

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Council of the County of Maui

MINUTES

October 20, 2021

Online via BlueJeans Link

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Kelly Takaya King, Chair
Councilmember Shane M. Sinenci, Vice-Chair (in 10:17 a.m.)
Councilmember Gabe Johnson
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Yuki Lei K. Sugimura (in 9:17 a.m.)
Councilmember Tamara Paltin

STAFF: James Forrest, Legislative Attorney
Shelly Espeleta, Supervising Legislative Analyst
Lesley Milner, Legislative Analyst
Nicole Siegel, Legislative Analyst
Wilton Leauanae, Legislative Analyst
Rayna Yap, Committee Secretary
Lenora Dineen, Office of Council Services Assistant Clerk

Axel Beers, Executive Assistant to Councilmember Kelly Takaya King
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Jordan Helle, Executive Assistant to Councilmember Yuki Lei Sugimura
Autumn Ness, Executive Assistant to Councilmember Gabe Johnson

ADMIN.: Sananda Baz, Managing Director, Department of Management
Shayne Agawa, Deputy Director, Department of Environmental Management
Jordan Hart, Deputy Planning Director, Department of Planning
Keola Whittaker, Deputy Corporation Counsel, Department of the Corporation Counsel

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OTHERS: Peter Landon, Natural Area Reserve System Specialist,
Department of Land and Natural Resources, State of Hawaii
Craig Downs, Executive Director, Haereticus Environmental
Laboratory
Jeff Bagshaw, State of Hawaii, Division of Forestry and Wildlife
Larry Stevens
Jill Wirt
Shelby Serra, Pacific Whale Foundation
Mike Moran, Kihei Community Association
Anne Rillero
Jason Economou
Others (1)

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

CHAIR KING: . . . *(gavel)*. . . Good morning and welcome to the Climate Action, Resilience, and Environment Committee meeting of October 20th, 2021. Members...just for Members and anyone listening, please silence all cell phones and noisemaking devices. And just a quick note that this online meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. Members, the Governor's most recent energy *[sic]* proclamation also includes the following mandate: a board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at non-public locations where board Members are physically present, or to identify these locations in the notice required by Section 92-7, HRS, provided that at the meeting, each board Member shall state who, if anyone, is present at the non-public location with the Member. In accordance with the Governor's mandate, if you are at a non-public workspace, when your name is called, please identify by name who is present with you in the room, vehicle, or workspace. So Members, today we are...looks like we got a little more than a quorum. So we'll hope for...we have Member...our Vice-Chair, Member Sinenci, excused. He's actually on his way back to...making his way back to Maui. He's at the airport right now. So he's going to try to log on. So we'll just kind of look for him. And today we have with us our Chair, Alice Lee, who will give us our greeting for the morning. Good morning, Chair Lee.

COUNCILMEMBER LEE: Morning, Madam Chair. And the morning greeting is for you. It's matin math. Matin math in Scottish, that means good morning. And I'm here alone in my home. Thank you.

CHAIR KING: Okay. Great. In the chat, it says matin math for some reason, but [matin va] is --

COUNCILMEMBER LEE: Yeah, but you pronounce it [matin va].

CHAIR KING: Oh, okay. Okay. Good to know. All right. Next we'll go to Councilmember Paltin, Tamara Paltin, from the West side. Matin math and aloha kakahiaka.

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COUNCILMEMBER PALTIN: Matin math and aloha kakahiaka from Wailuku Maui County Building. I'm alone in my office.

CHAIR KING: All right. And next we'll go to Councilmember from Lānaʻi, Gabe Johnson. Matin math and aloha kakahiaka.

COUNCILMEMBER JOHNSON: Matin math, Chair. Matin math, Councilmembers. Home alone on the Island of Lānaʻi. It's beautiful outside. The chickens are crowing and the birds are singing.

CHAIR KING: And are you alone in your room?

COUNCILMEMBER JOHNSON: I am home alone.

CHAIR KING: Okay. Great. And next we'll go to our Councilmember from...oh, you don't...you're not under the virtual bridge today, but from Makawao-Haʻikū-Pāʻia, Mike Molina is one of the fastest jetlag recoveries I've ever seen. Matin math.

COUNCILMEMBER MOLINA: Aloha and matin math to you, Madam Chair, my colleagues, and everyone else joining us for your meeting today. For the record, I'm transmitting out of my office in Wailuku, here in the County Building, and accompanied by my Executive Assistant, Laura McDowell. Aloha.

CHAIR KING: Okay. Aloha. All right. And myself, I'm in my room alone. I have, actually, a guest staying with me in another room doing her own meeting, and she happens to work in the State Energy Office, Kirsten Turner, but not in the same room. And we have...I haven't heard from Councilmember Yuki Lei Sugimura. Does anyone see her on? So we may just assume that she's going to be late. Councilmember Sugimura? So we'll hope to see her a bit later. And we have no Non-Voting Members with us. Today we have with us from the Administration, confirmed are Keola Whittaker, Deputy Corporation Counsel; and Shayne Agawa, Deputy Director of Department of Environmental Management. From the Administration, we also have our Managing Director, Sandy Baz, who texted me this morning saying he will be representing the Mayor's Office. We did invite Alex de Roode, Energy Commissioner, and I don't see him on. If you're there, Alex, show yourself. But we'll welcome him if he does show up. And then we have a couple of really important resource people. We have Peter Landon, the Natural Area Reserve System Specialist, Department of Land and Natural Resources, State of Hawaiʻi; and Dr. Craig Downs, Executive Director, Haereticus Environmental Laboratory. So both of those people will be designated later as resource people, and thank you, gentleman, for showing up. We have our Committee Staff, Nicole Siegel, Legislative Analyst--and Members, with great appreciation and great sadness, this is her last week with us before she goes back to the mainland. We have Lesley Milner, our Legislative Analyst who is going to be stepping in for Nicole. We have Wilton Leauanae, Legislative Analyst, who's our backup; Rayna Yap, our Committee Secretary; James Forrest, our Legislative Attorney, who has done a lot of work with Keola Whittaker on this bill; and we have Lei Dineen from Council Services, Assistant Clerk. All right. Members, we have one item on today's agenda, CARE-40...54,

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Sunscreen. And if you didn't get my memo to wear your swimsuit today, that's okay. We're all good. We're going to go ahead and begin with public testimony and I'll read the . . . *(inaudible)* . . . for that. We have several testifiers this morning. Oral testimony via phone or teleconference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link that's noted on today's agenda, or if you're wanting to provide audio testimony, you should have participated via phone conference. You can dial 1-408-915-6290, and enter meeting code 470 076 045, also noted on today's agenda. Written testimony is also encouraged, and you can find the instructions on how to submit written testimony at mauicounty.us/testify. Okay. So moving on to oral testimony, oral testimony is limited to three minutes per item. If you are still testifying beyond that, I will ask you to kindly complete your testimony. When testifying, please state your name and if you're testifying on behalf of an organization or are a paid lobbyist. Please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chat with other testifiers. If you are here to provide testimony, please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you are done testifying, you will be asked to disconnect from the call. However, you're welcome to continue to view the remainder of the meeting on *Akakū* Channel 53, mauicounty.us, or Facebook Live via the Maui County Council page. Please let Staff know in the chat if you are here and do not wish to testify. You will automatically be signed up as a testifier if you are on chat. So only Councilmembers, Staff, and designated resource personnel will be connected to the video conference meeting once testimony concludes. I'd like to remind Committee Members, Administration, and the public to please be patient if we run into any technological issues. And at this point, if there are no objections, I'll proceed with oral testimony.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (Excused: SS, YLS)

CHAIR KING: Okay. Thank you. Okay. Staff...not sure who's calling on testifiers today. Is that you, Nicole?

MS. SIEGEL: Yes, it'll be me, Chair.

CHAIR KING: Okay. Can you call our first testifier?

. . .BEGIN PUBLIC TESTIMONY. . .

MS. SIEGEL: The first person signed up to testify is Jeff Bagshaw, to be followed by Larry Stevens.

CHAIR KING: Aloha, Jeff.

MR. BAGSHAW: Good morning, folks. Aloha, County Councilmembers and Chair, Committee people. My name is Jeff Bagshaw. I'm with the State Division of Forestry and Wildlife. I am in full support of your efforts to ban the sale, distribution, and use of sun

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protection products with any active ingredients other than naturally occurring minerals, such as zinc or titanium. I've testified on this before, and other people can speak to the science about why we believe these chemical compounds are so dangerous to ourselves and our resources. Instead I will focus on the fact that I consider myself an expert in public outreach and education. I've been doing this on Maui for 34 years, first with the Parks Service, and the last 7 years with the State. I probably reach about 200 to 300 people per week in 'Āhihi-Kīna'u Natural Area Reserve, where we try to do education on this. The first argument you'll probably hear from people who oppose such legislation, they'll say that the Government should just do more education. And I'm here to tell you that that is very difficult, hot, repetitive, challenging work. And even with all the posters and the handouts we can give out, the signs we've got at the reserve, we give out thousands of shoppers' cards to people to encourage them to buy certain things and not others. We're still...probably still only reaching about 10 percent of all the people who go into the ocean around...at the reserve itself, just 10 percent with all of that effort. That only speaks to one place, and if you put chemical pollutants into the ocean, it moves around. And these compounds that we're concerned about bind microplastics and sediments, which means it goes into the food chain. That means if you're eating limu, crab, 'opihi, fish from our waters, you're getting exposed, even if you didn't put these ingredients on your skin, which leads me to another point: consumer choice. Consumer choice means you are choosing for someone else. Let the consumer decide. Well, that consumer is deciding for the public at large when they use these compounds. And clearly, people who put these ingredients on their toddlers when the bottle says don't use this on children under 12, they're not making a very informed choice. In fact, the number one thing that I hear from people now is the new greenwashing term, reef safe. It's a total greenwashing term. It's not based in science. It's there because no agency regulates what goes on the front of the bottle. I literally have to tell people, turn the bottle over, look at the back, look at the active ingredients. People are not label literate. So that's the number one problem. And people will tell me directly, I hate this, I tried to do the right thing. Look, I was trying to be conscious. They get very angry, not just at me, but at the system. . . .(timer sounds). . . And they want to...they'll say, ban these chemicals. So that's why this is a really good measure. The industry's going to just try to create new compounds under new patent names if you make a law that only regulates one or two things. So this is the best option. Thanks.

CHAIR KING: Okay. Thank you so much, Mr. Bagshaw. Members, just...and Mr. Bagshaw works with Peter Landon, who's one of our resource people, but if the...if there's no objections, maybe if Mr. Bagshaw can hang around, we can designate you as a resource person too, in case there are any questions that Peter might want to punt to you?

MR. BAGSHAW: I'd be happy to.

CHAIR KING: Because I know you...you've been very involved,. And if you've ever been to 'Āhihi-Kīna'u, you would probably see Jeff out there under the little ten-by-ten tent informing everybody who comes through and telling them about safe sunscreen. And so thank you for your service. And we'll...if you can hang around, we'll get to you and may have questions for you later. Okay. Members, if that's all right, then we'll move on to our next testifier.

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COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (Excused: SS, YLS)

CHAIR KING: Okay, great. Thanks.

MS. SIEGEL: The next person signed up to testify is Larry Stevens, to be followed by Jill Wirt.

MR. STEVENS: Aloha kakahiaka, Chair and Councilmembers.

CHAIR KING: Aloha.

MR. STEVENS: I'm unable to get my...oh, there's my video. Sorry for being slow.

CHAIR KING: Oh, there you are. Now I see you.

MR. STEVENS: My name's Larry Stevens, and I'm here alone with my dog, Cali, only. And I'm here to testify on behalf of Maui Nui Marine Resource Council in support of CARE-54. I...in 2008, it was estimated that 25 percent of the sunscreen applied to the skin is washed off within 20 minutes of submersion, releasing about 4,000 to 6,000 tons a year into the surrounding coral reefs. According to Hawai'i's DLNR, 55 gallons of sunscreen go into our near shore waters each day on Maui. That's the size of an oil drum. Much of that sunscreen is released on or near our precious coral reefs. The pollution doesn't occur just at the beach. Hawai'i's wastewater treatment facilities do not have effective means to filter out these organic compounds, leading to sewage contamination of coral waters. By failure to remove these compounds, the pollutants can accumulate and affect living organisms. The FDA is currently evaluating the safety of ten chemical sunscreen ingredients on human health. The list of those is impossible to pronounce, so I'll save us all the effort. I've submitted written testimony which has the list. They have also found that some of these chemicals are absorbed into the bloodstream, the human bloodstream, after you apply them...pretty awful. Sunscreens can contain up to 20 or more of these chemical compounds because no single compound at permitted concentrations provides sufficient UV protection. It is not known how the combination of these chemicals impacts human health or marine wildlife because it hasn't been evaluated. Researchers have found that common ingredients from some of these chemicals can stimulate dormant viral infections in the zooxanthellae, the beneficial algae that live within corals. These chemicals cause viruses within the zooxanthellae to replicate until there algal hosts exploded, spreading viruses into the surrounding water to infect nearby coral colonies. Another study addressed the impact of five UV filters found in sunscreen. UV filters are the things that protect you against the sun's rays. And they found that varying...they found varying levels of toxicity, but most filters affected marine bacteria. These bacteria are important and necessary for larger marine organisms, such as coral, algae, and fish. To protect corals, marine organisms, and human health, MNMRC supports CARE-54, and asks that the Maui County Council bring this to your agenda for consideration and passage. Thank you very much.

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CHAIR KING: All right. Mahalo, Mr. Stevens. Any questions for our testifier? We have a question from Member Paltin. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Stevens, for your testimony. I was wondering if you could clarify, within that 55-gallon drum of sunscreen, was it also included on the aerosols? You know, plenty of folks don't follow the instructions of like, you know, applying it in a closed place 30 minutes before you go in the water. And so when it like sprays out into everybody's air space and hits the sand and stuff, was that included in it, or was it just the lotions?

MR. STEVENS: I believe it was...I believe it was an overall estimate, didn't...based on the total sales of sunscreen. And one thing I find remarkable is that many people spray the sunscreen on their...on their skin, and immediately go in the water before it has a chance to dry, which provides no protection at all. So educating consumers is a lifelong task, as Jeff has explained to us, but if we can give them a little nudge in the right direction, I think it can make a big difference.

COUNCILMEMBER PALTIN: Okay. Thank you. That was my only question.

CHAIR KING: Okay. Any other questions for our testifier? If not, well, thank you so much, Larry. Really appreciate all the information . . .*(inaudible)*. . .

MR. STEVENS: Mahalo.

CHAIR KING: And at this point, I just...I want to recognize Councilmember Yuki Lei Sugimura. Thank you for joining us, and we're in the middle of testimony. So we'll move on to our next testifier.

MS. SIEGEL: Next testifier is Jill Wirt, to be followed by Shelby Serra.

CHAIR KING: Ms. Wirt. Okay. We can see you now.

MS. WIRT: Okay, great. Aloha kakahiaka. My name is Jill Wirt, and I'm also here to testify on behalf of Maui Nui Marine Resource Council in support of CARE-54, which would prohibit the sale, use, or distribution of non-mineral sunscreens. We supported the State-wide ban on the sale of sunscreens containing oxybenzone and octinoxate, two chemicals known to cause developing corals to bleach, baby corals to die, and lead to genetic damage in corals and other organisms. In corals, DNA damage can cause failure to reproduce, fatal larval deformities, and reduce the ability to heal from wounds and resist diseases in corals. Both chemicals can increase reproductive diseases in creatures from sea urchins to parrot fish and mammal species like the Hawaiian monk seal. In addition, this compound is herbicidal in property, which can be toxic to algae and marine plants as low as ten parts per million, killing limu. As we've all noticed since the ban, there's a serious lack of regulation regarding the marketing of sunscreens. One study looked at different reef safe and reef friendly marketed sunscreens, and found that in one-fifth of the surveyed sunscreens, a range of nine different chemical compounds were used. In 92 percent of the products, avobenzone, homosalate, and octosalate were present as active ingredients. These combinations of

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chemicals have not been adequately studied to understand their impact on the reefs, fish, invertebrates, and marine wildlife. Sunscreens can contain up to 20 or more of these chemical compounds because no single compound on its own, at permitted concentrations, provides sufficient protection against UV radiation. In fact, the FDA is just beginning to evaluate the impacts of ten common sunscreen chemicals on human health. The Nation of Palau in the Western Pacific Ocean, and Thailand, have also enacted bans on sunscreen chemicals, though they went further than only prohibiting oxybenzone and octinoxate. Palau banned ten chemicals, which are listed in my written testimony as well, and their ban took effect in 2020 to protect their pristine environment. Thailand enacted a ban this August which prohibits the bringing of and use of sunscreen containing any of the following four chemicals into Thailand's national parks: oxybenzone, octinoxate, 4-methylbenzylidene camphor, and butylparaben. Given the fragile state of our coral reefs and the many threats posed by sea level rise, warming ocean waters, and sediment runoff, we urge the precautionary approach to ban the sale and use of all non-mineral sunscreens in Maui (*audio interference*). That's why Maui Nui Marine Resource Council supports CARE-54 and asks that the Maui County Council continue to bring this to the agenda for consideration and passage. Mahalo.

CHAIR KING: Okay. Mahalo, Ms. Wirt. Any questions for our testifier? If not, thank you so much for being here. And it's nice to see a new face with Maui Nui Marine Resource Council. Thank you.

MS. WIRT: Thank you.

CHAIR KING: Okay. Nicole, next testifier?

MS. SIEGEL: The next testifier is Shelby Serra, to be followed by Mike Moran.

CHAIR KING: Okay, great. Aloha, Shelby.

MS. SERRA: Aloha. Good morning, Committee. I'm testifying today on behalf of Pacific Whale Foundation, whose mission to protect the ocean through science and advocacy and to inspire environmental stewardship. We are testifying in support of CARE-54. Coral reefs are among the most biologically diverse ecosystems in the world, supporting nearly one million species of algae, invertebrates, and fish. In Hawai'i alone, coral reefs has more than 7,000 known species of marine plants and animals, almost 20 percent of which are endemic to Hawai'i. They provide protection to our coastlines from storm surge and hurricanes, and they have over 33 billion in economic value to the State. Science is clear that many of the elements in chemical sunscreens are harmful to coral and other marine life, and research has shown that some chemicals commonly found can damage coral reefs by disrupting coral reproduction, inhibiting growth, deforming coral DNA, and increasing rate of zooxanthellae viruses and coral bleaching. In Dr. Downs' presentation to your Committee last month, it was revealed that adjustments to single polymers in a chemical compound used in a sunscreen can yield a new compound, but still have similar detriments to the ecosystem. However, the change in name of that compound can exempt it from prohibiting law. By this logic, implementing a law that allows only mineral-based sunscreen, such as those in

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zinc...based in zinc oxide and titanium dioxide, strengthens the intent of the legislation and disallows manufacturers from finding loopholes by adjusting their chemical compounds slightly. According to 2020 Hawai'i Ocean Resources Management Plan, as well as Hawai'i Tourism Authority, around ten million people visit Hawai'i every year, and of those, about 80 percent take part in marine activities. We must take swift action and take a different approach to sunscreen prohibitions to ensure that we do not continue to add reef-damaging chemicals to our waters, harming our reefs and marine life day after day. Mahalo for your time.

CHAIR KING: Mahalo for your testimony, Shelby. So Members, any questions for our testifier? If not, well, thank you so much for being here, for your support, and we'll move on to our next testifier.

MS. SERRA: Mahalo, Committee.

CHAIR KING: Mahalo nui.

MS. SIEGEL: Chair, the next testifier is Mike Moran, to be followed by Autumn Ness.

MR. MORAN: Good morning, Chair King and Committee Members. Mike Moran for the Kihei Community Association. Of course we're in...strongly in support of this bill this morning, and thank you for continuing efforts to get it done. A little over five years ago, we attended a meeting at the DLNR Office, in the days when we had live meetings, near the airport, and we saw a presentation by 'Āhihi-Kīna'u, emphasizing the 55-gallon drum, and they're all things that I think most of us have heard many times before. But that was reinforcing what we understood before about the dangers of these types of sunscreen. And many of us went to using the protection of...probably the best thing, of using clothing so you don't have to use anything. So we have our long sleeve rash guard on this morning for emphasis. And continuing that, we agree with just about everything Mr. Bagshaw said this morning about we try to pick up the gauntlet there with the education. We did get some of their posters and put them on our website. We mentioned it to a doctor at Kaiser, and we noticed shortly after that they had the posters up there. So the word was spreading, but again, we agree with what Mr. Bagshaw said. To say you have to just...education is going to do it, you know, we've seen in well over five years, the education is not working. We see the same gimmicks and tricks by big corporate entities of, you know, tricking the consumers with the reef safe actions and so forth. So we feel that it does take legislation to protect not only the community, but protect the voiceless environment that we have in our near shore waters. And we, too, are in fear of that...the entities. We'll ban this chemical, and they'll just tweak the ingredients and now it gets a new chemical name, now it's not banned. But we have to do what we can do today to take action, and that's why we commend this Committee for taking this action today. Hopefully, you'll pass it today, get it on to Council, and there'll be legislation. Thank you for the opportunity to testify.

CHAIR KING: Okay. Thank you, Mr. Moran. Any questions for Mr. Mike Moran? If not, thanks so much for being here, Mike. Appreciate your support and continue the good work. All right.

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MR. MORAN: A hui hou.

CHAIR KING: A hui hou. Nicole, next testifier, please.

MS. SIEGEL: Chair, the next testifier is Autumn Ness, to be followed by Anne Rillero.

MS. NESS: Aloha, everybody. I'm Autumn Ness. I do work for Gabe Johnson part time, but I'm here on my own time testifying in support of this measure because it is so very near and dear to my heart. I just want to give a little background. I worked for Elle--Sarah did too--around the time when the County oxybenzone and octinoxate bill was being written. It was Elle's bill, and it actually got...it passed the Council, and then it got overshadowed by a similar State bill. And you'll hear from Dr. Craig Downs that there are a number of chemicals known to harm coral, and when we were talking about the County bill, about crafting it, advocates had discussions about whether we should go about banning all of them or just the worst ones. And we thought that if we tried to ban all of them, we would really poke the cosmetic industry bear, right, and they would come out really strong against this bill. So we agreed that what if we just focus on the worst ones, and then it might be a springboard for education and we can steer people towards mineral based sunscreens, right? And the State bill mostly mirrored Maui's bill. And personally, now, I think it was all a big mistake, and I wish that we hadn't done anything besides ban all of them, because we inadvertently created a monster. Like you've heard, because we only banned two chemicals and because reef safe is not a Federally-regulated term, that opened the door for every sunscreen maker that didn't have these two specific chemicals in it to label them with reef safe. And so many people, thinking they're doing the right thing, go to the store and proudly wield their reef safe sunscreen while they're at the beach, spray it all over themselves, and don't know that they're actually doing harm. And for a while, the kids and I tried to educate people. We actually got a case of reef safe screen...sunscreen that's locally made, donated, and we would walk the beach and switch things out. And some people care and some people get really snarky that, like, don't tell me what to do on this beach when my can of sunscreen says reef safe. And then you realize that there's planes full of people arriving every day, and they walk into any Costco or Target or ABC Store, or you name it, and there's walls of sunscreen that say reef safe on them, and it's just like swimming upstream, you know? And then when the COVID lockdown happened, my daughter and I decided to take this opportunity to see what happens when you remove stressors that are associated with humans from the near shore waters. And we logged data at four different beaches that are normally like teeming with tourists. We counted like...things like fish counts, and what kind of animals we see, and water clarity. And I will tell you...I don't have enough time right now to go through it, but we saw the most incredible things when you remove all of the stressors that come with humans in the water. The water clarity was unreal. I have never seen, in my years here, anything like it. And we swam through--I'm not going to tell you where--in the middle of a normally very, very crowded resort in front...we swam through a tide of baby seahorses. I get chicken skin just telling you about it right now. Trip out what happens when you remove stressors from the water. . . .(timer sounds). . . So I'll close with one last sentence. I can't tell you which combination of stressors created the things that we saw, but I will tell you that we have a responsibility to remove all the stressors we can from the water because what we saw was incredible. Thank you.

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CHAIR KING: Wow. Thank you, Autumn. Do you have pictures of the seahorses?

MS. NESS: I wish I had a good underwater camera. We just took notes, and I...yeah. It was incredible.

CHAIR KING: That must've been amazing. I've never seen that in the water in all my years of diving. Any questions for our testifier?

MS. NESS: Thank you guys for picking this up.

CHAIR KING: If not, thank you so much for being here and continuing the fight. So we really appreciate all the early inspiration too, to this effort.

MS. NESS: That was Elle. . . .*(inaudible)*. . .

CHAIR KING: Yeah. . . .*(inaudible)*. . . It was a joint effort. So Nicole, next testifier, please.

MS. SIEGEL: Chair, the next testifier is Anne Rillero, to be followed by Jason Economou.

CHAIR KING: Good morning.

MS. RILLERO: Hi. Good morning. Good morning, Councilmember King and Members of the CARE Committee. I'm Anne Rillero. I'm also with Maui Nui Marine Resource Council, and I'm testifying in support of CARE-54 as well. Dr. Craig Downs kindly shared with me 16 studies and reports on the impacts of UV filtering chemical sunscreens on our reefs, and he's given me the okay to share those out with you by email and...which I will do after this meeting. What I saw from looking through these reports is that there are sufficient concerns regarding how these products impact human health and our coral reefs. For example, avobenzone, which is often used in place of oxybenzone, works in a similar manner and it poses similar risks to coral DNA and aquatic life exposed to this chemical. Another common chemical, octocrylene, has been reported to be an endocrine disrupter and has been linked to aquatic toxicity, with a potential to harm coral reef. It's been studied on zebra fish embryos and adult male zebra fish, and when exposed to octocrylene, the fish showed absorption, accumulation of this compound. Analysis revealed that the adult zebra fish males showed major impairments in the part of their brain that regulates development, and also impairments in the liver, which is responsible for their metabolism. So octocrylene was also studied in the fish known as Japanese medaka, which have...sorry, I just need to scroll down a little here...okay...which...they've been used as...to evaluate the impacts of chemicals in water for many years. And the studies showed that when they were exposed to octocrylene, they had decreased fertility, significantly decreased fertility. They also...there was more time for them to hatch, and there were higher cumulative death rates for the fish embryos. Another questionable chemical is homosalate, which is also found in a lot of so-called reef safe sunscreens. It impacts the human body's hormone systems, particularly our estrogen system. And hormone disruption is a threat to our reefs and aquatic organisms as well. So all of these chemicals, which are known as UV filters, can easily enter our ocean directly when they get washed off the

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skin of ocean users. And as Autumn said, you know, a lot of people go out and they buy what's labeled as reef safe, and they contain these chemicals. And because the molecules of most of these UV filters are really stable, it's very difficult for them to be completely removed by conventional wastewater treatment processes. So they're likely entering the ocean through our treated wastewater here on Maui. So of all the sunscreen chemicals in use, the FDA has only declared titanium dioxide and zinc oxide as safe for humans. So why should we take the risk of allowing other questionable sunscreen chemicals to cause harm to people and to our coral reefs? . . .*(timer sounds)*. . . So thank you for supporting CARE-54. Okay.

CHAIR KING: Thank you so much, and we really appreciate having you here. Any questions for our testifier? If not, we will...well, you'll be submitting written testimony in addition, right? Okay.

MS. RILLERO: Yes.

CHAIR KING: Thank you so much.

MS. RILLERO: Thank you.

CHAIR KING: Thank you for your support. Next testifier.

MS. SIEGEL: Chair, the next testifier is Jason Economou, to be followed by Peter Landon.

CHAIR KING: Good morning. Matin math.

MR. ECONOMOU: Good morning, Committee Chair. I am...I'm joined today by my son, Magnus. I am testifying on behalf of the Realtors Association of Maui. My name is Jason Economou. I am their Government Affairs Director. And we are in support of CARE-54. RAM believes that our island's well-being depends on our beaches and our reefs, and RAM supports the maintenance of a robust beach environment, and we think it's a key to sustainable long-term planning for Maui. Real estate becomes meaningless if our environment and our island are dying. So thank you for taking steps to preserve this place for us, and for our children, and our grandchildren. And you know, I'm...I just feel encouraged that this Council is being so active and being so proactive in preserving this land. And I'm not a science guy, so I don't have as good of information as everybody else, but I just wanted to say that RAM is thankful for this action. So that's it.

CHAIR KING: All right. Thank you so much for your testimony. And thank you for bringing your visual aid of why sustainability is so important. Any comments...or any questions for our testifier? If not, all right. Thank you so much for being here, Jason.

MR. ECONOMOU: Thank you.

CHAIR KING: Congratulations again. Okay, Nicole, do we have...I think you said Peter Landon's our next testifier. And I'm not sure. Was he wanting to testify in addition to giving comments as a resource?

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MS. SIEGEL: Yes, Chair. He indicated in the chat he would like to testify. And he's the last person on the testifier list as well.

CHAIR KING: Okay. All right. We'll welcome Peter Landon. Good morning. Matin math. You're muted. Peter, you need to unmute yourself.

MR. LANDON: Technical difficulties. Yeah. Good morning, Chair King, and good morning, Councilmembers. Thank you all for having me. I want to thank all the testifiers that came before me. It seems that there's really overwhelming support for this bill. I also want to thank them for all their thoughtful testimony about the science and the education and everything that came before. I'm going to pick up where they left off and talk a little bit about being a consumer. And I think that the reason I support this bill, beyond the protection of the reef and things like that, is that it really does the job from the...from the real action point or the beginning of the problem is that, you know, if you go to the store, there's an overwhelming number of sunscreen choices out there. I myself spent, you know, 20 minutes in Long's trying to find this the other day, you know, knowing that I want something with only minerals in it. And I'm looking for the best price that I can find for that product, things of that nature. And it's a daunting task for somebody that's an expert like myself. So by banning the sale of these products, you really make it easy for everybody, you know. Consumers should be happy that they don't have to spend that amount of time or more trying to educate themselves about sunscreen issues, chemicals and compounds and minerals and everything else, right? They could go to the store and be happy that they're purchasing the correct sunscreen and they're in Hawai'i, and nothing else matters, right? Like one of the biggest comments I get from people that I encounter that are conscious about these issues is they can't believe that they were duped at the store when they tried to buy something reef safe, right? And it...it's all because of this, you know, reef safe buzz term that everybody's using. They're putting it all over their sunscreen. Companies like Banana Boat, where I used to buy the Banana Boat Kids, and it would only have zinc oxide in it, now the Banana Boat Kids says mineral enriched right on the front of the can or the squeeze bottle. And you look at it, and it's got minerals in it, but it's got all the other chemicals. So it's like, you know, they took away something that was good and they replaced it with this mineral enriched to kind of catch your eye and get you to buy their product. And so that part alone is really unfortunate, and I don't think we can battle that with education. You know, like everybody said before me, some people you talk to, they're really happy that they met you and they really are going to take this to heart and act on it, and other people are just really irritated that you're either...that you're even bothering them, right? So by banning the sale of these chemical sunscreens and limiting the sales to only mineral sunscreens, I think is really the best way to address this, and I really applaud the Council for taking this action. And I'm in full support as, not only a...somebody that works for, you know, one of the most beautiful reefs in the State, but also just a regular person. It really will make people's life . . . *(timer sounds)*. . . easier.

CHAIR KING: Okay. Great. Perfect timing. Thank you so much, Peter Landon. And we'll be...we'll be hearing from Mr. Landon in a little bit too, as one of our resource people. So if there are no more questions, we'll go back and see if we have...oh, do...did you

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want to ask a question, Member Sugimura? You're muted.

COUNCILMEMBER SUGIMURA: Nice seeing you, Peter. Continue on with your good work, but since you took all that hard work to find that, can you tell us what the brand is?

MR. LANDON: Yeah, I mean, this is, I guess Bare Minerals, or Bare Republic. Sorry. See, I don't even know. But you know, I like the spray. I know that, you know, sprays have their own issues, but I have a four-year-old that you can't keep him still. So I like to grab this and hose him down with it and then rub it in while he's trying to run away and all these kind of things, right? It just makes my life easier as a parent. But yeah, the only active ingredients...I don't know if you can read that, but it's just zinc and titanium. You know, it comes in a nice spray, it's FPS [sic] 50. Yeah, it's good. It's at Long's. It's, you know, \$14 or something like that. If you want to buy the tube, you know, it's around 8 or \$9, but, yeah, like I said, it...that's the hardest part of this, right, is you want to do right, but then you get to the store and it's like really hard to do it. So I really think that the best course of action is what we're taking now, and I really appreciate it. You know, it makes my life easier, it makes my job easier, and people will be happy that they can just come to Hawai'i and not worry about it.

COUNCILMEMBER SUGIMURA: Thank you. Continue on with your good work, by the way.

MR. LANDON: Thank you.

CHAIR KING: Okay. Thank you, Member Sugimura. I know you were just out there not too long ago with Member Paltin looking at the paid parking. So you've seen it probably more recently than I have.

COUNCILMEMBER SUGIMURA: He's done a good job with that whole parking, which has become my model for what we can do with the County. So thank you very much. And he did it all on his own. Amazing. Thank you.

CHAIR KING: Awesome work being done out there.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR KING: Okay. Thank you so much. We'll see you a little bit later, Peter. Nicole, are there any more testifiers?

MS. SIEGEL: That was the last person signed up to testify and no one else has indicated that they would like to testify.

CHAIR KING: Okay. Just one last call. If anybody else wants to testify, speak now. Otherwise, Members, if there's no objections, we'll go ahead and close oral testimony and accept written testimony into the record.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (Excused: SS)

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. . .END OF PUBLIC TESTIMONY. . .

CARE-54: SUNSCREEN (CC 21-305)

CHAIR KING: Okay. Thank you. All right. Members, we'll move on to our one item, Sunscreen, CARE-54. And today we have before us County Communication 21-305 from Councilmember Tamara Paltin, transmitting a proposed bill to regulate the sale, use, and distribution of sunscreen containing oxybenzone and octinoxate. We also have correspondence dated October 14th, 2021, from the Department of the Corporation Counsel, transmitting a revised proposed bill entitled, "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.42, MAUI COUNTY CODE, TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF NON-MINERAL SUNSCREENS." The...and I just want to note here that this has been a joint effort with our OCS, with Corporation Counsel, with Member Paltin, and myself working on...to get us to the point of the bill that we're looking at today. So I really want to thank our resident ex-lifeguard, Member Paltin, for all your work on this too. On August 4th, 2021, we had an excellent discussion with our resources and Departments, resulting in the revised proposed bill we're discussing today. Under Act 104, 2018, Counties were temporarily preempted from enacting ordinances to prohibit the sale, use, or distribution of sunscreens containing oxybenzone or octinoxate. The preemption expired January 1st, 2021. Today we hope to have with us...I don't think he's arrived yet, but we hope...we did get a confirmation from Dr. Craig Downs, Executive Director, Haereticus Environmental Laboratory. We also have Peter Landon, who you just heard from, from the State of Hawai'i. And with the body's approval, we will designate these two as resource persons, along with Jeff Bagshaw, who we just heard from as well. From the Administration, we have Managing Director Sandy Baz. Alex de Roode, Energy Commissioner from the Mayor's Office of Climate Action, Sustainability, and Resilience was invited, but I don't...are you here, Alex? Don't know if he's coming. I think that's why Sandy Baz came. So we'll designate Sandy from the Mayor's Office. And we also have Deputy Director Shayne Agawa from the Department of Environmental Management, as well as Keola Whittaker, Deputy Corporation Counsel, to provide comments and answer questions Members may have relating to the proposed legislation. Once they've had a chance to share their comments with us, I'll open up the floor to Members for any questions they may have in three-minute rounds. After we hear from our resources and Administration officials, I can ask Staff to display the bill, if so desired, so that the body can do a review, if desired, on screen. And so right now, Members, I would like to designate, if there's no objections, Dr. Craig Downs, Peter Landon, Jeff Bagshaw, Sandy Baz, Alex de Roode if he...if he attends, and Shayne Agawa as resource persons, pursuant to Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (Excused: SS)

CHAIR KING: Great. All right. We're going to start with...is Dr. Downs here? Do you see

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him, Nicole?

MS. SIEGEL: He has not joined yet, Chair.

CHAIR KING: Okay.

MS. SIEGEL: I'll let you know.

CHAIR KING: Okay. We're going to start with the remarks from Jeff Bagshaw, if you have anything else to add, and then followed by Peter Landon.

MR. BAGSHAW: Hello again. One question that came up was about the spray. I have read one study that said only about 10 percent of sprays still go onto the body. And another question earlier was regarding our estimates about how much goes into the ocean. That's based on averages of the number of people who visit Maui and the number of people who take part in water recreation. It's an estimate about...saying that if just 10 percent of those people use only one half of the recommended amount of sunscreen, it would add up to about 55 gallons. So it's a very conservative estimate of...it's probably the only way you can really estimate how much is getting out there into the environment versus what's sold. So it's based on population, visitation and those kind of consumer averages, just to...just to back up on those questions.

CHAIR KING: Okay. If you can hang on, Jeff, then you know, we may have questions for you after all the resource people give comments.

MR. BAGSHAW: Okay.

CHAIR KING: Hang on. And if you've been out to 'Āhihi-Kīna'u, you've probably seen Jeff's visual of the 55-gallon drum that he's talking about, you know, that 55 gallons. Okay. Next we'll go to Peter Landon, see if there...you have anything additional you'd like to add. Peter?

MR. LANDON: Yeah. I don't have anything additional to add. I'll stand by for questions if anybody needs me, but yeah, I think everything's there. The only question I had was I looked it up on my own about the penalties, and I believe that the penalties are only civil. So that's good and bad. I guess good that that'll definitely take care of businesses because they would probably be the ones that you would serve paper and assess a fine. It doesn't necessarily create an environment where you can take sunscreens away from people if they're bringing them in and they just don't care, but I don't really know that we need to go that far with it. If we get it off the shelves, I think that will be, you know, a huge help on its own, and might be all that we need to really see a change. But other than that, I have no other comments. So I'm still in full support of just passing this thing.

CHAIR KING: Okay. Great. Thank you so much. Okay. And we're going to call on, next, our Managing Director, Sandy Baz. Baz, are you with us? Thank you so much for being with us. Aloha and matin math.

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MR. BAZ: Matin math. Good morning. Aloha, Chair, Members. So yeah, unfortunately, our Sustainability and Environmental Coordinator has moved on. And so that position's vacant right now, but I'm representing the Mayor. We are in support of this bill. We're in support of protecting our reefs from damaging sunscreens, and definitely want to move forward in this together and move forward in a educational...there's been a lot of discussion about education and enforcement, and as Peter mentioned, fines. It will be mostly businesses, but we're really looking to do more educational piece with them. You know, we've done the plastic bag ban, we've done the polystyrene lunch containers, and then all those. And each one of those...the smoking on beaches...each one of those hasn't really come with a lot of enforcement support, but we have done a lot of education with those. So Shayne Agawa from Department of Environmental Management will be tasked with this responsibility, but the Mayor will be requesting...most likely will be requesting three or four additional positions in the Fiscal Year '23 budget for this type of education and enforcement. Not specifically just the sunscreen issue, but any kind of environmental protection areas that we want to see, you know, get out to our businesses especially. Taking it off the shelves, I agree, is going to be the easiest and best solution to this. The amount of people that actually carry sunscreen with them coming is very small, I'm sure. And even if they do, they'll be, you know, done with it quickly and have to go buy new ones. So...and the more education we can do even with the tourism industry, you know, trying to get it to travel partners as well, I think will benefit this program. So I'm here to answer any questions if you have, but otherwise, in general, Chair, thank you, Members. We appreciate you putting this forward.

CHAIR KING: Okay. Thank you so much. And yeah, I hope those positions get filled quickly, but I did get an email from Makale'a Ane on her last day saying that she was thankful for this bill. So thanks for being here, Sandy. I really appreciate it. And so Members, you know, be writing down your questions if you have any. And we'll go...we'll check back in and see if Mr. Downs is with us. If not, we'll go to Deputy Director Shayne Agawa to see if you have any comments on the bill. Morning. Matin math.

MR. AGAWA: Matin math. Thank you, Chair King, Members. First I'd like to say that DEM is in full support of this bill. As you know, our Department has been tasked with the enforcement portion, like all other legislative bans and bills that pass. So just a few comments on this one from our standpoint. We do appreciate in Section 4 where the effective date has been pushed back. That will allow us to get the additional Staff necessary and to implement programs to help enforcement of this bill. What was also mentioned in the previous Committee meeting was additional budget for this. We would expect to have an additional budget of about \$50,000 required to do the enforcement, education, that type of thing. That's based on, as Managing Director Baz said, previous type of programs, like the foam free polystyrene ban, plastic ban. A lot of that budget would go into, like I said, educational, such as radio ads, you know, that type of thing. Also in previous talks with Tamara Farnsworth, who heads our EP&S division, we do have a strategy where we're thinking about doing kind of like a switch-out program, where --

CHAIR KING: Oh, okay.

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MR. AGAWA: -- the Department purchases, you know, mineral based sunscreen because, you know, we anticipate a lot of the users out there will be very hesitant to give up their \$15 tube of sunscreen, right? But if we have some kind of switch-out program where we can incentivize them to use the mineral...so that's part of our plan that we're talking about as part of enforcement. And yes, we are targeting mainly the sales and distribution of the sunscreen, the banned sunscreen...not more the use, but if we do have the additional Staff, we can maybe do a little bit more outreach to the people, the users out there. So we would probably need, as Managing Director Baz said, maybe two or three more additional Staff to help us. So we would ask your support in the future for the funding and the Staff. Other than that, I have no further comments, and I'll be available for questions.

CHAIR KING: Okay. Great. Thank you so much. And then, you know, on your requests, perhaps you could give us a list of all the other things that you're going to be needing for enforcement with these additional positions. So I think there's a lot out there to be done. Okay. Next, I'm just going to call on Keola Whittaker, who worked on this bill, to see if...Keola, do you have comments to make as well on anything that's been said that you want to comment on? Thank you for being here. Oh, you're muted. I think you're muted on your end.

MR. WHITTAKER: Can you hear me now?

CHAIR KING: Yeah, we can hear you now.

MR. WHITTAKER: Well, thank you so much, Chair. I wanted to thank you and OCS for the process used to finalize this bill. First the draft was introduced here, discussed, but no legislative action was taken. And then we were able to take it and work with OCS on it for a few weeks. And so that gave us time to redo our prior research that was done on this draft bill a few years ago, and we came to a new and different conclusion based on that updated research. And we appreciate the time to do that. I think it was an ideal way of drafting the strongest bill possible from a legal perspective. So through multiple conversations, we understood the policy goals of you, Councilmember King and Councilmember Paltin, and figured out the best way to draft the legislation. So with your permission, I'd like to just go over briefly our updated guidance, and then briefly discuss the FDA-proposed order and the meaning of generally recognized as safe and effective; is that okay?

CHAIR KING: Okay. Please do.

MR. WHITTAKER: Okay. So we sent a memo a few years ago when this was first considered by the Council, and we had two legal concerns with it. The first is that we were unsure whether we had the power under State law to pass an ordinance like this, and thought it might be struck down for that reason. The second is, we thought it might be struck down based on the Dormant Commerce Clause. However, since that memo, the law has changed, at least on State law. It is now clear that we have the power to do this, thanks to the sunscreen legislation that was passed on the State level. And the second thing is that case law has moved in a positive direction for us on the Dormant Commerce Clause, and we're...are fairly confident that we can defend this bill against

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a Dormant Commerce Clause challenge. And I think it's telling that when this bill was introduced a few years ago, you had, you know, pretty prominent attorneys--I think Margery Bronster and others--saying that we didn't have the legal power to do so, and we are not seeing that now. Now, I just wanted to discuss the FDA proposed order that is mentioned in the new draft bill. So this came out in September of this year, and the FDA proposes that of the 16 currently marketed active ingredients for sunscreen, two of the ingredients, zinc oxide and titanium dioxide, are generally recognized as safe and effective for use in sunscreen. Two of the ingredients, which is PABA and trolamine salicylate, are not recognized as generally safe and effective. And then the other 12, the FDA wants additional time because there's insufficient safety data to make a positive determination. So the FDA's working with the industry and published guidance on what they're looking for. So I've read from the FDA the studies that prompted this proposed order, and they expressed concern about absorption of active ingredients in chemical sunscreen into the body's bloodstream after they're applied to the skin. At least one study showed that when certain sunscreens were used at their maximal recommended use, their active ingredients were absorbed through the skin and into the body. And an additional finding from one study was that once absorbed, these active ingredients remain in the body for extended periods of time. So the FDA has said that these findings and these studies don't mean that they've concluded that the ingredients are unsafe for sunscreens, but they need further information to determine that it...that they are safe. So they use this term, generally recognized as safe and effective, and that's a legal term that describes usually older chemical ingredients that are not subject to FDA approval processes because it's recognized among the experts as safe for the use. So a good metaphor to understand this is like cooking beef stew, you know what ingredients go well in the stew because you've used them before, but if you introduce something new, you're not sure how it's going to affect it. It's the same thing with the...with the generally recognized as safe and effective category. These are drugs that have been previously used. We know they're safe for their prescribed use. And so in order to come to this determination, the FDA has defined that they've been subject to clinical investigations, they've been published in scientific literature by qualified experts, and then the experts generally agree, based on these published studies, that the product is safe and effective. And so the FDA's currently trying to determine whether those...whether the chemical sunscreens could be...are generally recognized as safe and effective and should be categorized as such, but they're...have not made a final determination from looking at those absorption studies. So that's what that portion of the bill . . . *(inaudible)*. . .

CHAIR KING: Okay. Great. Thank you so much for that explanation, Keola. And thank you for all your help on all the research that went into this bill. So Members, I think we have...we have Dr. Downs on now. He's the...what...434 number? So I think he's...

DR. DOWNS: Yeah.

CHAIR KING: Are you calling in, Dr. Downs?

DR. DOWNS: Yes. This is...this is Craig Downs.

CHAIR KING: Aloha and matin math, which is good morning.

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DR. DOWNS: Aloha.

CHAIR KING: So any comments that you can add to...you know, you are designated as one of our resource persons, and we'd love to hear from you now if you have additional information, or whatever you had planned to say.

DR. DOWNS: Yes. So I...I'm in full support of this bill. I have a slight differently interpretation of how the FDA sees things, especially based on the original 1938 act...Food, Drug, and Cosmetics Act. Category 3 is kind of a bogus category. It's...something is either GRASE or it's not GRASE, and it's a precautionary principle that the Congress actually incorporated into the original 1938 act, in that these companies have to prove that a drug is safe. There's no assumption of safety. You have to prove that it's safe. So until any of these chemicals are proved to be safe, which means that they're in Category 1 GRASE, then you can't make that interpretation that they are GRASE. I know that FDA tried to hedge their bets and give some coverage over to industry saying that, oh, it doesn't prove that they're not safe. And I would argue that the scientific literature, an abundance of scientific literature over the last 20 years, has demonstrated that many of these chemical products are most likely not safe. A really good example, just a recent example in the last three months, is the scientific body of the European Union, REACH Organization, made a statement regarding homosalate. Homosalate is allowed to be used in Europe, I believe, at 10 percent, and in the United States, homosalate is allowed to be used at 15 percent. The scientific body made the recommendation that homosalate should not be used in products above the concentration of 0.5 percent, which makes...which makes it absolutely worthless as an SPF sunscreen ingredient. And they did this based on the argument that it caused human endocrine disruption, as well as developmental disruption. And there was evidence that it was mutagenic and carcinogenic. And I could go through the list of the other chemicals like octocrylene, oxybenzone, octinoxate...have all shown to be genotoxic, which means they potentially are mutagenic, as well as carcinogenic. And all three of those chemicals are established endocrine disruptors. And there are at least a dozen studies demonstrating that their endocrine disruption capability, both in mammals as well as in fish. And so one of the arguments I would like to make for this bill is that it also...not just coral, but the coral reef community structure in general, especially for fish. We're seeing decreases in fish populations, and I'm not saying that sunscreen pollution is the major and overarching driver, but it can be a contributing factor because it is very...those chemicals, at very low concentrations, can cause embryonic development deformities, which basically means the fish is dead. They'll never grow up to be a reproductively competent adult. It also causes feminization in fish, especially oxybenzone. Octocrylene is also demonstrated to show some feminization, and octinoxate disrupts thyroid hormones, which ultimately does affect reproductive competence. So removing these chemicals from, you know, the West Coast of Maui, where a lot of the tourists go and a lot of people use sunscreen, where we can see high concentrations of sunscreen pollution, would be a very good conservation effort in mitigating this pollution and decreasing one of the major stressors on coral reefs so that Hawai'i's reefs can persist, especially Maui's reefs. So I...again, I think this is a great movement forward by the Maui County Commission [sic], and it's...I think it's just a fantastic conservation effort.

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CHAIR KING: Okay. Thank you so much, Dr. Downs. And so that concludes our resource persons that we had designated. And I'd like to start through the Councilmembers for rounds of three minutes' worth of questions to any of our resource persons that are with us today, starting with Member Paltin, who helped work on this bill. And I don't know if you have any questions left because I know you're pretty familiar with it, but I'm going to call on you first for any comments or questions.

COUNCILMEMBER PALTIN: Thank you, Chair. No, I was able to speak with Dr. Downs a couple weeks ago, and I got my questions answered, and so I'm ready for the vote.

CHAIR KING: Okay. Awesome. Okay. We'll just go down the list and go to Chair Lee next to see if you have any questions.

COUNCILMEMBER LEE: Madam Chair, I'm ready to vote too. I mean, I'm very impressed with the array of resource people you provided, and they were all very enlightening and informative. So I believe I'm ready to vote. Thank you.

CHAIR KING: Awesome. Okay. Next we'll go to Member Johnson from Lānaʻi. Any questions?

COUNCILMEMBER JOHNSON: Thank you, Chair. I have a few questions, and there are so many resources folks, I don't know who to ask. So maybe if they're...if you direct me or if they raise their hand...I don't know how you want to do it, but here's a simple question. In regards to the time and effect that the chemicals are in the water, like is it...like let's say I spray it on and I go in the water, is it...will it last for a long time? Is it considered a forever chemical, or is it just...or does the water just dissipate it? Or I mean, how does that...like what is the time that its effect in the water?

CHAIR KING: Is that for you as a consumer trying to protect your skin?

COUNCILMEMBER JOHNSON: Right. But I just wonder if...well, I think I'm leading to the idea of...you know, Lānaʻi has a...the largest fringe reef on its East Coast, but we don't...we have very few swimmers compared to Kāʻanapali, for example. So I wonder if the folks in Kāʻanapali, they put it on their chemicals...or they put the chemicals on them, and does it...does it cross the channel? Because a lot of times Lānaʻi people say, ah, that's more of a West Maui kind of issue, or that's more of a South Maui kind of issue. And I'm trying to get them to say, look, it's...you know, we don't want it in our reefs, we don't want it on their reefs, because Olowalu seeds our reefs, so it's connected. I wanted to kind of see if there's a...if there's any kind of evidence that shows how far-reaching are these chemicals.

CHAIR KING: Okay. So I would say that's either a question for Jeff Bagshaw or Peter Landon. So if one of you wants to...can one of you respond to that question?

MR. BAGSHAW: I can...

MR. LANDON: I would punt to Dr. Downs.

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CHAIR KING: Oh, okay. Okay. Thank you.

MR. BAGSHAW: I was about to say...

MR. DOWNS: Okay. I...yeah, I'd be happy to answer that. So for example, oxybenzone can persist in marine environments from 90 days to 3 years. And we have a study that will be published soon showing, for like example, on Honolulu, if we had one day of swimmers, let's say on a Monday, because Hanauma Bay is such an enclosed area, that residue, that pollution residue, can persist for up to ten days. And more so is that tides, with high tides, as we start seeing higher and higher high tides coming in, those...it pushes that sunscreen pollutants onto the shore. And so every time you get a high tide, the shoreline actually leeches chemicals back into sunscreen. And we actually showed this over in Kapalua and Nāpili area that this was an effect, especially when people spray sunscreens on them and it gets on the sand. When it rains, things will percolate. We were hoping to actually sample over in Lānaʻi, and we have a boat close that sampled about 100 yards off of there, and we did detect octocrylene. And this was in 2019. So we are able to detect octocrylene about 100 yards off the coast of Lānaʻi. Where it came from, we don't know. I mean, it could've come from...over from Molokini or West Coast of Maui, but you know, the sunscreen plumes can be very large because sunscreen pollution is considered pseudo-persistent organo-pollutants (*phonetic*). They're refreshed every single day. And so those chemicals are put back in every day, and you just begin to accumulate that, especially if they don't break down for three to four years. I hope that answers your question.

COUNCILMEMBER JOHNSON: Okay. Very much so. Thank you, Doctor. I appreciate that. So I'm just going to pivot for another question for...I think it was Mr. Whittaker, our lawyer. Can you help explain what Dormant Commerce Clause is?

MR. WHITTAKER: Sure. No problem. I'll do my best. It's a bit complicated. It's a Constitutional issue. And I did send a memo to the Committee, and hopefully it can be shared with you. Unfortunately, I was not given permission to make it public. So it's currently a privileged memorandum. But there's a Commerce Clause in the United States Constitution that gives Congress the power to make laws for interstate commerce. And the courts have implied a limitation on this that's known as the Dormant Commerce Clause. So that prohibits States and Municipalities to negatively affect interstate commerce. So a law that might...that would violate the Dormant Commerce Clause is saying...would say, for example, that you could only buy sunscreens made in Maui County, or you could only buy sunscreens made in Hawaiʻi, because that would affect the movement of goods between states. So that's what the Dormant Commerce Clause...how a law may fail Dormant Commerce Clause. For laws that are not that explicit, the courts have said that if there's a substantial burden on interstate commerce, then it would also violate the Dormant Commerce Clause. We don't think that this would have a substantial burden since it's not preferring sunscreens made in any place. It's really focused on what is in the...in the sunscreen. Other laws that might violate it are, you know, laws relating to taxation or transportation, where there's necessarily extra effort. So that's the basics on Dormant Commerce Clause, but if you have any specific questions, I can answer.

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COUNCILMEMBER JOHNSON: Okay. Thank you, Mr. Whittaker. And the last question I have is for Deputy Director Agawa in regards to the buyback...the buyback plan that Tamara was mentioning. I'm really curious about that. Is...can you speak on like, do...how far are you along in your talks on that?

CHAIR KING: Director.

MR. AGAWA: Well, thank you for the question, Member Johnson. We're actually in the infancy in our planning on this because it's so new, but you know, we briefly just talked about, okay, how we can...how can we do more than just the sellers and distributors, you know. And one of the issues that came up is, okay, the users, we know most of them are probably going to still be using the banned sunscreen. And then we want to kind of give them an incentive to utilize something else. Well, you know, it's hard to expect them to go into the store by us telling them, well, that's banned and then they go buy mineral sunscreen. So if we can do a switch-out program where we have the product in hand and then we show them, hey, if...you know, if you give us your tube of banned one and we'll give you one that's accepted, they might be more inclined to do that and use the accepted sunscreen. So we're in the initial talks about how we're going to implement that. We still need the Staff, like I said, but yeah, it's just early in the planning stages.

COUNCILMEMBER JOHNSON: Well, I just want to commend you, Deputy Director. That's very creative and very forward thinking, and I look forward to hearing more of how that develops. It's really a great idea. So thank you. Thank you, Chair. I have no further questions.

CHAIR KING: Okay. Thank you, Member Johnson. And Director Agawa, you know, we could probably partner with Mr. Bagshaw and Mr. Landon on those efforts too, in the areas that they reside because they're already doing that education. So if we can give them something to switch out to give...to hand out to people at 'Āhihi-Kīna'u. So that might be a good start too. But you know, happy to see that in the next budget, so...you know, the budget request. Member Molina, any questions for our resource people?

COUNCILMEMBER MOLINA: Yes. Thank you, Madam Chair. I'm going to try and squeeze in all I can in three minutes. So whoever answers this, some of this can be answered in maybe yes or no. And forgive me if I interrupt you, okay? All right, here we go. One, will this bill address or prevent any online sales of non-mineral sunscreen? For example, purchasing online from Walmart, Amazon, et cetera? Yes or no, whoever wants to take a shot at that.

CHAIR KING: Maybe Corp. Counsel?

MR. WHITTAKER: By its terms, it's...it would. So it would be an enforcement issue.

COUNCILMEMBER MOLINA: Okay, great. Thank you. And as far as...for Director Agawa or Mr. Whittaker, will the Department of Environmental Management have settlement authority to place a cap on fines or waive any fines?

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CHAIR KING: That's probably Corp. Counsel again.

COUNCILMEMBER MOLINA: Okay. Maybe Mr. Whittaker.

MR. WHITTAKER: I believe they would have that authority under the enforcement provision. They can determine how they do enforcement.

COUNCILMEMBER MOLINA: Okay, great. And then I guess maybe for Mr. Baz if he's still available, with regards to the four expansion...I presume expansion positions for education purposes...so will they be used, I assume, for enforcement purposes as well?

MR. BAZ: Correct.

COUNCILMEMBER MOLINA: Okay, great. And any particular title you're going to give them at this point, Sunscreen Officers or Educational Officers? Or is that...

MR. BAZ: As I...as I mentioned, it's not just for this. It would be for all of our environmental protections, and starting with what you introduced many years ago, the plastic bag ban.

COUNCILMEMBER MOLINA: Um-hum. Okay, great. And have we received any support or comments from the visitor industry, MVB, Maui Chamber of Commerce? And I ask this because typically, on the eve of a bill passing like this with regards to environment and impact on business sales, you would typically hear from them, you know, such as Ms. Tumpap and everyone else. Have we...I assume we've received some positive support for this from those entities? Maybe Madam Chair.

MR. BAZ: Unfortunately, I'm not aware of any. As you heard from the realtors this morning, they're in full support, and I would imagine most would be in support of it, for the same reasons that we all are.

COUNCILMEMBER MOLINA: Yeah. Great. Well, yeah, it's kind of surprising they're not here. And I would hope that they would offer...extend some support in terms of the educational aspect of this bill. After all, it's their clients that, you know, bring this sunscreen stuff to our beaches. So...okay. And lastly, the revised bill, I guess, will take effect on October 1st, 2022, and I presume this is enough time on the Administrative end to get things together when it comes to education and enforcement. Is that sufficient time?

CHAIR KING: Mr. Agawa.

MR. AGAWA: Yes. That was one of our comments in the previous Committee meeting, was...I think the previous one said to take effect upon approval or something like that matter. And yeah, so this extension will give us enough time to at least start the program. I can kind of answer your previous question regarding the position. So in our EP&S Division, we have three sectors: recycling, abandoned vehicles, and our other section that we're just filling now is our environmental program section. We just had interviews for Environmental Program Specialist. So more than likely, these two, or however

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many, positions would be under that environmental programs section, who would be helping the enforcement and inspection in this type of bills.

COUNCILMEMBER MOLINA: Okay, great. Thank you for the...appreciate the great responses. And I guess I came in under my three minutes, Madam Chair. Thank you.

CHAIR KING: Wow, what a great job you did. You fit a lot of questions in there, Member Molina. Okay. So next we'll go to Member Sugimura. Questions?

COUNCILMEMBER SUGIMURA: Thank you. I support this bill. And I had similar questions to Mr. Molina wondering if the start date was too fast, because I think oftentimes when we look at hiring people, it takes a while. So can the Department...I guess this is Mr. Agawa...can the Department function without having those three staffers there currently employed, or is it something that you need to...you need more time on?

MR. AGAWA: Well, thank you for the question, Member Sugimura. Yeah. So the time, we feel, in talking to Tamara Farnsworth, is adequate for us. We...like I said, we are...we just completed interviews for our Environmental Programs Specialist number 4. So that person would be hitting that section of EP&S, and would be tasked with these types of programs. If we have the expansion positions, we would more likely put in at least one or two in this coming fiscal year, but in the meantime, that Program Specialist would be adequate to at least start enforcement and inspection.

COUNCILMEMBER SUGIMURA: Okay. Very good.

MR. AGAWA: Thank you.

COUNCILMEMBER SUGIMURA: Very good. And then in their other creative idea, I agree about doing a switch-out. So is that a budgeted item, where we would need to increase our budget to accommodate this program, or is this something that you can already cover...or would be able to cover?

MR. AGAWA: Thank you for that question. That would be included in that 50,000 additional budget that we would be requesting for this bill.

COUNCILMEMBER SUGIMURA: Okay. Very good. Thank you very much.

CHAIR KING: Thank you, Member Sugimura, for your questions. And we have joining us now Councilmember Shane Sinenci, our Committee Vice-Chair, looks like from the airport. Aloha and thank you for joining us. Our greeting today, matin math. And if you have...do you have any questions? We're in kind of the question round. Do you have any questions for any of our resource people or anything about the bill?

COUNCILMEMBER LEE: Is he on the plane? Is he on the plane?

CHAIR KING: You're muted, Shane. Can you unmute yourself? We can't hear you. We still can't hear you. Okay. Thumbs up. All right. Okay. If you can hang on, I think we're going to get to the vote real soon here. So hang on with...are you on the airplane? Is

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that a thumbs up, you're on the airplane? I don't know if he can hear us now. Oh, okay. We lost him again. Okay. So Members, any other burning questions that anybody has? Or if not, then, if folks are ready for the vote, I will...okay. The Chair will entertain a motion to recommend passage on first reading of the proposed bill entitled, "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.42, MAUI COUNTY CODE, TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF NON-MINERAL SUNSCREENS," allowing Staff to make any nonsubstantive changes, and the filing of County Communication 21-305.

COUNCILMEMBER PALTIN: So move.

COUNCILMEMBER SUGIMURA: Second.

CHAIR KING: Okay. Motion made by Councilmember Tamara Paltin, seconded by Member Sugimura. Any comments? Any additional comments you'd like to make, Member Paltin?

COUNCILMEMBER PALTIN: No. Just, you know, it's been a long time coming, and you know, if...I know there's some folks that don't like this type of sunscreen, but it's better for you as a person, it's better for the reef, and there's no need to use it if you use a rash guard, which really is even better.

CHAIR KING: Yeah. Right.

COUNCILMEMBER PALTIN: Okay. Thanks.

CHAIR KING: Great. Okay. And any...Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Madam Chair. Mahalo to you and Member Paltin for shepherding this very important bill because I think it sends a very strong positive message to all about protecting, not only our oceans, but also our bodies as it relates to the use of this type of sunscreen and all those other icky chemicals that are currently in...that we want to ban. So anyway, kudos to all, and also to all of our resource personnel, the Department and...who came to educate us about this very important matter. I'm in full support. Thank you.

CHAIR KING: Okay. Great. Thank you. Any other comments or questions? If not, I will just say that I am...I am really excited...oh, Member Sugimura. Go ahead.

COUNCILMEMBER SUGIMURA: I'll go after you.

CHAIR KING: Okay. I just wanted to say I'm really excited to...I think this is groundbreaking legislation. It'll be probably the first...strongest bill in the world possibly. I think it's stronger even than the legislation that the community of Palau passed. And I'm anticipating possibly seeing some Halloween costumes, really frightening Halloween costumes of people dressing up as chemical sunscreen maybe. But I think what we're doing is so...is such an important move for our reef and I'm excited...I was really excited to hear Autumn Ness' experience about...you know, after a year of not having these

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COUNCILMEMBER SUGIMURA: Can't hear.

COUNCILMEMBERS: Aye.

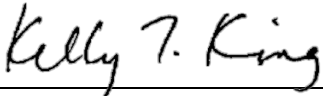
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CHAIR KING: -- then it's 10:25, and this meeting is adjourned. . . .*(gavel)*. . .

ADJOURN: 10:25 a.m.

APPROVED:



KEELY TAKAYA KING, Chair
Climate Action, Resilience,
Environment Committee

care:min:211020min:bc

Transcribed by: Brenda Clark

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CERTIFICATION

I, Brenda Clark, hereby certify that pages 1 through 28 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 10th day of November 2021, in Wailuku, Hawai'i



Brenda Clark