

**CLIMATE ACTION AND RESILIENCE COMMITTEE**  
Council of the County of Maui

**MINUTES**

**September 14, 2020**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 9:02 a.m.

**PRESENT:** VOTING MEMBERS:  
Councilmember Kelly Takaya King, Chair  
Councilmember Shane M. Sinenci, Vice-Chair  
Councilmember Riki Hokama  
Councilmember Tasha Kama  
Councilmember Tamara Paltin  
Councilmember Keani N.W. Rawlins-Fernandez

NON-VOTING MEMBERS:  
Councilmember Michael J. Molina

**EXCUSED:** VOTING MEMBERS:  
Councilmember Alice Lee

**STAFF:** Kasie Apo Takayama, Legislative Analyst  
Nicole Siegel, Legislative Analyst  
James Forrest, Legislative Attorney  
Stacey Vinoray, Committee Secretary

**ADMIN.:** Richelle Thomson, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Michele McLean, Director, Department of Planning  
Eric Nakagawa, Director, Department of Environmental Management  
Shayne Agawa, Deputy Director, Department of Environmental  
Management

**OTHERS:** Hannah Bernard, Executive Director, Hawaii Wildlife Fund  
Dr. Wendy Wiltse, President, Oahu Waterkeepers

(9) additional attendees

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

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CHAIR KING: . . .(gavel). . . Good morning. Will the Climate Action and Resilience Committee meeting come to order? Today is September 14, 2020. Welcome to my colleagues on the Council, and to all of our viewers out there, and to the Staff. Thank you for...everybody for being here on time. And I will ask now if everyone can please silence your cell phones and any other noise-making devices so they don't

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inadvertently go off when we're talking. And my name is Kelly King, I'm the Chair of the Climate Action Resilience Committee. Today we have with us...Alice Lee is excused, Member Lee is excused, she had some matters that just came up, I just got a notice. And with us today we have our Vice...our Committee Vice-Chair Councilmember Shane Sinenci. Aloha, Mr. Sinenci.

VICE-CHAIR SINENCI: Aloha ka kou, mai Maui hikina. I hope everybody had a good weekend.

CHAIR KING: Yeah, it's a good weekend. Okay, and we have with us Council Vice-Chair Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, mai Molokainui ahina.

CHAIR KING: Aloha kakahiaka. And Council Pro Tem Tasha Kama.

COUNCILMEMBER KAMA: Hello. Good morning. Good morning, Chair and Members. It's a beautiful day in the neighborhood of Kahului.

CHAIR KING: Good morning. And it must be a very healthy atmosphere because your monstera leaves are still looking bright and green. All right --

COUNCILMEMBER KAMA: Thank you.

CHAIR KING: --and we have with us Councilmember Tamara Paltin from the Westside.

COUNCILMEMBER PALTIN: Aloha kakahiaka. Live and direct from the Old Lahaina Center.

CHAIR KING: Aloha kakahiaka. And Councilmember Riki Hokama, thank you for being with us.

COUNCILMEMBER HOKAMA: Good morning, Chair.

CHAIR KING: Good morning. Love that background of the sharks. Not that it feels like that on this Committee, we're all pretty friendly. And today I'm so happy to announce we have our non-voting Member Mike...Councilmember Mike Molina from the Upcountry area. Aloha, Mr. Molina.

COUNCILMEMBER MOLINA: Good morning, Madam Chair, and everyone viewing, broadcasting to you live from under my virtual bridge in Makawao.

CHAIR KING: Okay, thank you for being here, for joining us. And our other non-voting Member is Yuki Lei Sugimura, who's welcome to join us at any time. Today, Members, we have...from the Administration, we have the...from Department of Environmental Management we have Director Eric Nakagawa, who will be joining us when we get to the comments hopefully from the morning session, morning presentations. We have Michele McLean, the Director of the Planning Department. We have, from Deputy

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Corp. Counsel...I believe it's Richelle Thomson, although I seem to always be getting an option of...Richelle, are you here? Oh, great.

MS. THOMSON: Yes, please. Hi, Chair.

CHAIR KING: It's really great to have you here because you've been following these issues, so thank you for being here.

MS. THOMSON: Sure.

CHAIR KING: And we have other guests that will be joining us shortly, Norris Uehara from the Safe Drinking Water Branch Section Supervisor of the State Department of Health. And we'll have Darryl Lum, Engineering Section Supervisor from the Clean Water Branch, State Department of Health for Hawaii. We have our Committee Staff: Nicole Siegel, Legislative Analyst; Casey Apo Takayama, Legislative Analyst; Stacey Vinoray, Committee Secretary. And I just want you guys all to know that this woman Stacey works late. I get emails from her sometimes at 9 o'clock at night. So thank you so much for your diligence, Stacey. Jean Pokipala, Council Services Assistant Clerk; James Forbes, Legislative Attorney. From my Staff, Kate Griffiths and Michele Del Rosario. And I wanted to make a special shout out, thank you, and congratulations to both my Staff members and Casey Apo Takayama for completing the Climate Reality Project Training that they just went through, and that's going to be very helpful to this Committee. And also, they--all three of these ladies have personal commitments, so thank you ladies for doing that training. It's a large commitment of five or six days of classes, and then you have to make commitments for throughout the next year, so I really appreciate that. So Members, we have three items on today's agenda. We have the CAR-1(7) Review of National Pollution Discharge Elimination System, which is the NPDES, and Underground Injection Control, UIC Permits, as it Relates to Protecting the Natural Environment. We have CAR-27, the Lahaina Wastewater Facility Modifications from the Contract with CH2M Hill Engineers. And we have CAR-28, Membership Requirements for Lanai, Maui, and Molokai Planning Commissions and Hana Advisory Committee. So Members, let's begin with Public Testimony.

**. . .BEGIN PUBLIC TESTIMONY. . .**

CHAIR KING: Staff, do we have testifiers today? Can you let us know how many you have signed up so far?

MS. SIEGEL: Chair, yes, we do, and we have three signed up at this time.

CHAIR KING: Okay, great. So testifiers wanting to provide video testimony should've joined the online meeting via BlueJeans link, [bluejeans.com/498712703](https://bluejeans.com/498712703) as noted on today's agenda. And testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290 and entering meeting code 498 712 703, also noted on today's agenda. Written testimony is highly encouraged as well, and you can send in your comments to [car.committee@mauicounty.us](mailto:car.committee@mauicounty.us). As everyone

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knows, oral testimony is limited to three minutes per item, and we'll give you an extra minute to conclude, should you require. Please state your name, and any organization you are representing, and whether you are a paid lobbyist or not. And please inform the Committee of those items so that we can get your spelling correctly for your name. All right, I'm going to go ahead and just jump to testimony, and we'll check with Staff, if you can call the first testifier.

MS. SIEGEL: Chair, the first person signed up to testify is Hannah Bernard, to be followed by the person logged in as Wendy. Ms. Bernard, if you could unmute yourself.

MS. BERNARD: Aloha kakahiaka, can you hear me?

CHAIR KING: Yes, we can. Thank you for being here.

MS. BERNARD: Good. Well, first, I'd like to just for the record reintroduce myself. Hannah Bernard, Executive Director of Hawaii Wildlife Fund, and I just want to thank you so much, Chair of the Committee King, and the rest of your Members for considering today these presentations on the Lahaina Injection Well situation, particularly as it relates to the two types of permits that impact that area, and possibly the changes to the wastewater treatment plant that you might be hearing a presentation about. Just thank you so much for putting those on the agenda. But specifically, what I want to testify to this morning is the County Communication 20-418 to support the suggestion, or the request, and this communication to have a conservation or a climate change specialist on all of the Planning Commission Committees and advisory committees. I think that's a fabulous idea that will probably save the County significantly in future costs when things that need to be considered maybe haven't been considered, and plans might need to be redone because of that. So having someone like that on your committees, what a great idea. Just as important as having a cultural practitioner on every one of these committees. No less important. So once again, mahalo, thank you for your good work everyone, and have a great day.

CHAIR KING: Mahalo, Ms. Bernard. Questions, we have a questions from...I'm not sure if there was a question from Member Rawlins-Fernandez, I think she was waving. We have a question from Councilmember Paltin. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Bernard. I just was wondering, have you ever applied to the Planning Commission? And if no, if you had a list or if you could help us recruit folks that have that type of qualifications? I mean, they can start --

MS. BERNARD: Yes, I...

COUNCILMEMBER PALTIN: --putting in their application now.

MS. BERNARD: I apologize, I have not. I am so busy, but now that I know there could be a position like that created, it gives me a real incentive to try to do that. And absolutely, will be sharing the word, that will be so good. I think we'll get lots of interest in that

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position.

COUNCILMEMBER PALTIN: Yeah I just was mentioning it because I know there's two positions coming up in March. So, I mean, we can start getting the applications in now, and hopefully it wouldn't expire, right, by March?

CHAIR KING: Okay, great. Thank you, Member Paltin. Thank you for your optimism about the item on the agenda today. Okay, anybody else? If not, thank you so much for being here, Ms. Bernard, and I hope you'll stay through the presentations. I think they'll be interesting.

MS. BERNARD: Thank you.

CHAIR KING: Next testifier, Staff?

MS. SIEGEL: Chair, the next person signed up to testify is logged in as Wendy.

CHAIR KING: Okay. Wendy? Wendy, do...can you unmute yourself? Oh, you're...the...let's see. Looks like she's unmuted. You're unmuted on our end, but we can't hear you. Not sure. We can see you, but we can't hear you. Staff, can you double check and make sure that Wendy's unmuted?

MS. SIEGEL: Chair, she's unmuted on our end.

CHAIR KING: Okay. Not sure why we can't hear you, but maybe--is it possible for you to phone in maybe? Something seems to be wrong with your audio. Maybe--can you try making sure that it's turned up all the way, the volume? We still can't hear you. Okay. It looks like she's going to phone in. Okay, so we'll go to the next testifier and then we'll come back to you, Wendy. Okay? Thank you. Next testifier, Staff.

MS. SIEGEL: Chair, the next person signed up to testify is logged in with the last four digits of their phone number, 6366.

CHAIR KING: Okay, testifier, could you please begin your testimony, and say your name and your affiliation if any. Oh. I don't see the testifier on.

MS. SIEGEL: Chair, they're unmuted on our end. Testifier logged in as last four digits 6366, did you wish to testify today?

CHAIR KING: Hello? Okay. I guess...I see them on here, and I see them unmuted. Okay, let's see if...is Wendy on now by phone? We can go to Wendy.

MS. SIEGEL: I don't see her yet, Chair.

COUNCILMEMBER PALTIN: Chair, does the phone folks have to press, like, star something on their end? The folks on the phone? Oh, star four?

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UNIDENTIFIED SPEAKER: Star four.

CHAIR KING: So if you're 6366 and trying to get in, try pressing star four on your phone. Can you help us out here, Staff? Is that the issue?

MS. SIEGEL: I'll try giving them a call.

CHAIR KING: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KING: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Sometimes when you...when the computer has used different video conferencing software, the...it affects the way that the software works. So if, you know, Wendy was on Zoom prior to joining BlueJeans, sometimes the affects the . . . *(audio interference)*. . . it operates. So if she wants to restart her computer, then it'll refresh and it then might work then.

CHAIR KING: Okay, I think she's trying to call in by phone. It looks like...do we have our...did we check back in with the person who was phoning in? Nicole, 6366? Yeah, so Wendy, we still...we can see you, but we still can't hear you.

MS. SIEGEL: Chair, they've confirmed that they're just here to listen today.

CHAIR KING: Okay, great. Okay. So I think the one that we're not getting is Wendy.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, would you like to take a quick recess maybe? . . . *(inaudible)*. . .

CHAIR KING: Yeah, you know, I think what I'll do is...let's go ahead and start with our program because we have two presentations. And I'll check back in with Wendy after the two presentations and see if --

COUNCILMEMBER RAWLINS-FERNANDEZ: No objections.

CHAIR KING: --make that call.

COUNCILMEMBERS: No objections.

CHAIR KING: No objections to that? Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: . . . *(inaudible)*. . .

CHAIR KING: So let's go again and go forward because we have two presentations this morning, we have people standing by.

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**CAR-1(7): REVIEW OF NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) AND UNDERGROUND INJECTION CONTROL (UIC) PERMITS AS IT RELATES TO PROTECTING THE NATURAL ENVIRONMENT (RULE 7B)**

CHAIR KING: We're going to be reviewing the National Pollution Discharge Elimination System, better known as NPDES permit, and Underground Injection Control or UIC Permit as they relate to protecting the Natural Environment. One of the duties of the Climate Action and Resilience Committee we share with the EACP Committee is to implement the general plans' objective of protect the natural environment. NPDCS and UIC permits are issued by divisions within the Department of Health to help protect our water from pollution. In the past, there has been confusion as to what these permits are, the differences between the two, and when and why they are issued. Today we have with us Norris Uehara, the Safe Drinking Water Branch Section Supervisor for Environmental Management Division at the State of Hawaii Department of Health; and Darryl Lum, the Engineering Section Supervisor for the Clean Water Branch, also with the State Department of Health. We've also invited the Department of Environmental Management for any comments they may have on this matter, and Director Nakagawa is on, so we'll ask him if he has any comments following the presentations. Mr. Uehara will provide us with some background on Hawaii's UIC program, and then Mr. Lum will give us some background on NPDES permits. They will be available after the presentations for question and answer from Committee Members. So it...so I don't forget this, Mr. Uehara and Mr. Lum both have special expertise in this subject matter before the Committee based on their key roles on permit issuance in the State of Hawaii. Therefore, if there are no objections, I would like to designate Mr. Uehara and Mr. Lum as resource persons in accordance with Rule 18(a) of the Rules of the Council. There are no objections?

**COUNCILMEMBERS VOICED NO OBJECTIONS**

CHAIR KING: Okay, great. All right. We'll go ahead and start with...is Mr. Uehara...here he is. Thank you, gentlemen, for being with us today, and disseminating this very important information to help us figure out some of the questions regarding this issue. And I'm going to go ahead and ask Mr. Uehara to, or, yeah, Mr. Uehara is going first. And Norris, if you can take it away.

**. . .BEGIN PRESENTATION. . .**

MR. UEHARA: Okay, good morning.

CHAIR KING: We have a...good morning.

MR. UEHARA: Can you guys hear me and see me okay?

CHAIR KING: Yeah, we can see you fine.

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MR. UEHARA: Okay. I'd like to start my presentation. This is the first time I'm doing this one on BlueJeans or whatever, so please bear with me. Let's see if this thing...if it works. Okay, can you guys see my presentation?

CHAIR KING: No, not yet.

MR. UEHARA: Okay.

CHAIR KING: Staff, did you give Mr. Uehara the screen share?

MS. SIEGEL: Yes. If you click in the --

MR. UEHARA: . . . *(inaudible)*. . .

MS. SIEGEL: --top center of your screen --

MR. UEHARA: Yes.

MS. SIEGEL: --there's the share screen button as long as your presentation is already open on your computer.

CHAIR KING: So it's the --

MR. UEHARA: Share screen.

CHAIR KING: --it's the one that looks like a screen.

MR. UEHARA: That's...yeah. Got it.

CHAIR KING: There we go. Okay.

MR. UEHARA: Okay. There we go.

CHAIR KING: Okay. Perfect.

MR. UEHARA: Okay. I'm with the Department of Health Safe Drinking Water Branch as a Supervisor for the Underground Injection Control Program.

CHAIR KING: Okay, can I just real quickly ask everyone to mute. I'm hearing some typing in the background from probably the Staff member and some hissing from somebody else. Go ahead, Mr. Uehara. Sorry about that.

MR. UEHARA: Okay. Okay, so I'm here to kind of give you guys an overview of what the Underground Injection Control program is about. To begin with, we were a program that started in 1984. It was done under...it was done for the purpose of protecting underground sources of drinking water from being contaminated by injection well



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wastewater disposal. Program administers Hawaii Administrative Rules Title 11, Chapter 23, entitled Underground Injection Control. And HRS Chapter 340(e) gives us the authority. And this point is kind of something that is kind of important for you guys to understand is that we're a State program, you know, a State mandated program. There's also the Federally mandated program, a UIC program also, regulated by the EPA. So there's duplicity in the regulation of your injection wells. Okay, so please beware of that, that we were...the State program was not delegated the primary enforcement authority. This is due to some disagreements with how our program regulates injection wells. In this presentation, I think I'll be touching upon this thing called the UIC line, and it will kind of explain or hopefully I'll be able to explain what the difference is when I get to that point. Okay. So wastewater can be disposed of into the ground or into the ocean. The wastewater disposal into the ground can be via surface impoundments, ponds, basins, Dorsham (phonetic) fields or leaching fields, ditches, trenches, and wells. Wastewater can also be disposed of into the ocean or streams, and outfall is the other option. Out of the options mentioned above, wells can be relatively cost effective and take up, you know, the least amount of space, thus making it kind of a popular wastewater disposal option. Okay, what is a well? And many people wonder what the difference, no, what incorporates a well. And let me just kind of read through these things. A well is defined as a ward drilled or driven shaft or a dug hole whose depth is greater than its widest surface dimension. Pretty much the depth dimension is typically measured from the ground surface to the bottom of the excavation or the drilling. The width, we normally look at the widest open hole dimension as what we consider the width. So pretty much a well is something that is deeper than it is wide. Okay. Now, what is an injection well? Okay. Injection well is a well that's used specifically for the disposal of wastewater. Most injection wells are gravity fed. Gravity is used to deliver the effluent into the well. There is a misconception out there with the term "injection" being in the title of these wells. Most people envision, you know, a hypodermic needle from like a doctor's office or whatnot, and the forcing of wastewater into the ground, but that's a misconception. Water is pumped to the ground into the well and dispersed just under gravity. That is a...that is the pressure and thus, the injection well. There's different kinds of wells. I break them up into large diameter wells and small diameter wells. Large diameter wells are like, you know, old cesspools or seepage pits, or drainage wells where, you know, the diameter of the well is more appropriately measured by feet versus inches. And that small diameter well is just the opposite of that, where it's more appropriately described as the width in inches versus feet. Okay. Small diameter wells are very common in industrial, in sewage, in most cases, other than drainage wells. Okay. What is the concern over injection wells versus other types of wastewater disposal into the ground? Okay, we have a premise that a shallower discharge can be, the better it is for the environment or for resource protection because shallower releases or discharges have an opportunity to go through the soil, root zone, and get filtered, get some of the nutrients or whatever's in there either bound up into the upper soil layer or used by the plants or whatnot. So it's, we just...our position is that we would prefer shallower discharges versus deep discharges. So that's where injection, a concern over injection wells are, because injection wells are usually constructed to greater depths than these shallow type drainage structures, like ponds or leech fields. Okay, so the water receives less filtration. And it goes further where deep injection wells

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when you get into smaller diameter injection wells where you can drill down hundreds of feet. These deep injection wells can totally bypass any kind of filtration and inject directly into the aquifer. So that is where...that's what the concern is regarding injection wells is that it can directly affect an aquifer or drinking water aquifer. Okay. How does the USC program protect drinking water aquifers? Pretty much, we protect it by prohibiting. We prohibit polluting wastewater from being injected into our underground sources of drinking water. And we also prohibit deep injection into our artesian aquifers. There's a difference between these two things, and I'll get into it later. It's about how we use the UIC line to delineate where the USDW's are or underground sources of drinking water are. But this deep injection into artesian aquifers is not reflected in that UIC line. It's where my staff, we're a bunch of geologists here. We understand where our cap rock formations are, and where the artesian aquifer exists, so we...this is where our role comes where we understand where the artesian aquifers are, and we try to maintain a distance. If there's going to be injection of wastewater, we're going to make sure that wastewater is injected only into that upper part, and it doesn't get into the lower artesian aquifer part. Okay. So pretty much, we are prohibiting injection wells in certain areas, but we do have to allow injection of polluting wastewaters, like industrial or sewage, into areas where they don't overlie what we're gonna consider protected underground sources of drinking water. That does end up being injection wells...sewage injection wells, and industrial injection wells end up being closer to the ocean because of that. Okay. The...

CHAIR KING: Mr. Uehara, just before we go --

MR. UEHARA: Sure.

CHAIR KING: --you finish up. Can you just explain to us what the noise in the background is? Because it appears to be coming from your end. We've been trying to figure out the hissing noise that.

MR. UEHARA: That noise?

CHAIR KING: Yeah.

MR. UEHARA: That's my battery backup.

CHAIR KING: Okay.

MR. UEHARA: Sorry.

CHAIR KING: If it's necessary, I think we can live with it.

MR. UEHARA: Yeah.

CHAIR KING: I just wanted to see if it was...the Staff has been checking, and it looks like it's coming from your end.

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MR. UEHARA: I apologize for that. I should have turned the thing off or done something about it.

CHAIR KING: Okay, well, continue please. Thank you.

MR. UEHARA: Oh, okay. So I've been mentioning this UIC line. Let me give you a little background about what this is. It's a plan view delineation for all of the major islands in the State which kind of define the extent of the underground sources of drinking water. I don't have a good visual for you, so I provided a link to the UIC maps on this slide. Maui is different than most of the other islands because it has two UIC lines, one going around Haleakala and one going around West Maui. So yeah, they encircle the islands and in many places, it follows either a shoreline, or a roadway, or an elevation contour just to help facilitate our identification of where the line is. The areas above the line, or mauka of the line, delineate the USDWs, or underground sources of drinking water. This is where most of the drinking water wells exist, and where aquifer recharge occurs. Areas makai of the UIC line are the areas where sewage and industrial injection wells are allowed with a permit. Okay. This may not be fully inclusive, but these are some of the common types of wastewater that we find in the State. Rainfall runoff being, like, the biggest wastewater that is managed through injection wells. Sewage, pooling water. Typically related to like the production of electrical power. Manufacturing of goods type of wastewaters. Food processing. Aquaculture, geothermal, and nowadays, this is something relatively newer, is desalination. People desalinating their water for drinking water purposes or other purposes, so that...the brine from desalination. Okay, we have strict prohibitions of certain kinds of wastewater that can't go down to any...through any injection well. Of course, there's a division of hazardous waste, or waste that exhibit a characteristic of a hazardous waste. Sewage and industrial wastewater above the UIC line. There are existing facilities out there that do have sewage injection wells above the UIC line. And they were kind of grandfathered in back in 1984, but they're limited to do what they were doing historically, and they cannot expand on it or increase their sewage injection. Other things that are not allowed are things that are undescribed in the...by their permit. The permit kind of locks them into the type of discharge, and the quantity of discharge, and the manner of discharge. And if they try to do something outside of that, that's not allowed. There's another set of, or another class of injection wells out there, like related to petroleum and the petroleum industry or hazardous waste industry, more commonly found on the mainland, called classes one through four. Those types of wells are not allowed in the State. Also, any kind of wastewater, including just potable or drinking water, within a quarter mile of the drinking water source is not allowed to be discharged into an injection well. Okay, what does a UIC permit do? Establishes recording, monitoring, operating, and corrective action conditions to prevent or address the potential for drinking water aquifer contamination from occurring. It acts like a contract which binds a facility, facility's injection activity, what they propose to do. So I mentioned...I forgot to put on this slide, and it is an important part of the permit is that you do have limitations as far as quantity and quality that a permit gives a facility to do. So that's an important point. Quantity, we have discharge limits, described by quantity and quality. Okay,

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permits contain the conditions and requirements specific to a particular injection activity. Their individual permits, monitoring and reporting typically include daily flow recordings, periodic recorded inspections, annual well performance evaluations, and periodic injection tests, lab tests, water quality tests. These permits need to be renewed. Five year is the maximum term of a permit duration. We don't have a general permit. That might be something that Darryl will be getting into in the NPDES presentation, but we do have this thing called permit exclusion, and it's meant mainly for drainage wells, sort of similar to a general permit. It's only for drainage wells where we just kind of register them. Okay, the UIC permitting process, it involves submitting an application, typically a \$100 filing fee, but the government agencies are exempt. If the proposed injection activity is above the UIC line for, like, the drainage well which is allowed above the UIC line, public notice would be required. If everything is satisfied there, then we grant the approval to construct the well, issue a final report format with the approval. Final report gets submitted after all the information is collected during the construction of the well, they test it, they do boring logs, and things like that. If everything looks okay, then we do the permit to operate. We issue that, and then it falls into the cycle of a maximum of five years that they do a permit renewal application, and then we issue a renewed permit. This is my contact information. Please contact me if you have any questions or if the public has any questions regarding what we do and this presentation. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, you're muted.

CHAIR KING: Thank you, Mr. Uehara. And can you stay with us through the next presentation to answer Members' questions?

MR. UEHARA: Yeah.

CHAIR KING: Okay, great. Thank you so much. All right, we'll go now to Mr. Lum, if you'd like to share your screen.

MR. LUM: Hi, good morning everyone. I'm Darryl. Just a minute, I'm going to share my screen.

CHAIR KING: And if we could ask Mr. Uehara to mute at this time.

MR. LUM: Okay, can everyone see my slides?

CHAIR KING: We can.

MR. LUM: Okay, great.

CHAIR KING: Thank you.

MR. LUM: Okay, so I'm Darryl Lum. I'm with the State of Hawaii Department of Health Clean Water Branch. The Clean Water Branch is responsible for administering Hawaii's water pollution control rules and laws. And one of the major pieces of, or

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components of our program is the NPDES permit program. So NPDES stands for National Pollutant Discharge Elimination System. This is a Federal permitting system that's required by the Clean Water Act, and the Department of Health has received the delegation and the approval to administer this program in Hawaii. So what this basically means is the Department of Health is processing and issuing NPDES permits on behalf of the U.S. Environmental Protection Agency in Hawaii. Okay, so what is a NPDES permit? The NPDES permit is a license that is issued by the Department of Health to a person authorizing the controlled discharge of water pollutants to State surface waters, subject to water pollution control conditions and laws. Okay, so when we issue NPDES permit, we're not allowing someone to just release their pollutants and do whatever they want. The permit is very stringent, and it obligates them by law to comply with the permit requirements. The purpose of a NPDES permit is to protect water quality by ensuring that the State's water quality standards is implemented, and the Federal water pollution control regulations are applied as permit conditions. The NPDES permit limits what a person can discharge to State surface waters, and generally, the permit specifies acceptable levels of a pollutant or pollutant parameter in a discharge. So the example that I have here is 19 micrograms per liter of copper. So if that is the person's permit limit, that's the most copper that could be in their discharge. The NPDES permit allows the permittee to choose the technologies in order to achieve those limitations in the permit. So in most cases, the permit doesn't dictate what products or technologies to utilize. The NPDES permit also establishes monitoring and reporting requirements and other provisions to ensure that the discharge does not hurt water quality or people's health. So when do you need to obtain a NPDES permit? The answer is, it depends on what you're doing and where you're going to discharge. So if you plan on discharging pollutants from a point source to a State surface water, you need a NPDES permit. If you plan on discharging pollutants into municipal sanitary sewer system, you do not need a NPDES permit, but you need to ask permission from the municipality that owns that sewer system. So you cannot just pop open a manhole cover and dump your waste into it, you need to get their permission. The reason you don't need a NPDES permit is because this municipality is already regulated through a NPDES permit or through some other permit mechanism. Okay, and if you plan on discharging pollutants into a municipal drainage system, you need a permit, or you may need a permit depending upon what you discharge. So if you ever find yourself in this situation, the best thing to do is to contact the Department of Health and the municipality. Okay, so in my previous slide, I had mentioned that if you're discharging pollutants from a point source to a State surface water, you need a NPDES permit. Okay, the term "pollutant" is defined in the Clean Water Act and the Hawaii Revised Statutes, and it includes all industrial, municipal, and agricultural waste that is discharged to water. Okay, these definitions include examples of what is considered pollutants, and some of these examples is sewage, sludge, heat, garbage, rocks, sand, dirt, and dust. So it's pretty much everything under the sun. The term "point source" is also defined in the Clean Water Act and the Hawaii Revised Statutes, and the regulatory definition is any confined, discrete, discernable conveyance from which pollutants may be discharged. Okay, so an easier way to think about what a point source is, it's pollutants coming from a specific source. So if you're releasing pollutants to State water, you're a point source. Okay, and the term "State waters" is defined in our statutes and it includes the

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oceans, streams, wetlands, lakes, rivers, ditches, and gulches. Okay. So let me give you an example. Let's say you own a factory, and you manufacture widgets, so you create some type of product. And as part of your manufacturing process, you generate some type of waste, and you need to get rid of the waste somehow. And let's say you look outside your window, and you see that there's a stream right outside your window. And you're thinking, oh, why don't I discharge to the stream? Okay, before you do something like that, you will need a NPDES permit. Okay, and the reason is your waste is a pollutant, your action of discharging the pollutants to the stream is a point source, and the stream is a State water. So why do you need an NPDES permit if you're discharging from a point source to State surface waters? The simplest answer, it's the law. The Clean Water Act prohibits anyone from discharging pollutants to a point source into waters of the U.S. unless they have a NPDES permit, and our statutes does not allow anyone to release pollutants into State waters except if they're given a permit or a variance by the Director of Health. And the permit that is being referred to here is the NPDES permit. We have two types of NPDES permits, we have individual permits, and we have general permits. A NPDES individual permit is written to reflect the site-specific conditions of a single discharger, and in some rare situations, the individual permit is issued to co-permittees or multiple dischargers. The individual permit is based on the information that is submitted by the discharger in their application, and the individual permit is unique to that discharger. And what I mean by unique, a particular discharger may not be utilizing a certain chemical, for example. So because of that, their permit may not contain restrictions or limitations on that chemical. Okay? The one thing we did want to point out is that if a discharger does not disclose a pollutant in their application, and we issue the permit...and after we issue the permit, they discharge that pollutant, that's an unauthorized discharge. Okay, an individual permit has to meet all applicable requirements of the NPDES Federal regulations, and the individual permit is issued directly to the discharger. The NPDES general permits are a little bit different than the individual permits. The general permits are written to cover multiple dischargers with similar operations and types of discharges. Our general permits are issued in the Hawaii Administrative Rules, and it's issued to no one in particular with multiple dischargers obtaining coverage under that general permit after it's issued. Okay, and since the general permit is already issued, the people that are requesting coverage on there already know what the permit conditions are. And because of this, whenever people request coverage under it, it's a lot quicker than the individual permit. Okay, general permits have to meet all applicable requirements of a NPDES permit, okay. The term "general" does not mean broader or less stringent. And any discharger that cannot meet all the conditions of a general permit has to apply for an individual permit or prevent the discharge to State surface waters. Okay, so let me give you an example here. We have a general permit for hydrotesting discharges. So this is when people are pressure-testing, leak-testing, or chlorinating pipes or tanks. And if you want to release that pollutant or that effluent into a State water, you need to get NPDES permit coverage, okay. And even though we have a general permit that covers that, if a person is proposing that activity, and they look through the general permit and they see for some reason, or one of the conditions, they just cannot comply with it, they cannot be covered under that general permit. Okay, so this table here contains the 11 general permits that Hawaii has. Two of these general permits are

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expired. We're waiting for a approval from the Attorney General's office to allow us to issue these general permits outside of the rules before we renew these two expired permits. I'm not going to read through this whole thing, but I just wanted to point out, there's three general permits that are commonly used in Hawaii. So if you look in the first column where it says HAR11-55 Appendix and then you go to the third row where it says Appendix C, this is the general permit for construction stormwater discharges. So when you disturb one acre or more of land, EPA determined that opening up that much land, you're considered a point source when it rains because potentially a lot of pollutants can be released. So we have a general permit that covers that type of activity. Another common one is the Appendix F, the hydrotesting waters discharge, which I kind of mentioned previously. And then the third common one is Appendix G, which is the construction activity dewatering. So typically, we average about two to three requests per day for coverages under these general permits. To apply for an individual NPDES permit, you would go...you would fill out the individual application form, it's called the CWB individual NPDES form on the DOH's e-permitting website. I have the web address on the screen. If you cannot remember what it is, like me, then just go into your web browser and type Hawaii e-permitting, and you'll be able to find it. There's two versions of this form, electronic signature and wet signature. If anyone is interested in doing electronic signature, they can just let me know. There's a one-time subscriber agreement process that has to be completed and notarized. Sections one through eight of the form is basic information, like what is your name, what's your address, where are you discharging to. Section 9 is the discharge specific attachments. So this is where the permit writer gets the information that is used to draft the permit and the fact sheet. The individual application has to be submitted at least 180 days before discharge. There's a \$1,000 filing fee. There's a required one-day public notice in a major local newspaper, and a 30-day minimum public comment period. And the discharger is responsible for all newspaper publication costs. The reason the public notice has to be in the major local newspaper is because this is a requirement in the Hawaii Revised Statutes. The Department of Health, during this past legislative session, had an administrative bill that proposed to amend this statute and allow government agencies to public notice on the website, but because of COVID-19, you know, everything kind of stalled. So hopefully when things...or if things get back to normal, then our DOH management will decide to pursue this again. Okay, processing of an individual application really depends upon the type of discharge, and it can range from...anywhere from 45 days to a year. So if it's a short-term temporary discharge, 45 days is typically common. If it's a continuous type of discharge where there's potentially a lot of pollutants, then one year is a possibility, okay. And processing an individual application includes drafting the permit and fact sheet, addressing draft permit concerns from the discharger, EPA, and our internal enforcement, doing the one-day public notice, holding the 30-day comment period, addressing all the public notice comments, holding a public hearing if it's deemed warranted, amending the draft permit based on public comments if needed, and issuing the final permit. The Clean Water Act and Hawaii Statutes limits the terms of the individual permits to no more than five years. The individual permit can be renewed at any time after the permit is issued as long as the permit holder submits a renewal at least 180 days before expiration. The individual permit can also be administratively extended if the permit holder reapplies at least 180 days before the

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permit expires, and if the reason why the permit cannot be renewed is through no fault of the permit holder. Okay, requesting coverage under a general permit is a little bit different than the individual permit. Okay, so when it comes to the general permits, people do not submit applications because they're not applying for a permit. The general permit has already been issued. Instead, the general permit is written such that once it's issued, anyone that wants to be covered under it will submit a form called a notice of intent, or NOI form. That's the notice from the discharger to the Department of Health that they wish to be covered under the already issued general permit because they can and they will comply with all of the conditions. Okay, so the NOI form is available on the Department of Health's e-permitting website. It's the CWB NOI form. We have electronic signature and wet signature versions available. Sections 1 through 8 is the basic information. Section 9 is the discharge specific attachment that's related to the general permit that the person's requesting coverage under. The NOI has to be submitted at least 30 days before the commencement of discharge. There's a \$500 filing fee. There's no public notice and no public comment period because when the general permit was in the process of being issued, it already went through public participation. And processing can range from one day to three weeks, and it just depends upon when a person submits the NOI and the workload of the people at that time. Okay, so all NPDES permits are required to have five sections. Okay, the first section of a NPDES permit is the cover page. So this, the cover page, contains the name and location of the permittee, what is being authorized to discharge, where the discharge is going to occur, and it also contains the signature from the Director of Health or whoever the Director designated to act on his or her behalf. And some people consider the cover page to be the most important part of the permit because without that signature, by law they can't discharge pollutants. Second part of a NPDES permit is the effluent limitations. So this is the primary mechanism for controlling the discharge of pollutants to the State waters, and the effluent limitations is where the Department of Health's permit writer spends the majority of their time. Okay, we have two types of effluent limitations in a NPDES. There's technology based effluent limitations, and water quality based effluent limitations. The technology based effluent limitations, or TBELs, requires a minimum level of treatment of pollutants from point source discharges based on available treatment technologies. So what EPA did is they went across the nation, they took a look at all the different treatment and technology that's being utilized, they ran all different forms of analyses, and whatever they decided, they put it in the Federal regulations. So when we issue a NPDES permit, if it applies to a particular facility, that facility has to comply with these TBELs. The second type of effluent limitations is the water quality based effluent limitations, or QBELs. The QBELs are derived from the State's own water quality standards. Okay, so if you remember from one of my previous slides, I kind of mentioned, the NPDES permit, the purpose is to ensure that the standards are being implemented. Okay, so this is where that comes in. The Federal regulations requires that all NPDES permits contain QBELs for every pollutant parameter that has a reasonable potential to cause or contribute to an excursion of any State water quality standards criteria. Okay, so the permit writer has to perform a reasonable potential analysis, and we have three different analyses that are done at the Department of Health depending on the type of pollutant. And once the Department of Health determines there's a chance the person could exceed that criteria, we are



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obligated by law to give them a QBEL in the NPDES permit. Okay, the third part of a NPDES permit is the monitoring and reporting requirements. So this is used to characterize waste streams and receding waters, evaluate the treatment efficiency, and determine compliance with the permit conditions. Fourth part is special conditions, so these are conditions that are supplemental to the numeric effluent limits. So special conditions could include things like monitoring activity, special studies, additional pollutant control measures, and compliance schedules. And then the fifth part of the NPDES permit is the standard conditions. So these are pre-established conditions that are taken straight from the Federal regulations that apply to all NPDES permits. And these standard conditions delineate the legal, administrative, and procedural requirements of the NPDES permit. Okay. Now, one of the most important parts of the entire NPDES process is the enforcement. Okay, there's various methods that is used to monitor the NPDES permit conditions. Okay, the permit requires the facility to sample its discharge, and to notify the Department of Health of their results; and for certain things, notify the EPA. The permit requires the facility to notify the Department of Health whenever it's in non-compliance with any one of its conditions or requirements, and the Department of Health and EPA can send their inspectors to inspect the facility to check on permit compliance. Federal laws also provides the Department of Health and EPA with various methods of taking enforcement action, and that includes things like issuing administrative orders and pursuing civil and criminal actions. Okay, and finally, the general public can enforce the permit conditions. So all of the facility monitoring reports that are submitted to the Department of Health are public records, and anyone from the public can review them. So if a person feels that the facility is not complying with a particular condition of the permit, and the Department of Health and EPA is not enforcing upon that, they can pursue their own independent legal action. And that's the way the Clean Water Act was written. So how are the NPDES permits different from the Underground Injection Control or UIC permits? The NPDES permits are for pollutant discharges to State surface waters, it's regulated under the Clean Water Act, and the permit effluent limits come from Hawaii's water quality standards. And Hawaii's water quality standards does not apply to groundwater. The UIC permits, on the other hand, are for discharges to ground water, and it's regulated under the Safe Drinking Water Act. Okay, so I have my...our contact information here, anyone, you know, feel free to call us, email us at any time. You can ask for me. If I'm not around, you can ask for any one of the permit engineers, and they can help you. I can answer any questions or...that anyone has.

**. . .END PRESENTATION. . .**

CHAIR KING: Okay, thank you, Mr. Lum. That was great. If we can get the screen back. I believe we have our...if you can stand by, and hopefully, Mr. Uehara can join us again. We have...our one testifier, I think, is ready to testify, the one who couldn't get on before. Wendy?

MS. SIEGEL: Yes, Chair --

CHAIR KING: Nicole?

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MS. SIEGEL: --she's logged on --

CHAIR KING: Okay.

MS. SIEGEL: --and standing by.

CHAIR KING: Okay. Go ahead if you can give.

MS. SIEGEL: Wendy, you can go ahead and...

MS. WILTSE: Great, can you hear me now?

CHAIR KING: Yes, we can.

MS. WILTSE: Wonderful. I apologize for the problem before. Okay, so Chair King and Councilmembers, my name is Dr. Wendy Wiltse. Thank you for the opportunity to comment on protection of the natural environment under NPDES and UIC. I want to elaborate on the nice presentations by Norris Uehara and Daryl Lum. I am currently the President of Oahu Waterkeepers, a non-profit organization working for clean water. I'm retired, but I did work for over 30 years for the Environmental Protection Agency, 25 of those years I was based in Hawaii on Oahu, and also on Maui. And through my work at EPA, both the Clean Water Act and the Safe Drinking Water Act programs, I have a broad knowledge of regulatory programs to protect drinking water and surface waters. I also hold a PhD in marine biology, so I'm going to make some points comparing UIC and NPDES from the perspective of a biologist, and protection of the marine environment. So the bottom line is that the important difference between NPDES and UIC is that UIC protects human health for drinking water. The Clean Water Act and NPDES protect human health, and also the marine environment and the health of marine organisms. So I'm going to see if I can share my screen for just a moment. However, it's not working.

CHAIR KING: Staff, are you...is she able to share her screen? There's about a minute and a half left in the testimony.

MS. WILTSE: Yeah, actually I'm going to need a couple extra minutes to make these technical points. So...

CHAIR KING: If you can...I'll give you two minutes from now, but we don't have your screen on.

MS. WILTSE: Oh, you don't have my screen?

CHAIR KING: No, we don't.

MS. WILTSE: Okay, let me do it without the screen then.

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CHAIR KING: Okay.

MS. WILTSE: The points that I want to make are that both the Drinking Water Act and the Clean Water Act limit pollutant concentration. They provide standards or thresholds for the maximum allowable concentration. And if we look, for example, at two important pollutants: nitrate, which is a fertilizer, can cause algae blooms; and copper, which is toxic to aquatic life, that's used in boat bottom paints because it's so toxic. For nitrate, the Safe Drinking Water Act maximum allowable safe concentration is 10 milligrams per liter. Under the Clean Water Act, the maximum allowable nitrate concentration is 0.005 milligrams per liter. Ten versus 0.005, orders of magnitude more stringent under the Clean Water Act. Copper, under the Safe Drinking Water Act, 1.3 milligrams per liter. Under the Clean Water Act, 0.0029 milligrams per liter. 1.3 versus 0.0029. So UIC permits can be less stringent . . . *(timer sounds)*. . . than NPDES permits because they do not...they do not take into account the protection of marine life.

CHAIR KING: So Ms. Wiltse --

MS. WILTSE: Yes.

CHAIR KING: -- can we stop here and take any questions and ask if you would hang around with your expertise to be another resource for us when we get into the Q and A for the presentations?

MS. WILTSE: Yes.

CHAIR KING: Would you be...

MS. WILTSE: Yes. However, I have one other brief point that the protection for marine life under the Clean Water Act that I'd like to...

CHAIR KING: Yeah, if you can make that real quickly, and then we can --

MS. WILTSE: One, yeah.

CHAIR KING: --go into Q and A.

MS. WILTSE: Okay, so the NPDES permits also protect marine organisms through the whole effluent toxicity test, or the WET test. The WET test assesses the toxic effect of wastewater by measuring a typical organism's mortality, impaired growth, or reproduction when exposed to wastewater. It's implemented in Hawaii permits by a sea urchin fertilization test. The purpose of the test is to determine if the wastewater impedes fertilization of sea urchin eggs. It's a...as a component of the NPDES permit, it ensures that the wastewater including a soup of chemicals is not directly harmful to marine life. So the bottom line is UIC protects only human health, and marine organisms can be far more sensitive to pollutants than humans for drinking water. So the NPDES permit can be more stringent and more protective of marine life. Thank you.

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CHAIR KING: Okay, thank you so much. And thank you for sticking with us through all those earlier technical difficulties. I really appreciate it.

MS. WILTSE: Sure.

CHAIR KING: So Members, if there's no objection, can we have Ms. Wiltse on as another resource as we...and then we'll go straight into Q and A on these presentations.

**COUNCILMEMBERS VOICED NO OBJECTIONS**

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR KING: So we're now...yes, Ms. Rawlins-Fernandez?

COUNCILMEMBER KAMA: Are we going to close public testimony, Chair?

CHAIR KING: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: I have a question.

CHAIR KING: Oh, okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: If...

CHAIR KING: You have a question for Ms. Wiltse?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I don't have a clarifying question, I just wanted to ask if she could email that information to us prior to the Q and A so that we have it in writing.

CHAIR KING: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: [car.committee@mauicounty.us](mailto:car.committee@mauicounty.us).

MS. WILTSE: Okay. I did.

CHAIR KING: Yeah, so her testimony is on Granicus.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Chair.

MS. WILTSE: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Wiltse.

MS. WILTSE: Yeah.

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CHAIR KING: Okay, great. So if there's no objections we'll close public testimony now. Any objections? Any objections to receiving written testimony into the record? Okay, so ordered.

**. . .END PUBLIC TESTIMONY. . .**

*(Note: Public testimony closed at 10:10 a.m.)*

CHAIR KING: And we'll go...we'll start with our Committee Vice-Chair Mr. Sinenci, and then I'm going to try to just go in order as I see people on the screen. So Councilmember Sinenci, do you have any questions for our presenters today? Do we have Mr. Uehara and Mr. Lum still with us? If you could come on screen, that would be great.

MR. LUM: I'm still here.

CHAIR KING: Okay great. Thank you. Mr. Uehara is here too. Okay, go ahead, Mr. Sinenci, any questions?

VICE-CHAIR SINENCI: Thank you, Chair.

CHAIR KING: We'll try to limit you to two questions per person.

VICE-CHAIR SINENCI: Okay, I just had some general questions of our panelists today, Mr. Uehara and Mr. Lum. So just basically, how many permits, UIC permits and NPDES permits, are we dealing with Statewide? Just a round figure? And then on Maui, how many of those permits for Maui County?

MR. UEHARA: Okay, if I can answer first before Darryl. I'm redoing my data system, and it's been ongoing for about the past seven years. I've stopped taking a rough count of all these types of things because I was gonna be depending on better information coming out of my system. So I don't have a good number for you. I'm working towards being able to provide that kind of number in the future, but right now, I'm not prepared to give you a number. I can give you a rough range, but in...I kind of don't want to throw out lousy numbers that later on get the used into publications, and then kind of being misused, so that's my fear right now. So if you...if it's okay with you if I don't say anything right now because of that, I would appreciate that.

VICE-CHAIR SINENCI: I guess a rough range would kind of put it in some perspective, I mean, like, is it like 20? Over 100? 500?

MR. UEHARA: Yeah. Okay, somewhere between 100 and 200 probably facilities with injection wells on Maui versus things in the thousands on Big Island. Okay? So Maui, in general, you guys don't have too many injection wells. It's probably the Big Island that has the most, then it comes to Oahu, and then Maui, Kauai, then that...it's a much lower percentage for the Statewide.

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VICE-CHAIR SINENCI: Thank you, Mr. Uehara.

CHAIR KING: Thank you, Mr. Sinenci. Did you have another question, Mr. Sinenci, or are you done? Okay, we'll go around and get everybody's...

VICE-CHAIR SINENCI: For Mr. Lum for NPDES...

CHAIR KING: Oh, for Mr. Lum? Okay, did you have a response?

MR. LUM: For Statewide, it's roughly about a thousand. That number fluctuates a lot because we do have a lot of short-term discharges. Approximately 80 of them are continuous type discharge, you know, like treatment plants and things like that where, you know, it's constantly renewed every five years, but the majority is short-term. For the number on Maui, I'm guessing right now it has...it's probably ten or less NPDES permits.

CHAIR KING: Okay?

VICE-CHAIR SINENCI: Thank you.

CHAIR KING: All right, thank you, Mr. Sinenci. Next we'll go to Councilmember Kama, you have any questions for our panelist today?

COUNCILMEMBER KAMA: Thank you, Chair. Thank you to Mr. Lum and Mr. Uehara for being here. I was just kind of curious to hear...or not curious, but I...happy that you folks are here to help us understand even...especially our community to understand the issue that has been facing this Council for at least the past two years that I know. So I'm very happy that you're here to help us to understand things a lot more deeper, a lot more clearer, a lot more richer. And I see the difference between the two types of permit. So do we have agencies or entities across our State and across our island that have conflicts with whether or not to, or not to apply, or to apply for permits where they think they don't need one or if they do need one?

CHAIR KING: Mr. Uehara?

MR. UEHARA: There...there's always a handful of people that try to justify not getting their permits, so I'm sure it's the same way for Darryl's program.

MR. LUM: For the...

MR. UEHARA: I under...

MR. LUM: I'm sorry, go ahead. I'm sorry.

MR. UEHARA: No, no, no. Go ahead.

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MR. LUM: For the NPDES, for the most part we don't really have issues like that with the Government agencies. Rare...maybe like in a few rare cases we have that with some individuals that don't want to be permitted for some reason and then, you know, there's long discussions and things that happen. But for the most part, the Government agencies are fine.

COUNCILMEMBER KAMA: So Chair, if I may, can I ask one more question, Chair?

CHAIR KING: Okay, quickly.

COUNCILMEMBER KAMA: Okay, so how do you treat cesspools?

MR. UEHARA: Is that the...

COUNCILMEMBER KAMA: . . . *(inaudible)*. . .

MR. UEHARA: That question, I guess, is more directed towards me because cesspools are...can be considered injection wells. The UIC regulations explicitly exclude cesspools that serve single-family residences or non-residential businesses that generate less than 1,000 gallons per day. So our rules were set up to not include that type of a single-family cesspools, and that's what I believe makes up the majority of the cesspools throughout the State --

COUNCILMEMBER KAMA: Right.

MR. UEHARA: --is those serving, you now, just single-family homes.

COUNCILMEMBER KAMA: Right.

MR. UEHARA: So our UIC rules are not meant for those types of situations.

COUNCILMEMBER KAMA: Okay.

CHAIR KING: Great question. Thank you, Member Kama.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR KING: Yeah, thank you. And next we'll go to Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you Mr. Uehara and Mr. Lum. I don't know, Mr. Lum, if you remember me, I called all the time in my previous career. But --

MR. LUM: No.

COUNCILMEMBER PALTIN: --my first question is for...I guess all my questions would be for Mr. Lum. Is there a site where we can see all the valid NPDES or, I guess, UIC permits

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in our area? Like, you know, say we think that somebody may [sic] doing an illicit discharge, but we don't want to just go and accuse someone, we want to see if they actually have a NPDES permit?

MR. LUM: For NPDES, we have a website, it's called the WPC viewer. WPC stands for Water Pollution Control viewer. You can go into your web browser and just type that in, and it'll...a link will pop up. It will show you the location of the permitted facility, it's like a GIS type map. The problem with the viewer is that when we moved to our new office location, there was some issue with the server, so we cannot...before we had all the public records that were uploaded, but since, you know, like about a year ago, we couldn't upload the latest records. If...but all of that is public record, so you can always request it from our branch. We do have a vendor on that is going to help us to try to fix this, but right now, that's one of the holes that we have.

COUNCILMEMBER PALTIN: Okay. And then my second question would be, you know, when you talk about enforcement...I guess, two-part question. What is the number to report violations? And say the person...like, there...is there two separate types of violations, the kind where they're violating their NPDES permit, and the kind where they don't even have the NPDES permit, like, and say you're backwashing your swimming pool directly into the ocean, and there's no NPDES permit. Like, how is enforcement of that carried out? Because, you know, Lahaina used to be known for its limu and now, no more.

MR. LUM: Yeah, for enforcement, we have a separate section that handles that, but it's within our program. For any type of enforcement questions or anything or complaints, you can just dial, you know, our main number, the 808-586-4309. And it doesn't matter whether the person has a permit or not, you know. Maybe they're a non-filer. So in both situations, you can ask for people from our enforcement section.

COUNCILMEMBER PALTIN: And what kind of evidence would you need? Would you need like a video of someone back-charging or backwashing their pool directly into the ocean?

MR. LUM: I think the best is...I think video is always the best but, you gonna...you gotta be safe, you know what I mean? So it's best if you contact someone from our enforcement section. And then if you want to remain...like, you want it to be confidential, you know, you can let them know that too.

COUNCILMEMBER PALTIN: And you do have enforcement on all the neighbor islands?

MR. LUM: The enforcement staff is on Oahu, but they do take enforcement actions on, you know, for different things on the neighbor islands. And we do have a environmental health specialist on each island, so they can help do inspections and things like that.

COUNCILMEMBER PALTIN: Okay. Thank you so much, Mr. Lum. And if you ever see Mr. Watson Okubo, tell him I said, what's up.



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MR. LUM: Oh, okay. Okay.

CHAIR KING: Thank you, Member Paltin. Okay, next we'll go to Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So I guess I have a question for Mr. Lum regarding the County's NPDES permit. Were you...or were you the person that was processing that, or was that, like, Staff that would process those applications?

MR. LUM: We have a permit writer that's assigned to it, but I'm the one that oversees it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so I was trying to look for the date, I think it was probably like in 2014 or something. But you're familiar with the County's application for the NPDES permit?

MR. LUM: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Would you be able to speak to some of the obstacles to approving the permit?

MR. LUM: So I think the obstacle is kind of what the court case is about, you know, where you're getting into like a subsurface type discharge.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, no. I --

MR. LUM: I'm sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: --guess my understanding, Mr. Lum, for that permit was...one of the concerns was how would we monitor?

MR. LUM: Oh, okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: That's one...there's like the three steps that you talked about with the TBEL, QBEL. Yeah. And then monitoring and reporting. And so as far as monitoring and reporting, because it's not one simple outfall where the monitoring and reporting would be straightforward because it would just be that one pipe that outfalls into the ocean that's...because there's seepage coming from, you know, like over 200 spots, that the monitoring would be not as straightforward. So would you be able to speak to that?

MR. LUM: That's exactly one of the concerns the permit writing staff have. That's one of the challenges of writing a permit like that. And I guess a decision by DOH hasn't really been made yet as far as how, you know, or if a permit will be written or what the permit would look like.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, yeah. Because I understand that it's,

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like, you know, new. But, you know, we did submit an application, and we have, you know, community members who have experience with this type of work who had suggested ideas on how the monitoring could happen. But it would just, you know, require, like, some creativity because, you know, it's not just an outfall. You know, there's like several different places that would need to be monitored. But I was wondering, you know, as far as the writers, if they were open and creative enough to, like, think outside the norm of how, you know, just one simple point source would be, so that we could get the NPDES permit for the County.

MR. LUM: You know, if you have those suggestions, would you mind sharing it with me?

COUNCILMEMBER RAWLINS-FERNANDEZ: Absolutely. Um-hum, yes. Mahalo, Mr. Lum. Mahalo, Chair.

CHAIR KING: Mahalo, Member Rawlins-Fernandez. Great question as well. And then we'll move on to Mr. Hokama. Any questions for our panelists or Ms. Wiltse?

COUNCILMEMBER HOKAMA: Thank you, Chair. First I want to just thank you for the quality of the panelists today and their presentation, so thank you. For our panelists, whoever feels to respond, I would appreciate it. I've been around, so I know about Safe Drinking Water Act from the '70s, UIC, NPDESs. So my question to our panel is as I understand our history, in the '90s...and again, Lahaina, for me, goes back to the mid to late '70s, yeah, the Lahaina, the west end of our Maui Island. So...but I know that in the '90s, I believe that the EPA made a decision that the Federal UIC permit was appropriate to regulate the wells the County was doing and in regards to its impacts to the ocean. Is that not accurate, Mr. Lum or Wendy or Mr. Uehara?

MR. UEHARA: I think Wendy can best...Wendy would be able to best answer that.

CHAIR KING: Ms. Wiltse, are you still on with us? Staff, do we still have Wendy? Oh, there she is. Okay.

COUNCILMEMBER HOKAMA: Hi, Wendy, can you unmute yourself please?

MS. WILTSE: Councilmember Hokama, could you repeat that question?

COUNCILMEMBER HOKAMA: Hi, yeah, Wendy. I was just wondering since maybe you have some historical understanding for us, my experience, my knowledge about the history of this West Maui area that I'm talking in general was that in the '90s, Federal EPA made a decision that the UIC permit was appropriate to regulate our wells, as well as the impacts to the ocean. Is that accurate or not accurate?

MS. WILTSE: Well, I'm no longer with EPA, so I can't speak for them, but I was working for EPA and involved with this in the 1990s. They...the...they've issued a Federal UIC permit for Lahaina in addition to the State permit because they had the authority to do so. But even at that time, they were concerned about impacts to coastal waters. In the '90s, we were having bad algae blooms along West Maui and thought that maybe

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the injection wells were aiding that with high nutrients. So they felt that the limits of their authority were only UIC at that time. This lawsuit may change that --

COUNCILMEMBER HOKAMA: Right.

MS. WILTSE: --may change the limits of authority, but at that time, they felt that UIC was the only authority they had.

COUNCILMEMBER HOKAMA: Yeah. Yeah, and thank you for mentioning that, Wendy, yeah, because I recall Kahului Harbor, Kihei besides Lahaina having algae bloom problems, if you can recall as well.

MS. WILTSE: Yes, I do recall.

COUNCILMEMBER HOKAMA: Yeah, it was more than just one area in the State, so it's not...thank you for responding, I appreciate you being able to recall, Wendy, because I think your historic knowledge is important, so thank you. Chair, my second question was about...again, you know, this...the permits thing. So I'm just wondering how our sister County, San Diego...because right now, I think they got the largest desal plant in the country, they desal 50 million gallons of the drinking water a day for 400,000 residents of San Diego County. 50 million gallons. And my understanding is they do direct discharge of the super sulfates into the ocean. And so what kind of permit do you think they were required to have? Was the UIC and NPDES all part of that requirements according to our panel this morning?

CHAIR KING: Let's see, who would you like to respond to that, Mr. Hokama? Any...

COUNCILMEMBER HOKAMA: I was thinking maybe Mr. Lum or Mr. Uehara. Because I do know even for California, that would come under the...their State Department of Drinking Water, so it would be a State decision in California, as well as State enforcement.

MR. UEHARA: I believe that would be Darryl's...would be better answering that question because you said the discharge goes to the ocean, yeah?

COUNCILMEMBER HOKAMA: Yes.

MR. LUM: Yeah, so I'm not familiar with, you know, that facility or the permit, but I'm assuming, you know, if it's the discharge to the ocean, there's a NPDES permit involved probably.

COUNCILMEMBER HOKAMA: Do you think they also needed, at the same time, a Federal UIC permit approval, Mr. Lum?

MR. LUM: Unless they have some type of injection well also, they...I guess it kind of depends upon how the facility is set up.

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COUNCILMEMBER HOKAMA: Okay.

CHAIR KING: Mr. Hokama, we can send...we can actually send through the Committee a question to San Diego and try to get those answers for you. Because I know that desal was one thing that the former, the previous Mayor was actually looking at it one time for Maui, and then it was deemed too expensive at that time. But if you're interested, we're...you know, happy to ask Staff --

COUNCILMEMBER HOKAMA: Yeah.

CHAIR KING: --to follow up.

COUNCILMEMBER HOKAMA: Yeah, well, I would be, Chair, because it's one of the few programs where the utility...I guess they're a utility, pretty much did not ask for a public bond financing program, as I understand it. So really, the taxpayers of San Diego County in Southern California isn't on the hook for it. So that's why I'm asking because I'm interested if there's other ways to provide new high tech processes, whether it's osmosis or others, I'd be interested in looking at it because they found a way to daily provide 50 million gallons of drinking water from the ocean, you know, that's one of our --

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: --that's...thank you, Chair.

CHAIR KING: Sure, we'll have Staff follow up and get those contacts from San Diego and ask those questions. I'd like to...thank you, Mr. Hokama, for your questions. And I'd like to give our non-voting Member, Councilmember Molina, a chance to ask a question if you have one, Mr. Molina. No pressure if you don't.

COUNCILMEMBER MOLINA: No, no. Thank you for the invitation, and thank all of our panelists here, it's been very informative, to say the least. Just one general question. With the very highly publicized Supreme Court ruling related to the Lahaina injection wells, has that ruling had any impact on how you're going to be issuing permits in the future? Are you looking at possible changing some rules and regs, if you will, at least on the State level? Any thoughts on that?

MR. LUM: From the Clean Water Branch's side, we, the...so I'm part of the Staff, and we haven't been given any instructions yet. So I believe they're still discussing and taking a look at what's going on. But right now there's no changes to how we're processing things.

MR. UEHARA: Same for UIC.

COUNCILMEMBER MOLINA: Okay. And then one last question on...I guess Mr. Uehara, in your opening remarks, you made a comment about the disagreements between the, I guess, the Federal UIC permit and the State. Can you elaborate about what

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specifically those disagreements are at this point?

MR. UEHARA: Thank you for bringing that back up because I do now remember that I didn't talk about it when I had the opportunity to. It's basically based on water quality. The UIC line was drawn with a...using a different criteria for water quality. I don't...don't quote me on this, but then it's like we use 15,000 parts per million TVS (phonetic), but the Federal government considered water, I believe, like...I think I'm gonna screw it up with the numbers, but they had a higher number that they would recognize as drinking water. So because of the way that our line was drawn using the lower number, it wasn't protective of that higher number ground water, and that was, like, the basis of a disagreement, that we were being too lenient in allowing the UIC line to be drawn where it was drawn. So again, please don't quote me on those numbers. If you need to know them, I can do some research and provide them to you, but that's basically what the issue was.

COUNCILMEMBER MOLINA: Okay. Thank you very much for your response, Mr. Uehara. Thank you, Chair.

CHAIR KING: Thank you, Member Molina. Okay thank you, gentlemen. I just want to give the Department, we have Director Eric Nakagawa standing by, any chance to give any last comments from the Department on these...the issue, which is the clarification between the two permits and permit processes. And no pressure on you, but if you have any last minute comments, we're happy to hear them.

MR. NAKAGAWA: Good morning, Chair. Good morning, Committee.

CHAIR KING: Morning.

MR. NAKAGAWA: Can you hear me?

CHAIR KING: Yes, we can hear you fine.

MR. NAKAGAWA: Okay, good. No, we continue to work with Darryl and Norris as well as their branch chiefs, and we've been meeting with them for the past...about eight months now. So trying to hammer out some details and trying to figure out with the ruling, the court ruling also, and then, yeah, and I think they did a great job explaining. Good thing I didn't have to do it because I would have never been able to explain that in detail, so they did a great job. But yeah, you guys have any questions, you guys let me know.

CHAIR KING: Okay, well, I appreciate you being here because it's nice to hear, you know, the backup of the presentations from your Department as well. And I do have...Members, also I do...since we have limited time, we have one member that has to leave early, I was going to go ahead and defer CAR-27 and go to the third item, if that's okay with you, Mr. Nakagawa, we'll take that up maybe when you're further along in the modification of that contract, and then we can get...we've got a request in just to have the full contract from a couple of the Members, so --

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MR. NAKAGAWA: Okay.

CHAIR KING: --if you're okay with that because we have limited time, and the third issue actually involves decision making, so then we can let you off the hook. But I really appreciate you being here, and I look forward to talking about that contract and the modifications that are happening on the Lahaina Wastewater Treatment Facility. And thank you for, you know, keeping abreast of everything, and for the work they're doing, and for the focus you're doing on reclaimed water because I think that's a key to our future, and I really appreciate the focus on that. So Members, if there are no objections I would like to defer this item.

COUNCILMEMBERS: No objections. (Excused: AL)

**ACTION:                      DEFER.**

**CAR-27:      LAHAINA WASTEWATER FACILITY MODIFICATIONS (CONTRACT C5954-4;  
                 CH2M HILL ENGINEERS, INC.) (MISC)**

CHAIR KING: Okay, great. And then I would also like to defer CAR-27 and then move into CAR-28 if there are no objections.

COUNCILMEMBERS: No objections. (Excused: AL)

**ACTION:                      DEFER.**

**CAR-28:      MEMBERSHIP REQUIREMENTS FOR LANAI, MAUI, AND MOLOKAI  
                 PLANNING COMMISSIONS AND HANA ADVISORY COMMITTEE (CC 20-418)**

CHAIR KING: Okay, it's 10:38, we do have the Director of Planning standing by for the final item, and we have one Member who has to leave a little early. So are there any objections to going right into CAR-28, and then ending the meeting early hopefully, rather than taking a break now?

**COUNCILMEMBERS VOICED NO OBJECTIONS**

CHAIR KING: Okay, and if Mr. Molina has to drop off, I just want to say thank you so much for being here because I know you were involved in these issues as well, and I appreciate your diligence as a Non-Voting Member.

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. Thanks for having these presentations, it was very informative.

CHAIR KING: Great, thank you. Okay. So Members, we have with us today...I think we

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have the Director of Planning, Michele McLean. I know she's got some time constraints as well, so I want to get into CAR-28 next, the Membership Requirements for Lanai, Maui, and Molokai Planning Commissions and the Hana Advisory Committee. Before we...we have before us the County Communication 20-418, which I submitted, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 2.28.070, MAUI COUNTY CODE, RELATING TO PLANNING COMMISSION AND HANA ADVISORY COMMITTEE MEMBERSHIP REQUIREMENTS." The purpose of this proposed bill is to add a requirement that at least one member of each Planning Commission and Advisory Committee have a background in conservation, natural resources, or climate change. It is clear that conservation and climate change be considered during discussions and meetings of the Planning Commissions and Advisory Committees. Having an expert in these fields would be a huge contribution to the decision making. And this...I also want to add in here that this has come up before in talking about these, the Planning Commission appointments. On August 31, 2020, Committee, the Committee submitted to Corporation Counsel a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 2.28.070 MAUI COUNTY CODE RELATING TO PLANNING COMMISSION AND ADVISORY COMMITTEE REQUIREMENTS." This bill removed Hana from the title of the bill, anticipating that other districts in Maui County will officially form advisory committees, and this bill could apply to those as well. It also requires at least one member have a background in natural resources/climate change. On September 2, 2020, we received a response from Corporation Counsel, approving this version of the proposed bill as to form and legality. But today we have Director Michele McLean, our Planning Director, to give the Committee her feedback on the proposed bill. Director, would you like to give any opening remarks?

MS. MCLEAN: Thank you, Chair. Sure. Good morning, everyone. I don't really have a lot to say, just a few sort of general comments to be mindful of. I'm just not sure how many people out there have this kind of background who would be available to serve on these commissions because they are time commitments, and sometimes we do struggle to get applicants. So I don't know, we'll just have to see. Also, the expectations of what these qualifications are intended to produce with their participation on the Commission. I can kind of assume, and I think that's all positive, but just so it's clear what the objective is. And then the only possible concern I have, other than getting candidates, would be if...and this sort of comes up...I know that, Chair King, you've been following the Kihei High School issue, where the State Department of Transportation is proposing a change in that intersection. The community doesn't support that, but the Planning Department relies on agencies to give us input on the issues where they have expertise. So your Department of Transportation is saying that a roundabout is safe, that we don't need the overpass or underpass, and we usually rely on their expertise on those kinds of things. So if we have one of these commissioners...let's say we get comments from DLNR, or Parks, or CWRM, or Sea Grant [sic] about a certain issue, and typically we rely on that expertise, but then this commissioner with their expertise has a different point of view, just...it could...that create conflict. I don't really see that happening because generally, these are scientific approaches, and there's generally consensus about that, but that would be the only other concern that comes to mind. That's really all I have

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to say as opening comments. Thank you, Chair.

CHAIR KING: Thank you very much. Okay, Members, the...has everybody had a chance to view the bill? It's on...it's been posted for a week or so. So I guess we'll just go ahead and start and open up for questions either to the Director or to myself as the proposer of the bill. The bill is proposing that we...that every Planning Commission in the County, as well as every Advisory Committee include an environmental specialist/climate change, environmental/climate change. And the purpose of this is to add more balance to the Planning Commissions and the Advisory Committees. We have an overabundance...it's been stated several times, we have an overabundance of developers and people from the real estate industry on these Commissions, and that it needs to be balanced out by the environmental side. We were able to, in the previous term, add the Native Hawaiian cultural expert requirement, but we were not able to get the support last term for the environmentalist. So that has come up several times when we've been approving new members to the Planning Commission, and I just thought that it would be a good time to bring this bill back and deliberate on this, and hopefully pass it through. So any questions, Members? Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. So my question is just like a hypothetical informational question. If our...like, I think the Native Hawaiian practitioner position, and I could be wrong, is the only one that's, like, a requirement of, like, a certain type of person. If the Native Hawaiian practitioner position also had conservation, climate change, or environmental marine biology type of background, would that one person then be considered as satisfying these two positions? Just for information purposes.

CHAIR KING: The intent of...yeah, thank you for that question. The intent of this bill is to have a separate person. There's a lot of crossover that happens in a lot of these people that are on this board, so there could be people from the development area that also have some expertise in the environment, but there needs to be a dedicated person for environment/climate change. Even if they are a Native Hawaiian expert, they would be a second...then they would be a second Native Hawaiian expert on the Commission. But the first...the reason for appointing them would be the expertise in natural resources and climate change.

COUNCILMEMBER PALTIN: So then I guess my follow-up question might be for Corp. Counsel in the wording of it, the bill. Is it clear enough that it's meant to be two separate persons? Because I see one or more of the following: expertise in Hawaiian traditional and customary practices, and at least one...but is it clear enough in lawyerese that they're supposed to be two separate people, or is there more needed in the words of the bill?

CHAIR KING: Okay, great question. Corp. Counsel, Ms. Thomson, can you speak to the bill?

MS. THOMSON: Chair, thank you. That is a very good question, Councilmember Paltin. I think that the legislative history, you know, now that you've brought it up, if there were a question, the legislative history would show the intent of the Committee, that these are separate individuals. If you wanted to, under Section B, you might include



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the word “additional”...at least one additional member of each Planning Commission, you know, if you wanted to add that for clarity.

CHAIR KING: Okay, that’s...yeah, I think that’s a good idea. It’s always good to not have to go back, you know, for future Councils not to have to go back years to have to find out what the intent is. So can we...Ms. Thomson, can we add that on as a friendly amendment, or do we need a...do we need to make the motion once we get to the motion?

MS. THOMSON: I think I would go ahead and do that, formally by an amendment, yes.

CHAIR KING: Okay. Why don’t we...if there’s no objections, can we go ahead and get a motion on the floor so then we can be speaking to the motion as it’s written. Are there any objections to that?

COUNCILMEMBER PALTIN: So move.

CHAIR KING: Okay. So Members, the Chair will entertain a motion to recommend passage on first reading the revised proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING SECTION 2.28.070, MAUI COUNTY CODE, RELATING TO PLANNING COMMISSION AND ADVISORY COMMITTEE MEMBERSHIP REQUIREMENTS,” allowing Staff to make any non-substantive revisions, and the filing of County Communication 20-418.

COUNCILMEMBER PALTIN: So moved.

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

UNIDENTIFIED SPEAKER: Chair?

CHAIR KING: Okay, moved by Member Paltin, seconded by Member Rawlins-Fernandez. And now I have a motion on the floor, and let’s...are there any other questions before we start on the amendments? Member Hokama.

COUNCILMEMBER HOKAMA: No, not a question on the amendments, I just wanted to show the Committee Members, Chair, that for Lanai, I appreciate Director McLean’s comments. We dealing with unique situations on Lanai. And our problem on Lanai is not what the Maui Commission has in regards of who is sitting on the Commission from what sector. Lanai’s issue is basically the one employer and its influence on residents regarding employment and housing, and how in the past, many of them were considered conflicted in sitting on boards and commissions of the County. But for Lanai, I am going to propose that Lanai be exempted from this ordinance until such time as the Planning Commission, who’s made up of basically just our regular residents, not associated with Pulama Lanai, basically you independents, your government people and entrepreneurs, that is our basis. And on Lanai, out of the 3,000 people, over half is employed by Pulama. So our pool of those that can serve without conflict is very limited, and that is why you would notice from...we can ask

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my...our colleague, Mr. Molina, the difficulty that the Administration has in getting Lanaianians to sit on required boards and commissions. We just have a very limited pool currently under our current situation of employment and ownership that I just want the Members to try and understand our uniqueness and empathize with us that maybe at this time, it would create more issues for us than resolve a problem. But I support, you know, the comments as it regards to the Maui Commission, Chair. And I can support that. Thank you very much.

CHAIR KING: Okay, thank you, Mr. Hokama. So would you do me a favor and hold that thought so we could go to Member Paltin's amendment, then we'll come back to you to make your amendment? And if there are any other questions before the amendments are made? If not, Member Paltin, would you like to propose your amendment?

COUNCILMEMBER PALTIN: Sure thing. Thank you, Chair. Oh.

CHAIR KING: Go ahead.

COUNCILMEMBER PALTIN: I move to amend the bill in Section B, by saying at least one additional member of each Planning Commission--adding the word "additional."

CHAIR KING: Any second? Do we have a second to the --

VICE-CHAIR SINENCI: Second.

CHAIR KING: Okay. Moved by Member Paltin, and seconded by Member Sinenci to add the word "additional," clarifying that the environmental position would be in addition to the Native Hawaiian cultural specialist. Any other...Member Paltin?

COUNCILMEMBER PALTIN: Oh, sorry. I forgot this procedure. So now we're going to --

CHAIR KING: . . . *(inaudible)* . . .

COUNCILMEMBER PALTIN: --discuss it and vote. Okay.

CHAIR KING: You can speak to the motion as the maker of the motion.

COUNCILMEMBER PALTIN: Yes. I just, you know, a lot of times in the future, Councils, they're not clear of the legislative intent, and a lot of times people don't take the time to go back and read the minutes, so they may think the condition would be satisfied with one Native Hawaiian practitioner that also has environmental knowledge. And so it's cleaner, I think, to put the legislative intent in the bill itself so that nobody has to go back and reread the minutes.

CHAIR KING: Okay, great. Thank you. Any other comments or questions on the amendment? Mr. Hokama.

COUNCILMEMBER HOKAMA: Yes, Chair, I just wanted to make sure the Staff...my

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understanding from what Ms. Paltin is saying, it's pretty clear to me, but I just wanted to make sure that the word "additional" members is not confused because the Charter specifically requires nine members only for the Planning Commission. So I just share that the --

CHAIR KING: Oh.

COUNCILMEMBER HOKAMA: --you know, that by adding that language we not adding a 10th Commissioner, yeah? Unless --

COUNCILMEMBER PALTIN: Oh, yeah.

COUNCILMEMBER HOKAMA: --we change the Charter.

COUNCILMEMBER PALTIN: Should I say...

COUNCILMEMBER HOKAMA: I just wanted to make it clear so outside don't get confused about adding another number to the count. Thank you.

CHAIR KING: Okay, thank you. Thank you for bringing that up. Ms. Thomson, do you have a comment on that?

MS. THOMSON: I think that clarification was important to note for the record, but I don't think the motion needs to be changed.

CHAIR KING: Okay. Because...it still says...we're not changing the ordinance that says there are nine members on the Planning Commission.

MS. THOMSON: Right. Yeah, we would have to change the Charter to change the number.

CHAIR KING: Okay. Great. Okay, thank you, Mr. Hokama. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I didn't second the motion because I don't really like the word "additional" as the clarifier. I think it should be clearer than that. I would recommend something more like at least one member of the...and then we'll probably discuss the Maui and Molokai Planning Commissions, who do not...who is not the member that satisfies A in this section. So something like...more like language like that, clarifying that this will not also be the person in A. Because I agree with the intent, but I don't like the word "additional." I think it's not clear enough, honestly. And like Member Hokama just brought up, it could be interpreted in other ways. And so I won't be supporting the motion as it is because I don't think that's good language for this.

CHAIR KING: So Member Paltin, are you amenable to the language proposed by Member Rawlins-Fernandez instead of the word "additional"?

COUNCILMEMBER PALTIN: Oh, can she repeat the language proposed?

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CHAIR KING: Keani, can you repeat the proposal?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, at least one member of each Planning Commission who is not a member that satisfies A, or Section A...it's not, like, perfect, but that's kind of where I was trying to get at.

COUNCILMEMBER PALTIN: I'm okay with it if it passes the muster of Corp. Counsel.

CHAIR KING: Corp. Counsel? Ms. Thomson.

MS. THOMSON: I think that, you know, probably some language can...it sounds like there are other changes though, and particularly with respect to Lanai. So maybe we could take a very short break and Member Rawlins-Fernandez could tailor what she's contemplating in terms of the amendment.

CHAIR KING: Okay, or we could go to, we could just withdraw the original motion and go to Mr. Hokama's motion if you're...Member Rawlins-Fernandez, if you're willing to write that up real quickly.

COUNCILMEMBER PALTIN: I'm willing to withdraw the original motion, if that's the will.

UNIDENTIFIED SPEAKER: Chair.

CHAIR KING: Okay.

VICE-CHAIR SINENCI: Second.

CHAIR KING: Okay, great. Thank you. Okay, then we'll go to Member Hokama for your proposed amendment.

COUNCILMEMBER HOKAMA: Thank you, Chair. I appreciate your openness and willingness to consider. I move that the Planning Commission for Lanai be deleted from consideration of the proposed ordinance, amended ordinance attached to communication dated August 31st, 2020, from Corporation Counsel to Chair Kelly King.

CHAIR KING: Do we have a second?

COUNCILMEMBER PALTIN: Second.

CHAIR KING: Okay, moved by Mr. Hokama and seconded by Ms. Paltin, to remove the requirements being proposed from the Lanai Planning Commission. Any further deliberation? We heard the justification earlier, and that actually...this was something that came up even last term. So I appreciate you bringing that back up in that context. Member Paltin.

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COUNCILMEMBER HOKAMA: Thank you, Chair.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Member Hokama. I just was...had a question for the purposes of discussion. I'm assuming that a nine-member Lanai Planning Commission is part of the Charter. But being how the population base of Lanai is so much smaller than Maui, just wondering if it would help if instead of a nine-member Commission, it was something smaller, like seven or five, so that you could get quorum easier or fill these seats easier, or do you think that nine is correct amount of Commission Members? Just for discussion.

CHAIR KING: Yeah, we're not discussing that right now because we'd have to do a Charter Amendment to change that but, so I think that...

COUNCILMEMBER PALTIN: It would help me in my decision to just know that information.

CHAIR KING: Okay, Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. Thank you, Ms. Paltin. Ms. Paltin, that has never been an issue for Lanaians or a major challenge. Obviously, yeah, residents, no matter what district, prefer the major commissions and boards, Police, Fire, Planning, you know, those areas, Civil Service. And so I would say for Lanai, our, again, biggest challenge is the amount of people that automatically because of conflict of employment and whatnot gets eliminated from the pool. And for us, that is our major concern is how we can get a Lanai resident representation properly, as well as taking in account the needs of the landowner and their employees, which make up half of our island. And so I would say, Ms. Paltin, at this time, you know, unless the Director of Planning has some other thoughts, I would say I would just leave it as is and exempt Lanai from this proposal at this time. There may be a time, hopefully, that we'll grow enough that, you know, this could be an issue. But at this point, until we get greater diversification of ownership and business opportunities, we're pretty in limited situation right now. So I would just ask for you folks' support for this, please. Thank you, Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, you're muted.

CHAIR KING: Sorry about that. Thank you, Mr. Hokama and Member Paltin. We'll go to Member Rawlins-Fernandez next.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I'm sorry, I was working on this and I didn't hear the exact language that Member Hokama proposed. I'm so sorry --

CHAIR KING: Could you repeat...

COUNCILMEMBER RAWLINS-FERNANDEZ: --could you repeat? I'm sorry.

CHAIR KING: Yeah. No, that's my fault because I asked you to work on that. So Member Hokama, could you repeat your language for the amendment?

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COUNCILMEMBER HOKAMA: So my motion was to delete Lanai from all portions of the proposed amended bill for an ordinance in the legislation.

CHAIR KING: So that just applies to the amendments today, not to the Native Hawaiian cultural position, which is a previous...that's already in the bill --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR KING: --in the ordinance.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so, Chair...

COUNCILMEMBER HOKAMA: Yeah, that does...yeah, Lanai, we have one Member.

COUNCILMEMBER RAWLINS-FERNANDEZ: . . . *(inaudible)*. . .

CHAIR KING: I'm sorry, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: So the word Lanai is not mentioned at all in this, in the amendment that you've proposed. So I think to remove Lanai, the language would actually have to be something like at least one member of the Maui and Molokai Planning Commissions, and then that would remove...exclude Lanai because Lanai itself is not called out in the bill.

CHAIR KING: Mr. Hokama.

COUNCILMEMBER HOKAMA: Great point, my colleague. And again, yeah, I'm trying to work within the title of Chair King's bill for an ordinance because even in the title, there's no mention of Molokai, Lanai, or Maui though, yeah? And that's why I was trying to find a way...or we just add a new section that says that Lanai is exempted from this section of the Maui County Code Provisions. I would defer it to our professional Staff and Corporation Counsel for guidance --

CHAIR KING: Corp. Counsel, Ms. Thomson.

COUNCILMEMBER HOKAMA: -- using this as the vehicle.

CHAIR KING: Okay, Ms. Thomson, can you give us some guidance on the best way to include this exemption?

MS. THOMSON: If Member Hokama's intent is to exempt the membership restrictions or requirements under both section A and B, it's probably cleaner to add C, a new section C that says that this section 070 does not apply to the Lanai Planning Commission.

CHAIR KING: No, I think that we're just talking about the amendment that we're discussing

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today on the natural resource/climate change expert, not the...

MS. THOMSON: . . . *(inaudible)*. . .

CHAIR KING: Right. That's just for the...

MS. THOMSON: Then maybe as Member Rawlins-Fernandez pointed out, the amendment could be something along the lines of at least one member of the Maui and Molokai Planning Commissions and Advisory Committee. And then to the other thing we were talking about earlier, which member shall not satisfy the requirements of subsection 2.28.070A, and then go on with the current text.

CHAIR KING: Okay, so you're suggesting that we do that in one motion?

MS. THOMSON: Oh, you could do so if the body feels comfortable with that.

CHAIR KING: Okay. So let's try to do that in one motion if we can. Mr. Hokama, if you could withdraw your motion and then I'll call on Member Rawlins-Fernandez to propose the one motion.

COUNCILMEMBER HOKAMA: Okay. Happy to do so, Chair.

CHAIR KING: Thank you, Mr. Hokama. We'll call on our colleague who has the legal background. Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I move to amend the proposed bill by having it read, at least one member of the Maui and Molokai Planning Commissions and Advisory Committee, which member shall not satisfy the requirements of subsection 2.28.070A.

CHAIR KING: Okay, do we have a second?

COUNCILMEMBER HOKAMA: Second.

CHAIR KING: Thank you. Moved by Member Rawlins-Fernandez, second by Member Hokama. And so that...and that applies to all, just to be clear, that applies to all Advisory Committees, so that would be Committees, yeah. We're hoping to get more in the future.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR KING: So any additional discussion? Thoughts or debate, or we ready...Member Molina, do you have a comment?

COUNCILMEMBER MOLINA: Yeah, Madam Chair, on the proposal, Madam, but I'll yield the floor, I think I saw Member Paltin had her hand up. So I'll yield once all the Committee Members have had a chance to respond.

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CHAIR KING: Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. And I just am not 100 percent clear. The concern is that we won't be able to find an environmentalist on Lanai that doesn't have ties to the one employer; is that correct? Just...

CHAIR KING: I believe that was Member Hokama's concern. He's nodding his head, for the record.

COUNCILMEMBER HOKAMA: Yeah.

COUNCILMEMBER PALTIN: Okay.

COUNCILMEMBER HOKAMA: Yes, Ms. Paltin. Thank you very much for that question.

COUNCILMEMBER PALTIN: Yeah. And then if that person, like, if we would have to choose someone from Pulama Lanai for the environmentalist position, then they would end up recusing themselves on many of the issues because of their employment with Pulama Lanai.

CHAIR KING: I believe that...Mr. Hokama.

COUNCILMEMBER HOKAMA: Yeah, because what we...for us, our uniqueness is basically, the only ones that would submit a proposal would be Pulama Lanai. So your employer is basically the one that's doing all the development and request of approvals for the island. And that's the situation we'll be putting that person in, making those calls about their employer.

COUNCILMEMBER PALTIN: Okay.

COUNCILMEMBER HOKAMA: Thank you.

COUNCILMEMBER PALTIN: Thank you, I just wanted to clarify that for myself.

CHAIR KING: Okay, are you, are you okay with us making the one motion, or you don't need to bifurcate the motions? Okay, great. Thank you.

MS. APO TAKAYAMA: Chair.

CHAIR KING: And Mr. Molina...oh. Who said that?

MS. APO TAKAYAMA: Sorry, this is Kasie.

CHAIR KING: Oh.

MS. APO TAKAYAMA: I just wanted to clarify for the record since we have two bills posted on



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the agenda, could we please specify which bill we're amending?

CHAIR KING: Oh, I thought I clarified that in my opening remarks. I talked about the bill that was put in there as the revised bill, that that's the one we're talking about.

MS. APO TAKAYAMA: Okay, thank you.

CHAIR KING: Okay, thank you. Okay, and then last comment from Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you very much, Madam Chair. Just wanted to share my thoughts. Member Hokama said he wanted to kind of hear my perspective as someone who did the Boards and Commissions for our former Mayor. And I appreciate the comments from Director McLean as well because Lanai is a unique situation. You have a very limited pool of applicants. And of course, you have many of the citizenry working for the company that owns the island. So I think it's important to have flexibility in the backgrounds of what you want. I certainly support the concept of having someone with conservation background. The question would be what kind of...how extensive is the minimum qualifications, how much that should be. Like if I could parallel that with the requirement for the cultural specialist for the Planning Commission, we had Councilmembers that voted no on some of the nominees because they felt their background was not extensive enough. So I think that should be taken into consideration as well with any future nominees. But come back to Lanai, it was a challenge to get...regardless of background, just to get nominees to serve on this Commission. There was a high turnover rate, maybe because of the...it conflicted with their work time or maybe the individuals who were selected didn't anticipate the workload. So there were some challenges, so I can certainly support Mr. Hokama's view on this, and something to be taken a look at later. But of course now, with the employment situation on Lanai, it's changed, so there may be people with more time on their hands to serve, and they may have...some of those folks may have some, you know, environmental or conservation background. So anyway, that's just my two cents on this one. Thank you for letting me have a say on this. Thank you, Madame Chair.

CHAIR KING: Thank you. Thank you for being here. Okay, if there are no further comments or questions, I'll call for the question. All those in favor raise your hand and say "aye." Oh, let me...does anybody need me to read the motion again? We're voting on the amendments again. Okay, so on the amendment, all those in favor say "aye." Aye. Member Paltin? Okay. That's one, two, three, four, five, six ayes. One excused, Member Lee, and no noes. Okay, we're back...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

CHAIR KING: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Motion is in the chat as well. The language is in the chat, for anyone's reference.

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CHAIR KING: Okay. So I think that may be what Member Paltin was asking about. Thank you for putting that there. Now I'm really jonesing to be in Hilo because I see the background of Ms. Paltin. One of my favorite sites and my grandchildren are over there so it's really hard for me not to go over there.

**VOTE: AYES: Chair King, Vice-Chair Sinenci, and Councilmembers Hokama, Kama, Paltin and Rawlins-Fernandez.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Lee.**

**MOTION CARRIED.**

**ACTION: APPROVED AMENDMENT.**

CHAIR KING: Okay, if there's no further comments or discussion, we'll take a vote on the main motion as amended. The main motion is, we're voting on the motion recommending passage on first reading of the revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 2.28.070, MAUI COUNTY CODE, RELATING TO PLANNING COMMISSION AND ADVISORY COMMITTEE MEMBERSHIP REQUIREMENTS" as amended, allowing Staff to make any non-substantive revisions and the filing of County Communication 20-418. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to thank you for this proposed bill. I remember when you proposed this when you were the Planning Committee Chair back in 2018, I believe. And it was proposed together to have a Hawaiian cultural expert and an environmentalist background, have both. And it was removed during that time, and only the cultural expert requirement remained in. So I wanted to thank you for your persistence in making sure that this got in to ensure a more balanced composition of our Planning Commissions. Mahalo, Chair.

CHAIR KING: Mahalo, Member Rawlins-Fernandez. And I also want to say that I appreciate the Committee's...the will of this Committee and of this Council. And I do recall in the past term that Member Hokama would have supported it if we could have gotten that far with his amendment. So I know that his heart was there, we just never got there to get to the amendment to exempt Lanai. So I appreciate that, Mr. Hokama. Any comments, Mr. Sinenci?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And I testified in support of it at that time too, so...

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CHAIR KING: Right. Thank you so much, I remember that. Mr. Sinenci?

VICE-CHAIR SINENCI: Mahalo, Chair, I just wanted to quickly speak in support of this and to do, to...I guess a lot of the times as the Councilmembers, we don't get to vet some of the commission members that are always brought before us. So, you know, having people that often...and to have people that sometimes don't represent you on some of the commissions. Particularly us in East Maui rural community, oftentimes our voices are not often heard. So I speak in support of this as a way to support some of our concerns. Mahalo for bringing this up. Thank you, Chair.

CHAIR KING: Okay, you're welcome. Thank you so much. Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. And, yeah, I also speak in support. And I just wanted to emphasize, you know, that it does say at least one. So that doesn't mean, you know, you have one and done and, you know, a lot of times we have multiple realtors or those associated with the realtor industry, and it could possibly be because that they make up their own hours and so their time is flexible, but...and then there's multiple people from the construction industry. And while I'm grateful for their expertise, to not have the balance of, you know, folks that are very familiar with environmental issues, especially when so many of the decisions made involve the SMA areas, that it doesn't truly reflect the broader County of Maui. And so I'm hopeful that, you know, we won't be limiting ourselves to it, you know, it would be great if every member on there had a Native Hawaiian practical [sic] knowledge, environmental knowledge, construction knowledge. But, you know, this is real life, and so I think that, you know, doing this step would help us out a lot. And for my part, I have recruited a marine biologist type to turn in her application, and I also have a copy of that on file. So for us as Councilmembers, if this is what we want to see, we also have to . . . *(inaudible)*. . . kuleana and recruit folks that are willing to serve as well, so that the Administration isn't left in the position that Councilmember Molina might have been left in, or Mr. Mossman, that they don't have any options. You know, so that they can have a bunch of options and it won't be difficult for them. It's not enough for us to just say this is what we want, but we also need to help them out and recruit as well. So at least one, not one and done. Thank you.

CHAIR KING: Very good point. Very good point. Excellent. Okay, so, are we ready to vote? If no other comments, I'll call for the question. All those in favor of the motion on the floor, say "aye" and raise your hands. All those...oh, that's unanimous. Six ayes, no noes, one excused, Member Lee.

**VOTE:**           **AYES:**    **Chair King, Vice-Chair Sinenci, and Councilmembers Hokama, Kama, Paltin and Rawlins-Fernandez.**

**NOES:**    **None.**

**ABSTAIN:**   **None.**

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**ABSENT:** None.

**EXC.:** Councilmember Lee.

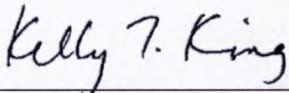
**MOTION CARRIED.**

**ACTION:** **Recommending FIRST READING of revised bill and FILING of communication.**

CHAIR KING: And we'll see Mr. Molina when we bring this up at Council. Thank you for being with us. Thank you, Members. That brings us to the end of our program, our agenda today. I appreciate your diligence and the attention to the matters and moving this on, this issue on to the full Council. Have a great Monday. All right, the meeting is now...oh, I gotta find myself a gavel. The meeting is now adjourned at 11:16 a.m. . . . (gavel). . .

**ADJOURN:** 11:17 a.m.

APPROVED:



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KELLY TAKAYA KING, Chair  
Climate Action and Resilience  
Committee

car:min:cs

Transcribed by: Crystal Sakai

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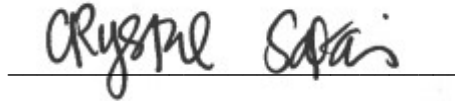
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CERTIFICATION

I, Crystal Sakai, hereby certify that pages 1 through 44 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 16th day of October 2020, in Wailuku, Hawaii

A handwritten signature in black ink that reads "Crystal Sakai". The signature is written in a cursive style and is positioned above a horizontal line.

Crystal Sakai