank her for her time in serving the community. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura.

Members, 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.

DEPUTY COUNTY CLERK: Mr. Chair, proceeding with County Communications for referral. The following County Communications are recommended for referral to the following committees as noted.

NO. 17-467 - ALAN M. ARAKAWA, MAYOR,  
(dated November 15, 2017)

Transmitting a proposed resolution entitled "APPROVING COST ITEMS FOR BARGAINING UNIT 12, INCLUDED AND EXCLUDED EMPLOYEES".

The recommended action is that County Communication No. 17-467 be referred to the Budget and Finance Committee.

NO. 17-468 - MARK R. WALKER, DIRECTOR OF FINANCE,  
(dated November 15, 2017)

Transmitting the Finance Director's Quarterly Report for Fiscal Year July 1, 2017 to June 30, 2018 as of September 30, 2017 and the Capital Improvement Projects Report as of September 30, 2017.

The recommended action is that County Communication No. 17-468 be referred to the Budget and Finance Committee.

NO. 17-469 - MARK R. WALKER, DIRECTOR OF FINANCE,  
(dated November 20, 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 October 31, 2017.

The recommended action is that County Communication No. 17-469 be referred to the Budget and Finance Committee.

NO. 17-470 - STEWART STANT, DIRECTOR OF ENVIRONMENTAL  
MANAGEMENT, (dated November 9, 2017)

Transmitting the following proposed bills entitled:

1. "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.54, MAUI COUNTY CODE, RELATING TO THE SOLID WASTE MANAGEMENT FUND"; and
2. "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 3.55, MAUI COUNTY CODE, CREATING THE ENVIRONMENTAL PROTECTION AND SUSTAINABILITY FUND".

The recommended action is that County Communication No. 17-470 be referred to the Budget and Finance Committee.

NO. 17-471 - DON S. GUZMAN, COUNCILMEMBER,  
(dated November 21, 2017)

Relating to the control of Maui's feral pig population.

The recommended action is that County Communication No. 17-471 be referred to the Housing, Human Services, and Transportation Committee.

NO. 17-472 - ELLE COCHRAN, CHAIR, INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE,  
(dated November 20, 2017)

Transmitting a proposed amendment to the bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE", attached to Committee Report No. 17-179.

The recommended action is that County Communication No. 17-472 be referred to the Infrastructure and Environmental Management Committee.

***(COUNTY COMMUNICATION NO. 17-472 WAS FILED LATER IN THIS MEETING. See pages 227 through 263 for discussion and action.)***

NO. 17-473 - RICHELLE M. THOMSON, DEPUTY CORPORATION COUNSEL,  
(dated November 22, 2017)

Relating to "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE".

The recommended action is that County Communication No. 17-473 be referred to the Infrastructure and Environmental Management Committee.

***(See pages 227 through 263 for discussion.)***

NO. 17-474 - DAVID C. GOODE, DIRECTOR OF PUBLIC WORKS,  
(dated November 13, 2017)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 10.48.030, MAUI COUNTY CODE, RELATING TO PROHIBITIONS IN CERTAIN PLACES".

The recommended action is that County Communication No. 17-474 be referred to the Infrastructure and Environmental Management Committee.

NO. 17-475 - DAVID C. GOODE, DIRECTOR OF PUBLIC WORKS,  
(dated November 13, 2017)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 10.32.020, MAUI COUNTY CODE, RELATING TO ONE-WAY STREETS".

The recommended action is that County Communication No. 17-475 be referred to the Infrastructure and Environmental Management Committee.

NO. 17-476 - WILLIAM SPENCE, PLANNING DIRECTOR,  
(dated November 16, 2017)

Transmitting a Conditional Permit Application submitted by Wireless Resources, Inc. for Verizon Wireless, transmitting documents and a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING CELLCO PARTNERSHIP, DBA VERIZON WIRELESS A CONDITIONAL PERMIT TO ALLOW THE MODIFICATION OF AN EXISTING TELECOMMUNICATIONS SITE ATOP HI2 PUUONE TERRACE TO INCLUDE A REPLACEMENT OF ANTENNAS AND EQUIPMENT CABINET, AND INSTALLATION OF ACCESSORY EQUIPMENT WITHIN THE A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 493 PIO DRIVE AND IDENTIFIED AS TAX MAP KEY NUMBER (2) 3-8-037:039, WAILUKU, MAUI, HAWAII".

The recommended action is that County Communication No. 17-476 be referred to the Land Use Committee.

NO. 17-477 - DON S. GUZMAN, COUNCILMEMBER,  
(dated November 9, 2017)

Relating to the Central Maui Regional Sports Complex and Maui Lani Park accessibility and parking.

The recommended action is that County Communication No. 17-477 be referred to the Parks, Recreation, Energy, and Legal Affairs Committee.

NO. 17-478 - KA'ALA BUENCONSEJO, DIRECTOR OF PARKS AND RECREATION, (dated November 8, 2017)

Transmitting the semiannual report regarding park dedications for each community plan area for the period of April 1, 2017 through September 30, 2017.

The recommended action is that County Communication No. 17-478 be referred to the Parks, Recreation, Energy, and Legal Affairs Committee.

NO. 17-479 - MIKE WHITE, COUNCIL CHAIR,  
(dated November 21, 2017)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 10.48.250, MAUI COUNTY CODE, RELATING TO PUBLIC BEACH ACCESS PARKING".

The recommended action is that County Communication No. 17-479 be referred to the Parks, Recreation, Energy, and Legal Affairs Committee.

NO. 17-480 - YUKI LEI K. SUGIMURA, COUNCILMEMBER,  
(dated November 22, 2017)

Transmitting a proposed resolution entitled "URGING THE GOVERNOR OF THE STATE OF HAWAII AND THE HAWAII STATE LEGISLATURE TO HAVE THE DEPARTMENT OF LAND AND NATURAL RESOURCES, THROUGH ITS STATE HISTORIC PRESERVATION DIVISION AND DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT, PROACTIVELY ADMINISTER AND ENFORCE CHAPTER 6E, HAWAII REVISED STATUTES, RELATING TO PRESERVATION OF HISTORIC PROPERTIES AND NATIVE HAWAIIAN BURIALS".

The recommended action is that County Communication No. 17-480 be referred to the Parks, Recreation, Energy, and Legal Affairs Committee.

NO. 17-481 - YUKI LEI K. SUGIMURA, CHAIR, POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE COMMITTEE, (dated November 22, 2017)

Transmitting a proposed resolution entitled "RELATING TO THE APPOINTMENT OF CARL ADOLPHO III TO THE MOLOKAI PLANNING COMMISSION".

The recommended action is that County Communication No. 17-481 be referred to the Policy, Economic Development, and Agriculture Committee.

***(See pages 188 through 197 for discussion and action.)***

NO. 17-482 - ALAN M. ARAKAWA, MAYOR, (dated November 15, 2017)

Transmitting a proposed resolution entitled "APPROVING THE REMOVAL OF DAVE TAYLOR AS DIRECTOR OF WATER SUPPLY".

The recommended action is that County Communication No. 17-482 be referred to the Policy, Economic Development, and Agriculture Committee.

***(See pages 198 through 208 for discussion.)***

NO. 17-483 - DAVID TAYLOR, DIRECTOR OF WATER SUPPLY, (dated November 20, 2017)

Transmitting a proposed resolution entitled "AUTHORIZING THE EXCHANGE OF REAL PROPERTY SITUATED AT HALEAKALA HIGHWAY, KULA, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE".

The recommended action is that County Communication No. 17-483 be referred to the Policy, Economic Development, and Agriculture Committee.

NO. 17-484 - MIKE WHITE, COUNCIL CHAIR,  
(dated November 21, 2017)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 2.08.050, MAUI COUNTY CODE, PERTAINING TO LEGISLATIVE BRANCH ORGANIZATION".

The recommended action is that County Communication No. 17-484 be referred to the Policy, Economic Development, and Agriculture Committee.

***(THE BILL ATTACHED TO COUNTY COMMUNICATION NO. 17-484 WAS FILED AND THE MATTER RELATING TO LEGISLATIVE BRANCH ORGANIZATION WAS REFERRED TO THE POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE COMMITTEE. See pages 208 through 212 for discussion and action.)***

CHAIR WHITE: Thank you, Mr. Clerk.

Are there any objections to the referrals as read by the Clerk?

### **DISCUSSION AND ACTION RELATING TO COUNTY COMMUNICATION NO. 17-481**

COUNCILMEMBER SUGIMURA: Chair, Chair, I'd like to ask for a discharge of Carl Adolpho III. So, in reference to County Communication No. 17-481, reference to this.

I'D LIKE TO MOVE TO DISCHARGE THE POLICY, ECONOMIC DEVELOPMENT, AGRICULTURE COMMITTEE FROM FURTHER CONSIDERATION OF THE PROPOSED RESOLUTION ENTITLED "RELATING TO THE APPOINTMENT OF CARL ADOLPHO III TO THE MOLOKAI PLANNING COMMISSION" ATTACHED TO THE COMMUNICATION.

COUNCILMEMBER CRIVELLO:

SECOND.

COUNCILMEMBER SUGIMURA: Thank you.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, thank you, Chair.

Your Policy, Economic Development, Agriculture Committee at its meeting on November 13, considered the nomination of Carl Adolpho III to the Molokai Planning Commission. Born and raised on Molokai, your Committee discussed Mr. Adolpho as someone who understands the needs of the Molokai community and has previous experience serving on the Molokai Community Plan Advisory Committee.

Your Committee voted 4 – 2 and failed to obtain the five votes needed for Committee recommendation. The deadline for Council to approve or disapprove the nomination is coming up, December 23, and I'd like to request the Committee, the Council to discharge this, to consider action today on this proposed resolution. Thank you, Chair.

CHAIR WHITE: Any further discussion on the waiver?

COUNCILMEMBER KING: Just a question, Chair. Yeah, if something doesn't pass out of Committee, is that appropriate for it to come back to the Council?

CHAIR WHITE: Well, I, I don't recall what happened in the Committee. Mr. Garneau are you familiar with the--

SUPERVISING LEGISLATIVE ATTORNEY GREG GARNEAU: Yes, thank you. I think Councilmember Sugimura said what the vote was in Committee so there wasn't a vote to pass it out. There was not enough votes to pass it out in Committee.

CHAIR WHITE: So there's no, no final action taken and so--

SUPERVISING LEGISLATIVE ATTORNEY: So there's no recommendation, there's no final action taken so--

CHAIR WHITE: --as long as a discharge is posted, I believe that's appropriate.

COUNCILMEMBER KING: So that was, there wasn't a denial of the position, it was just a not approval, is that what, is that what's going on.

CHAIR WHITE: I don't know how many--

COUNCILMEMBER KING: I mean if it doesn't pass, is that--

CHAIR WHITE: Ms. Sugimura, maybe you can fill us in a little bit more.

COUNCILMEMBER SUGIMURA: So, it was, I'm asking for discharge because we need to take action to approve or disapprove by November 23 [sic]--

COUNCILMEMBER KING: November?

COUNCILMEMBER SUGIMURA: --and at the Committee meeting we did not have sufficient votes. We had, we had six Members present and when it was up for a vote, we needed five basically for it to pass, and it failed based on a 4 – 2 as a Committee recommendation. So, it's here today so that we can consider him as nine Members on the Council, and asking to discharge the Rules so that we can consider this as a committee of nine people on the Council to look at this, to approve or disapprove the Mayor's nominee for the Molokai Planning Commission.

CHAIR WHITE: Okay, thank you.

Brief recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 9:24 A.M., AND WAS RECONVENED AT 9:25 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting will come back to order.

I misspoke, it's, Ms. Sugimura was not asking for a waiver, but was asking for a discharge--

COUNCILMEMBER SUGIMURA: Discharge, yeah.

CHAIR WHITE: --because the Committee was not able to take a, make a decision one way or the other. So, the vote is to discharge her Committee from that item.

So any further discussion?

COUNCILMEMBER COCHRAN: Yes, Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, yes I was at that Committee, and as I recall, it was a, a standstill at a 2 – 2, so the gentleman was not approved technically. And I had asked for another meeting, follow-up Committee meeting in order to have the gentleman here for questions and sort of interview here at our podium and things of that nature.

So, the next step that now comes in front of us is this. So, I take total offense of the procedure of how we typically run things not being followed, not being adhered to. And it feels like, looks like to me, because the person in question was not picked and voted out of Committee, this is the other route the Chair of the Committee decided to take. I don't appreciate it, I don't support it and I still feel what is the rush. December 23, okay, it's only the fourth, and there's time.

And if we recall on Friday there were numerous testimonies coming from the island that are not in favor and had, I feel very justifiable reasons. So, with all of that taken into consideration, I am not in favor of this. I think it's done improper and it should be in Committee and vetted through Committee one way or the other and then come to this body. But not in this manner. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Cochran. Any further discussion?

COUNCILMEMBER KING: Chair, yeah, I just wanted to reiterate, I was also in that meeting and I recall that the conversation was to ask Mr. Adolpho to, to appear before the Committee and that's not happening today. We, my records show there were six folks that testified against this appointment and none in favor. So I, I would like to see it go back to Committee as well. Thank you.

CHAIR WHITE: Thank you.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: You know, it's interesting how you can count six out of a population of almost 8,000 people. And, you know, obviously when I listen to the testimony, at least a couple of them have not been on the island when we had CPAC. One of them is not from the island and here we have a keiki o ka aina o Molokai. This is a homebred individual that is all of the island. The Adolpho family are not from somewhere else.

I mean he has his sister, who has moved back home after a successful volleyball years with the University of Hawaii. Another sister just moved home after graduating as a biotechnologist. And, Mr. Adolpho is raising his family on homestead. And it, it

behooves me that it sounds like it's those who, who participated in disagreement does not know the full story of his participation in CPAC.

He was appointed late in, in the process because he replaced a dear friend who passed on, Mr. Luczon. And, his work schedule had to be as such. So I further checked with the individual, is he really ready to make this commitment, if not, then he should withdraw. And the response I got, yes, I'm raising my family here, I want to have a voice, you know.

And, it, if this is an incorrect procedure, then we have protocols that we need to go through. But this is the procedure that's allowable, then let's get this, let's get the business going. For whatever political reason that certain of my colleagues do not even understand the island, can step forward and say, six people. There weren't six people who testified against, I can tell you who they are and who they're related to, obviously. And, and I come from a small island that it's easy to think that six voices, you know, is speaking on behalf of all of my island.

I speak in favor of this young man and at the time he cannot make commitment, then we shall necessarily take action. But what I understand, he's ready to make the commitment to serve on the Molokai Planning Commission.

CHAIR WHITE: Thank you, Ms. Crivello. Any further discussion?

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. I understand that Mr. Molina is here in case there is any questions.

CHAIR WHITE: Okay, thank you.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Can I get some clarification on the deadline. So, basically this has to be voted on by the Council or it needs to be presented to the, declined or approved before a certain date. Is that December 23, and why is that, and is there, yeah, if I can get an explanation on why it's--

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER GUZMAN: --there's a time sensitivity to it?

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, so Chair, as, as everybody knows, the clock starts ticking once we hear from the Mayor's Office that they have a nomination. So the deadline for us to approve or disapprove is December 23. Of course, you know, if we take no action it means that we approve. So, same, same Charter rules apply, so that's what we're trying to abide by.

I will, I will say that the, when we had this discussion about this, Mr. Adolpho III that we did hear strongly from our fellow, you know, Ms. Crivello about this, this individual. And, I did check on his attendance because it was brought up, and it was confirmed basically what Ms. Crivello has the name of the person who passed away, but he did replace a person on CPAC who had, who had passed away. So the Council at that time went through the process of, of finding this other member and Mr. Adolpho came forward. So, you know, that, that's the information that I found out after the Committee meeting. Thank you, Chair.

CHAIR WHITE: Thank you.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, just to follow-up with Ms. Sugimura's explanation. So on the, so if, if we were, so basically if the, if the Council doesn't take action, it gets deferred as an approval, or is it defaulted as an approval. So taking action means, by the full Council or taking action by the Committee. Because I've always, it was my understanding that once a vote was called in Committee, that's action. And so I need to understand how that got rerouted to full Council when a vote was called in Committee.

Cause I, cause basically in the past what we've done is, and you're very well aware of our procedures in the past is that if there is a time sensitive issue, it may enter into the Committee and then the Chair will notify the Committee that look, we'll have the discussion, but we're going to defer it or discharge it in Committee, but not call the vote. So, in this case it's distinguishable because there was a vote called. So now I'm confused, what was, what was the action?

CHAIR WHITE: Well, I, my understanding is that when we take action in Committee, it has to be in an affirmative action. So it has to either be a vote of five for--

COUNCILMEMBER GUZMAN: For or against.

CHAIR WHITE: --or a vote of five against.

COUNCILMEMBER GUZMAN: Okay, now I understand. So while it was in Committee, and I apologize to the Committee Members, I was in Korea during that time, so I was the one, there was two of us absent. So I understand now where you're going. What you're saying is that because there was no full confirmed affirmative vote yes, and there was absent a confirmative vote of no, it was basically, in a sense, technically not, no action taken on either.

CHAIR WHITE: Correct.

COUNCILMEMBER GUZMAN: Yeah, and so therefore, you're taking the same route that we usually do, just yeah--

CHAIR WHITE: And therefore discharge is something that we--

COUNCILMEMBER GUZMAN: --so I can see the technical aspect of that being okay, now that I understand it. But, now it's now in the full Council and I know maybe at least one other Councilmember wasn't there during the Committee, and is Mr. Adolph present and it, there enough time to defer this so, to have him here presented in Council so that we may ask questions. And, you know really get to know the person on, you know, his values and things like that. I, I know that like myself is open, I, I just don't have the ability to, and I should have, but I just got back so, is there an ability to defer it, and, and post it again while we, while we request Mr. Adolpho to attend our meeting, or have him ready available on speakerphone?

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, my next meeting is December 11, and I guess I was afraid that we may not have quorum or something that may affect the vote, and I wanted our body to be able to act upon it. So that's the notice, that's why the action today. And thank you, Mr. Guzman for understanding our Charter and the process. So, that's why I wanted to have it taken cared of today because it sounded like, excuse me, you know, through discussion, especially today, that we would be able to take action on it.

Other than that, then it would have to come before Council and we would have to do a discharge again at the next Council meeting. So, it would be your call, I mean, willing to do the 11<sup>th</sup> and do the, a discharge on the 15<sup>th</sup>, if that's what the Council wants to

do. Although I think that we have information on him that we could probably take action today.

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Yeah, I, the earlier aggressive statements notwithstanding, my, my concern is less to do with the individual. But I agree with Mr. Guzman, we should have this person present if there are questions. And that was what we were asking for in the Committee meeting and so, you know, I would like to, I mean, it would have been nice to have him here today, if the intent was to discharge it and take action today. So, you know, that's, I would, I would prefer it go to, through the, back to Committee, let us have the person present so we can have that discussion.

We've had, we've had too many approvals without applicants being present because it takes four or more people to request that. And then we get to, and we get to a situation like today where, you know, now you have several individuals requesting that and we've missed some opportunity at Committee.

So, yeah, I think we should go back to Committee and, and have a chance to talk to this person. Because yes, I do, when I see testimony, I do take it under advisement when six people come out against it, and no one's come out for this person. It doesn't mean I'm making a definitive decision on that, but it does mean something. In, if you go to legislative, if you go to legislative training, they teach you that for every person who comes up, they represent 50 people because people don't come out. So, you know, I take that under advisement, and I would like an opportunity to talk to this person. Thank you.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: I, I don't think we'll have a problem to have this young man heard. And if it, if it means that you need more than six testifiers, I don't think you'll have that problem either. If, if this is what is the setback, let's, if he's willing and able, and, and I think, you know, it's costly and it takes time for them to fly over, you know, it's not easy to get flights. So if its interactive we can do with that. I don't think we'll, we'll have a problem. And, I believe Mr. Molina or the Mayor's Office can make the necessary contact if that is so.

But, you know, granted you, you had a group of people that turned out to make all the same testimonies, you know, very well attended by these six individuals. I take nothing from their participation. But, not everyone can turn out during, during the mornings that we, we have the testimony time. I think that's, people do work, although many do not either. Some people are employed and cannot be out there to testify. And if they want full testimony in support of him, there'll be no problem to get that either. So perhaps, things have to be orchestrated according how, how certain people show up to testify in full orchestration. Thank you.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: May, may I, if, if time is of the essence, instead of deferring it back to the Committee, I think you have a couple options, deferring it back to the Committee and then, or deferring this matter for the next Council meeting under your agenda, under the Council's agenda. And at that time, Mr. Adolpho can either be present, and we've done this in the past where we've had the, the applicant or the nominee present during the full Council vote. Questions could be asked. Testimony can be received through public testimony. So there is a way, either we, it's up to your call, Chair, either we send it back to Committee or we defer this matter for the next Council, Council meeting, preferably to meet the deadline of December 23.

SUPERVISING LEGISLATIVE ATTORNEY: Chair, Chair, if I could be recognized, please.

I just, if I could just follow-up on what Councilmember Guzman was saying. So if, if you don't discharge today, you actually, doesn't need to be recommitted because it stays in the Committee. There would be time for the Committee to take it up at its December 11, meeting, although that would not give time to report out.

So, one of the possibilities if the body was wanting to today would be to just do the discharge so the Committee no longer has, would no longer be in Committee and then defer the consideration of the proposal to your meeting on the 15<sup>th</sup>. Because I think with the way the, the deadlines are, you're going to, the only way the body could consider it would be to discharge it either today or the 15<sup>th</sup> in terms of the Committee.

CHAIR WHITE: Right, so my preference would be to have the item stay in Committee and have Ms. Sugimura bring it up at her next Committee meeting, and then there would not be a vote taken, it would just simply be discharged to the December 16 or December 15, meeting.

SUPERVISING LEGISLATIVE ATTORNEY: That's correct, we would have to post very similar communication, what's here today--

CHAIR WHITE: Right, so we'd have to post the discharge.

SUPERVISING LEGISLATIVE ATTORNEY: --on the posting deadline, which would be prior to the actual PEA meeting, does that make sense.

COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBER GUZMAN: But Chair, only if there's not an affirmative vote on either way, like if it goes back to the Committee--

CHAIR WHITE: No, because if, if, no because if the vote is taken in Committee, then we are not going to have another, it has to be posted for the Council meeting and there's not time to post.

COUNCILMEMBER GUZMAN: Oh, right, right, okay, I got the time, yeah--

CHAIR WHITE: You would have to discharge.

COUNCILMEMBER GUZMAN: --you would require to discharge. Okay, technically, okay.

CHAIR WHITE: But I think it's better to have a full discussion in Committee and then discharge after that without taking a vote.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR WHITE: So, you'll withdraw your motion.

COUNCILMEMBER SUGIMURA: Yes.

CHAIR WHITE: Okay, thank you.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, no, I just was going to say that I prefer to do Committee work in Committee and not on the Council floor.

CHAIR WHITE: Okay, thank you. I would agree. Okay, any further items.

**DISCUSSION AND ACTION RELATING TO  
COUNTY COMMUNICATION NO. 17-482**

COUNCILMEMBER KING: Chair, yeah, I do have a item. In reference to County Communication 17-482, I believe it's in the best interest of the County that the Council act on the Mayor's request on the removal of the Water Director today. This is a person who is very high level, is the only one of the, between the Director and Deputy Director who has an engineering degree, which is required by County Charter and has been put on administrative leave pending this motion, I'm assuming.

SO, THEREFORE, I MOVE TO WAIVE THE REQUIREMENT OF COMMITTEE REFERRAL AND RECOMMENDATION PURSUANT TO RULE 7E OF THE RULES OF THE COUNCIL, AND TO WAIVE THE RESTRICTION THAT AN AMENDED RESOLUTION NOT BE ACTED ON AT THE SAME MEETING AS THE AMENDMENT PURSUANT TO RULE 19C OF THE RULES OF THE COUNCIL.

COUNCILMEMBER COCHRAN:

SECOND.

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

Ms. King.

COUNCILMEMBER KING: Chair, yeah, this has been, and I've, I've looked at, I've talked to people in the Administration, obviously not the Mayor because he hasn't been here. But I've also looked at the video of the Mayor's visit to the Board of Water Supply in which he details the reasons which to me don't make sense, the reasons why he's trying to replace Mr. Taylor. There is one year left, there would, it would probably take about a year for someone to be trained in this position so I, I don't see the sense of this.

To me it's a waste of taxpayer dollars to have someone who's making 150,000 plus sitting at home on administrative leave. And so I would like to be able to make a, a decision on this quickly, and if we get a vote then I'll make a, I'll make another motion on that decision.

CHAIR WHITE: Okay, further comments?

Mr. Hokama, followed by Ms. Sugimura.

COUNCILMEMBER HOKAMA: Chairman, I speak against the motion. I don't like to do personnel issues on the Council floor. I think it's appropriate we send this to Committee, allow our subject matter Chairman, Mr. Atay, post a appropriate agenda with executive session requirements to go and review the personnel issues. If the Mayor has just cause, so be it. But I think it's important in the appropriate venue to allow the rights of the employee as well as the employer representative . . . to present a personnel issue in the appropriate environment. And I won't do this in one open Council meeting, Chairman. So, I will not support this motion and that would be my recommendation to the body. Thank you.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, I, I did some, my own research on Dave Taylor who's very talented and, University of, UC Berkeley degree, he's an engineer, he has a lot of credentials. And, he seems to have a ability to do what many engineers may not be able to do, who are more technically inclined, which he understands how to, maybe talk to people and deal with people and can kind of work in our environment.

So I kind of lean, I understand what Member King is saying, but I would like to take this up in my Committee if possible, and to explore this and make sure that, you know, the Council is, is comfortable with making a decision knowing all the facts. So, that's, that's all. Thanks.

CHAIR WHITE: Okay, any further discussion?

COUNCILMEMBER HOKAMA: Chairman, point of information.

CHAIR WHITE: Yes.

COUNCILMEMBER HOKAMA: If this does get referred, what was your recommendation, to which standing Committee?

CHAIR WHITE: Pardon.

COUNCILMEMBER SUGIMURA: Policy.

COUNCILMEMBER HOKAMA: Oh, Policy, okay. I just made--

CHAIR WHITE: Yeah, they're responsible for appointments and so forth.

COUNCILMEMBER HOKAMA: --incorrect, I assumed it was Water Resources. So thank you for that correction.

CHAIR WHITE: Did you have your hand up, Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. Yeah, I am in support and I understand the comments. But I also understand that it is imperative, it is very, very important that we have this gentleman who we all know, I don't always see eye to eye with him, but he does have the credentials and qualifications of doing this job. He has been in it for many years and I do trust that he is doing the best job possible at this time. And, he ought to be there at least for the last year of this Administration.

So, the sooner we can hopefully solidify that fact, that he stays in seat and in this very high priority, I believe responsibility for this County, the better. And it's not to take away from you know, anyone in place currently. But I feel Mr. Taylor is deserving, he is qualified, especially and ought to be there and we should take the vote in order to assist that. Thank you, Chair.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you. So if it goes to Committee, when, I would like to know when will it be heard and, and what process will we be going through because this sounds like something that we just talked about with a appointment to a Planning Commission, about procedures and process. And, and now we're saying this is something very, very serious and Mr. Taylor deserves to be heard fully. And, you know, now we're saying forget about the Committee process and, and let's just do it now.

So, I, I want to know what takes precedence as far as process. Yeah, we can do it now, but is that what we want to do on such a serious matter that, like they say, you know, here we have a, a, a well-qualified Director and we need, this has to do with personnel, and whatever, whatever is going on, who knows. But I think through, through Committee we can vet it through. Again, do we do Committee work during Council.

CHAIR WHITE: We have options to do it either way.

Mr. Atay, any thoughts on water side.

COUNCILMEMBER ATAY: Well, I personally have worked alongside of Director of Water, being that we were in the Committee of Water. I'm in support of, of, I cannot see a person being on administrative leave indefinitely. I think we need to make a vote yea, nay and look after the best interest of the County.

CHAIR WHITE: Any further discussion?

Mr. Guzman.

COUNCILMEMBER GUZMAN: Yeah, initially, I was thinking about moving this forward to the full Council's vote. But then, I thought what is the general perception of what's going on to the public. So you read in the newspaper, the Mayor's, you know wants to terminate the, or has already implemented a termination of the Water Director. But there's a lot of pieces missing for the general public. I may know the fill-in, by speaking to Mr. Taylor. But I think we owe a duty to the public to really investigate it and let them know what was going on and how we based our decision.

And, as we spoke of the previous item going back to Committee for full vetting, I then realize that Councilmember Crivello is correct, we do have to try to be somewhat consistent in what we do. And although we may have the ability to hear it in full Council, we should be consistent with all matters. Unless there's a time-sensitivity attached to this, then I need to know what that is. And if it is something greater than, or very sensitive that we need to, to address in the Council, then, it's appropriate to hear it in the Council. But I need to know if this is, you know, time is of the essence, or there's a deadline to this.

CHAIR WHITE: Thank you.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. I think there is, I think time, it is time-sensitive because we've had a very high-level Director sitting out for a few weeks. My, my interest in trying to go this route is I think this is an egregious act of the Mayor to put somebody on administrative leave without a, a major complaint about his performance, without an immediate replacement being known who fits the requirements of the Charter.

And I think if the, if the Mayor wants to come before us and request somebody's removal, don't take them out of office first. By removing him from office, I believe he's already violated the Charter, and so I'm trying to correct something that I see as a violation. And then let him come back with his complaint and, and, and have his day in the Committee. I have no problem with him coming back to Committee at some

point if he's got a formal issue, but I have not seen that. And I think by removing somebody from their duties, that that violates the Charter.

It says in the Charter that the Council approval is needed to remove the Director of, of the Department of Water Supply. We, we have not been asked for our approval before that removal happens so to me this is not the same issue, although I, I understand Member Crivello's issues, it's not the same issue because this has been, this has been, I think predicated on a violation of the Charter.

We had a dozen people that came out and said the same thing and, and I'm very worried about the political aspects of this removal. So I don't want to, I, I think we can correct it, and if he wants to come back with some charges, let him do that. Some, some basic reason then we can hear that in Committee. But, the thing that, I, I probably wouldn't even be making this motion if he had not taken the, the Director out of service, which I think is the violation. Thank you.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: So, so what I'm hearing is, is that there's a potential violation of the Charter that's at hand and so at this point then, now my ears are turning red, or flags are coming up. So when I hear that, I'd like to ask the opinion of Corporation Counsel is there, are we in jeopardy if we were to delay this to go through the vetting process with the Committee. Is there, are we placed on notice that there's a violation of the Charter. What is our stance at this, what is our position. What are we facing? What are the consequences and if true, maybe we do need to take action. But I need to hear it from the Corporation Counsel.

CHAIR WHITE: Mr. Kushi.

FIRST DEPUTY CORPORATION COUNSEL EDWARD KUSHI: Yes, Mr. Chair, Member Guzman. As far as I know, there's no violation of the Charter. What the Mayor is doing in actuality is following the Charter. He is opting to remove the Director, subject to this Council's approval, that's what the Charter says. As far as the time limit, as far as I know there is no time limit involved. This is the first time it's happened in my experience.

COUNCILMEMBER KING: Chair, can I follow-up with a question.

CHAIR WHITE: Yes, Ms. King.

COUNCILMEMBER KING: So if, if the vote, if the, if the body, if the Council votes to disapprove the removal and the Mayor keeps the Director out on administrative leave, is that not removal by proxy? I mean technically he's already removed him from his duties.

CHAIR WHITE: Mr. Kushi.

FIRST DEPUTY CORPORATION COUNSEL: Mr. Chair, Member King. It's not, he hasn't been removed. He can be suspended, he can be placed on administrative leave. He's not, he's not removed though, if this body doesn't--

COUNCILMEMBER KING: He's removed from duties.

FIRST DEPUTY CORPORATION COUNSEL: He's not removed, he's still in the position, but he may be suspended, he may be placed on administrative leave. That's a Personnel action, it is not deemed a removal.

COUNCILMEMBER KING: Well, what do you see happening if this body approves, disapproves the removal? Do you see him going back to office, to his duties?

FIRST DEPUTY CORPORATION COUNSEL: His position is still filled by the incumbent. Whether he's on duty or not, it's up to the Mayor.

COUNCILMEMBER KING: Okay, so basically, we have somebody who the, if we had somebody who the Council deems appropriate to continue in this position, he can still be, he can still be removed from his duties, he has been removed from his duties for a couple of weeks now.

FIRST DEPUTY CORPORATION COUNSEL: Why don't we say this--

COUNCILMEMBER KING: Whatever you, whatever you want to, whatever technical or legal term you want to use, that's what's happened.

FIRST DEPUTY CORPORATION COUNSEL: I would use the term terminated.

COUNCILMEMBER KING: Well the Charter says removal, so I'm using the word removal, he has been removed from his duties and the, and to me that flies in the face of the Charter. Maybe we need to go to court to figure that out, I don't know but--

FIRST DEPUTY CORPORATION COUNSEL: Right.

COUNCILMEMBER KING: --but that's my position, that's why I proposed this motion. Thank you, Chair.

FIRST DEPUTY CORPORATION COUNSEL: Right, and again, I remind this body that the, all Deputies and Directors are employees at will. There is no tenure involved, except for the Charter provision saying that--

COUNCILMEMBER KING: Right.

FIRST DEPUTY CORPORATION COUNSEL: --it has to be approved the, this body.

COUNCILMEMBER KING: That's right, right, so, so at will does not, at will does really not apply to a position where the Council has the authority of removal. You cannot fire somebody at will if it takes the Council vote to remove them.

FIRST DEPUTY CORPORATION COUNSEL: In the case of the Water Director, the Prosecuting Attorney, and the Corp. Counsel, that's correct.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: So, and correct me if my, if I'm wrong and if I overstate anything. So if, if we were to pass the waiver and we were to address the issue on this floor today. Is there representation from the Administration to come and, and give us a briefing of what the intention was in the termination? And is Mr. Taylor here as well, and is he willing to waive his entitlement for the executive session? Because we would have to enter into executive session because it's employee, employee matter. And if we, you know, if he's here to, to do it in open session, then we would have to get a waiver from him, or his consent, from Mr. Taylor to do it in public. Other than that, we are looking into, you, we would be required to go into executive session. And if so, do we have representation from the Administration to explain their side. Because it, we, we owe it as a, as a body to hear both sides. That's just a question, I don't know.

CHAIR WHITE: Yeah, we have, we have as I see two options here. One is that we, we could take action today. The other is that we simply refer the matter to Ms. Sugimura's Committee, then it gets heard at the same December 11 meeting and we could also decide to discharge that item from action at the Committee level and bring it back for a vote at the Council. That would allow us the opportunity to hear from both Mr. Taylor and from the Mayor, which I think is, is fair.

COUNCILMEMBER GUZMAN: I--

CHAIR WHITE: So I, you know, we have two options. I have a sense that Mr. Taylor has significant support, and at the same time, you know, the Mayor is not here and I don't believe he's back in the building until tomorrow.

COUNCILMEMBER GUZMAN: Okay.

COUNCILMEMBER KING: Chair. I think that would be a good option to bring it back to the next Council meeting. And I would be willing to amend my motion to, to just waive the requirement of Committee referral and recommendation and not the restrictions that it not be acted on at the same meeting. So would just be the waiver, it would just be waiving it from Committee referral, is that--

CHAIR WHITE: No, but actually, if, if we, if you withdraw your motion then it automatically will go to the Committee and Ms. Sugimura can hear it at her December 11, meeting. The, the main thing for me is that we need to respond to the, the Mayor's action, either affirming it or disapproving it.

COUNCILMEMBER KING: But if we, but if we waived it from Committee referral, we can, we can address this at the next Council meeting which cuts, no--

CHAIR WHITE: No, no I don't want to do it at the next Council meeting, I want to do it at a Committee meeting--

COUNCILMEMBER KING: Okay, then it's going to take two more Council meetings after that, so no--

CHAIR WHITE: --no because we can similarly to the previous issue, we could discharge it--

COUNCILMEMBER KING: Okay.

CHAIR WHITE: --from the Committee and it will be on the December 15, agenda.

COUNCILMEMBER KING: Okay, that's, that was my main concern, if we can get it on the December 15, then I'm fine with that.

SO, THAT WOULD JUST ENTAIL A, A WITHDRAWAL OF THE MOTION.

CHAIR WHITE: Okay, thank you.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: I think it's, it's something that deserves the appropriate level of examination and, you know, I think Mr. Taylor has done a, a very good job in many respects. And we should be interested in hearing what concerns the Mayor has and also hearing from Mr. Taylor what his, his responses are to the Mayor's concerns.

Mr. Hokama.

COUNCILMEMBER HOKAMA: I . . . assumption, Chairman, that, that matter is done.

CHAIR WHITE: Excuse me.

COUNCILMEMBER HOKAMA: I can bring up another matter at this time.

CHAIR WHITE: Yeah, that, that matter is done.

COUNCILMEMBER HOKAMA: So the previous matter is done.

CHAIR WHITE: Yes.

COUNCILMEMBER HOKAMA: Okay--

COUNCILMEMBER COCHRAN: Chair, sorry, Mr. Hokama, Mr. Chair. Because I'm reading the Charter and as I take it from Deputy Kushi, the word removal, I think there's a difference in the definition of that in this Charter. And so with that in mind, am I to understand then Mr. Kushi, that currently Director or Deputy Director shall be a registered engineer and we all know, current, standing, fill in Director, Ms. Baisa is not a Civil Engineer. So how does that work in conjunction with this Charter. But is it okay, because you're claiming removal doesn't mean that Director Taylor is really removed, and he has a Civil Engineer degree. So I'm just, how does this refer to Director--

CHAIR WHITE: Yeah, I, I would rather we take that up, since we've referred it to a Committee, since we will be referring it to Committee, I would rather those questions--

COUNCILMEMBER COCHRAN: Okay, and we can just discuss--

CHAIR WHITE: I have the same questions because I don't see how, well it was explained to me that once Council takes action, if we disapprove it, then he goes back to work. And it seems, it's a difficult reach for me that if we disapprove of the Mayor's action, that he can simply turn around and put him on, on leave again. It just doesn't, it doesn't make sense to me. But, hopefully by the time we get to the, the Committee meeting, we'll have the answers to some of those questions.

COUNCILMEMBER COCHRAN: Sorry but that's why I'm, I'm hoping we're not in a liability situation currently as we speak in trying to vet this out and figure it out. That's one of my needs and urgency in moving this forward and trying to rectify this because I feel like, I, my judge of this Charter, we're in some kind of, yeah, we're not doing it right currently, the way the bodies are situated, for me, in the Department of Water Supply.

COUNCILMEMBER GUZMAN: Chair, Chair, if I can ease the--

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: --the, the, I guess the anxiety of our, my colleague. I think because we're in administrative process, we are seeking administrative remedies to resolve the issues at hand. And that's first and foremost that we have to exhaust those before any type of, I guess, real liability would, would trigger. So we are in the process, it's not like we're, we're expending a exorbitant amount of unreasonable time to solve this problem. We will be calling this to a vote on December 15, on the full Council.

We're referring it to Committee for discussion and then at that point, once the questions have been answered, if we worked it out, will discharge it back to the Council for the full vote on December 15. So I think we are in reasonable time-frame to address the issues at hand and I think our Corporation Counsel is aware of that and would make sure that we are not overstepping our, our liabilities. And so--

COUNCILMEMBER KING: Chair, I have a question, it relates to this because we've had situations like this before and, and we've come up against Corporation Counsel who represents the Mayor and represents the Council who may be on opposite sides of an issue. So, the vote in the last election, Charter amendment was to allow this Council to utilize our own legal counsel, and I don't know where that's at right now, but you know, that, that's something that, is that an option here for, for this issue?

CHAIR WHITE: It, it's option when it's in Committee--

COUNCILMEMBER KING: Okay.

CHAIR WHITE: --if as a Committee we disagree with the Corp. Counsel's view, we can take a vote in Committee whether to assign one of our own staff as special counsel.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR WHITE: Okay. Okay, moving back to Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chairman. No, I think this is a very important discussion. We are delving into new areas that we haven't experienced as a Council or a County regarding administrative officers. So, I, I think being thoughtful in our due diligence will set the template for future Council's on how to proceed. So I think we need to do this very well since this is new grounds for all of us.

### **DISCUSSION AND ACTION RELATING TO COUNTY COMMUNICATION NO. 17-484**

COUNCILMEMBER HOKAMA:

BUT REGARDING 17-484, CHAIRMAN, I WOULD LIKE TO MAKE A MOTION TO FILE THE PROPOSED LEGISLATION ATTACHED TO COUNTY COMMUNICATION 17-484, AND REFER THE SUBJECT TO THE APPROPRIATE STANDING COMMITTEE.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion to file, a motion from Mr. Hokama and a second from Ms. King.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, yeah, thank you. I'm sure all of us had, well I had enough comments this past weekend at home about what was going on with this proposal. And I told them that the way it was proposed, I had great difficulty. I have no problem terminating for cause. I think, again, for cause, there's grounds, so again, if appropriate, it is an administrative option to deal with personnel issues. The way it has been, has been proposed I do have concerns. And therefore, I have made this motion, I believe this is something that can be discussed in the Committee.

But as, my residents, I got to tell you, they, I was very pleased some of their questions to me. And somebody was, if this is a personnel issue, why are there certain kind of points being made in the open testimony, that unless you were in the personnel issue, how do you get that information. I found that intriguing being asked of me. So, I said, you know, I think part of it is to have this referred to Committee and allow the

appropriate procedure to go and investigate this and report back. And so that is my rationale for this motion this morning, Chairman.

COUNCILMEMBER HOKAMA: Thank you, Mr. Hokama.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: All those in favor, please signify by saying "aye".

COUNCILMEMBER CRIVELLO: Further discussion.

CHAIR WHITE: Ms. Crivello. I did it again.

COUNCILMEMBER CRIVELLO: We are flowers. Thank you. Anyway, I, I too would like to see this, to, to be more, you know, to, to just as the bill was presented, you know, I have to say when I first saw it, I thought well, I cannot support such a bill. But I appreciate Mr. Hokama coming in with a cause and referring it to Committee cause I was just kind of overwhelmed with the testimony and all the information that was popping up. And I'm going wow, where did people get all this information from.

And, we weren't able to even deliberate and to hear it fully so it just, it basically threw me off. I mean, such details that supposedly came out from the testifiers as well as what was related in some of the social media and some of the things that I don't quite understand how people have such information that may not even be, be such. So I think the opportunity for the public as well as for all the testifiers, as well as for myself as a Councilmember who, you know would want to be able to still, you know, consider my personal staff as an elected official.

But, if there is some, there was a purpose of having this bill set forth, sounds like there, there was some sort of a situation that took place accordingly from, from my colleague and my colleague's staff and as well as, I guess, from what I gathered after asking questions, was it affected some of our Office of Council Service staff, which I value being of the highest caliber to assist us as Council people.

So, I think if this is an opportunity for us to surface some of the issues or comments I would say, made by, by testifiers, and you know, when, I don't know, some of the accusations that are quite shocking that have come out. So, I sure would like to clear the table and see how we can have a honest and fair conversation for, for all people involved. So, thank you, Mr. Hokama for moving this forward. Thank you.

CHAIR WHITE: And the Chair would just like to add, our initial draft had the, the word "cause" in it. It was my recollection is it was taken out by Corp. Counsel because all of your

employees are "at will". And, but I think, I understand the hesitation, I understand all the angst over it because there was never any intention to try to remove anyone with anything other than cause because I, as many of the testifiers said, it would be political suicide, it would be unfair. You know, I don't think there's anyone who would want to have their staff removed.

And, it can't be, can't be done by, well, and we have a, if you could, if staff could pass out, we listened to the testifiers the other day and we have redrafted it into match exactly the removal process for OCS staff, which is for cause and requires a vote of six Members of the Council. And so we put it at the same, same level. It's just for information, and it can go with the, this as an information piece. If anything is done with it, it would have to be posted and it would be posted by Ms. Sugimura. And she has no obligation to, to even hear the matter. So, it's totally up to the body, where this goes.

But I'd have to remind you all that not just the Chair, has a responsibility to protect our staff. All of you have an obligation to protect the staff. And I don't want to get into a lot of details because there is an ongoing investigation, but we have not just a responsibility, but an obligation to do what's right, to make sure that our staff can conduct their business in a way that is comfortable and supportive and, and maintain a level of effectiveness that is as high as we can make it.

Ms. King.

COUNCILMEMBER KING: Chair, thank you. You know, I support the motion although I don't think it goes far enough. I would have rather just file the entire communication because I don't think the conversation is about cause, any of us can fire our staff for cause. I think it's about the process of who does the firing. And so I personally found it very offensive to think that there could be a vote taken about my staff, and I think most of the other Councilmembers would not want that happening with their staff. So, to me, it, it you know, we can sit here and have all the conversation we want about cause, but we know we're allowed to hire and fire for cause. It's really about this process that I, I would not support in, in any number, really, six to three, seven to two, but just the idea that and, and it was said at, in testimony on Friday, the, that you would never see, you would never see the State Legislature or you know, our Congress behaving in this way trying to hire/fire excuse me.

CHAIR WHITE: Recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:13 A.M., AND WAS RECONVENED AT 10:14 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting will come back to order.

I'm sorry, Ms. King, please proceed.

COUNCILMEMBER KING: So, anyway, that's my feeling is, and I'll support the motion because it, at least it takes this, this legislation off the table. But I really personally don't see any reason to move forward with the discussion. Thank you.

CHAIR WHITE: Thank you.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Sorry, thanks. Yeah, you know, I also what to echo what Ms. Crivello said about the importance of OCS staff. I want to particularly, you know, recognize the work that Greg Garneau does, and you know, Shelly who works for me as my Legislative Analyst and Clarita. But all of them play an important role so that we can sit in this chair and have the information that we need to provide communication to our, our constituents as well as present factual information that we need to and, and, and make, you know, policy and, and vote accordingly.

But, I, I think that by vetting this forward is a good idea. I, I approve and support what Mr. Hokama says, cause I too was deluged with a lot of communications this weekend from people, phone calls, emails, like what's going on. And people who are in HR, as I'm sure Ms. King must have heard, you know, being that she has her own business, but people who are in business and wondering what's going on and people, I was reminded that the Council is not above Federal and State law. So, that the things that we need to do is look at this further and I approve and appreciate this motion. So, thank you.

CHAIR WHITE: Thank you.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. Yeah, thank you, Mr. Hokama for seeking to file, but I too would rather just have it killed completely. I think the process in place is there, it's a good one, I think it's, it's very democratic in nature. And so just glancing through your, your new draft here, I do not support it. I would like to keep it as is, basically. And, hearing all the testimony I know there's a lot of truth and merit behind it. And, but we shall, I guess if it does get pulled up into a Committee for further discussion, will be vetted. And all that will be brought on the table. So at this time, yes, I'm in support of filing, but no I'm not in favor of continuing this discussion. Thank you, Chair.

CHAIR WHITE: Yeah, and that, and that all can be heard at the Committee level, if it, if it comes up.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Oh, thank you. Yeah, I was also in, I guess concurrence with my colleagues King and Crivello and Ms. Cochran. Initially when I first read the original draft, very broad and very overcompensating the, the other rights of a, the Members. It appears by the testimony this involves something at the administrative matter. And I know what we've done in the past is have Chair's meetings, and we haven't had one, I think in this term. And we use to have those Chair's meeting where there wasn't a, a noticed official Council meeting, but it was a meeting between the Chair and the Members.

And maybe possibly this could have been done in an administrative level, that way. I would have rather it, at least get some of the, the issues on the, or discussed among ourselves prior to any type of ordinance being drafted and presented. But as it is, it is what it is, and I, I further have been aware of some of the issues that have come before us. So it is something that we need to look at and, and talk about, but I don't think this is the, the avenue, or the vehicle to do it in. So thank you, Chair.

CHAIR WHITE: Thank you. Okay, let's take a vote. 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.

Actually, I think we have two items 17-472 and 473, that need to be taken up with the bill prohibiting the sunscreen containing oxybenzone and octinoxate. So any objection to that?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you. Okay, Members, anything else, before we move on?

Okay, Mr. Clerk.

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

### COMMITTEE REPORTS

COMMITTEE REPORT  
NO. 17-172 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That County Communication 16-279, from the Director of Personnel Services, pursuant to Section 7-5(3), Maui County Charter, informing and submitting a listing of abolished positions in various County departments, be FILED; and
2. That County Communication 17-376, from the Director of Personnel Services, pursuant to Section 7-5(3), Maui County Charter, informing and submitting a listing of abolished positions in various County departments, be FILED.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, without objections from the Members, I would request the Clerk bring up all Committee Reports, up to and including 17-177.

CHAIR WHITE: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

COMMITTEE REPORT

NO. 17-173 - BUDGET AND FINANCE COMMITTEE:

Recommending that County Communication 17-356, from the Budget Director, transmitting 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 FINANCE, COUNTYWIDE COSTS, DEPARTMENT OF MANAGEMENT, MANAGEMENT PROGRAM; TOTAL OPERATING APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)", along with the "CERTIFICATION OF ADDITIONAL REVENUES FOR FISCAL YEAR 2018", be FILED.

COMMITTEE REPORT

NO. 17-174 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That County Communication 16-290, from the Budget Director, transmitting the Budget Implementation Report for Fiscal Year July 1, 2016 to June 30, 2017 (First Quarter ending September 30, 2016), be FILED;
2. That County Communication 16-308, from the Director of Finance, transmitting the Director's Quarterly Report and Capital Improvement Project Report for the Fiscal Year July 1, 2016 to June 30, 2017 (First Quarter ending September 30, 2016), be FILED;
3. That County Communication 17-93, from the Budget Director, transmitting the Budget Implementation Report for Fiscal Year July 1, 2016 to June 30, 2017 (Second Quarter ending December 31, 2016), be FILED;
4. That County Communication 17-114, from the Director of Finance, transmitting the Director's Quarterly Report and Capital Improvement Project Report for the Fiscal Year July 1, 2016 to June 30, 2017 (Second Quarter ending December 31, 2016), be FILED;
5. That County Communication 17-205, from the Budget Director, transmitting the Budget Implementation Report for Fiscal Year July 1, 2016 to June 30, 2017 (Third Quarter ending March 31, 2017), be FILED; and
6. That County Communication 17-227, from the Director of Finance, transmitting the Director's Quarterly Report and Capital Improvement Project Report for the Fiscal Year July 1, 2016 to June 30, 2017 (Third Quarter ending March 31, 2017), be FILED.

COMMITTEE REPORT

NO. 17-175 - BUDGET AND FINANCE COMMITTEE:

Recommending that County Communication 17-202, from Mayor Alan M. Arakawa, informing that the Department of Environmental Management estimates a \$275,000 shortfall in Solid Waste Management Fund revenue for Fiscal Year 2017, be FILED.

COMMITTEE REPORT

NO. 17-176 - BUDGET AND FINANCE COMMITTEE:

Recommending that County Communication 17-237, from Director of Finance, transmitting a notice of transfer of appropriations from Countywide Terminal Pay/Salary Adjustments to Department of Fire and Public Safety's Ocean Safety Division and to various Departments, be FILED.

NO. 17-177 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Bill 102 (2017), 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 PUBLIC WORKS, WAILUKU-KAHULUI COMMUNITY PLAN AREA, DRAINAGE, KAHULUI DRAINLINE REPAIRS, TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill 103 (2017), entitled "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 (KAHULUI DRAINLINE REPAIRS)", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That Bill 104 (2017), 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 PUBLIC WORKS, WAILUKU-KAHULUI COMMUNITY PLAN AREA, KAHULUI DRAINLINE REPAIRS", be PASSED ON FIRST READING and be ORDERED TO PRINT.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA:

CHAIRMAN, I MOVE THAT COMMITTEE REPORTS AS READ  
BY THE CLERK, WITH ITS RECOMMENDATIONS, BE  
ADOPTED.

COUNCILMEMBER CRIVELLO:

SECOND.

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

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, your Budget and Finance Committee in its review of its responsibilities vetted and reviewed the various components of departmental reports. We have reviewed it, we are recommending filing of those reviews.

And one bill for an ordinance we are supporting moving forward, the Kahului Drainline Repairs at \$2.2 million. We believe this is a, at this time, important enough to move forward and not wait for the next budget session.

Thank you, Chairman.

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.

DEPUTY COUNTY CLERK: For the record, relative to Committee Report 17-177, that's BILLS 102, 103, and 104 (2017), respectively.

COMMITTEE REPORT  
NO. 17-178 - HOUSING, HUMAN SERVICES, AND TRANSPORTATION  
COMMITTEE:

Recommending that Resolution 17-168, entitled "URGING THE GOVERNOR OF THE STATE OF HAWAII AND THE HAWAII STATE LEGISLATURE TO SUPPORT AFFORDABLE HOUSING AT FRONT STREET APARTMENTS", be ADOPTED.

CHAIR WHITE: Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATION IN COMMITTEE  
REPORT 17-178.

VICE-CHAIR CARROLL:

SECOND.

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

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

Your Housing, Human Services, and Transportation Committee met on November 16, 2017, to consider a proposed resolution "URGING THE GOVERNOR OF THE STATE OF HAWAII AND THE HAWAII STATE LEGISLATURE TO SUPPORT AFFORDABLE HOUSING AT FRONT STREET APARTMENTS". Front Street Apartments consists of 142 affordable housing units, located adjacent to Kenui Street and Wainee Street, Lahaina, Maui, Hawaii, and is situated on property identified by tax map key (2) 4-5-003:013.

Front Street Apartments was completed in 2001, utilizing Federal and State tax credits totaling more than \$1.5 million and was to remain affordable until 2051. The County also provided over \$2 million in real property tax subsidy since 2001. A loophole in the Internal Revenue Service Tax Code allows for the owner to charge market rate rental

prices in 2019, effectively removing Front Street Apartments from Maui's affordable rental market and potentially leading to almost 300 tenants, a portion of which are disabled or retired, and living on fixed incomes being priced out of their homes.

Your Committee fully supports the State Legislature's efforts to introduce legislation to support affordable housing at Front Street Apartments.

Your Committee voted 5-0 to recommend adoption of the proposed resolution incorporating a nonsubstantive revision to forward a copy of the resolution to the Hawaii Housing Finance and Development Corporation, as noted in Committee. I respectfully ask for the Council's support. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Crivello.

Any further discussion, Members?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. Chair I'd like to make a motion to amend the proposed reso.

CHAIR WHITE: Please proceed.

COUNCILMEMBER COCHRAN:

CHAIR, I MOVE TO AMEND THE PROPOSED RESOLUTION ATTACHED TO THIS COMMITTEE REPORT 17-178, BY AMENDING THE FOURTH WHEREAS CLAUSE TO READ:

"WHEREAS, THE OWNER, FRONT STREET AFFORDABLE HOUSING PARTNERS, ASSERTS A LOOPHOLE IN THE INTERNAL REVENUE SERVICE TAX CODE ALLOWS IT TO REMOVE FRONT STREET APARTMENTS FROM THE AFFORDABLE RENTAL MARKET."

SO THE, LET'S SEE THE WORDING, THIS IS THE PART WHERE I'M INSERTING, "THE OWNER, FRONT STREET AFFORDABLE HOUSING PARTNERS, ASSERTS".

CHAIR WHITE: Do you have that in writing?

COUNCILMEMBER COCHRAN: I believe it, I'm sure all the paperwork from Friday is--

DEPUTY COUNTY CLERK: Yeah, Mr. Chair, this--

COUNCILMEMBER COCHRAN: --it's all jumbled in there.

DEPUTY COUNTY CLERK: --Yeah, the, the legislative proposal from Councilmember Cochran was distributed to the Members prior to this meeting, in your in-trays, so your, your offices might have it.

COUNCILMEMBER COCHRAN: Maybe we'll just take a recess so we can all get it--

CHAIR WHITE: You know, we, we have so much paperwork, let's take a quite recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:26 A.M., AND WAS RECONVENED AT 10:31 A.M., WITH ALL MEMBERS PRESENT.)

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

Has everyone got the copies that they need? Okay, let's, please move forward.

Ms. Cochran, back to you.

COUNCILMEMBER COCHRAN: Okay, thank you, Chair. So, great, now we have all on the same page.

AND MY, I MOVE TO AMEND THE PROPOSED RESOLUTION AS FOLLOWS:

ON THE FOURTH WHEREAS: "THE OWNER, FRONT STREET AFFORDABLE HOUSING PARTNERS, ASSERTS". AS YOU SEE THAT THEY UNDERLINED, "A LOOPHOLE IN THE IRS, INTERNAL REVENUE SERVICE TAX CODE ALLOWS", AND DELETING THE BRACKETED AREA, "ALLOWS IT TO REMOVE", ADD IN "FRONT STREET APARTMENTS FROM THE AFFORDABLE RENTAL MARKET".

CHAIR WHITE: Do we have a second?

COUNCILMEMBER KING:

SECOND.

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

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you.

Maybe, you want me to read it without the, so let me just read it real clearly. So fourth WHEREAS:

"WHEREAS, the owner, Front Street Affordable Housing Partners, asserts a loophole in the Internal Revenue Service tax code allows it to remove Front Street Apartments from the affordable rental market".

And my reasoning here is that, to date, there has been no confirmation that this IRS loophole the owners are referring to would in fact allow the sale of the property and amending the wording as suggested alleviates concerns that the County is conceding that this provision would give the owner such authority.

So, in essence, the owners are, I guess reading it to suit their needs as to they're able to now sell it out from the affordability rate to the open market. And that is not, in essence what this IRS Code, it's this IRC provision in it, that they're claiming is allowing them to do this. So I want to make sure it's the company asserting this, it's the company stating it, not us.

CHAIR WHITE: Not us.

COUNCILMEMBER COCHRAN: Yes.

COUNCILMEMBER CRIVELLO: Chair.

CHAIR WHITE: I think that's a--

Ms. Crivello, followed by Mr. Guzman.

COUNCILMEMBER CRIVELLO: Well, first of all I'd like, I don't support the amendment. And obviously we have two owners, we have the building owner and the landowner. And the intent of this resolution is to support what efforts Senator Roz Baker and House Representative Angus McKelvey plan to do with this legislation. And, what, what it

does it, it just makes changes where, whereby the legislators haven't had the opportunity to, to review.

So I would like for us to move forward, for the purpose of this resolution is to be, to support, then partnering with the advocacy group for Front Street, as well as they work with State legislation to, for them to work on this matter which is really, to me an oversight from our State, from Hawaii State.

CHAIR WHITE: Thank you.

Mr. Guzman, followed by Ms. King.

COUNCILMEMBER GUZMAN: I apologize, Chair, my computer is acting up and I'm going to borrow, Member King's laptop real quick. On the fourth WHEREAS, as in the original bill, if I can, Chair, I yield at this time, I can't get, I can't pull it up on Kelly's. So as the fourth WHEREAS, in the, in the original bill, it's, it's just stating a, you know, a basically a factual background. And so, I'm, I'm under, I'm trying to understand where Member Crivello is coming from where this--

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER KING: He's talking--

COUNCILMEMBER GUZMAN: No, no, no, no, Ms. Crivello had stated that she's in opposition to the amendment and I'm just wondering how that, how the amendment itself would dramatically affect, or substantially affect any type of legislation from the State, you know from the State body, by just changing the background information. And it's clearly, to me it's very minimal, it's, it doesn't really affect any type of rights or entitlements by, by the amendment itself.

I would say that the word "asserts", could be amended to "alleges". They are alleging a loophole because it's not been determined whether or not if, if that, if the position is we're challenging their assertion, then we should put forth that it's an allegation. And because the wording asserts means that they're asserting something that's already there, there is a loophole.

But our position should be we're challenging that they can't assert the loophole, so it's really an allegation, it's really alleging, they are alleging the use of a loophole. So I would amend the, the word "asserts" to "alleging" so that therefore, you know, it, it keeps it open for our State Legislators to accuse them of saying "look, the loophole is really, isn't really a loophole".

CHAIR WHITE: Ms. Cochran, are you--

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: --comfortable with that change.

COUNCILMEMBER COCHRAN: Yeah, I--

CHAIR WHITE: As a friendly amendment.

COUNCILMEMBER COCHRAN: --I think alleges, or asserts, I think, yeah, I, either way. I think the assert was because it's coming from their voice, they're asserting this and we want to make sure it's the entity asserting, it's not this Council asserting. And true, the change, the amendment here is not changing the intent of this entire resolution. It really changes no, the meaning and intent in any way, but for me it just clarifies that the existence of this alleged loophole is in fact the opinion of the owner themselves. So that's really what this is about. And yeah, either way, I'm okay. You want to do allege, assert--

COUNCILMEMBER CRIVELLO: Chair.

COUNCILMEMBER COCHRAN: --so long as the main--

COUNCILMEMBER KING: I think I'm next.

COUNCILMEMBER COCHRAN: Yeah, determination in the end is that the opinion is of that entity and not so much, not the County.

CHAIR WHITE: Thank you.

Ms. King, followed by Ms. Crivello.

COUNCILMEMBER KING: Thank you, Chair. Yeah, just wanted to reiterate some facts from the Committee meeting which is that there is a, there was a change in the Internal Revenue Service Tax Code, which they are trying to use as a loophole to get out of keeping this in affordable housing, in affordable rentals.

And, you know, it's come to my attention that there are some folks in the housing industry on Maui who are looking into the legality of whether they can use that, that change in the code to get out of their agreement that they have with the County. Because they have a legal agreement with the County of Maui and the State of Hawaii, I believe, to continue this contract and keep this in affordable housing.

So, I think the rewording of it makes it clear that we're not, we're not saying yeah there's a loophole there that allows them to get out of it. That they're saying that they're trying to use the loophole to remove this, this, this building from the affordable rental pool which, you know, may or may not be even legal at this point, it's my understanding.

So I'm comfortable with the amendment, I don't really care if it says asserts or alleges, but whatever the body is comfortable with is fine. It's just a, it's just kind of changing that, that statement to, to put the, the action on the owner and not have the County or this Council say that we accept that there is a loophole that gets them out of this. Because, you know, personally, I don't, I don't think we know yet if that's a legal avenue for them to use. So that's my position, I support the amendment.

CHAIR WHITE: Thank you, Ms. King.

Ms. Crivello.

COUNCILMEMBER CRIVELLO: I, I still say you, the purpose of this reso is in support for what our State Senator and State Representative intends to work with through their legislation. It's coming to support. It, it is a loophole in the IRS according to the Section 42. So, these very same people worked hard to lobby so that it became law, you know, for them to utilize. So, I don't want to make a big thing about it, but, it, it's just what we, we've worked with the State Legislators so that we could have everything in sync according to how they would like to see it move forward. And at this point, it's not, it's coming from us, the County Council and from the Committee to support their efforts to, to try and, and save this Front Street Apartments.

CHAIR WHITE: Ms. Crivello, are you aware of whether or not the, the State Attorney General has weighed in on whether or not this is a, this loophole is available to this particular developer?

COUNCILMEMBER CRIVELLO: Um, I have not heard from the State Attorney General at this point, but I do have lots of research papers that have come back. And, and--

CHAIR WHITE: The Chair's feeling is that it, it doesn't, it doesn't--

COUNCILMEMBER CRIVELLO: --it is a fact that that's what they're using--

CHAIR WHITE: Yeah, the amendment doesn't change the, the intent of the resolution.

COUNCILMEMBER CRIVELLO: I understand.

CHAIR WHITE: It simply says, and I'm not sure, I don't think any of us are sure that there, the loophole applies specifically to them. There were some questions brought up in some of the testimony. And I think it's, I think this is a reasonable approach because it's simply saying that they're saying that the loophole applies to them, when I don't think we as a Council have enough information to say yeah, it's a loophole. I don't. So, I'm, I'm comfortable with the amendment.

COUNCILMEMBER CRIVELLO: That's fine, I'm not. Thank you.

CHAIR WHITE: Okay.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, and lastly, thank you. And, as far as I know, again, not trying to change intent, so completely agree with Ms. Crivello's, you know, intent and purpose of this resolution, but trying to protect ourselves due to the fact that only the court and the IRS can make this determination, truly. And even the Attorney General cannot. So, just to keep ourselves clean and safe here, is reason. And so I am in support of course my amendment. Thank you.

CHAIR WHITE: Okay.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, curious what Corp. Counsel may have to say about this. I mean, I'm wondering if we're trying to do this because a body came before the County and got support from us, and so that's why this insertion of the correct name is being brought up now. I don't know what difference it makes. The owner of Front Street Affordable Housing Partners and the other one is, one is asserts and what is it, oh I guess it's the same, is it the same body that is, is it the correct name, I guess, that was, that came before us that we approved and gave them funding support. Does it matter?

CHAIR WHITE: Are you asking Ms. Cochran or Mr. Kushi.

COUNCILMEMBER SUGIMURA: No, Mr. Kushi.

CHAIR WHITE: Mr. Kushi.

FIRST DEPUTY CORPORATION COUNSEL: I don't understand the question, Mr. Chair. What's the question?

COUNCILMEMBER SUGIMURA: I guess I'm trying to figure out what is the importance of making this amendment.

FIRST DEPUTY CORPORATION COUNSEL: The purpose of the resolution is to urge the State to support this, this project. I'm not sure what the history of this project is, but according to the reso, apparently some waivers were granted by the County way back when that enabled the developers to get State and Federal tax credits. But again, there's the issue about the, the longevity of the affordability, so that's a State issue at this point.

COUNCILMEMBER SUGIMURA: So what difference would this amendment make based upon all the facts that we--

FIRST DEPUTY CORPORATION COUNSEL: I don't think it makes any difference.

COUNCILMEMBER CRIVELLO: Chair, if it makes a difference, so why do it?

CHAIR WHITE: I think, I think, Mr. Kushi is saying that it makes no difference with the overall intent. But, you know, each of us have to be comfortable with what the amendment is asking to do.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN:

CHAIR, I JUST WOULD LIKE TO ASK AGAIN, THE MAKER OF THE MOTION IF IT WOULD BE OKAY TO HAVE A FRIENDLY AMENDMENT TO HER MOTION TO STRIKE "ASSERTS" AND ADD THE WORD, LET'S SEE, "ALLEGES THAT", "ALLEGES THAT", SO IT WOULD THEN READ AS FOLLOWS: "WHEREAS, THE OWNER, FRONT STREET AFFORDABLE HOUSING PARTNERS, ALLEGES THAT A LOOPHOLE IN THE INTERNAL REVENUE SERVICE TAX CODE ALLOWS IT TO REMOVE FRONT STREET APARTMENTS FROM THE AFFORDABLE RENTAL MARKET."

COUNCILMEMBER COCHRAN: Yes, yeah, accepted, not a problem.

COUNCILMEMBER GUZMAN: Okay, thank you.

CHAIR WHITE: Okay, everybody heard that. Any further discussion on the motion? Seeing none, all those in favor please signify by saying "aye".

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

CHAIR WHITE: Those opposed say "no".

NOES: COUNCILMEMBER CRIVELLO.

CHAIR WHITE: Okay, we have eight "ayes"; and one "no", Ms. Crivello.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, we're back to the main motion, as amended.

CHAIR WHITE: Thank you. Any further discussion on the main motion.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I'll speak in support of the motion as amended. I, I just had to say that I find it so ironic that the entity called Front Street Affordable Housing is asking to be deleted from affordable housing, so, sorry for that comment, Members. Thank you.

COUNCILMEMBER COCHRAN: True.

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.

DEPUTY COUNTY CLERK: For the record, RESOLUTION 17-168.

COUNCILMEMBER KING: Mr. Chair, could we take a break, a quick break.

CHAIR WHITE: Yes, thank you very much. Sorry to keep to you so long.

COUNCILMEMBER KING: Thank you.

CHAIR WHITE: Please be back in your seats at 11:00. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:48 A.M., AND WAS RECONVENED AT 11:04 A.M., WITH ALL MEMBERS PRESENT.)

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

Mr. Clerk, let's proceed.

COMMITTEE REPORT  
NO. 17-179 - INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE:

Recommending the following:

1. That Bill 105 (2017), entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE " be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-316, from Councilmember Elle Cochran, be FILED.

DEPUTY COUNTY CLERK: Mr. Chair, also before the body are County Communication 17-472 and 17-473.

NO. 17-472 - ELLE COCHRAN, CHAIR, INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE,  
(dated November 20, 2017)

Transmitting a proposed amendment to the bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE", attached to Committee Report No. 17-179.

NO. 17-473 - RICHELLE M. THOMSON, DEPUTY CORPORATION COUNSEL,  
(dated November 22, 2017)

Relating to "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE".

CHAIR WHITE: Thank you, Mr. Clerk.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR, I MOVE TO ADOPT THE RECOMMENDATIONS IN COMMITTEE REPORT 17-179.

COUNCILMEMBER GUZMAN:

SECOND, CHAIR.

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

COUNCILMEMBER COCHRAN: Thank you.

CHAIR WHITE: Go ahead, Ms. Cochran.

COUNCILMEMBER COCHRAN: And thank you.

AND CHAIR, I'LL BE NEEDING, I MOVE TO AMEND THIS PROPOSED BILL ATTACHED TO COMMITTEE REPORT BY

STRIKING ALL REFERENCES TO CHAPTER 20.40, AND SECTIONS 20.4, HANG ON, CHAPTER 20.40, AND SECTIONS 20.40.010 THROUGH 080, AND INSERTING IN THEIR PLACE 20.50, AND SECTIONS 20.50.010 THROUGH 080, RESPECTIVELY.

COUNCILMEMBER KING: Chair, do we have a copy of that amendment?

CHAIR WHITE: Yeah, my understanding is that we're, Ms. Cochran is proposing is that the, the bill contains reference to Chapter 40, Section 40, and it should be 50, because I believe the sand mining bill is occupying 40. So it's really just, it's just a housekeeping correction to make it consistent.

COUNCILMEMBER COCHRAN: Yes.

CHAIR WHITE: Any further? Is that correct?

COUNCILMEMBER COCHRAN: That's correct, Chair. Thank you very much.

CHAIR WHITE: Any further discussion?

COUNCILMEMBER COCHRAN: Oh wait.

COUNCILMEMBER CRIVELLO: I have Chair.

COUNCILMEMBER KING: We don't have a motion.

COUNCILMEMBER COCHRAN: Is there a second, a second.

COUNCILMEMBER KING:

SECOND.

COUNCILMEMBER COCHRAN: Wait, I made a motion and then was waiting for a second.

COUNCILMEMBER KING:

SECOND THE MOTION. OKAY, SO THERE'S A MOTION AND I'LL SECOND IT.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR WHITE: Okay.

COUNCILMEMBER COCHRAN: Okay, and then, I'll discuss and reiterate. So Chair, the amendments are to correct that the chapter and section numbering are necessary because IEM Committee was in the process of working on this proposed bill. And it has been, we've been working on the proposed bill to establish a moratorium on sand mining, and that bill establishes a new Chapter 20.40, Maui County Code. Correcting the chapter and section numbering would resolve this confusion and would otherwise result from inadvertently establishing two chapters numbered 20.40. So yeah, it's a housekeeping item. Thank you, Chair.

CHAIR WHITE: Okay, Members, any further discussion?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. You know, I, I do support the purpose of, the intent of this bill. I, I have a question regards to how we as a Council are doing our work in, in being legally--

COUNCILMEMBER GUZMAN: Speak to the amendment please.

COUNCILMEMBER CRIVELLO: Oh, you're on the amendment, okay, sorry.

CHAIR WHITE: No problem. Any further discussion on the amendment.

COUNCILMEMBER SUGIMURA: Can you read it, what, can she repeat what she wants to do.

COUNCILMEMBER COCHRAN: Yeah, basically changing all the numbers 40, so my motion is to amend this proposed bill attached to Committee Report by striking all references to Chapter 20.40 and Sections 20.40.010 through 080, and inserting in their place 20.50, and Section 20.50.010 through 080.

CHAIR WHITE: Okay, 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".

Back to Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you.

AND SO CHAIR, TO BE CONSISTENT WITH COUNTY COMMUNICATION 17-472, I MOVE TO AMEND THE PROPOSED BILL BY DELETING THE LETTER "A" FROM PROPOSED SECTION 20.50.060, AND THE ENTIRE SUBSECTION (B), SO THAT SECTION READS: "VIOLATIONS OF THIS CHAPTER SHALL BE SUBJECT TO THE CIVIL PENALTIES AND ENFORCEMENT PROCEDURES IN SECTION 19.530.030 OF THIS CODE".

CHAIR WHITE: Does everybody have that?

DEPUTY COUNTY CLERK: Mr. Chair, that, that proposal is attached to County Communication 17-472.

COUNCILMEMBER KING:

SECOND THE MOTION.

COUNCILMEMBER COCHRAN: Thank you. Yeah, we pulled these, I think you, in your opening comments.

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

Ms. Cochran, go ahead.

COUNCILMEMBER COCHRAN: Yeah, I think it was mentioned to bring these two items together so we can cross reference and work together on them. So hopefully everyone has that, 17.402 [sic].

So this amendment clarifies that no special fund will be created for purposes of receiving fines under this chapter. Instead, by removing Subsection (B), fines collected pursuant to this chapter shall be deposited into the General Fund is the reasoning.

COUNCILMEMBER KING: So, Chair, can I just clarify.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: So basically, we don't have an "A" or "B", we just have one, we have two statements underneath that section. So it would say "Violations of this chapter shall be subject to the civil penalties and enforcement procedures in section 19.530.030 of this code. Fines collected pursuant to this chapter shall be deposited into the General Fund." So it's one, okay.

COUNCILMEMBER COCHRAN: Yes.

COUNCILMEMBER KING: Got it, thank you.

CHAIR WHITE: Any further questions or discussion on this amendment? Seeing none. Oh, I'm sorry.

Mr. Hokama.

COUNCILMEMBER HOKAMA: I, I understand what Ms. Cochran is trying to do. I'm just trying get it clear. This is a Chapter 20 proposal, and we're going to use the zoning chapter for the fines and penalties provision. Is that a good understanding?

CHAIR WHITE: That's, I believe the connection. I think that does bring up a question of whether or not there is a fine and penalty section in, in Chapter 20.

COUNCILMEMBER HOKAMA: Okay, okay. Thank you, thank you for that, Chairman.

My only other concern Chairman, again, I am supporting where we're going to go and now, my only reservation is in Section 1, in the last paragraph, we state that we have, we find and declare. I don't think we've reached that point yet. I don't have a problem that says the Council supports efforts to preserve the health, safety, welfare and all of those things, but I don't have enough documentation and verification to say that we have found this to be the factual information as we've been hearing from both sides on the issue, Chairman. So, that's, that's just my concern. But again, as I state, I am in support of the direction we're going to go and with this proposal at, the motion at this time. Thank you.

CHAIR WHITE: Thank you. Corp. Counsel is there a penalty section in Chapter 20 that would be, or is it more appropriate to use 19?

FIRST DEPUTY CORPORATION COUNSEL: Mr. Chair, I haven't looked at Chapter 20 in a while but, this is a new chapter under Title 20, but again, Title 19 specifically the reference to 19.530 of the Maui County Code, also enforces violations of various chapters 12, 14, 18, 19, and 20. So that's where the enforcement vehicle comes into play in terms of civil administrative fines.

CHAIR WHITE: Okay, thank you. So that is the appropriate place. Okay, any further discussion on this amendment? 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".

Back to Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. This proposed bill has received overwhelming support from the public and from Members of your IEM Committee. And, I recognize that Corporation Counsel has concerns about the proposed bill, but the fact remains that the scientific evidence supporting this ban is also overwhelming. Not one study was presented to this Committee that would undermine the science that Dr. Downs and Dr. DiNardo presented to your IEM Committee.

HRS Section 46-1.5(13) provides that counties have the authority to enact regulations to protect the health and the safety of persons and property. And I firmly believe that this proposed bill is an example of this exercise and this authority that we have as, as the County.

Corporation Counsel has concerns about possible preemption of this proposed bill by State and Federal law. But I have consulted with my own counsel who staunchly disagrees. As mentioned by a testifier in 2006, the Hawaii Supreme Court decision in Kelly v. 1250 Oceanside Partners supports not only our authority, but our obligation to

conserve and protect the State's natural resources, that's in quotes, in a case that expressly deals with water pollution.

I have also consulted with outside counsel that believes that Corporation Counsel's use of the Commerce Clause in this situation is a misinterpretation: 1) This bill is not protectionist or discriminatory; 2) The IEM Committee determined that the benefits of the County's interest are outweighed by the alleged burden on interstate commerce.

Your Committee made a policy decision that the science is clear enough that we don't need to ask any, we don't need to seek any less restrictive alternatives. So your Committee recommended passage of this bill at first reading and filing of the County Communication. And I at this time really, really, respectfully ask for this, my fellow Members' support of my motion as amended.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Thank you, Ms. Cochran.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I too am in support of the, the intent of the measure. I think that what we've heard so far and I think everyone of us agree on the floor that our coral reefs are our life. It's our bread and butter for the visitor industry. It also provides our cultural, native Hawaiian rights in gathering as well as making sure that our, our future generation has an ocean that is clean, and fish available that are safe and, and viable for our subsistence and, and our future endeavors and, and the harmony that it, it brings among the island.

However, my, and there's always a however, because everybody knows on the Council floor that I, I'm really particular about how wording and legislation is passed out because of my experience as the Chair of the litigation of the County. And, and just bringing forth, and for example, of course the moratorium bill it was said that I took a lot of time in trying to put forth some amendments and even proposing two other bills to support the sand mining. But, but all of that was in, intentional to make sure that we as a County have defensible, defensible components so if ever we're challenged, we're ready to be able to defend ourselves.

Such is the case with the styrene bill. Of course, we took longer period of time to get that through, but we did it the right way. We, we, actually it was under your, your guise, Chair, that you presented a presentation showing both sides of the issue, which is completely proper in that matter, where you had one side the scientific opposition in, in favor, we had a panel. And it was up to the Council, as our own discretionary voting

powers to determine what in fact that, what, what we as the Council could rely on for a, for a challenge under a Commerce Clause. So I feel very confident for any challenges that comes before us on either one of those bills that, that, that would come forth.

And, because of that confidence, it's, it's even more so relied on because of the signature of the Corporation Counsel. That signature that approves each bill that we pass out of here is so crucial and, and I don't know if the general public realizes this, but because of that signature of the Corporation Counsel as to form and legality, it basically says that, yeah, anybody can sue us, but we are going to put out notice to the rest of the world, that we have a defense and we, we are willing to go to bat for this, this ordinance.

Inclusively in that, when we get sued, a lot of times we use our self-insurance for settlements. Now, because, if we pass out a bill that doesn't have our Corporation Counsel's signature on it, that may jeopardize our ability to use moneys in our self-insurance to cover the costs for settlements. So that's why I'm so particular in making sure that bills that get passed out are signed off by Corporation Counsel, who are the attorneys that defend the County, not special counsels or other, other attorneys out there giving opinions, because they don't defend the County. Corporation Counsel is the attorneys for the Council, for the entire County and in order for us to have a defense for anything that may come up, we've got to show to the general public and to the world that that signature means something. That signature says look, we're ready to defend, go for it.

But this bill in particular, I'm so worried about because it doesn't have the signature of Corporation Counsel. And in all my five years of being in office, I have never passed out a bill that doesn't have a Corporation Counsel's signature because I know what it means. It means it leaves us up to jeopardy and, and liability in a way that no one can fathom, because therefore, we are not going to be able, possibly not be able to use our self-insurance to, to, to pay out the settlements if we lose. That means the moneys, if we were to settle, goes, comes out of our General Fund. Which means look, this, this, this case, or whatever case may come before us, if we don't have self-insurance and the ability to pay off from a different fund, the General Fund is now jeopardized.

That means non-profits get cuts, that means less infrastructure, that, that means less positions, and our TAT taxes as well is, is being cut from us under. So where do we find the money at that point? Out of the General Fund, out of the General Fund. So, I know that every time we settle a case, the general public, the public doesn't know how much we settle these cases for. If they actually knew how much we settle them for, maybe they would realize that that signature on the, on the ordinances mean something.

And so let me, let me reiterate, I mean, I'm not violating anything if I, if I talk in, in the totality of settlements, not specific settlements. But in the last three years, we have spent in settlements \$7,962,853.86. I can give you the last ten years, which is approximately, estimated about 20 million. So we, we are spending, a huge amount on litigation.

So that's why it's so important for me to make sure that we do the ordinances correctly. I'm in support of this ordinance, but I think, not think, I believe that we need to make sure that all the "i's" are dotted, and the "t's" are crossed. Just like what we did in the styrene bill, we had the presentation on the full Council and, and, and we, we heard testimony, we heard the evidence on both sides, we made sure that Corporation Counsel signed off.

But this bill again, doesn't have a lot of the components that the styrene bill had. Meaning that the foundation wasn't set in place properly and the, and the nexus of being able to exactly determine the narrow scope of what this ordinance is supposed to regulate. We need to go back and make sure that's placed in the record. So it's not a matter of us passing it right now that, that, that's going to affect us, because anybody can sue us any time, even when we do all the presentations up and down the world.

But I'm talking about giving, giving our attorneys, giving our County a chance to build the foundation for a defense. And I personally don't think that we've done that in this case. We, we have to take our time with it and build it the right way or we're going to look at another GMO bill that goes all the way up to, to the Federal level and a lot of money will be spent.

Money, like I said, money that may come out of our General Fund. Because if we move forward without a signature, that's General Fund money that we will be using, that we will be spending millions of dollars that we cannot compensate, we can't, we won't be able to earn, or at least use for things that we need to be using those moneys for.

Those moneys will be spent to special counsel cause we don't, we are not equipped to defend product liability cases. Our, our attorneys in the County are not equipped to defend product liability cases like this. So we will be hiring special counsel. So we will at least spend at least a million dollars, all that money goes to special counsel, none of it will be a return. It's almost like let's take half of that money, 500,000 use it for education. At least we get a return on it, you know at that bare minimum.

But as it sees fit I'm, again I'm in support of this bill, I'm in support of making sure our coral reefs live long and prosper, and I think people can adapt. You know, I think

everybody can adapt and make that sacrifice for the coral reefs and change up their screen, the way that they use their sunscreens. I think that's easy. It's something that we all owe a duty to for our environment.

But the way it's, I, I hold two hats here, I have to also contend with what does this mean to us if Corporation Counsel doesn't sign off. It means big, big, big, big money that I don't think we are equipped to handle at this point, so it's something that we always have to discuss. I mean this bill can be proposed, but if passed today, but I would feel more comfortable if we take the time to really present the evidence, build the right foundation, and move forward with it just like we do with the styrene bill. So that's all I have to say, Chair. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman. Any further discussion?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Chair, thank you. I want to thank my colleague Mr. Guzman because there is no doubt that this bill is to one of the avenues to protect our reefs and our, our ocean and our marine life. But, when I came across what our Corp. Counsel sent, and there's no signature from our Corporation Counsel, I think Mr. Guzman made it clear for me what we need to do as far as being fiduciary, our fiduciary responsibility.

So, I want to hear from Corp. Counsel, how does this hold with no necessary approval from Corporation Counsel. And, you know, and also too, I'd like to know how do we enforce the application of this bill when it becomes usage and everything else. But, more important I have to segway off what Councilmember Guzman just eloquently expressed from the legal ramification if there are any. But I will respect his opinion. So, how can we make this effective and be of value for us to, you know, implement such a, such a bill, if Corp. Counsel could answer.

CHAIR WHITE: Mr. Kushi.

FIRST DEPUTY CORPORATION COUNSEL: Mr. Chair, I believe our position, our office's position is stated extensively in the memo dated November 22, 2017 from Deputy Corp. Counsel Richelle Thomson to Elle Cochran as well as yourself, Mr. Chair. It's about 11 pages, I believe all of you have a copy of it. If you want to get into it, I have Ms. Thomson here. But, these are the reasons why our office feels that this, this bill should not be enacted, and this is why our office will not sign off on this bill at this time.

CHAIR WHITE: Okay, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Also for Corporation Counsel. Did Corporation Counsel when reviewing this and reviewing the bill and the things that you had, you had concerns with, reasons you couldn't sign off on it. But was any consideration given to changing the language anyway, while still meeting the intent and effectiveness of the bill that would make it acceptable to you. Any changes could be made inside here, again.

CHAIR WHITE: Without objection we'll have Deputy Corp. Counsel Thomson join us.

MEMBERS VOICED NO OBJECTION.

DEPUTY CORPORATION COUNSEL RICHELLE THOMSON: Thank you, Chair. And thank you for that question. We did look at whether there were other versions of the bill that might meet the intent, the intent being to preserve and protect the coral reefs with the understanding that we're getting into State jurisdiction. So, from the high wash of the waves, seaward that's State jurisdiction.

There are two ways in, I did respond to Councilmember Cochran's question, same question by email last week. You could fund education as Councilmember Guzman recommended, which may be a better way of achieving the actual goals. That's not regulatory, that would be basically a, a County funded effort. So, that's one possibility.

Another possibility and this I don't think is quite as effective, but with the aquarium reef fishing organizations, we require that they register those businesses. And under HRS it's 46-1.5 and I, I don't recall the exact section right now, we as a County are allowed to regulate certain business. So that's how we achieve the goal of regulating aquarium reef commercial enterprises so that we could track them and monitor them, and basically kind of clamp down on that industry through registration.

You know to register all of the companies that sell sunscreens here on Maui, I don't know that that would really achieve the goals of decreasing usage on people to go into the water. So, I think education is probably the best route, and that's definitely within the County's real house to be able to do that without being exposed to legal liability.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Carroll, are you. Your mikes off.

VICE-CHAIR CARROLL: I will defer to Mr. Guzman. Thank you.

CHAIR WHITE: Mr. Guzman, followed by Ms. King.

COUNCILMEMBER GUZMAN: Thank you, thank you, Chair.

I, most of that, what you have stated so far sounds like policy decisions. And I, I, and I'm a firm believer in what, I want to echo Mr. Hokama, that we, you know, every time it's our, it's our call for policy decisions. But what my main concern is, how do we prompt you or, so many very common question, I mean very, very simple question, how do I get your signature on this bill. How do I get form and legality signed off by Corporation Counsel? That's all I want to know. I mean all this other stuff can be policy decisions, but what does it take for your office to feel comfortable enough to, to say that whatever lawsuits that are coming, that signature says it's defensible. We have a defense, so bring it.

CHAIR WHITE: Ms. Thomson.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you, Chair. And, and that's, that's a good question. At the end of the day, the Council doesn't need our signature on proposed ordinances to be able to pass them. What, how I, how I look at my job is that I provide you as much information as I can, and if a bill is defensible, we feel that it is defensible, such as the sand mining moratorium, yes there are still problems with it, yes there are potential areas of a legal challenge, but do we feel that it is, at the end of the day defensible, you know, then we would sign off on it.

With this current sunscreen bill, in my opinion, the exposure is too great to be legally defensible at this time. And when you're looking at banning the use of a certain product, and you're looking at banning it island-wide, you know not only say it, locations adjacent to the beach, you know, that's problematic. When you're looking at also banning the sale island-wide no matter where the people are going to be using the product, that's problematic both from a Commerce Clause basis and because it's a, you have to look at what's the least burdensome way of achieving the goals when you're affecting Interstate Commerce. And that to me is fairly burdensome, I don't think we would, a court would look at that and say you're using the least burdensome way to achieve this goal.

Those are some of the issues. The other, I think probably primary though is State preemption, so the State has jurisdiction over the nearshore waters and aquatic life. And you know, really the State needs to be stepping in if, if this is a sound scientific basis for enacting certain laws, this is the State territory. And, my understanding is that half a dozen bills on sunscreen went through the State Legislature just this earlier

2017 Session. Ultimately none passed, but that to me is the place where this type of legislation needs to come from is on the State level.

COUNCILMEMBER GUZMAN: Chair, you know, I, I completely agree with Ms. Thomson that if, of course this body can pass legislation without signature of the Corporation Counsel. But, I am so very fearful, and I have never voted yes on a, on a bill that doesn't have it. Because basically without that signature, it's an invitation. It's an invitation saying look, any plaintiff's attorneys out there, we are, we are passing out a bill without the confidence of our Corporation Counsel, so go ahead, fire away. That's my biggest concern. If we can find a way somehow to, to at least give Corporation Counsel the ability to say it's defensible, then I think that that's the prudent thing to do. And, and whatever it may take to, to make that happen, we've got to make that effort.

If it means narrowing or narrowly or strictly confining the areas to make it a better bill to, for challenge like only on our beaches, the use of therefore, then now, now we're narrowing the area. So that, that could be a possibility. And then, going back and building, rebuilding a foundation wherein we bring in all the, I guess scientific evidence, and, on both sides. Because if you go back in the record, in the Committee level, it appears as though the other side, which is the proponents of the oxybenzone production thereof, it was, it was void of their, I guess testimony or their presentations.

So you have a bill coming out of Committee that has only one-sided presentation on it. So, you, you, you can be attacked on the foundation and whether or not the, the Council as a whole has determined that the science is good or bad. And that's up to the Council, cause we did that in the styrene bill, both sides and we made a determination which science we wanted to follow. But I think there was lacking of that as well as trying to put, that would, that would help in building our foundation for a Commerce Clause attack or challenge.

But reworking the language maybe we can narrow the areas to at least give Corporation Counsel that ability to defend. Otherwise we're going to have to as policy-decisionmakers try to do a balancing to determine that oh, we are going to be sued. There's no doubt in my mind, we are. You don't get attorneys testifying that are already retained by the other side. And, my information is that they're, they've already got the complaint ready to file. So, this, these are multi-conglomerate companies that we're dealing with, Neutrogena, Banana Boat. You expect these guys to sit back and let, let this thing slide. They are going to come after us with everything they got.

So, my concern is making sure that Corporation Counsel signs off so at least we are not jeopardy, we can at least use some of our self-insurance money if we do have to settle out. I just want to protect our General Fund, the General Fund that we use for our non-profits, our roads, and infrastructures. You know, in the past we've been able

to handle paying off our settlements, but I'm saying, like I said, almost 30 million in the last 15 years to 10 years.

So let's, let's really get a hold, and understand what we're doing here. So my intent is trying to make sure that this bill is defensible. And if the Corporation Counsel can work with us at whatever level, bring it back to Committee or do what we did with the, the styrene bill under your, your leadership, then I, I think it, it gives us an opportunity to really make sure that this bill is done properly.

CHAIR WHITE: Thank you, Mr. Guzman.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. So I, I still haven't heard specific, I mean I've heard that the State jurisdiction is to the high-water mark and yet this body previous to my time on it passed a bill banning tobacco on all of our beaches, so clearly we have jurisdiction to pass protections for our island.

I've heard some, something being bandied about the Commerce Clause, and I will tell you, I've dealt with the Commerce Clause for six years when I was at, trying to get a bill passed through the State Legislature and I understand that the Commerce Clause has to do with creating a barrier to outside businesses. We're not doing that here. We're not saying that other businesses cannot send in reef safe substitutes of sunscreens. We're not, we're not, you know, from what I know of the State Commerce Clause, we're not flying in the face of the State Commerce Clause because we aren't, we aren't saying that there has to be just local sunscreens that you use.

So I'm, you know, I'm still, I still don't know exactly what the, what the pushback is, but I have heard from sources within the Administration that there is a State Deputy Attorney General who's looked at this bill and said that it's a sound bill. I've seen some other information from other attorneys. I do think there's urgency to this bill since we're putting in, you know, like a 55-gallon drum of this poison into our oceans every day. And I know that we are backed up by our State DLNR because they are handing out this flier every day at `Ahihi-Kina`u, trying to, trying to educate people about this, the toxicity.

But I personally don't feel that education is working because we're still having highly lethal, toxic levels of this, these poisons in our oceans. And, you know, we can continue to go and do education, but why are we educating people about something that we know is bad if we're unwilling to take action about it. You know, if we know it's this bad, why are we just standing around telling people to stop doing it.

We didn't do that with tobacco, we got in there, we said no, stop smoking in our public places, stop smoking on our beaches. So, I, I'm just, I'm still not satisfied that there's a reason for all this fear other than big corporations coming in and threatening lawsuits. They did that in California, and California State Legislature still passed Proposition 65, which makes all businesses that have these carcinogenic chemicals register and, and just personally I'm not prepared to give into that fear.

And I understand the concern about Corp. Counsel signing off on it, but I've met with lawyers and I've met with environmental lawyers and I believe that the information about our duty to protect the public good and the public resources outweighs my fear of what the chemical attorneys might do.

CHAIR WHITE: Ms. Thomson, if you'd like to respond.

DEPUTY CORPORATION COUNSEL THOMSON: Sure, thank you. So, as to banning smoking within the County beach parks, we're specifically authorized by HRS, it's 328J, Chapter 328J, to regulate smoking, so I can just read that, just a short, short section here.

328J, it's a Chapter called Smoking. 328J-15 "Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter."

And then it goes on "Nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter."

So, as to preemption, there is no preemption, we have specific authorization in the, in State law to be able to enact smoking laws that may be more restrictive than the State law is. We also did, my understanding is that we did the smoking, the smoking ban based on our authority to regulate rubbish and garbage, so we have clear statutory authority to regulate both under rubbish, which is under 46-1.5 and then under this other chapter of HRS. So that's, that's where the, the legal basis for regulating smoking comes in.

With the Commerce Clause, so one, one of the issues you look at is are you discriminating against businesses that are from outside of your State in favor of businesses that are within your State. So you're setting up a, an unequal playing field between an enterprise. We're not doing that here, I agree, we're, you know, regulating all sunscreens, evenly. So that's just the first step that you take.

The next step, you identify the public purpose that you're trying to achieve, which we've identified harm to coral in the nearshore waters. So you do have a public purpose.

The next step is, is this regulation the least burdensome means of achieving that public purpose. So when you're looking at Commerce Clause, you look at, you know, public, are you leveling the playing field or unleveling it. What is your public purpose and then is this the least burdensome means to achieving that public purpose.

Commerce Clause is one set of analysis. Preemption is another and I think potentially our, our exposure under preemption is probably, you know, equally or greater than Commerce Clause, but I'd see both of those challenges being brought.

COUNCILMEMBER KING: Okay, so, I have a letter from an attorney that says IEM-45 is not preempted by State authority because neither DLNR nor DOH have the authority to regulate the sale of consumer products. So, if that's true and they don't have that authority, who does have the authority to do that?

CHAIR WHITE: Go ahead, Ms. Thomson.

DEPUTY CORPORATION COUNSEL THOMSON: So there, I don't have the chapter offhand, but prescriptions are regulated under a different State chapter. So DLNR may not have the ability to regulate things that would be allowed by FDA, you know where other bodies that regulate certain chemicals. It may be a different branch. I don't know who the attorney is who's giving that advice to you. I, you know, I know that this body obviously can vote to hire special counsel.

What I'm suggesting in my memo though is that our office has looked at this issue and at this time we feel the exposure is too great. That is your call to make at the end of the day though. Right, this is, you know, these are your dice to roll as, as my boss has said.

COUNCILMEMBER KING: Thank you.

COUNCILMEMBER GUZMAN: Chair, can I just--

CHAIR WHITE: Wait, I just want to remind you Mr. Guzman, you've had a couple of, couple of whacks so, let some of the rest of us ask our questions.

Ms. Thomson are you aware of the, Kelly v. 1250 Oceanside Partners case and whether, to me it seems to apply to this, but I don't know the details of it.

DEPUTY CORPORATION COUNSEL THOMSON: I am generally aware of that case. If my memory is correct, it's an, a runoff case so grading or other types of land pollution running off into the ocean and harming the reef by smothering the reef. We have authority to regulate activity on land that impacts the nearshore waters through the

Coastal Zone Management Act. So that is through SMA permits. And yes, we do have an affirmative duty to regulate uses, or to try to prevent harm to nearshore waters through that statute. But Coastal Zone Management Act deals with development and with land use such as, you know, kind of your typical grading, construction type of land use, not regulating people putting on sunscreen and going into the water.

Where I would see that type of pollution coming in generally is through, the Department of Health regulates water pollution under a couple of different statutes and then also DLNR through their regulation and control of our aquatic life and the nearshore waters and the beach territories.

CHAIR WHITE: It was my understanding, similar to Ms. Cochran's that this, that that issue, that that case, basically said that both the County's and the State have the responsibility to, to take care of our resources. And, I would appreciate it if you would take a look at that case and see specifically what, what the claim by the County was versus the claim by the State. How much of your determination not to sign off on it was based on the, the level of scientific information.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you, Chair. I, I also felt that the, although we did have the two consultants come to speak to the IEM Committee, and you know, and I looked, I looked to try to find other sources of information that were reliable. Like I said there are no other statutes of, of this type that I was able to find in any State in the U.S. I was able to find a reference to two, they are national, basically national marine preserves in Mexico, in the Cancun area, I wasn't able to find those regulations to read them.

So I don't know if it's guidance, you know, if it's, rises to the level of law or if it's a policy decision, where they are requesting that people do not wear sunscreens, not only just oxybenzone and the other chemical, but basically all non-biodegradable sunscreens. They don't want you to use anything when you're going into these certain areas because they are very fragile.

I thought that, so what we're doing with the science is establishing a public purpose behind our ordinance. If we are facing a challenge, we're only as good as our record is. So if we don't have a sufficient record, we're left with basically no, nothing to defend it with. You know, or if, or if the science is not peer reviewed or peer validated, you know, and you can get non-involves other scientist to say yes this is valid research and we do support these findings. So that was definitely one of my concerns too.

I think that a stronger record would give us a better defense.

CHAIR WHITE: Okay, what, who would you need to have us hear from to make it comfortable?

DEPUTY CORPORATION COUNSEL THOMSON: I know when I was weeding through the State, the State legislative process and some of the testimony, and there was testimony provided by the University of Hawaii, I think it's Ocean and Earth Scientists, Science Division. I can get the name of that, of the person who provided that testimony, but I think that we have a lot of resources here in the State, you know that we could call on, but probably that may be where I would suggest starting.

CHAIR WHITE: Okay, thank you. Next, do you have a concern that this, our bill is burdensome if those same companies can still sell any other kind of sunscreen that does not include those two chemicals.

DEPUTY CORPORATION COUNSEL THOMSON: I think what we're, what you're suggesting Chair is because their business model doesn't include just these particular maybe sunscreens only containing these chemicals that they have other, other types of products available. I don't know that, you know, I, I think we would still face a Commerce Clause challenge and it would be both based on potentially the lack of, the lack of public purpose in a sufficiently defined fashion. So, if the science is flawed, the basis for your law is flawed.

Also least burdensome would look at, you know, right now, the ban is island-wide, so this is, you have a disconnect then if you have, if the harm you're trying to prevent is to the nearshore waters, but you're banning it island-wide. That means you're banning it for use by people who will not go into the water at all that day. So there's a disconnect there, that means that it's more burdensome than, than it probably should be.

CHAIR WHITE: Okay, then, lastly, I think I was, I am probably the one to blame for putting use in the bill. To what degree is the inclusion of use on top of for sale part of your objection.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you, Chair. Well, you know, I think at the end of the day, it's the use that you're really trying to address because that's how the chemical gets into the water. You know, the, the sale is just prohibiting the availability of the product on the island, on the islands. But the use is really, that's really the objective here it to change behavior, you know, and to, you know, it's going to be pretty hard to prevent tourists from bringing in you know, the product whether it's available for sale here on the island or not.

So from an enforcement standpoint, this is Countywide, all over the place, and you know, someone using it Upcountry before they go and they mow their yard is going to

be equally as in jeopardy of violating the law as somebody who is, you know, at the County beach park. And we don't have jurisdiction to go, for this purpose, we don't have jurisdiction to go onto the beach, onto the State property and start issuing violations.

So, you know, enforcement, I think we brought that up, I didn't go into that in great detail in that memo, but enforcement's going to be an issue too, both from a practical standpoint and then also from a legal standpoint. And then we're going to have people, you know, walking up and saying show me your sunscreen, right. So, I could, I could see people saying no, get a search warrant, this is in my bag.

CHAIR WHITE: Well, yeah, it's clearly a lot easier to enforce the sale than it is the use because I don't know of any swab that you could walk up and say, what are you using. So if, if we were to amend it to focus just on the sale of that, how, how much closer would that get us to having you sign off. I want to see this bill go, I like it the way it is. At the same time, I think, you know, we want to be as sure as we were with the polystyrene and I'll let you answer that.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you, Chair. And so, you know, just looking at it from a sales standpoint then you're, you're going to primarily look at Commerce Clause, but they would also bring a preemption challenge. They would say you do not have the authority under State law to enact ordinances like this. So, I think we would still face a preemption challenge and I still, and also a Commerce Clause challenge.

I think that because this, you're not, it's going to be difficult getting over that least burdensome criteria. So, banning it regardless of where the product is going to be used, we haven't identified any, or insufficiently identified land, so reasons, reasons that you'd want to ban the sale island-wide, if you're only preventing harm to the nearshore waters and coral, that's a disconnect also between, you know, people using it in any other place on the island. So I think you're going to have trouble getting over that least burdensome factor.

CHAIR WHITE: But if, I think all of us, and we spend a lot of time here talking about runoff and mauka to makai issues. And so I, I'm not certain that that is a case that can be easily made because if somebody gets in a stream, it's going to go to the ocean. If they're somewhere else, you know, I don't know how, I don't know how long these, these chemicals last, but if they get into the nearshore waters, that's where the problem is and they can get there in a number of different ways.

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Members--

COUNCILMEMBER KING: Chair, can I just make a comment. I, have we had anybody try to sue us for our State DLNR handing out this handout at `Ahihi-Kina`u, because there's a lot of research referred to in here and this is all backed up by peer reviewed studies. So, if we're handing this out, we're pretty sure that this is toxic to our reef, I'm assuming, it's published by the State of Hawaii, Department of Land and Natural Resources.

CHAIR WHITE: Go ahead.

DEPUTY CORPORATION COUNSEL THOMSON: Well, if the States has jurisdiction over the nearshore waters, they may have information that we don't have in our current record upon which to base that material. But they are going at it from an educational standpoint, so they're handing those fliers as a means of changing behavior.

And at the end of the day, whether you make this a law or whether you make this, you know, more of a policy decision like DLNR is apparently doing right now, you have to spend some money changing, changing behaviors. So educating the public, you know, and that kind of circles back to what Councilmember Guzman was saying is that we could spend quite a bit of money trying to defend a lawsuit, or we could spend potentially less money trying to change behavior. But it's, it's a, it's a choice that the Council as, as the, as the policymaking body would have to make where they want to, where they want to see this effort go.

COUNCILMEMBER KING: But wouldn't you agree that changing the law is going to have faster results and, and it makes it, it makes a more permanent statement about what we, I mean, to say that we don't have all this information, all this information is available to us. And those of us who have read it are very concerned.

But I just want to give you an example of, it's a very hard enforcement the smoking on beaches enforcement. And I, I had an experience last year where a man tried to light up a cigar on, on the beach close to me and I went over and asked him to put it out. He was adamant that the kind of money he was spending allows him to do whatever he wants on the beach. And I said well, he said none of your business, I said well, you know, it is my business because it's the law. And I understand I can't personally enforce it, so I got on my cellphone and as soon as he saw me dialing he put out his, his cigar. I mean, having a law is much more, is a much bigger statement than just saying you should or shouldn't do this, and by the way, we may or may not believe in this science.

So the other thing I wanted to, was to say Chair, pursuant to the argument about whether it's just the runoff, this, this flier that's being handed out on a daily basis, on one of our State preserves, one of the questions is shall we just use up the oxybenzone stuff when I'm gardening. Not a solution, says DLNR, take a shower and the oxybenzone in the sunscreen you used goes down the drain and still goes into the ocean, it's that persistent in the environment.

Use it anywhere on the island, using it anywhere on the island means that we are still poisoning the reef. In one test, twenty minutes after people applied it to their skin, it tested positive in their urine. In mammals and fish these compounds are reproductive toxicants. So, you know, I just want to go back to, you know, I feel very well supported by the State in the amount of, amount of data that's out there, by the science of, of what we're trying to do here.

And I, and personally I don't think it's just about the, the ocean preservation, you know, I think we should save people from putting toxins on themselves like we're trying to do with tobacco. You know, we're trying to save people from getting, from using a poisonous substance there. So, so anyway, that's just, that's my position on it Chair, and I hope we can move this forward today so we can, we can get this substance out sooner rather than later. I don't, I don't feel that we have months or years to continue to study it.

And I, I know it took years to get the polystyrene bill but in the end, when those, when those meeting were done and we watched, we had meetings presented to us from the scientist, and then all of the supporters were the people who had something, you know, financially to gain or some business to, to support by opposing that bill.

So, you know, I'm, I'm satisfied where we're at but you know, personally it's because I've done a lot of research myself on this issue. And I've followed the previous attempts at the State level to pass this and I was very disappointed that they didn't get further and, and actually do the science themselves or the presentations. But I haven't heard from any of our State Legislators, personally I don't think this body heard from any of them in Committee, that they found anything illegal about the bill that we're trying to pass. Thank you.

CHAIR WHITE: Yeah, I think, thinking back to the polystyrene, we were banning the sale in the stores, but the majority of the scientific information that made me want to take action had to do with the ocean. So we're, we're dealing with virtually the same kind of thing and same, same impact, or not exactly the same, but very similar.

So, we're going to take our lunch break.

COUNCILMEMBER COCHRAN: Chair, Chair, Chair, sorry, Chair. Before we do, if I can ask I have one really question.

CHAIR WHITE: I would, I would rather, I would rather we be fresh when--

COUNCILMEMBER COCHRAN: Cause it--

CHAIR WHITE: --when you get the answer.

COUNCILMEMBER COCHRAN: Well, I think it's something everybody, okay.

CHAIR WHITE: No, no, but I'm not, I'm not, I don't want to--

COUNCILMEMBER COCHRAN: It's about our Corporation Counsel--

CHAIR WHITE: --I would rather, I would rather look at--

COUNCILMEMBER COCHRAN: --and a conflict.

CHAIR WHITE: I would rather we discuss that after lunch when we're all fresh and, and the response is going to be fresher. We're in recess until 1:30.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:05 P.M., AND WAS RECONVENED AT 1:33 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting shall please come back to order. Members, we are still dealing with the Committee Report 17-179 regarding the banning the sale and use of SPF sunscreens containing oxybenzone and octinoxate.

And Ms. Cochran has the floor.

COUNCILMEMBER COCHRAN: Thank you, Chair. So, I guess, what's very distressing to me all along throughout the entire battle with this legislation, it's been stated often that no, we don't need signature from Corporation Counsel, so I see that. But the other thing is we have mounds and mounds of reports, and outside counsel information and lots of case law and details on the Commerce Clause, and I mean the list goes on and on that my office and I think some others have, are very privy to and have inquired and received, and researched and gotten.

Yet, this Corporation Counsel has failed to do this type of due diligence work for us on our behalf. And it just is, it's again really distressing and it bothers me because it seems to be that point for point, the opposing defense in direct relation to this item

seems to be the same exact information and defense our Corporation Counsel is giving us.

CHAIR WHITE: Ms. Cochran, address your remarks to me please.

COUNCILMEMBER COCHRAN: And so I'm just, I'm feeling, and I'm seeing that this Corporation Counsel has not worked in, in the benefit of us to this County, to this body, to everything this legislation is trying to better and protect. So I have a lot again, a lot of information, a lot of supportive documentation, scientific documentation, too. But also to defend what this is written to do, the purpose and intent about the Commerce Clause issues, about is it our jurisdiction issues, about, I mean the list goes on and on.

So I'm just, it's, it's, I don't even know really where to begin, but there's a definite conflict as far as I can see that the counsel that's been retained to, to oppose this legislation, which is Margery Bronster, she was here and testified, her, I see word for word matching of what this Corporation Counsel has put forward to us. So, I, I'm like wondering what is the relationship here, cause there really seems to be one, with our Corporation Counsel and the defense. I, I can't figure any other reason.

CHAIR WHITE: Yeah, Ms. Cochran, I understand your point, but I think it needs to be pointed out that the document was transmitted to Council and posted on the agenda for this meeting. So, Ms. Bronster had equal access to, to the work. So I, I don't know, for the most part attorneys are very, very clear about their lines of, of avoiding conflicts and, and I'm sure that in our case Corp. Counsel has, has done a lot of that as well. But your point is well taken.

COUNCILMEMBER COCHRAN: So, Chair, is there a mechanism or is there a question that can be posed if there is something this Corporation Counsel needs to disclose. Is, is that a rightful or a, a--

CHAIR WHITE: We'll ask Mr. Kushi.

COUNCILMEMBER COCHRAN: --question.

FIRST DEPUTY CORPORATION COUNSEL: Disclose what?

COUNCILMEMBER COCHRAN: If there is a relationship of sorts.

FIRST DEPUTY CORPORATION COUNSEL: Are you saying--

COUNCILMEMBER COCHRAN: A connection--

FIRST DEPUTY CORPORATION COUNSEL: Member Cochran, are you saying that our office is in, has consulted Margery Bronster?

COUNCILMEMBER COCHRAN: I'm asking the question, is that, is that the relationship? I don't know.

CORPORATION COUNSEL PATRICK WONG: First of all Chair, if I may.

CHAIR WHITE: Please proceed.

CORPORATION COUNSEL: Let me apologize for not being here earlier, I was in another meeting. So, to be clear, Ms. Bronster has not in this matter whatsoever consulted with our department, has had no communication with our department, and has not at all framed any of her legal opinions based on our department. Can I be more clear than that.

COUNCILMEMBER COCHRAN: I don't know, can you. Okay, and so it's not, I kind of, my question was more directly to Ms. Thomson who is the assigned Corporation Counsel to this item, was primarily the question.

CHAIR WHITE: Ms. Thomson.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you, Chair. I know of Ms. Bronster. I have never met her and I have never spoken with her, and none of my work is based on any of her prior work, nor has she ever reached out to me in any kind of capacity.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: Nor would that be appropriate.

COUNCILMEMBER COCHRAN: Sorry.

CHAIR WHITE: Mr. Wong.

CORPORATION COUNSEL: Ms. Bronster did reach out to my office, but she did not receive a phone call, or any time, or any communication from my office. I just became aware she placed a call. She did not receive a return call from me or anyone else in my department, and there was no information given to her from my department and we received no information from her. If you have anything that says otherwise, I'd like to see it.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So my, I guess my question, it was, I was real curious as to how this County Communication was brought forward. I mean the way it was presented onto this agenda, it's typically put into the item, with the Committee as, you know, a memo and additional information. But the way it was sent in already had some curious, I don't know, it was just very odd to me.

CORPORATION COUNSEL: What's your question.

COUNCILMEMBER COCHRAN: The way that it was presented. Things that typically are discussed in executive session, and things of that nature.

CORPORATION COUNSEL: I thought, excuse me if I may. I thought you'd want all of this vetted in open. I thought you would want, and the general public, would want to know our position on whether or not the bill is legal or not. It's in response to a query from you and it was sent back to you and to the Committee.

COUNCILMEMBER COCHRAN: And--

CORPORATION COUNSEL: So you would prefer to have this discussion in executive session so that the general public cannot be made aware of what the concerns are.

COUNCILMEMBER COCHRAN: Chair. No--

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: --no, no, and I appreciate everything being in the open, just as I would have appreciated with sand mining. But, what this is doing as far as I can see, is it laid out every single bullet pointed opposition, or a way for litigation to occur, point by point, very open and blatantly set out from the whole IEM item, in its own document of twenty some odd pages for the whole world to see and the whole opposition to see. That's what's odd about it.

Because if I correlate it to how we've been working through the sand mining bill, all that stuff is stopped and roadblocked into executive session for further detail, and this one has been put out for the entire world to see, especially the opposition. And point by point, what could be litigated and all the concerns, and I mean it was just laid out like a Christmas gift. So that is what is very distressing to me.

CORPORATION COUNSEL: Chair, if I may.

CHAIR WHITE: Please proceed.

CORPORATION COUNSEL: Committee Report 17-197, 179 page three:

"The Deputy Corporation Counsel stated she had concerns about the revised proposed bill, including the legal impacts of the ban and other legal issues. She suggested an executive session so she could express those concerns to your Committee. Your Committee chose not to go into executive session."

That's your report.

COUNCILMEMBER COCHRAN: That's right. And so you're going to put out all the bullets and ammunition for the opposition to pick up and run with.

CORPORATION COUNSEL: Absolutely, you were given an opportunity to go into executive session. It is the Department of the Corporation Counsel's responsibility to inform this body when it is crossing the line into creating a law that's going to expose the County to liability. You're on notice.

COUNCILMEMBER COCHRAN: Thank you, and I'm glad that you take that philosophy in your department. So why is it that your department has not dug into all the case law, all the backup documentation, scientific, hundreds of pages of reports--

CHAIR WHITE: Let's, let's lower the temperature a little bit, both of you.

COUNCILMEMBER COCHRAN: --to make, to defend this County in pushing this, this legislation through. I've had to go outside of this County, this Corporation Counsel to seek further guidance and support, and they have come up with total proven case law. And I have not seen this department, your department, this Corporation Counsel do the due diligence that I've had to go outside to seek. I don't, I don't understand that part either.

CORPORATION COUNSEL: I'm not sure, what's your question?

COUNCILMEMBER COCHRAN: My question is why didn't you folks do your job.

CORPORATION COUNSEL: We are doing our job.

COUNCILMEMBER COCHRAN: No.

CORPORATION COUNSEL: We're putting you on notice--

COUNCILMEMBER COCHRAN: Personally, sorry, I have a lot of case law here, and I'm not even the attorney in this room, for god sakes. But it's pretty written, point, black and white, very simple layman's terms that states, we have every right to do what we're doing, basically. And, if you read this--

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: --and there's also outside counsel who's more than happy to defend us, cause we're not getting it here with your department. Sorry, Chair, but it's the truth.

CHAIR WHITE: Have you, have you provided any of those documents to Corp. Counsel.

COUNCILMEMBER COCHRAN: I believe they have it. You should, Kelly v. 1250 Oceanside and I mean, the Commerce Clause. Ms. Thomson states it all the time. There's, I mean, again they are the attorneys, they should have all of this at their fingertips like I do.

DEPUTY CORPORATION COUNSEL THOMSON: Chair, if I may. I have, I am aware of the case 1250 Oceanside Partners, however, I have not received, I don't know what material you're referring to but I have not received materials from your office in support of different conclusions that, than are those that I came to in my memo back to you.

CHAIR WHITE: I think it would be helpful if you would provide the, whatever case documentation has been provided to you to Corp. Counsel.

COUNCILMEMBER COCHRAN: So, I guess in basic, you've never, you said you have vetted through this and you, I think you gave a summarization of your reading of this. And what you brought out is completely different from what an outside counsel pointed to in this document. That's another reason why I feel this Corporation Counsel has not worked in the best interest of this County.

CORPORATION COUNSEL: Chair.

COUNCILMEMBER COCHRAN: Chair, is, is--

CHAIR WHITE: Mr. Wong.

CORPORATION COUNSEL: Can, can we have Member Cochran identify who's this outside counsel, and where this legal advice is coming from, and whether or not this body has authorized the engagement of outside counsel.

COUNCILMEMBER COCHRAN: It's from my own personal education and help in my deliberations. It's not--

CORPORATION COUNSEL: Can we have the law firm identified.

COUNCILMEMBER COCHRAN: --I'm not hiring, I'm not using County funds or taxpayers' money for this. This is how I do my due diligence in order to make educated decisions for this County, which I thought is your folks job to do.

CORPORATION COUNSEL: It certainly is.

CHAIR WHITE: Okay.

CORPORATION COUNSEL: But we're not going to take that type of advice--

CHAIR WHITE: Let's tone it down a little bit.

CORPORATION COUNSEL: --from anyone.

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: May I, you know, this, this reminds me of the impasse that we had during the styrene bill. Okay, during, as we can all recall, Corporation Counsel had, did not want to sign off on that bill. So we went ahead and did reestablish our foundation by having another presentation to bring in more evidence to, to vet forward. And along the time period that that was going on, there was amendments to that bill that eventually Corporation Counsel had done further research and it became defensible. So, in the result of it, Corporation Counsel then signed off on that bill.

I can, I can understand why Corporation Counsel doesn't want to sign off because it appears as though their position right now is that they don't have a complete information and, and there, it also appears that there could be other research that could possible change their mind or their position. And along the way as we build a better foundation if you would allow the same process as we did during the styrene bill, wherein you did present in full Council both sides of the issues and brought forth more evidence.

We were able to deliberate more as a Council and as a body and to establish that nexus or foundation that we need to create a defensible bill. I can understand Corporation Counsel's probably feeling that it's not defensible at all right now, but I

think we can build towards that defense and it could possibly then at some point become defensible and, and we can then move forward with the signature of Corporation Counsel.

Like I said in my previous statement, for me it is important to have the, the signature of our, of our attorney, the County attorney that is, they are advising us, they were hired in the Charter to advise us and to defend the County on all legal issues. And by not, by moving ordinance through without signature, it's basically the Corporation Counsel saying look, they went ahead without the advice of the, without the advice of their attorney.

So what does that mean? It means later on when we are in settlement negotiations, or we're in a filed case in court, and we have to settle, if we do have to settle, we, we would then have to go to our insurance, our self-insurance, which of course you know we have to pay a deductible or not, I mean, a deductible for it. But, it will, that deductible comes from our General Fund. But the, the substantial amount of the money is paid by our insurance. But in this case if we don't get the signature of Corp. Counsel, we're exposing our General Fund to an entire settlement amount. So, to me it's important to get the signature and, and, and have at least the, the comfort level of our Corporation Counsel which is the County attorney signing off on these ordinances.

So whatever it takes to get to that point, like we did in the styrene bill, I think we, we have an obligation to try to, to do it, you know to try to make it a bill, an ordinance bill that is defensible. It may not, I mean we're going to be subject to all kinds of challenges granted that. But let's try to mitigate some of that so at least give us an opportunity to avail of some of our self-insurance if, if we move forward by having the signature of our Corporation Counsel.

So if you would be willing to do that, and if the Members are willing to go through another, I guess, set of deliberations as we did in the styrene bill, I think that is the better route to take at this point, so that we can at least lay a good foundation. Thank you, Chair.

CHAIR WHITE: Further comments.

COUNCILMEMBER KING: Just a question.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: I just have a question. Is going through that same, the same motions of having those two types of presentations, is that going to change Corp. Counsel's opinion.

CHAIR WHITE: I would assume it depends on what the outcome of the--

COUNCILMEMBER KING: Well we, just hearing, you know, from what I heard is just the fact that we've heard the other side. I mean we've heard it in testimony, we just haven't had them sit down and, and you know go over those things. But, does it have the potential, or are we just going through motions.

CHAIR WHITE: Well I, I think the, the issue is that I think there are, are a number of areas where we, we have concerns and a number of areas where Corp. Counsel has concerns. I don't know how many of those would be sorted out during further investigation. But I think it's, it's certainly possible and I think the, I think what we did with the polystyrene helped all of us to get more comfortable with it.

So I'm, you know, we have two options, we can, we can either vote on it right now, or we can recommit it to Committee, or we can do what we did with polystyrene, we, we vote it out on first reading with the understanding that prior to second reading we bring in the panels to, to have another, you know, more, I guess more exhaustive look at the, the issues, to see whether we're comfortable with it and whether Corp. Counsel can get comfortable with it.

COUNCILMEMBER KING: Okay, I think that would be, I would personally be in favor of that last option, go ahead and vote it out and then, understanding that we bring back, we bring, you know we set up some panel discussions before the next Council hearing on this.

COUNCILMEMBER GUZMAN: Chair.

COUNCILMEMBER KING: So, that, that's my opinion. Thank you, Mr. Chairman.

COUNCILMEMBER GUZMAN: I, I would go along with Councilmember King. Also, I think it would be advised that, it would be giving the opportunity for Corporation Counsel to receive other, other memos from the, I guess, other attorneys that may have submitted memos in, that, or in contradiction to the opinion that was received by Corporation Counsel.

I also believe that maybe some of the other jurisdictions may have been, that they, they are, they're looking at our bill as well and maybe get some opinions from Big Island Corp. Counsel. I think they might be, may have even signed off on a duplicate bill already, so maybe get an opinion from them. Various other research that Corporation Counsel can do while we're conducting this set of, laying the foundation, more proper foundation for this, this ordinance.

My point is, I, I am very much in favor of this bill. I just want to make sure that we're given enough opportunity for it to create a defensible balance to it. And if that means Chair, removing the use, the language of use or limiting it to boundaries, that, yeah, that--

CHAIR WHITE: Oh, that, and that would be part of the discussion--

COUNCILMEMBER GUZMAN: --right, right, right.

CHAIR WHITE: --I realize that that, that is the--

COUNCILMEMBER GUZMAN: But, but those are the things that we need to do thus far so that we can limit the potential of greater liability. Of course we're always going to get challenged, but the point is to lessen it. Thank you.

CHAIR WHITE: Any further discussion.

CORPORATION COUNSEL: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah, Chair, thank you. I am, yeah, I'm in support of your, your last recommendation, the similar path we took with the polystyrene. I think that's, that's reasonable, you know, we've come this far. And, yeah, I have been in dialogue with other counties within the State. They are watching what we do, as we sit here and speak. And they are very supportive of what we have as written. They just want to see how's it going to play out here. So, I, yeah, if it takes another meeting to sort of vet this a little bit more, then great. But I'm, I'm supportive of your, your final recommendation that you brought to us.

CHAIR WHITE: Just so that we all understand. If we, if we do this, voting it out on first reading, it's not going to come up for second reading in two weeks because doing the polystyrene took us a while to make sure that the various resource people that we wanted to bring in were, were available. Some of them had to be brought in, or at least arranged on the mainland and they all have their own schedule. So, just so everyone understands that if this is going to happen, it's not going to take, not going to take place immediately. And we're running into the holidays as well.

COUNCILMEMBER COCHRAN: Yeah, and thank you, Chair. And of course, my office is, you know, more, more than happy to help expedite and assist you in getting that together.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Thank you, Chair. You know, I sat here and listened, you know, people address Commerce Clause, people address preemption challenge. I, I don't know, I'm coming from a different angle. You know, in the issue of kuleana and responsibility, in the issue of upholding our State motto. I come from the angle of wanting to address the protection of our food and our food source.

So, after Friday, I got a lot of communications from many kupuna and traditional food gatherers from the reefs. And they said, you know, who's going to represent us where they're killing our limu, killing our marine life such as the tako, the lobsters, the marine fish that they eat. People grumbling about chemicals and suntan and, and sunscreens and all that, but the people are asking where is our right as native Hawaiian gatherers. Can we be represented also in this, where they are saying they don't need no science data to tell them that the limu is dying, that the fish is dying. And so, the food source of our reefs that feed these entities which will then feed the people is not being taken cared of.

So I would ask that I too would want to see the support of the, this bill's end result. But at the same time, I also support Member, Member Guzman's position of we want to make a bill that is defensible. So at the same time, I want to turn to Corp. Counsel and ask that, that's where we want to go, we want to get there. We want to make a solid bill, but for me I representing the people is, we got to protect our people's food, you know, so how do we bring that importance forward also. So I would support your, your recommendation and please consider inclusion of native Hawaiian law representatives as well as native Hawaiian gatherers or, or people who rely on the reef and the health of the reef for their food.

CHAIR WHITE: Thank you, Mr. Atay. And you know, I, I couldn't agree with you more, the, the issues that we're dealing with may be only one of the causes of the challenges that we're seeing on the reefs. But because it's just one of the causes doesn't mean it's manini. And so I think this is, I feel there's enough scientific evidence presented to move forward, but at the same time, I think it's appropriate for us to take, take another swing at it and make sure that we allow people with other perspectives a chance to voice their opinions and, and possibly show us studies that provide a different outcome.

But I will say that the folks that visited me from the Personal Care Products Association, I can't, I'm not sure I'm getting that right, did not provide any documentation that these

chemicals were not a problem for our reefs. So, I think it's appropriate for us to give them that opportunity and so.

Any further discussion?

DEPUTY COUNTY CLERK: Chairman, recess.

CHAIR WHITE: Okay, recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:01 P.M., AND WAS RECONVENED AT 2:03 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting will please come back to order. The Clerk was just making, Deputy Clerk was just making sure that I make it clear that this is, I think on the polystyrene it took us about four months or so. So we will work very hard to get this done within the first two to three months of the next year. We have to have it done by budget, but this is not a short process so, I just want the expectations to be realistic.

And, so, with that, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you for your comments. I, again, just want to make it clear to our community that having the Council go through this process now, this is the formal body where official action is taken. So I will assume we are going to follow the appropriate procedures, decorum, and requirements of an official Council public hearing, Chairman. Which means we do it all through proper motions and like everything else. This is not a Committee meeting, this is what shall be a Council hearing on the proposed legislation. So, I would ask that we remember that and that we follow the formal process to conduct a formal Council hearing, Chairman. Thank you.

CHAIR WHITE: Thank you, Mr. Hokama. Seeing no further discussion, with the understanding that the second reading will be probably in three to four months or so. And we'll do it sooner if we can. The vote is on the main motion. All those in favor please signify by saying.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Quick discussion. This three to four months thing, but that's, as soon as we can get the panelists and figure all that out, logistics of who's attending, when they are attending. That, I mean that can be--

CHAIR WHITE: Yeah, realizing we're coming up on the holidays too, so--

COUNCILMEMBER COCHRAN: Right.

CHAIR WHITE: --the people's availability for the next three weeks or so, three to four weeks is going to be fairly limited.

COUNCILMEMBER COCHRAN: Right, but, right. I understand, but I mean three weeks versus three months, there's a big timeline there. So okay, but just again, as my office will be helping to assist let's hopefully get it quicker than that, but.

COUNCILMEMBER GUZMAN: Chair, I just want to follow-up with Member Cochran and Member Atay's statements that it, it is, you know, our objective, I think it's a general consensus that we want to see if this bill can find the defensible issues. And if memos or research can be submitted to Corporation Counsel, don't, don't expect them to get all the information on their own because I think it does help if, if we lend a helping hand. And if we do have memos or anything that are in opposition or in support to allow that to be vetted, at least researched, researched through by Corporation Counsel. So thank you.

CHAIR WHITE: Thank you. Seeing 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. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, if we could have some direction on the disposition of County Communication 17-472 and 17-473.

COUNCILMEMBER HOKAMA: Recess, Chairman.

CHAIR WHITE: Recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:07 P.M., AND WAS RECONVENED AT 2:08 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: This meeting will come back to order. Ms. Cochran, I think what would be appropriate if you made a motion to file County Communication 17-472, and I believe Communication 17-473 should, should be, should remain with the issue.

COUNCILMEMBER COCHRAN:

SO MOTION TO FILE 17-472.

CHAIR WHITE: 472, right, because that was already taken care of.

COUNCILMEMBER COCHRAN:

ALRIGHT, SO I MOVE TO FILE COMMITTEE, 17-472.

COUNCILMEMBER GUZMAN:

SECOND.

CHAIR WHITE: We have a motion to file from Ms. Cochran, and a second from Mr. Guzman. 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 so--

COUNCILMEMBER COCHRAN: And 473, would--

CHAIR WHITE: 17-473 will stay with the Committee Report moving forward.

COUNCILMEMBER COCHRAN: Okay--

CHAIR WHITE: Okay, Mr. Clerk.

COUNCILMEMBER COCHRAN: --no, no motion on that, it just stays with the report. Okay.

DEPUTY COUNTY CLERK: And just for clarification, it will stay with the bill, which is BILL 105 (2017).

CHAIR WHITE: Okay.

COUNCILMEMBER HOKAMA: Chairman, point of order.

CHAIR WHITE: Who, who's asking?

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: So what is the status of the previous bill? Cause Council has the ability to postpone to an, an indefinite time if, if need be, since we don't know when we're going to take up the matter.

CHAIR WHITE: What, what is your question?

COUNCILMEMBER HOKAMA: What is, how have, how have we dealt with the status of the bill after first reading?

CHAIR WHITE: The same way we did with the polystyrene, it was brought back once we--

COUNCILMEMBER HOKAMA: Which is postpone to an indefinite time.

CHAIR WHITE: Right.

COUNCILMEMBER HOKAMA: Is that your ruling.

CHAIR WHITE: Yes.

COUNCILMEMBER HOKAMA: Okay, thank you.

CHAIR WHITE: Okay, Mr. Clerk.

COMMITTEE REPORT  
NO. 17-180 - POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE  
COMMITTEE:

Recommending that Resolution 17-169, entitled "RELATING TO THE DESIGNATION OF LAAKEA POEPOE AS THE NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES EXPERT TO THE MOLOKAI PLANNING COMMISSION," be ADOPTED.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

COUNCILMEMBER SUGIMURA:

I MOVE TO ADOPT RECOMMENDATIONS IN COMMITTEE  
REPORT 17-180.

COUNCILMEMBER CRIVELLO:

SECOND.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Policy, Economic Development, Agriculture Committee met on November 13, 2017 to consider the Mayor's nomination of Laakea Poepoe as the native Hawaiian traditional and customary practices expert to the Molokai Planning Commission.

Pursuant to Section 2.28.070, of the Molokai, of the Maui County Code, at least one member of the Molokai Planning Commission shall possess demonstrated expertise in native Hawaiian traditional and customary practices. Your Committee discussed Mr. Poepoe's involvement since 1994 with Hui Malama o Mo`omomi natural resource management and conservation on Molokai as fulfilling the requirement.

Mr. Poepoe's appointment to the Molokai Planning Commission was approved at a July 28, 2017 Council meeting for a term expiring on March 31, 2019. His term as a native Hawaiian traditional and customary practices expert would run concurrently.

Your Committee voted 7 – 0 to recommend adoption of the proposed resolution. I respectfully ask for the Council's support of my motion. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura. 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.

DEPUTY COUNTY CLERK: For the record, RESOLUTION 17-169.

COMMITTEE REPORT

NO. 17-181 - POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE  
COMMITTEE:

Recommending that Resolution 17-170, entitled "RELATING TO THE APPOINTMENT OF LU ANN LANKFORD-FAVORITO TO THE MOLOKAI PLANNING COMMISSION," be ADOPTED.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you.

I MOVE TO ADOPT THE RECOMMENDATION IN COMMITTEE  
REPORT 17-181.

COUNCILMEMBER CRIVELLO:

SECOND.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Policy, Economic Development, Agriculture Committee met on November 13, 2017 to consider the nomination of Lu Ann Lankford-Faborito to the Molokai Planning Commission for a term expiring March 31, 2018 to fill a vacancy due to the resignation of Williama Akutagawa.

The Council must approve or disapprove Ms. Lankford-Faborito's nomination by December 23, 2017, or the nomination will be deemed approved. Your Committee did not request to interview the nominee.

Your Committee learned that Ms. Lankford-Faborito resides on Oahu and was not planning to relocate to Molokai until early January 2018 despite noting Hoolehua, Molokai as her city of residence on her application form. Because of this she would not be available to attend meetings until January 2018, and she withdrew her name from consideration.

Your Committee voted 5 – 0 to recommend adoption of a revised proposed resolution to disapprove the nomination of her to the Molokai Planning Commission. I respectfully ask for the Council's support of my motion. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura. 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.

DEPUTY COUNTY CLERK: For the record, RESOLUTION 17-170.

COMMITTEE REPORT  
NO. 17-182 - POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE  
COMMITTEE:

Recommending the following:

1. That Resolution 17-171, entitled "APPROVING FOR INCLUSION IN THE 2018 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL RELATING TO ENFORCEMENT OF THE BASIC BILL OF RIGHTS FOR VICTIMS AND WITNESSES" be ADOPTED; and
2. That the correspondence dated November 2, 2017, transmitting a proposed resolution entitled "URGING THE STATE OF HAWAII LEGISLATIVE REFERENCE BUREAU TO REPORT TO THE STATE LEGISLATURE ON THE LEVEL OF ENFORCEMENT FOR EACH COUNTY'S VICTIM WITNESS ASSISTANCE PROGRAM, be FILED.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN  
COMMITTEE REPORT 17-182.

VICE-CHAIR CARROLL:

SECOND.

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

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Policy, Economic Development, Agriculture Committee met on September 18, 2017, October 2, 2017, October 17, 2017, and November 13, 2017 to consider a proposed resolution to approve, approve for inclusion in the 2018 Maui County Legislative Package a proposed State bill entitled "A BILL FOR AN ACT RELATING TO VICTIM RIGHTS". The purpose of the proposed bill is to allow for more stringent enforcement of the Basic Bill of Rights for Victims and Witnesses by holding implementing parties accountable.

Your Chair transmitted an alternative proposed resolution to urge the State of Hawaii Legislative Reference Bureau to report to the State Legislature on the level of enforcement of each County's Victim Witness Assistance Program to determine whether data supports the need to allow for more stringent enforcement.

A motion to recommend adoption of the alternative proposed resolution urging the State of Hawaii Legislative Reference Bureau to report to the State Legislature on the level of enforcement for each county's Victim Witness Assistance Program failed with a vote of 4 – 3.

Your Committee instead voted 5 – 2 to recommend adoption of the proposed resolution to approve for inclusion in the 2018 Maui Legislative Package a State bill for more stringent enforcement of the State, of the Basic Bill of Rights for Victims and Witnesses. Thank you, Chair.

CHAIR WHITE: Thank you. Members, any further discussion?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. I have kind of, quite a bit to say about this. It is as you can see, recall via some testimonies, it's, it's quite emotional for a lot of people here in our County and State and abroad.

But Chair, as it's been discussed, this proposed bill allows for more stringent enforcement of the Basic Bill of Rights for Victim and Witnesses, which is codified in Section 801D-4, of the Hawaii Revised Statutes. And by holding the parties that are responsible for implementing of the Bill of Rights accountable in the event their efforts should fall short. And according to 801D, of the HRS, the Basic Bill of Rights for Victims and Witnesses exists to ensure that all Victims and Witnesses of crimes are treated with dignity, respect, courtesy and sensitivity. And that these rights are to be honored and protected by law enforcement agencies, Prosecutors, and Judges in a manner no less vigorous than the protections afforded the criminal defendants.

As the Statute is currently worded, State of County officers are immune from civil liability if they fail to carry out the requirements of Section 801D. The intent of this proposed bill is to remove this immunity and incentivize responsibility for upholding and implementing the Basic Bill of Rights.

And the Committee received comments from Department of Prosecuting Attorney, who is responsible for implementing the Basic Bill of Rights. It is important to consider that

while this legislation would hold the implementing parties accountable, the purpose is to ensure victims, witnesses are receiving the services and the respect that they deserve. And if implementing parties are carrying out their responsibilities as set forth in the State Statute, civil liability should not be an issue.

We are all answerable to the law in all situations. If one of us breaks the law, we are not immune to liability. We should all be held to the highest standards of stewards of the creation and administration of the laws we oversee.

The Basic Bill of Rights as part of treating victims with respect, dignity, and dignity requires that victims be notified at court proceedings that they have an interest in, receive protection from threats of harm or actual harm; are informed of social services and financial assistance available to them; have personal property returned to them by law enforcement agencies in a timely manner; and are informed of changes in the custodial status of the offender, such as release from prison, furlough, parole, etc.

The Victims and Witnesses are also supposed to be informed of their final disposition of the case. And if the crime is a felony, they are to be updated regarding major developments in the case including if the offender is released from custody. For many of these requirements, the law requires that these actions take place in a timely manner. These basic rights are in place to help insure victims and witnesses are treated with fairness and not cause any further harm or stress during already stressful and sensitive times.

At our last meeting, Mr. Hokama had suggested that we reach out to the State and request information and data that would support the introduction of legislation such as this before we could support, he could support it. By happenstance, my office received precisely that information referenced in Mr. Hokama's comments near hours after you mentioned that in that Committee. And, there's, there, it states, it's established that there is a gap in services between, services being provided to the victims. And, we've had, we forwarded that information, the data for the Council to review.

I also went to a, a domestic violence meeting and, that was organized by the Hawaii Women's Legislative Caucus last month, and we've given you our minutes and overview summary of that, that gathering. And it includes a lot of telling data and information, things that Mr. Hokama had asked, by the way. Survey results, these surveys were conducted by Hawaii State Coalition Against Domestic Violence in preparation for the County meetings.

HRS 709-906, Statistics, Domestic Violence cases filed under HRS 709-906, which has been updated of this year, January 19, 17. Uniform crime reporting program, quarterly, April 2017 outlines new domestic violence reporting requirements.

Comparison of HPD and HPD criminal investigation department data, it was hosted by Senator Baker and Senator Thielen.

The domestic violence community was there and they gave their insight into the DV issues that affects this County. The Hawaii State Coalition Against Domestic Violence has been coordinating along with Maui County DV advocates. The groups that they reached out to Women Helping Women, PACT, Family Peace Center, Child and Family Services Maui and Molokai, Alternatives to Violence.

And I think it's super important to understand that our State Reps and Senators are actively working with victims to improve their experiences of victim with regards to support from all our judiciary bodies. Also in attendance and participating was the Judiciary, Attorney General, and other elected officials to discuss issues that were raised in their first two meeting.

This is a recognized issue, deserving of our due diligence and attention. It is a problem statewide and we are not the only body looking at ways to improve these deficiencies. I have submitted for the record today, the minutes of the out, of the outcome of that DV meeting across the State and I hope everyone will take a look at it.

I do not see any harm in sending this issue along to the State for their discussion and scrutiny. This body is not being asked to make a decision on HRS, that is not our kuleana. This body is being asked to send this item to the State so they may make that decision. And I am certain that the State will have their own amendments in the end. There will be an entirely new version of this legislation.

I humbly request in support from, ask support from this body that we act as a voice for victims in our County and pass this proposal on for consideration with their noted grievances by acknowledging that this is an issue worthy of our response. So we do victims no justice by being complicit in this deficiency or by turning a blind eye to their complaints. And Chair for these reasons, I request the full support of this body to pass this on to the State for further scrutiny and review. Thank you for allowing me that long justification. But thank you, Chair.

CHAIR WHITE: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: I felt it, I needed to share.

CHAIR WHITE: 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".

Members, before we get into ordinances, take a quick recess, about five minutes.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:25 P.M., AND WAS RECONVENED  
AT 2:32 P.M., WITH ALL MEMBERS PRESENT.)

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

Mr. Clerk, let's proceed.

DEPUTY COUNTY CLERK: For the record, RESOLUTION 17-171.

Mr. Chair, proceeding with ordinances, second and final reading.

## ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 91 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY  
CODE, TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL  
HOMES OR TRANSIENT VACATION RENTALS AS "SHORT-TERM RENTAL"  
FOR TAX VALUATION PURPOSES

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, unless the Members object, I would ask the Clerk  
to bring up all ordinances proposed for second and final reading.

CHAIR WHITE: Any objections.

COUNCILMEMBER KING: Chair, yeah, I just, I would like to address Bill 91 and 92 separately, if possible, first.

CHAIR WHITE: Okay, any other concerns.

COUNCILMEMBER GUZMAN: I would also concur with Member King.

CHAIR WHITE: Thank you, so let's take them up one at a time.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Bring up 92, please.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 92 (2017)

A BILL FOR AN ORDINANCE AMENDING  
CHAPTER 3.48, MAUI COUNTY CODE, RELATING  
TO REAL PROPERTY TAX

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA:

CHAIRMAN, I MOVE THAT BILLS 91 AND 92 PASS SECOND  
AND FINAL READING.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: Just a quick recess, I thought we were taking them up individually.

(THE MEETING WAS RECESSED BY THE CHAIR AT 2:34 P.M., AND WAS RECONVENED  
AT 2:35 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: Back in session.

Maybe the, the Chair was not quite on point. Do you have an objection to voting on 91 and 92 at the same time?

COUNCILMEMBER KING: I don't, Chair.

COUNCILMEMBER GUZMAN: Chair, I do because I support 91, but I do not support 92.

CHAIR WHITE: Okay, I'd, I would like to take them up separately as well, but, so if you don't mind withdrawing your, your motion and taking them up one at a time.

COUNCILMEMBER HOKAMA: I withdraw the motion, Chairman.

CHAIR WHITE: Thank you.

COUNCILMEMBER HOKAMA: Okay, Clerk, let's see what you're going to bring up.

CHAIR WHITE: He's brought up 91 and 92.

COUNCILMEMBER HOKAMA: Repeat it please.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 91 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY  
CODE, TO CLASSIFY REAL PROPERTY USED AS SHORT-TERM RENTAL  
HOMES OR TRANSIENT VACATION RENTALS AS "SHORT-TERM RENTAL"  
FOR TAX VALUATION PURPOSES

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA:

CHAIRMAN, I MOVE THAT BILL 91 PASS SECOND AND FINAL  
READING.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: Okay, we have a motion from Mr. Hokama, with a second from Mr. Carroll.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, as we worked it through Committee, through first reading, this is to classify real property as short-term rentals for tax valuation purposes for lodging and dwelling units occupied by transient tenants for a period of less than six consecutive months, and includes property granted a short-term rental home permit, transient vacation rental permit, or a conditional permit allowing transient vacation rental use, unless classified as timeshare, hotel and resort, or commercialized residential.

We do have our Department of Finance Administrator available to answer questions regarding any of the technical requirements for this proposed legislation.

CHAIR WHITE: Okay, thank you, Mr. Hokama. Members, any further discussion on this item?

Ms. King.

COUNCILMEMBER KING: Chair, yeah, I was, one of the reasons why I thought if we took these up together they seem to conflict with each other 91 and 92. And so I'm not sure what the intent is to the classification short-term rental on one, and then classified as hotel and resort in the other. There is a, there's a clause in Bill 91 that makes changes to the language in 3.48.305C, and then Bill 92 eliminates all of Section C. So I, not really in support at this point of, my original concern with these bills was, was inflicting pain on those who have legally received permits for short-term rentals and possibly discouraging other people from going through that, the legal procedure to, for short-term rentals. The, the ten-year requirement for long-term would probably discourage a lot of people from actually renting out long-term, and I would hate to think that we were passing a bill that would discourage additional long-term rentals since we're so, we're so short of inventory for that. So, I, I don't, I speak in opposition to Bill 91.

CHAIR WHITE: We have, we also have Mr. Ueoka here if you have questions on the--

COUNCILMEMBER KING: Mr. Kushi.

CHAIR WHITE: Pardon.

COUNCILMEMBER KING: You mean, Mr. Kushi.

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER COCHRAN: Behind you.

COUNCILMEMBER KING: Oh, oh, okay.

CHAIR WHITE: No, Mr. Ueoka here, if you'd like to ask for clarification.

COUNCILMEMBER KING: Yeah, I mean is that appropriate because I know we're all taking one bill at a time, but is it appropriate to ask about this, the conflict.

CHAIR WHITE: No, you, well you can ask about Bill 91.

COUNCILMEMBER KING: Okay.

DEPUTY CORPORATION COUNSEL JEFFREY UEOKA: Thank you, Chair. The perceived conflict was based on Chair Hokama's preference to send up a bill separately, one to creating the short-term rental class, a second eliminating the actual class use classification for condominiums. Once 91 passes, it will amend Section 3.48.305C and if 92 passes, it will delete Section C. So those changes will disappear also. So they appear to be in conflict, but if one passes and the other doesn't it will be fine. If they both pass, it works itself out also. Thank you.

COUNCILMEMBER KING: Okay, so that was the intent of it, was to be sequential.

CHAIR WHITE: Go ahead, Mr. Ueoka.

DEPUTY CORPORATION COUNSEL UEOKA: Thank you, Chair. Yes, Member King.

COUNCILMEMBER KING: Okay, thank you, Chair.

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

COUNCILMEMBER HOKAMA: Aye.

COUNCILMEMBER SUGIMURA: Aye.

COUNCILMEMBER CRIVELLO: Aye.

VICE-CHAIR CARROLL: Aye.

COUNCILMEMBER COCHRAN: Aye.

CHAIR WHITE: Those opposed say "no".

COUNCILMEMBER KING: No.

COUNCILMEMBER ATAY: No.

CHAIR WHITE: I counted two, Mr. Atay. Let's take a roll call vote please.

DEPUTY COUNTY CLERK: Councilmember Alika Atay.

COUNCILMEMBER ATAY: NO.

DEPUTY COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: AYE.

DEPUTY COUNTY CLERK: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: AYE.

DEPUTY COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: AYE.

DEPUTY COUNTY CLERK: Councilmember Don S. Guzman.

COUNCILMEMBER GUZMAN: NO.

DEPUTY COUNTY CLERK: Councilmember Kelly T. King.

COUNCILMEMBER KING: NO.

DEPUTY COUNTY CLERK: Presiding Officer Pro Temp Stacy Crivello.

COUNCILMEMBER CRIVELLO: AYE.

DEPUTY COUNTY CLERK: Vice-Chair Robert Carroll.

VICE-CHAIR CARROLL: AYE.

DEPUTY COUNTY CLERK: Chair Mike White.

CHAIR WHITE: NO.

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

NOES: COUNCILMEMBERS ATAY, GUZMAN, KING, AND  
CHAIR WHITE.

DEPUTY COUNTY CLERK: Mr. Chair, there are five "ayes", four "noes", motion passes.

CHAIR WHITE: Okay, thank you.

On to the, please call up Bill 92.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 92 (2017)

A BILL FOR AN ORDINANCE AMENDING  
CHAPTER 3.48, MAUI COUNTY CODE, RELATING  
TO REAL PROPERTY TAX

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA:

I MOVE THAT BILL 92 PASS SECOND AND FINAL READING.

VICE-CHAIR CARROLL:

SECOND.

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

Mr. Hokama.

COUNCILMEMBER HOKAMA: As mentioned earlier by our Deputy Corporation Counsel to the Budget Committee, we are just adding a new section regarding to condominium units or planned developments dedicated for long-term residential use as well as amending Section 3.48.305 of the County Code relating to the classification of land and buildings pertaining to said planned developments where transient vacation rentals are permitted and to condominium property regimes or CTR's. Thank you, Chairman.

CHAIR WHITE: Thank you, Mr. Hokama. Any further discussion, Members?

COUNCILMEMBER GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. I, I speak in opposition to this bill, although the intent seems to be a valid reasons but I disagree with how the, the process is in Section 3.48.370, putting a heavy burden on the owners of the condominiums to file with the Bureau of Conveyances and basically a declaration as well as submitting that declaration to the RPT, or at least the Director of Finance. It seems very burdensome for the owners of the condominiums to do so to prove that they are, they are within a long-term lease agreement and then to dedicate their, their property, or their condo for another ten-year period.

It seems very, I know, I guess, you know, almost called you your honor, Chair, I, I think that there could be a, a better way to go about doing this without putting so, so much onus onto the, the condominium owners. A lot of them are elderly, and I suspect by doing this additional process it may possibly create more short-term rentals because people don't want to go through the humbug of having to put their property in dedication. So, those are my concerns, at this stage as well as you have businesses throughout the County that rely on these type of rentals and if, so happen this becomes so burdensome that we lose long-term rentals, we may have a problem housing our employees.

So I'm looking, it may be premature, but, I'm looking far, far ahead in the future that the consequences of this may come back and bite us. I think the, the rationale should be, we should look for the enforcement of our short-term rentals right now, and that hasn't been completed efficiently. So, it's almost like putting the, the cart before the horse. So, Chair, that's my reasons for objecting to, or voting no on this measure. Thank you.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Just a, that was a pretty good summary of my objections, I, I think I voiced them earlier. But yeah, I do have those major concerns. And, and just to clarify, I think what Mr. Guzman meant that we, we need better enforcement of our illegal STR's because that's what's take, that's another thing that's taking a lot of inventory off the market. But I just fear that requiring a ten-year declaration is going to push a lot of people into short-term rentals, legal or not, and we're going to lose a lot more long-term rentals that way. So, I don't support this measure. Thank you.

CHAIR WHITE: Thank you. Any further discussion?

I will just add I have the same, same concerns. I agree with the concept, but I am very concerned that we're going to lose, lose out on especially the long-term condo rentals that are in our resort areas that can do short-term rentals legally without having to go through any hoops. So, if that number is as high as it was stated, I believe it was either 1200 of 1600, you know that's just, that's not moving us in the proper direction. So, the Chair won't be supporting it this time.

Any further discussion?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Just briefly, yeah, I'm in opposition at this time too, but for reasons already stated. Thank you, Chair.

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

COUNCILMEMBER HOKAMA: Aye.

COUNCILMEMBER SUGIMURA: Aye.

COUNCILMEMBER CRIVELLO: Aye.

CHAIR WHITE: Those opposed say "no".

COUNCILMEMBER KING: No.

COUNCILMEMBER ATAY: No.

CHAIR WHITE: Roll call vote please.

DEPUTY COUNTY CLERK: Councilmember Alika Atay.

COUNCILMEMBER ATAY: NO.

DEPUTY COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: AYE.

DEPUTY COUNTY CLERK: Councilmember Elle Cochran.  
COUNCILMEMBER COCHRAN: NO.  
DEPUTY COUNTY CLERK: Councilmember Riki Hokama.  
COUNCILMEMBER HOKAMA: AYE.  
DEPUTY COUNTY CLERK: Councilmember Don S. Guzman.  
COUNCILMEMBER GUZMAN: NO.  
DEPUTY COUNTY CLERK: Councilmember Kelly T. King.  
COUNCILMEMBER KING: NO.  
DEPUTY COUNTY CLERK: Presiding Officer Pro Temp Stacy Crivello.  
COUNCILMEMBER CRIVELLO: AYE.  
DEPUTY COUNTY CLERK: Vice-Chair Robert Carroll.  
VICE-CHAIR CARROLL: AYE.  
DEPUTY COUNTY CLERK: Chair Mike White.  
CHAIR WHITE: NO.

AYES: COUNCILMEMBERS CRIVELLO, HOKAMA,  
SUGIMURA, AND VICE-CHAIR CARROLL.

NOES: COUNCILMEMBERS ATAY, COCHRAN, GUZMAN,  
KING, AND CHAIR WHITE.

DEPUTY COUNTY CLERK: Mr. Chair, there are four "ayes", five "noes", motion fails.

CHAIR WHITE: Thank you, Mr. Clerk.

Next item.

DEPUTY COUNTY CLERK: Mr. Chair, could we have some recommendation as to the disposition of Bill 92 (2017).

CHAIR WHITE: Mr. Hokama, what's your pleasure.

COUNCILMEMBER HOKAMA: You guys killed it, file it.

CHAIR WHITE: Is that a motion to file?

COUNCILMEMBER HOKAMA: You guys can make it.

COUNCILMEMBER COCHRAN:

MOTION TO FILE, CHAIR, BILL 92.

CHAIR WHITE: Do we have a second?

COUNCILMEMBER KING:

SECOND.

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

Ms. Cochran.

COUNCILMEMBER COCHRAN: No, no discussion.

CHAIR WHITE: Okay, thank you. Any discussion, Members.

Mr. Hokama.

COUNCILMEMBER HOKAMA: I find it interesting how, you know, the fear factor of how much taxes, and again, we don't even know how much we're going to raise yet for the upcoming budget. To be able to talk about dollars and cents and we have no sense of valuation, no certification to work from, and no proposed rates to just, justify against an expense of proposed spending. So I find it interesting we can make a tax decision of potentially what people going to pay, when we're not even at that point in the process. So that just tells me our level of understanding of the overall big picture of fiscal requirements of this County, and god bless us come budget session.

CHAIR WHITE: Okay, thank you, Mr. Hokama. Any 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.

COUNCILMEMBER SUGIMURA: Wait, what are voting on, I'm sorry.

CHAIR WHITE: Filing.

COUNCILMEMBER SUGIMURA: Sorry, okay.

CHAIR WHITE: I, I didn't hear any "noes", so that's nine "ayes".

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 97 (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,  
DEPARTMENT OF PUBLIC WORKS  
(FEDERAL HIGHWAY ADMINISTRATION, FEDERAL-AID AND  
OTHER TRANSPORTATION GRANTS)

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: I would ask the Clerk to bring up all remaining bills for second and final reading.

CHAIR WHITE: Any objections, Members.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 98 (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,  
DEPARTMENT OF HOUSING AND HUMAN CONCERNS  
(KUPUNA CAREGIVERS PROGRAM)

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 99 (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

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 100 (2017)

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,  
LIQUOR EDUCATION FUND

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 101 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY  
CODE, RELATING TO THE CIRCUIT BREAKER TAX CREDIT

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA:

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

COUNCILMEMBER CRIVELLO:

SECOND.

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

Mr. Hokama.

COUNCILMEMBER HOKAMA: No further discussion.

CHAIR WHITE: Any 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: Measures pass with nine "ayes".

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, proceeding with Unfinished Business.

## UNFINISHED BUSINESS

### COMMITTEE REPORTS

COMMITTEE REPORT  
NO. 17-167 - INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT  
COMMITTEE:

Recommending the following:

1. That Bill \_\_\_\_\_ (2017), 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," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 17-214, from the Mayor, be FILED; and
3. That County Communication 17-215, from Councilmember Alika Atay, be FILED.

DEPUTY COUNTY CLERK: Mr. Chair, Members, currently pending before the body is a motion by Councilmember Cochran and seconded by Councilmember King to adopt the recommendations in Committee Report 17-167, as amended.

CHAIR WHITE: Thank you, Mr. Clerk.

We go back to Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you very much. At the Council meeting of November 17, I believe 2017, this proposed bill attached to Committee Report was amended by striking tax map key (2) 3-5-001:064 from the moratorium area and by amending the attached map to reflect the removal of that TMK.

Then as indicated at that meeting, this matter was considered during the course of eight IEM meetings, Committee meetings and on October 8, 2017, the proposed bill you have with amendments was passed out of Committee by a 6 – 0 vote.

As you know we reviewed several versions, and have had much discussion about how to strike a balance about protecting this precious finite resource and environment which is culturally sensitive and historically significant, while also acknowledging potential impacts the legislation may have on our landowners for the short period of time.

I feel confident that this bill strikes that balance, and gives consideration to all concerned. Since our last meeting on November 17, it is my understanding that perhaps Chair, that you had sent out some letters inquiring, inquiries to each owners on that list of TMK landowners, and I guess, so we've been getting some feedback from, from that.

And my office has reviewed and researched the archaeological inventory survey and geotechnical reports for two TMK's so far, and the first of the two being Kehalani Agricultural Investors LLC, which we exempted at the last Council meeting and the second being a more recent request from Waiko Light Industrial. I think Mr. Ryan Churchill had come to testify a few times.

The most glaring difference between these two requests for exemption where that Kehalani was able to verify that their TMK no longer contained that sliver of Qdo sand that once existed, whereas Waiko Light Industrial's TMK tested positive for dune sands in every sample taken. While I sympathize with the slight delay that the Waiko project may experience with their intended January start date, should this bill pass, I feel that it is important to keep the intended purpose of the moratorium pure and to honor it.

In order to qualify for a waiver, applicants must provide sufficient information that the proposed activity would not affect a burial site as defined in section HRS 6E-2, and that the proposed activity does not conflict with the purposes of the legislation. The AIS concluded that no further archaeological work was needed, but stated that given the location of the project, the presence of sand dunes and presence of historic properties on immediate adjacent properties, precautionary archaeological monitoring was recommended for any development or future earthmoving activities.

And the AIS conducted in 2011, and the geotechnical report conducted in 2015. I find it alarming to see nothing about whether archaeological monitoring occurred during the digging of 23 excavated pits, test pits, for the geotechnical report. The AIS notes that two human burial features were inadvertently discovered during archaeological monitoring for the Consolidated Baseyard Development project which is located between the east and west section of this project area.

The AIS also stated that much of the land at the time of the study was heavily utilized as baseyards with various large stockpiles, cattle feedlots, and associated settling ponds, thus access was limited to those where cattle feedlots covered acres of the project area and backhoe work was not able to occur in the stockpile areas or cattle feedlots.

And what I found unsatisfactory beyond the lack of access to the entire property for archaeological trench testing was the fact that out of the 20 trenches, more than half were under six feet deep and only six were over ten feet deep. While all these test pits and trenches serve as needs to protect possible burial sites to learn what material deposits are present, so appropriate measures can be taken for safe development, the flip side of that coin is that it also serves as an amazing tool for landowners within the dunes to learn exactly how deep they should request to grade their land in order to harvest this valuable and precious and rapidly disappearing environmentally sensitive area.

The geotechnical report which excavated the majority of the 23 pits to at least ten feet, but without an archaeological monitor present shows pristine and clean sand from surface to as deep as ten feet below the lands current grade. And the Waiko grading plan approximate, approximates earthwork quantities with a max height of excavation set at ten feet, with embankment removal estimated at 26,000 cubic yards and excavation removal estimated at 81,500 cubic yards.

Dump trucks are rated by how many cubic yards they carry, and the average commercial dump truck holds anywhere from ten to fourteen cubic yards of dirt. Using a fourteen cubic yard truck, that would mean this project plans to remove approximately 5,821 dump truck loads of sand for excavating and another 1,857 dump truck loads for the embankments.

My office went on a site inspection of this property and found that it was quite flat already, which according to the AIS is a result from previous extensive grading and grubbing, and sand mining activities. And due to that fact I don't see an immediate obvious reason the landowner would need to grade it ten feet further, especially since it already sits below the current grade of the Rojac County Access Road to its immediate west. And for these reasons I don't feel comfortable supporting the deletion of this TMK: 2-3-8-007-102 from the bill.

Your Committee recommended passage of the bill at first reading and then filing of this communication. So, I believe, Chair, you're looking to perhaps defer.

CHAIR WHITE: We have received in addition to that one, we've received two additional requests that are adjacent to the one that we, adjacent to the Dowling--

COUNCILMEMBER COCHRAN: Kehalani's--

CHAIR WHITE: --the Kehalani Agricultural, there are two additional parcels that are nearby and I'm uncomfortable voting because these two--

COUNCILMEMBER COCHRAN: The two churches.

CHAIR WHITE: --actually I think all, all three of the properties are further ahead in their process than the Dowling property was. I felt concerned that if we, if we authorize one and not the others without, without some sort of due process, that it puts us in a bit of a, a bind. So I, my preference would be to provide the time for your staff to go through those applications and identify whether these other ones also should be considered. And I'm not comfortable making that determination right now, so.

COUNCILMEMBER COCHRAN: Right, so Chair, yeah, I, I support your recommendation to defer the bill today for one more meeting, so that we can finish reviewing as you state the AIS, the geotechnical reports that have been submitted as a request for exemption from the bill.

But if I may, and respectfully ask, or request that we set a deadline to submit these requests. If anyone is to come forward, if they could on record, I don't know, somehow officially be asked to send it to us by Wednesday, December 8. Today is Monday, and that would give us, is that right, December 8, what is today? Oh today is the fourth.

COUNCILMEMBER KING: December 6.

COUNCILMEMBER COCHRAN: We're looking, my office is looking for about a week to be able to--

CHAIR WHITE: How about if we say a week from today.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: That gives them until, until Monday of next week, and the bill would be deferred until the fifteenth.

COUNCILMEMBER COCHRAN: So, we're looking, what was it we needed--

CHAIR WHITE: And, and you know the reality is the later somebody turns it in, the less time we're going to have to review it. So if anyone is going to present something, they should do it as soon as possible.

COUNCILMEMBER COCHRAN: Right, and, okay, that, that should work.

COUNCILMEMBER KING: Chair. Question, Chair.

COUNCILMEMBER COCHRAN: And real quickly, I believe those two other entities, I had asked them, they had come to testify and asked if they were ready to break ground or anywhere near in the next six months and they both said no. One, I called, and the other I asked on the floor.

CHAIR WHITE: Yeah, the, the issue is that Mr. Dowling isn't either, I don't believe, so, I think they're--

COUNCILMEMBER COCHRAN: Mr. Dowling, okay. But looking through all his reports and paperwork--

CHAIR WHITE: I just want to be fair to them--

COUNCILMEMBER COCHRAN: Okay, that's fine, that's fine.

CHAIR WHITE: --because they're, they're actually three connected lots.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: All the same. So we have Ms. Sugimura, Mr. Atay, Ms. King, then Ms. Crivello.

COUNCILMEMBER SUGIMURA: Thank you. So I'm just curious, I guess Elle's office is taking on the lead of being the investigator, I guess, from what I'm hearing, or screening. And I'm just curious what the criteria is just for clarity as it may fit into this bill and what it's objective is. So I wonder if, if you know, Chair.

CHAIR WHITE: For me the, the issue is, was brought up by Mr. Dowling who has an AIS report, has a small amount of sand, but not a significant amount of sand and they are well along in the process of the permitting. So--

COUNCILMEMBER SUGIMURA: Thank you. And again, I guess I asked this question at the last Committee meeting, Council meeting about what is the tie with the archaeological inventory surveys or you know the iwi kupuna, because there's nothing in it, in the bill. But looks like we're using that to judge whether companies could be included or excluded from the bill. So, I don't think that part is very clear, it's maybe an assumption at this point, so I think it, there's a problem for me, Chair.

CHAIR WHITE: Okay, thank you.

Ms. King.

COUNCILMEMBER KING: Yeah, Chair, I was just looking at the purpose in this bill and it does clearly state that to "prevent the disturbance of Hawaiian historical, cultural, or archaeological sites, and unmarked human burial sites". So I think that's what Ms. Sugimura was looking for, it's in that first paragraph under "Purpose".

I had thought there was something in this bill that allowed for a waiver in the bill, so my question was do we, do we need to have all waivers in before we pass this bill, or is there a process, even after the bill gets passed for waivers to, you know, folks to come forward and ask for a waiver. And my point is that we keep pushing this down the road, and at some point, I mean, I think maybe even today, we could look back and say if it had been passed it would be over with by now, the six months would be over.

So, you know, continuing to pass it down the road is going to conflict with some of the folks who say yeah, we don't have anything pending right now but we may get into the point where, where it is, you know, they are getting ready to break ground. And I hate the idea of just being held up by these last-minute waivers and last-minute waivers. So, you know, I, I'm--

CHAIR WHITE: No but, I think that's why--

COUNCILMEMBER KING: --I'm glad to hear that there's a deadline but, are we going to say then at that deadline then, once we pass this bill we're not granting any waivers, or is there still--

CHAIR WHITE: Right, well, no, not--

COUNCILMEMBER KING: --there's still, there's still a process to--

COUNCILMEMBER COCHRAN: Yeah.

CHAIR WHITE: --there's two different terms. What we're considering are exemptions from the bill. Anyone who is left in the bill will have to apply for a waiver.

COUNCILMEMBER KING: Okay.

CHAIR WHITE: The reason I think we need to be open to consideration for exemptions is because the waiver process is not very crisp, it's not defined at all. So, it's--

COUNCILMEMBER KING: Okay.

CHAIR WHITE: --and if this is only going to be six months duration, what do you do to get a waiver? It's not, it's not defined.

COUNCILMEMBER KING: Right, but--

CHAIR WHITE: So I think we have a responsibility to do, to take, to provide some due diligence as we move forward.

COUNCILMEMBER KING: Okay, no I understand that and I think that's good, but I just don't want us, to see us keep getting held up, you know, a few days before the Council meeting because there's another exemption that comes in.

CHAIR WHITE: Right, thank you.

COUNCILMEMBER KING: Thank you.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Chair, yeah, for me it was just the line of question on if our next meeting is the fifteenth, then I think the deadline for the people who's coming forward requesting exemption should be made the end of this week, which would then give us the seven days posting of that exclusion of them, instead of next week Monday.

CHAIR WHITE: Yeah, you bring up a good point, and I don't know if we can necessarily review all the information in time to actually post it, but it would give us a, a little better idea. I'm open to either one. Are you, did you have anything else?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. So, I'm sorry, I'm not part of this Committee so, but I'm trying to, I've tried to follow it as much as I could. So, when I hear the word moratorium, it's like a freeze. And if we're making exemption to waive for one, and I have your concern, if you're going to do it for one, then all these others may apply. And then who has the authority, who's the, the entity that authorizes the waiver, through what application process do we have before us. Is that stated so as part of this, this bill.

I think the intent for us to have this moratorium in regards to our iwi kupuna is of expressed value. And, is, is that the only thing we're looking at in this bill. And, I am just concerned that if you exempt one, what about, what about the rest. And, you know, if, if this is a temporary prohibition based on, on what the landowner has to provide or is it, is it in regards for the full purpose of protecting our, our iwi kupuna.

CHAIR WHITE: I, I think it's a little bit of both. Right now we have received requests from three different entities and we've gotten the majority of the information that we're going to get from those three. So I don't, I don't anticipate receiving more than three. I don't know at this point. And I don't know if Ms. Cochran can provide a, a little--

COUNCILMEMBER CRIVELLO: Chair, who does the, who has the authority?

CHAIR WHITE: As far as the exemptions, we can do that ourselves. After, after the bill passes, then the waivers, I don't, I believe it's--

COUNCILMEMBER GUZMAN: Two-thirds.

CHAIR WHITE: --I believe it's the Council that has the--

COUNCILMEMBER COCHRAN: Yeah, we do.

CHAIR WHITE: --the responsibility for waivers. But we don't have a structure for, for a waiver process, so.

COUNCILMEMBER CRIVELLO: So how did Mr. Dowling get his waiver, if there's really not the process.

CHAIR WHITE: He, he submitted, he didn't get a waiver, he got an exemption. And, he was granted that because he submitted the, the archaeological inventory survey and other documents to Ms. Cochran and they reviewed them and found them to be--

COUNCILMEMBER CRIVELLO: So they are the authorized entity.

CHAIR WHITE: --they are, they are the ones--

COUNCILMEMBER CRIVELLO: That will say that you qualify or not.

CHAIR WHITE: --they are the only ones that currently, yeah, they are the only ones that. Well, I've been involved with the process to, it's, they are the only ones who at this point have received an exemption. And there are three others under consideration.

COUNCILMEMBER CRIVELLO: Not much of a moratorium yeah, if you're making exemptions. That's just a comment.

CHAIR WHITE: Okay. Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I, I'm trying to figure this out on a timing schedule wise, also. You know, I'm thinking recommittal might be the way, if you guys, if you're, if what you're, I'm hearing is going to play out, I would defer this on the Council agenda. Whatever we do at the next Council meeting, will just be to take care the amendments to the proposed legislation, we cannot take final action on the same day.

CHAIR WHITE: Correct.

COUNCILMEMBER HOKAMA: So we're still going to wait another deferral if we do everything at the next meeting. I would rather see our Committee deal with everybody's thing at one time, come out with a Committee recommendation and we up or down it at the Council, personally.

And, and you know I hear Ms. Crivello, I mean, in the end, who's really part of the moratorium. Okay, and I agree, I think if you look at the minutes, in the second meeting of Ms. Cochran's Committee, I think I had already proposed let's just take care the moratorium up front, in meeting number two I believe, that she conducted. So, that's water under the bridge, as we would say it. But for me Chairman, I cannot see us keep deferring on the Council agenda knowing it's going to be deferred again just by procedure, since we will not take final action.

You know, and if it's the Committee, that's fine, I, I can defend to our, my community what not, how we reached a recommendation and that was a Committee recommendation. I think that's part of the concern I heard in Ms. Crivello's voice. If it's through the Committee Chair's office, that's one thing, yeah, but other than that, and again, they do the work, so I'm not complaining.

The question comes, is just Ms. Cochran's staff the authorized people to up or down a request. And again, they been doing the work so I, like I said I'm not complaining. I just wonder, if that's what we're going to rely on, then that's what we're going to say, we rely on a review by such and such and that's how we basing our recommendation and how we're going to base our decision on. And that's just being up, upfront with everybody. And that's just how I see it Chairman. Thank you.

CHAIR WHITE: Okay. Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, thank you. I would like to see this passed out. Only because, you know, I, I see the bigger picture here and the bigger picture is we have properties in Central Maui that need a rest for us to take the time to see in fact what is, what is the issues, what can we produce or at least look into protecting.

And, we, from Judge Cardoza's opinion, based off of the, the foundational evidence that was presented and cleared, that we discovered that we have a fault in our own legislation, our own Codes in Chapter 19, regarding our, oh my gosh, grubbing and grading. And so therefore I put out a bill for Chapter 19 to address the extraction. So basically, obviously if you're going to take more than a hundred tons and go sell that sand, that's mining, and it should be under a mining permit. So, basically in my legislation is, yeah, you, there are certain conditions that will require a developer to get a mining permit. So basically that will be in place but it's still, that bill is still off to the Planning Commissions and they have a 120 days for review of that.

The other bill, which actually addresses the SHPD failure to come on property and the teeth or an enforcement that we need to as a County delegate and, and work with the State to enforce these implementation plans. That, that bill is in Mr. Carroll's Committee right now, and I'm not sure when Mr. Carroll is going to be able to hear it. But originally, I wanted it in, in Councilmember Cochran's Committee, but she refused, I mean, she didn't want it in her Committee, but therefore I have to wait for Mr. Carroll to push that bill out.

So this six-month period is right on target, you know, for the protection of what is out there. You know, so those two bills coming in, it gives justification and reasonability to have a six-month moratorium as opposed to the two years that was originally placed in this moratorium bill. So for me, this all makes sense. Everything is in proper alignment. This bill, this moratorium is to have a standstill so that we can finally receive my two bills that are coming out and vet them through and pass them, hopefully pass. But without those two bills, there is no real protection, we're back to square one, we're back to what status quo is, as it's always been.

So, I support this bill as is right now. I think the differentiation or the distinction between what we're talking about waiver versus exemption, exemption, where we can easily vote on that right now because of, or at the next meeting, it's, that's clearly an amendment to the bill, which takes five votes. You're amending to exclude or delete certain TMK's from the bill.

So that's a perfect amendment, it just takes five votes on the floor, it doesn't really, I mean you can go through the investigative process so on, so forth, but the bottom line is it's a motion on the floor for deletion of a specific provision in the ordinance regardless of whether investigation was done. It will just only take one of the Members to propose a motion to delete, and if they got four votes along with that one motion, hey, that's excluded from the ordinance, versus we pass this all out, then the developers or the property owners will have to come back and find a way, a vehicle to present a waiver request to the Council via probably a resolution and the resolution will take two-thirds vote to pass. That will be the waiver.

So I, I, I see the mechanism both ways. I don't think we need to make it any harder than it is. I, I do also agree with Ms. Crivello and Ms. Sugimura in terms of the, which office is in charge of collecting the data. It may or may not be sufficient, or looked at as being unbiased, things like that, I don't know. But these are issues that could arise later on if in fact a developer or entity doesn't get the exemption, you know. They could accuse biases, I don't know. But that's why I think just a straight-out vote on an amendment is clear enough. I mean it's, don't really need to lay too many facts down. You got the five votes or not to remove it from the ordinance. So those are my two cents. Thanks, Chair.

CHAIR WHITE: Thank you.

Ms. Sugimura

COUNCILMEMBER SUGIMURA: Thanks, Chair. So based upon what Mr. Guzman just said, I think that to me ties into what Mr. Hokama says as to why we should take this up in Committee, so that we can talk about all of this. I think Member Cochran presented detailed information about why yes or why no, you know, not the Waiko project. It's pretty extensive, it's not simple, it sounds like to just look at the report and just say oh this sounds good or this sounds bad, you know.

So I really would like for us to do Committee work in Committee. I've heard that, you know, being new on the Council, I think I've heard that several times from Members, saying that let's do our Committee work in Committee and do it very fairly. So I, I stand by us doing it that way so that it can be fairly done for all the people who may be concerned. So that's my opinion, Chair.

CHAIR WHITE: Okay, thank you. Any further discussion?

COUNCILMEMBER KING: Chair.

COUNCILMEMBER COCHRAN: Go ahead.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Yeah, I was just reading again the, the waiver, "Adjustment by Council", which is 20.40.060 it says "The council may, be resolution approved by two-thirds of its members, authorize a waiver of any provision in this chapter. To qualify for a waiver, the council must find: A. The proposed activity would not affect a 'burial site', as defined in section 6E-2, Hawaii Revised Statutes."

So I think there's a qualification there and if we want to make an amendment to exempt any of the current requested properties should they meet that requirement, then I would be, I would be fine with that. And then anyone after this passes who wants a waiver, comes back under this waiver provision.

But, yeah, I, I think if we keep putting it off it has a potential to, to drag on and on, and I, although I'm not a member of the Committee, I know that this has gone on for many months already and come to a point where I think most of us agree that we need to do this. And, that we just need to, we need to be satisfied that, you know, we can't, we can't, everybody satisfied that every single person or developer or even the folks who are in favor of this motion get heard. So at some point we have to, you know, fish or cut bait, because it just, it just keeps dragging on. I would be in favor of a vote.

CHAIR WHITE: Right, it's not, it's not going to drag on, because we, we have a deadline for them to, to turn in their materials and I tend to think that Mr. Atay's timeframe is probably the safest. And, Mr. Hokama is correct that if we make amendments on the, on the fifteenth meeting, then the final vote would take place at the next Council meeting in January. So, there is a, there is a delay, but it's not a, it's not a protracted delay.

COUNCILMEMBER KING: So if we make amendments at the next meeting we don't have to go back to, it doesn't send it back to Committee.

CHAIR WHITE: Again, it's, it's like the, it's like the sunscreen bill. I don't, it's going to take more time if we send it back to Committee than if we deal with it the way that we're suggesting. And, and both Ms. Cochran's staff and OCS staff have been working on, on reviewing the materials. So, the Chair is comfortable with, with proceeding with a deferral this one more time so that we, we feel we've given everybody their fair shot at avoiding a waiver process if they can show us that they've got, they've got a, a, a, something similar to what we've approved.

COUNCILMEMBER KING: Okay, but I guess my question was that if we have this list here, so if we remove some names off of this list per the exemption for the Council meeting on the fifteenth, is that a significant change that then sends it back to Committee.

CHAIR WHITE: It doesn't send it back to Committee, it just means that if we have, if we have an amendment, it has to wait for one more meeting for the final vote.

COUNCILMEMBER KING: Okay.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, Chair, I think--

CHAIR WHITE: Actually we--

COUNCILMEMBER COCHRAN: --is it clear that we have not even done first reading yet on this. It's, we haven't done first reading. You just deferred it and here we are now. We haven't even done a vote ever, ever. So, and, and there is a huge difference between an exemption and a waiver.

CHAIR WHITE: Right.

COUNCILMEMBER COCHRAN: And the waiver is spelled out in the bill and Ms. Kelly, Ms. King, highlighted that. So that's been explained. But the exemptions, so I'm not, my office is not in sole charge of all this. It's just Mr. Dowling presented all his, puts his ducks in a row, we vetted through it, it complies with the provisions of a waiver per se, but it's not a waiver cause that's via this body to decide. It's an exemption out of this bill. And we discussed it, presented the justifications for it in Committee, everyone was satisfied, and thereby he was exempted out of this bill.

Now we have others who have come forward, who also would like to prove that they too are worthy of exemption. I just explained why I see there's glaring differences between Mr. Dowling and Waiko Industrial's paperwork, so that, that's all, it was only a recommendation on my behalf to not exempt out of this bill on their behalf. So I'm not the sole decision-maker here on anybody, and the waiver as written--

CHAIR WHITE: Nor your staff--

COUNCILMEMBER COCHRAN: Right--

CHAIR WHITE: --and your staff has been working with your Committee staff.

COUNCILMEMBER COCHRAN: --right, right, right. And so that's what that's about. But I'm, of course I'm, I'm good to vote, but also I'm good to as you stated defer, gather more info, vet through. And any office is more than willing, happy, I'm more than happy to have them vet through all this documentation. But my office has, along with OCS staff as you mentioned--

CHAIR WHITE: Right.

COUNCILMEMBER COCHRAN: --have been working through this, to give everyone a fair shake and a fair, you know, opportunity to be exempted.

CHAIR WHITE: Mr. Guzman.

COUNCILMEMBER GUZMAN: Last and final Chair. I'm very glad that Ms. Cochran had indicated on the floor that her office is just making recommendations for the exemptions. As I stated earlier, any Member can put forth a motion to amend to delete any TMK, if they have the vote to amend the ordinance. So, clearly we're, probably on December 15, there'll probably be a few names that are going to be, I guess, described out or listed and maybe Ms. Cochran will give her recommendation. But clearly as I stated if one of us Members want a certain TMK to be exempt, put out the motion and if you have the votes, it will be deleted from the ordinance.

CHAIR WHITE: Any further discussion? Seeing none, so Ms., Ms. Cochran you're comfortable with us deferring till the next meeting with a deadline for everyone to turn in whatever final documentation they have by, what is Friday, the eighth?

COUNCILMEMBER COCHRAN: Yes, so--

CHAIR WHITE: So by--

COUNCILMEMBER COCHRAN: --yeah, December 8, Friday and then December 15, would be the full Council.

CHAIR WHITE: Correct.

COUNCILMEMBER COCHRAN: Yes, that would be, yeah, enough time for us to yeah, research those applicants.

CHAIR WHITE: Okay. So with that Members, we will defer this matter to--

COUNCILMEMBER HOKAMA: Chairman.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Before the deferral, I would ask you, I think it would be cleaner if we defer this and clear the floor of any outstanding motion so that we can keep the slate clean at the next meeting and when appropriate you can entertain a motion by Ms. Cochran or any Member to propose at that point in time. I think it would be appropriate since I expect amendments and revisions so--

CHAIR WHITE: Probably a reasonable--

COUNCILMEMBER HOKAMA: --I would ask you to--

CHAIR WHITE: --cause we've had this motion hanging for the last two meetings and this meeting.

So if you're comfortable to start it off, well let's.

COUNCILMEMBER HOKAMA: No that's why I'm just requesting that, that is my suggestion, we clear the slate and we take off the motions on the floor so we start clean at the next Council meeting. That's my suggestion, Chairman.

CHAIR WHITE: But we've, we've already approved Mr. Dowling, so are you saying that it--

COUNCILMEMBER HOKAMA: But as Ms. Cochran made the appropriate comment, and as I heard the Clerk bring up the item, we are considering first reading. So there's actually no readings yet, there is nothing official either by this Council or from any Committee recommendation as of yet. And that's why for me, the motion is pretty much, I rather have it off the floor and then we can make a brand new motion come the fifteenth.

CHAIR WHITE: Quick recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 3:27 P.M., AND WAS RECONVENED AT 3:28 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR WHITE: You know, the Chair is comfortable carrying it over as is. But Ms. Cochran, I'll leave it up to you. We can, we can do it either way, we can, we can leave the, currently the measure has an amendment that we voted on and approved. And I would prefer we just leave it at that, leave it at the status of, that it is in right now. We can do that or we can go back to the, the original Committee Report.

COUNCILMEMBER COCHRAN: Thank, yeah, thank you, Chair. But, and thank you Mr. Hokama, but Chair I would just prefer that we, we did some work and here we are, and just kind of leave it as it stands and continue the work and, and come back. So I don't, yeah, I don't know it seems kind of, yeah, I, I much, I agree with you, your, your comments.

CHAIR WHITE: Okay, we'll just leave it as is. That brings us to the end of our agenda, I believe.

Mr. Clerk.

COUNCILMEMBER COCHRAN: Cause Chair, real quickly, cause there's no motions right on the floor right now for this item, currently.

CHAIR WHITE: There is a motion. We're on, we had a motion to amend--

COUNCILMEMBER COCHRAN: Which was the Dowling.

CHAIR WHITE: --which was the Dowling amendment. And so the main motion--

COUNCILMEMBER COCHRAN: We passed.

CHAIR WHITE: --is still on the floor.

COUNCILMEMBER COCHRAN: Okay the main motion, right. Okay, yeah, the main, yeah. So, okay, no it's probably better just to leave it--

CHAIR WHITE: I'm comfortable leaving it as it.

COUNCILMEMBER COCHRAN: --okay, yeah, myself too.

CHAIR WHITE: Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, just for the record, the deferral to the Council meeting of December 15, at 9:00 a.m. in the Council chamber.

CHAIR WHITE: Correct.

DEPUTY COUNTY CLERK: And, regarding for that deadline, if Members are wishing to post anything on the next agenda, the deadline for items into our office is noon on the eighth. So just keep that in mind when requesting responses from these various entities that these responses would need to be back and reviewed by you prior to that noon deadline on Friday for posting.

Mr. Chair, there's no further business before the Council.

CHAIR WHITE: Thank you very much, Mr. Clerk. Thank you all for being here today and we are adjourned.

ADJOURNMENT

The regular meeting of December 1, 2017 was adjourned by the Chair on December 4, 2017 at 3:30 p.m.



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DENNIS A. MATEO, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII