

COUNCIL MEETING

FEBRUARY 16, 2024

The Council Meeting of the Council of the County of Kauaʻi was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhuʻe, Kauaʻi, on Friday, February 16, 2024, at 8:45 a.m., after which the following Members answered the call of the roll:

Honorable Addison Bulosan
Honorable Bernard P. Carvalho, Jr.
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable Ross Kagawa
Honorable KipuKai Kualīʻi
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Kualīʻi moved for approval of the agenda, as circulated, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the agenda, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

MINUTES of the following meetings of the Council:

January 18, 2024 Council Meeting
January 31, 2024 Council Meeting

Councilmember Kualīʻi moved to approve the Minutes, as circulated, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to approve the Minutes, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

INTERVIEWS:

FIRE COMMISSION:

- Lorilee L. Almarza – Term ending 12/31/2026

ELLEN CHING, Boards & Commissions Administrator: Good morning.
Ellen Ching, Boards and Commissions Administrator. Today, I am pleased to introduce Lori Almarza. Lori was born and raised on the Westside and graduated from Waimea High School. After a year at the University of Hawai'i (UH), Hilo, Lori transferred to Kaua'i Community College (KCC) and earned an associate degree in hospitality. She threw herself into the working world at Liberty House and at the Waiohai Resort, but life had other plans for her. Like many of us, when Hurricane 'Iniki struck, it turned her world upside down. True to form, the next day, Lori reported to work only to find the hotel in shambles as well as her job. Always resourceful, Lori bounced back and landed at Kaua'i United Way (KUW) and the rest is history. For the past thirty plus (30+) years, Lori has been with the Kaua'i United Way. In 2020, she was named Interim Executive Director. If you know Lori, you know she has been actually running the place for a very long time, so it is no surprise that in July 2023, she was named the Executive Director of the Kaua'i United Way. Kaua'i United Way has been in existence since 1943 and has served as a funding resource for nonprofit organizations for over eighty (80) years. During this time, KUW has raised and granted millions to a broad range of nonprofit organizations like Big Brothers Big Sisters, Boy Scouts, Girl Scouts, Catholic Charities, Easter Seals, Kaua'i's Food Bank, Young Men's Christian Association (YMCA), Mental Health Kōkua, Kaua'i Economic Opportunity's Homeless Program, and the Salvation Army to name a few. Organizations that provide services for children, houseless individuals, or individuals with a mental illness or an intellectual disability, and more. As a steward of contributions, Kaua'i United Way is like the "Good Housekeeping Seal of Approval." KUW verifies that all organizations funded are meeting the necessary legal requirements of a nonprofit organization. They also monitor the organizations throughout the year. With social media fundraising, that is more important than ever. Kaua'i United Way ensures that every dollar stays on Kaua'i to help someone on Kaua'i. Lori is also a proud parent of a graduating senior at UH Maui. When she is not corralling both husband and son into volunteering at golf tournaments, dinners, and other special events, Lori enjoys relaxing with her family, Hawaiian food, and dreaming of a trip to Paris. When I asked Lori, why does she stay at Kaua'i United Way, she replied she enjoys helping people and how rewarding it is to see what a difference that makes. Lori has never served on a board or commission, and I appreciate her willingness to contribute her time, experience, and perspective on community needs and how best to meet those needs on the Fire Commission.

Council Chair Rapozo: Thank you. Lori, do you have anything to add?

LORILEE L. ALMARZA: Good morning, everyone. As Ellen said, I have never served on any commission, but being with Kaua'i United Way for many years, I have served the community and I felt this was an opportunity for me to do it in a different way.

Council Chair Rapozo: Are there any questions for Lori?

Councilmember Cowden: I mostly want to really say, "Thank you," and I want to acknowledge that United Way has given you quality administrative experience and a vibrant understanding of our at-risk communities, which overlaps in the Fire Department and Fire Commission. What makes you particularly interested in fire? Also, just throwing it in there, the experience we had as a state with the Lahaina fire. How has that shaped your perspective in taking this particular commission, because you could have been good for a number of different commissions with your skill set?

Ms. Almarza: Being with Kaua'i United Way, I had the opportunity to go to Maui United Way about one (1) month after the fires. Yes, I really do not know much about fire and the Fire Department, but I see how instrumental they were during that time and continue to be, and I feel that I could give my expertise in the human service area to the Fire Department.

Councilmember Cowden: That is great. Thank you.

Ms. Almarza: You are welcome.

Councilmember Cowden: Thank you for volunteering.

Ms. Almarza: Thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Where do I begin? Should I bow down to you? I will ask you only one question. The fruit does not fall far from the tree. I was five (5) years old at St. Theresa Catholic School. I had a kindergarten teacher and I had a hard time reading, so she would take extra time to teach me to read and she told me that one day I would go to college. Her name was Ms. Fernandez. Is that your grandmother?

Ms. Almarza: Yes, it is.

Councilmember DeCosta: Bless you, bless your mother, and bless your grandmother.

Ms. Almarza: Thank you, Councilmember DeCosta.

Council Chair Rapozo: Are there any other questions? Seeing none. Thank you, Lori. It is no secret that you ran the United Way for a long, long, long time. As a former member of the Allocations Committee and as a former applicant for grant funds, I can sit here without doubt and say the management of those funds by the United Way board, yourself, and your team, is real, and that money is well spent. I did

want to say that when you donate to the Kauaʻi United Way, the money stays here. When you donate to the Aloha United Way, it does not. Lori cannot say that, but I can. When you get those things in the mail, make sure you are donating to the Kauaʻi United Way, and no other United Way. Thank you.

Ms. Almarza: Thank you, everyone.

Council Chair Rapozo: Next, please.

FIRE COMMISSION:

- Jeffrey A. Murray – Term ending 12/31/2026

Ms. Ching: Ellen Ching, Boards and Commissions Administrator. I am happy to introduce Jeff Murray. Jeff was born on Kauaʻi and grew up in Upcountry Maui. Straight out of Maui High School, Jeff joined the United States (U.S.) Air Force. He spent most of those early years freezing in Kansas and South Korea, so his last deployment at Hickam Air Force Base was a great surprise. Jeff spent a total of six (6) years in the military—four (4) years in active duty and two (2) years in the active reserves. In the military, Jeff found his passion and became a firefighter. That was the start of a lifelong career of thirty-four (34) years. Upon his return to Maui, he joined the Fire Department and was stationed on Lānaʻi. At the time, there were only volunteer firefighters there as the County was opening a station and staffing it with active-duty firefighters. Back in the early '90s, if you were stationed on Lānaʻi, you had to pay your own way back and forth to Lānaʻi, so being stationed there meant you needed to live there. During the next nineteen (19) years, Jeff worked his way up the ranks from being the youngest driver in the Fire Department to Operator Lieutenant in fire prevention, reviewing plans in arson investigations, Administrative Captain in charge of hazardous materials, medical officer in training, and Captain in charge of urban search and rescue teams. At the same time, he was stationed all over the island at Kihei, Wailuku, and Kahului, opening the new station there in 1991, back to Lānaʻi, Lahaina, back to Kahului, Makawao, and Pāʻia. As the Captain in charge of urban search and rescue teams, Jeff was dispatched to Kauaʻi to assist with the Ka Loko dam disaster and arrived the next day. In 2008, Jeff was appointed as Maui's Fire Chief and served for ten (10) years. Under his administration, he completed the transition of incorporating ocean safety and the lifeguards into the Department and focused on obtaining new and improved firefighting equipment and vehicles and meeting the Commission on Fire Accreditation International (CFAI) standards of rescue review. The CFAI is the gold standard. Currently, there are only three (3) organizations in Hawaiʻi that are accredited: Honolulu Fire Department, Barking Sands Fire and Emergency Services, and Navy Region Hawaiʻi Fire and Emergency Services, Federal Fire Department at Pearl Harbor. Under his leadership, Maui's Fire Department was considered the best in the state. When asked how he did that, he humbly replied that he was surrounded by good people. In 2013, Jeff was attending a State Fire Council meeting on Kauaʻi, where he was introduced to Angela Victorino, who was attending a Chamber of Commerce meeting. In French, it is called "*un coup de foudre*," which is love at first sight. Jeff said she was so beautiful he was speechless, so luckily, he had another opportunity to meet her, and they have been together ever since. I like to think it was meant to be, as Angela is the daughter of retired Fire Chief Damien Victorino. Since his

retirement, they relocated to Kauaʻi to raise their sons and daughter. With Jeff's thirty (30) years of experience in construction, they formed a construction company. In his free time, Jeff keeps active with softball, baseball, surfing, and fishing. He enjoys cooking. His most requested dishes are prime rib and chow fun. They travel every month to visit family on Maui, where his son is a firefighter. During the Maui fire disaster, their son was on the line in Kula. This year, they will be proudly celebrating three (3) graduations—their daughter's from Kapaʻa High School, and their grandsons', one from KCC in Construction, and the other from UH in Engineering. As a former big wave surfer, a dream trip would be to Nazaré, Portugal as well as Madeira and Scotland. With Jeff's extraordinary technical experience and knowledge, I am so grateful that he has agreed to share his *manaʻo* with the Fire Commission.

Council Chair Rapozo: Thank you, sir. First of all, thank you for your service, both in the military and with the Fire Department.

JEFFREY A. MURRAY: It was an honor.

Council Chair Rapozo: Do you have any additions to what Ellen said? Her introductions have a lot of information.

Mr. Murray: I just want to be able to share some of the things I have learned over time with this community, to be a mentor, and to assist when needed. I have never been on a commission, but I was guided by a commission for my whole career as Fire Chief, so I have some knowledge of how that works.

Council Chair Rapozo: Thank you. Are there any questions for Mr. Murray.

Councilmember Cowden: First of all, I want to say, "Wow." You have a lot to bring, so that is really wonderful. It is a pretty easy and enthusiastic yes. What brought you back to Kauaʻi? Was it Angela's family?

Mr. Murray: Yes.

Councilmember Cowden: Okay. Will you stay here?

Mr. Murray: Yes. I came here twenty-eight (28) days after my retirement.

Councilmember Cowden: What brought you back?

Mr. Murray: My wife's family. My parents passed. I still have a ton of family, including my oldest son and my grandchildren. My wife wanted to come home, so where else better to be than Kauaʻi? It is like Maui was a long time ago.

Councilmember Cowden: Okay. Are you still out surfing and everything?

Mr. Murray: Yes.

Councilmember Cowden: That is because as we all know, that is a really important skill for being a Fire Chief. I believe so, because so many of our calls are in the ocean and water. You are not the Fire Chief, but an applicant for the Fire Commission, so I am really glad to have you.

Mr. Murray: Thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Your resume makes me want to support you, but you made me lose a bet. I was watching a softball game when I first met you and Sean Osaka told me, "That person will hit the ball out of the park on the first swing." I asked, "Who is this person? He does not even look like he is from our island." He said, "He is not. He is from Maui. He is the retired Fire Chief." I bet him a plate lunch on you, and I lost. That ball went ten (10) feet over the park. I had a soft drink with you at the park. You are an amazing person and an amazing mentor. I want to ask you about the Kula fire and your son fighting on the line, and Lahaina. On the Westside, which is close to my heart because I was born and raised in Pākalā, we have some land between Waimea and Kekaha that is over twelve thousand (12,000) acres of unused tall grass land. It is a fire hazard. It burned a few years in a row. Please help us to do something about that land between Waimea and Kekaha. We need some fire mitigation out there, please. Thank you.

Mr. Murray: You are welcome. I will help.

Council Chair Rapozo: Are there any other questions? Seeing none. I knew you looked familiar and Councilmember DeCosta triggered my memory. It was not this past senior softball opening, but last year.

Councilmember DeCosta: He is the man.

Council Chair Rapozo: Yes. You hit that ball so hard.

Mr. Murray: I was lucky.

Council Chair Rapozo: I did not bet, because I am smart. I would have bet that you would hit that ball over the fence. You hit that ball so hard. I was looking at your employment with the Air Force in 1984 and 1989. Did you say you were deployed to South Korea?

Mr. Murray: Yes.

Council Chair Rapozo: Did you ever participate in Team Spirit in those years?

Mr. Murray: Yes, two (2) times.

Council Chair Rapozo: Because between 1984 and 1989, I think I had been deployed to Team Spirit about four (4) or five (5) times. In our tent city, it was

always the Fire Department who had nice trucks. They had really nice trucks. I do not know. We may have been at the same place.

Mr. Murray: Probably. I had much shorter hair and was younger.

Council Chair Rapozo: Yes, I was really, really young. That is awesome.

Mr. Murray: We may have run across one another.

Council Chair Rapozo: I need to believe we were in the same place. Thank you.

Mr. Murray: You are welcome.

Council Chair Rapozo: Again, I appreciate you agreeing to serve. Thank you. Next.

CIVIL SERVICE COMMISSION:

- Robert B. Crowell – Term ending 12/31/2025

Ms. Ching: Ellen Ching, Boards and Commissions Administrator. Most of you know Bob Crowell as the Harbor Master at Nāwiliwili. What you may not know, is that Bob was born and raised in Kaimuki and is a St. Louis School alumnus. Following high school, Bob attended Chaminade College and graduated with a degree in business administration. The Comprehensive Employment and Training Act (CETA) was a federal program to train workers and provide them with jobs in public service. Seizing this opportunity, Bob went directly to work at the State Department of Transportation's personnel office. This was the start of a forty-eight-year career in government service. After completing his CETA training, he had the years of experience to qualify for a position as a Personnel Management Specialist which he applied for and was selected. This position was with the Airports Division. He worked in the personnel office and assisted with labor relations. In 1980, Bob moved to the Harbors Division's personnel offices, then segued into harbor operations. Previously, all Harbor Masters were required to be boat captains. When that requirement was dropped, Bob was able to serve as a Harbor Master. Still on O'ahu, Bob was assigned to relieve Harbor Masters throughout the State on the neighboring islands. Like Lori, when Hurricane 'Iniki hit, Bob was sent to Kaua'i to assist the District Harbor Master. He attended the daily county briefings and was thoroughly involved in the relief and reconstruction efforts following the devastation. When the Kaua'i District Harbor Master moved to O'ahu to become the Harbor Master there, Bob was selected to assume the position of the Harbor Master here in 1994. On Kaua'i, Bob met and married his wife. They just celebrated their twenty-seventh anniversary together on February 3, 2024. On December 30, 2023, both Bob and his wife joined the ranks of the newly retired. In his free time, Bob and his wife are attacking the long honey-do list. In between are trips to the mainland and O'ahu to visit the fourteen (14) grandkids. Both Bob and his wife cook, his favorite is her kalbi and being part Chinese, Bob loves all Chinese foods. When they have narrowed

down the list, they are looking forward to venturing into cruising with a short trip between the islands and then taking on an Alaskan cruise. The Civil Service Commission is not a very well-known Commission and yet it serves a very important function of hearing and determining any appeals filed by County employees regarding personnel issues. With all of his technical experience and knowledge, I'm so grateful that Bob is willing to continue serving the public on the Civil Service Commission.

Council Chair Rapozo: Thank you, Ellen. Bob, do you have anything to add?

ROBERT B. CROWELL: Is that not enough?

Council Chair Rapozo: You look younger. I do not know if it is because you shaved off your mustache or what it is you did, but you look much younger.

Mr. Crowell: That was a few years ago. That is how long we have not seen each other.

Council Chair Rapozo: Do you have any additional comments?

Mr. Crowell: No, I think she said it all.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I want to say that as another person who has so much capacity and understanding, thank you, Bob. My presumption is you have worked with pretty much all the unions in the government over the years. You would have had experience with every one of them.

Mr. Crowell: That is correct.

Councilmember Cowden: Maybe a little less with State of Hawai'i Organization of Police Officers (SHOPO) and...

Mr. Crowell: And the nurses.

Councilmember Cowden: Nurses.

Mr. Crowell: And teachers.

Councilmember Cowden: Teachers.

Mr. Crowell: Yes.

Councilmember Cowden: But this will be very comfortable and very familiar to you. Also, the rules and regulations of the Department of Labor and Industrial Relations (DLIR) are probably something that you know very solidly.

Mr. Crowell: Yes, I pretty much know it.

Councilmember Cowden: That will really help you in helping us. It sounds like you have excellent experience. Thank you so much. I am really happy about this important knowledge of our own harbor.

Mr. Crowell: Thank you.

Council Chair Rapozo: Thank you. Is there anyone else? Bob, thank you for agreeing to come back. You had eight (8) years on the Salary Commission and if I remember it correctly, it was not always smooth sailing. There was a lot of debate back then, so I know you are obviously fit for the job. Thank you, again, for agreeing to come back and serve.

Mr. Crowell: Thank you for allowing me to do so.

Council Chair Rapozo: Can we have the next item, please?

COMMUNICATIONS:

C 2024-30 Communication (01/22/2024) from the County Engineer, requesting approval of the indemnification provisions to items 9, 10, and 12 contained in the Letter of Agreement for health services rendered by Kaua'i Medical Clinic to the County of Kaua'i, Department of Public Works – Wastewater Management Division, for use of services for new employees for respirator evaluations.

(Councilmember Kagawa was noted as not present.)

Councilmember Kualii moved to approve C 2024-30, seconded by Councilmember DeCosta.

Council Chair Rapozo: It is self-explanatory, but if you want to add to what you submitted, go ahead.

(Councilmember DeCosta was noted as not present.)

TROY K. TANIGAWA, County Engineer: Troy Tanigawa, County Engineer, for the record. This request is on behalf of the Wastewater Division. Here with me this morning, I have Donn Kakuda from the Wastewater Division.

(Councilmember Carvalho was noted as not present.)

There being no objections, the rules were suspended.

Mr. Tanigawa: Basically, there is a medical agreement that the Wastewater Division needs to execute in order to receive services for respirator fittings for their employees. That is what we are here requesting Council approval for this morning.

Councilmember Cowden: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: Currently, do the employees use the respirators on a regular basis when they are working in the wastewater facility? Is that what it is for?

DONN T. KAKUDA, Civil Engineer VI: Donn Kakuda, Civil Engineer, Wastewater Division. I do not know what you mean by "often." To me, it would not be that often. The employees typically use it when they go into the pump stations. It is when they need to go down inside the pump stations. It is more for comfort, because obviously we have...like sniffers, so we put the monitors in and if there is any gas, we do not send anyone down there.

Councilmember Cowden: Okay.

Mr. Kakuda: Sometimes, they feel more comfortable with the respirators as well. I would not say "often," but last month, they may have used it once.

Councilmember Cowden: Okay, because I do not remember seeing people wearing them, but they are usually out in the breeze and it is open-air, so I was wondering if they put them on all the time, but this is not required to be worn when they go to work. Is it when they need it?

(Councilmember Carvalho and Councilmember DeCosta were noted as present.)

Mr. Kakuda: Yes, it is when they need it.

Councilmember Cowden: Is it that this is voluntary, but we are making sure we have the correct safety product for them?

Mr. Kakuda: It is an Occupational Safety and Health Administration (OSHA) requirement. That is why we need to do this.

Councilmember Cowden: Does OSHA require them to wear it all the time or just to have it available?

Mr. Kakuda: To have it available. We obviously do not send anyone down when the gas is high. We just do not. It is more for comfort.

Councilmember Cowden: Okay.

Council Chair Rapozo: Are there any other questions? If not, thank you. Is there anyone in the audience wishing to testify? Seeing none. Is there any further discussion? Seeing none.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2024-30 was then put, and unanimously carried *(Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Council Chair Rapozo: The motion is carried. Next item, please.

C 2024-31 Communication (01/25/2024) from the Executive on Aging, requesting Council approval to receive and expend Federal funds, for the first and second allotment in the amount of \$15,903.00, Fiscal Year 2024, and to indemnify the State Executive Office on Aging, for the Nutrition Services Incentive Program (NSIP) provision of congregate and home-delivered meals.

Councilmember Kualii moved to approve C 2024-31, seconded by Councilmember Carvalho.

Council Chair Rapozo: I have a question. Let me just ask the question. The request is to receive fifteen thousand nine hundred three dollars (\$15,903), which is the first and second award, right?

There being no objections, the rules were suspended.

LUDVINA K. TAKAHASHI, Executive on Aging: It is for the first and second award.

Council Chair Rapozo: When I look at the letter that is coming from Governor Josh Green, M.D., they are mentioning, "received its third allotment" for the NSIP in the award of three thousand dollars (\$3,000), which was received on August 30, 2023. I am a little confused. How many awards are we entitled to with this?

Ms. Takahashi: Kealoha Takahashi, Agency on Elderly Affairs. It is a lumpsum of four (4) allocations given quarterly. We will receive it after we submit a report of the expenditures. It is based on how many meals were provided and it is a percentage.

Council Chair Rapozo: Is this request here for Fiscal Year 2023 or Fiscal Year 2024?

(Councilmember Bulosan was noted as not present.)

Ms. Takahashi: This is for Fiscal Year 2023.

Council Chair Rapozo: Okay. Is it that this is recurring, it is basically the money set aside, and as we deliver, we send them an invoice?

Ms. Takahashi: It is based on the number of meals provided, so they pay us.

Council Chair Rapozo: Is it based on what we actually served?

Ms. Takahashi: Yes.

Council Chair Rapozo: Okay. That was my question.

Ms. Takahashi: These go towards food cost.

Council Chair Rapozo: Thank you. Is there anyone in the audience wishing to testify? Seeing none. Is there any further discussion? Seeing none.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2024-31 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Bulosan and Councilmember Kagawa were noted as silent (not present), but shall be recorded as affirmatives for the motion*).

Council Chair Rapozo: The motion is carried. Next item, please.

C 2024-32 Communication (01/26/2024) from the Executive on Aging, requesting Council approval to apply for, receive and expend Federal grant funding awarded by the Corporation for National and Community Service to the County of Kaua'i, Agency on Elderly Affairs, Kaua'i Retired and Senior Volunteer Program (RSVP) for the three-year period of April 1, 2024 to March 31, 2027, in the amount of \$77,500.00 for the first year, including a one-time mainland travel allotment of \$2,500.00 for the RSVP Director to attend the AmeriCorps annual convention, and \$75,000.00 for the next year, combined with annual matching County funds in the amount of \$167,332.00, to assist Kaua'i RSVP in carrying out the national service program as authorized by the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 et seq.), and the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 5001).

(*Councilmember Bulosan was noted as present.*)

Councilmember Kualii moved to approve C 2024-32, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?

JADE K. FOUNTAIN-TANIGAWA, County Clerk: We have one (1) registered speaker. Alice Parker.

There being no objections, the rules were suspended to take public testimony.

ALICE PARKER: Alice Parker, for the record. I do want to support this. This RSVP program is very helpful to seniors. It gets active, mind-working seniors out there helping in the community, and the Agency on Elderly Affairs does tremendous things for older folks. The community service aides should also be canonized. They help seniors so much. I have a neighbor who is disabled, he cannot

read, and he cannot fill out papers for recertification for housing. The community service aide helps him in that and many other ways. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else wishing to testify? Seeing none. Is there any further discussion? Councilmember Cowden.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Cowden: I just want to say how much we appreciate the RSVP program. It is excellent.

Council Chair Rapozo: Thank you. Is there anyone else? Seeing none.

The motion to approve C 2024-32 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion*).

Council Chair Rapozo: The motion is carried. Next item, please.

C 2024-33 Communication (02/01/2024) from the County Engineer, requesting Council approval to dispose of various records, pursuant to Hawai'i Revised Statutes (HRS) Section 46-43 and Resolution No. 2021-48 (2021), which have been kept for over seven (7) years and are no longer of use or value.

Ms. Fountain-Tanigawa: Council Chair, there are two (2) registered speakers for this item.

Councilmember Kualii moved to approve C 2024-33, seconded by Councilmember DeCosta.

Council Chair Rapozo: Mr. Tanigawa.

There being no objections, the rules were suspended.

Mr. Tanigawa: Troy Tanigawa, County Engineer, for the record. We have several divisions participating in this request. They have records they wish to dispose of which have exceeded storage for seven (7) years, and we are requesting approval at this time.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: As we are moving forward, are we doing more things where this is becoming automated records, and so as time goes on, we will have less things to throw out or are we staying on a paper program?

Mr. Tanigawa: We are trying to digitize as much as we can, especially the valuable records that have information for future reference.

Councilmember Cowden: For anything in here that was very critical, have those been digitized?

Mr. Tanigawa: Yes.

Councilmember Cowden: Okay.

Council Chair Rapozo: Are there any other questions? If not, we will move on to the public speakers. Thank you.

Ms. Fountain-Tanigawa: The first registered speaker is Bridget Hammerquist, followed by Elizabeth Okinaka.

BRIDGET HAMMERQUIST: Good morning, Chair. Good morning, Members of the Council. I am here today, because it was not clear to the public what was intended to be destroyed. There are seven (7) divisions in the Department of Public Works—Building, Wastewater, Solid Waste, Engineering—a lot of them are very critical to the operation of the County. I think in this day and era, it is not difficult, because currently, almost everything is being submitted in unique form of applications through portals and it is coming in digitally since 2018. Before 2018, there were a lot of hard copies, right? I think there should be effort made to digitize, to preserve, and to say to the Department you are saving everything that is important, right? This morning, or yesterday, for instance, there was a violation found at the demolition on Coco Palms Resort. They were taking down a rock wall that was not to be dismantled, so the project was shut down, but there was paperwork, there was a preservation plan, there were things that could be checked on. The coastal management, the Special Management Area (SMA) permit, the traffic impact assessment, all of those things date back much more than seven (7) years. As the Council Chair knows, they are from 2013, 2014, and 2015, and the whole thing with Coco Palms Resort has been going on for over twenty-five (25) years. I think there needs to be a clear policy. I noticed that in the Hawai'i Revised Statutes (HRS), Section 489E-17, they talk about some guidance that has come down from the Office of the Comptroller on the State level and they are actually told to save anything that has anything to do with something involving litigation, where there are disputes, where there are still permits pending, and things like that. They need to save all of the documents, so they just digitize it. Storing is much easier on the clouds and all the various ways that we have to store today. There really is no need for destruction. Photographing. With just our handheld devices, we can take photographs and even capture big blueprints and they become computerized records. I would just really encourage the Council to adopt...I actually could not find any documents retention procedure on the Kauai.gov website when I was searching it for this type of protocol. I could not find anything where we had adopted a policy by the County for the preservation of records, and I would just encourage that by the Council. I know you have a lot on your plates all the time.

Council Chair Rapozo: I need to stop you. That is your first three (3) minutes. How many others are registered? Do you mind if she finishes her second three (3) minutes? Go ahead, you can have your second three (3) minutes.

Ms. Hammerquist: That is okay. I was at the end. Thank you, Chair. It seems like in today's day and era, it is really not necessary to destroy. Everything should be captured, photographed, and digitally saved, especially from this Department, because it involves highway construction, wastewater, solid waste, all the Engineering plans, and it would be devastating. I cannot think of a better example than the Coco Palms Resort. We have some issues now in Kukui'ula, and we can access records from the Land Use Commission dating back to the early '70s, so I do not think we need to destroy things. Thank you.

Council Chair Rapozo: You can just sit there. The camera captures both of you.

ELIZABETH OKINAKA: *Aloha.* My name is Elizabeth Okinaka. I would like to reiterate. Being familiar with the Freedom of Information Act (FOIA) process and having requested many records myself, I think it is scary to hear seven (7) years is the limit. I think we have a lot of developments that were planned way back in the '70s and '80s and sadly, we are now just breaking ground. I think it is really crucial to keep a lot of these documents and I think in 2024, hopefully, we should not be destroying them. I think it is very simple.

(Councilmember Kagawa was noted as present.)

Ms. Okinaka: Even if the Council needs to send some funds to these departments so that they can increase storage or something, I really hope that there could be more of a way to preserve these documents, instead of destroying them. Who knows? Maybe one day twenty (20) years from now, someone will try to pull these documents. I think it is crucial for the public to be able to access these documents, and I do not want to see them destroyed. When you put in requests, you sometimes need to request from different divisions and different departments, so to hear that one department is requesting it is scary. I think that they should be preserved, they should upload it digitally, or that a way for them to be saved instead of destroyed can be found. *Mahalo.*

Council Chair Rapozo: Is there anyone else wishing to testify?

Ms. Fountain-Tanigawa: There is one (1) additional registered speaker.

Council Chair Rapozo: Is there one (1) more?

Ms. Fountain-Tanigawa: Yes. Jeffrey Lindner.

Council Chair Rapozo: Okay. Mr. Lindner.

JEFFREY LINDNER: Jeffrey Lindner, for the record. *Aloha.* I guess I am questioning the use, that there is no use. Specifically, I see in here there is the Building Division and Subdivision Review Comments. There still are subdivisions that are substandard and have not been resolved, so some of these documents are still going to come up in other...hopefully, it will come up, but I am speaking specifically of Moloa'a Hui. Basically, the Department of Public Works did not...that subdivision was a

subdivision where the roads are still dirt. There was no grading. There has been no grading, no drainage. There is no fire flow. The water system is also not completely...it still has some violations. There were permits given after the subdivision without...there is a question of how the permits were given out. I guess it is not just the Department of Public Works. It is the Planning Department and the Department of Public Works.

Council Chair Rapozo: Mr. Lindner, the topic on the agenda is the destruction of the Department of Public Works' documents.

Mr. Lindner: Yes, but I am saying it is not an independent agency. I am saying the Department of Public Works is being told what to do. There is no other subdivision that I know of that has not had some sort of grading permit, drainage, or pavement on it, and this continues to exist. I do not know if I am reading this right, but it says for building permits, it says 1984 inclusive, so that does not mean it is exclusive, so it would assume...this was in 1998 or 1997. It is sort of a substandard subdivision and these documents, I think, are going to be relevant or important if it is never resolved.

Council Chair Rapozo: Is the bottom line that you do not agree with the destruction of these documents?

Mr. Lindner: Yes. I am specifically saying for the building and subdivision review, those are critical things.

Council Chair Rapozo: I understand. Thank you, sir. Ms. Parker.

Ms. Parker: Alice Parker, for the record. The way I read this, it says they want to destroy records that are no longer of use or value. The issues that have been brought up are still of value and use, so I think it is a discretionary area and I do not know how we can list what they should keep or how they should prioritize. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else wishing to testify? Mr. Lindner.

Mr. Lindner: I would like to point out that there were no paved roads in here, and I want to point out the contrast between Moloa'a Valley, which is a condominium property regime (CPR) done in like 1999. That is still being processed. No one has been able to build on it and they are making them do roads. It is basically right next to Moloa'a Hui, and these folks have been in talks with the County for probably twenty (20) years. People bought the CPRs and afterwards were told they need to make the paved the roads, and it is hard to get people to pay money to put in a road after they all have bought the property. I guess what I feel is if you are going to want to do housing here...if you really care about housing, you need to have the subdivision people do...the rules need to be standard and the CPR...

Council Chair Rapozo: Again, Mr. Lindner, the topic is the destruction of documents.

Mr. Lindner: Right.

Council Chair Rapozo: We are not getting into the process.

Mr. Lindner: Okay. I guess what I am saying is the hypocrisy of having an agricultural (Ag) subdivision...and this was the Department of Public Works with no paved roads and then you have one right next to it...

Council Chair Rapozo: I will need to stop you.

Mr. Lindner: Okay.

Council Chair Rapozo: We are focused on the destruction of documents. That is what the agenda item is about.

Mr. Lindner: I am accentuating the importance of saving the documents based on Ag subdivisions.

Council Chair Rapozo: I go it. I agree with you.

Mr. Lindner: Alright. I was just accentuating.

Council Chair Rapozo: Thank you. Do you have a question?

Councilmember Cowden: I have a question for the Engineering Division.

Council Chair Rapozo: Yes, but first, let us get the public testimony finished.

Councilmember Cowden: Okay.

Council Chair Rapozo: Is there anyone else wishing to testify?

(Councilmember Kualii was noted as not present.)

Ms. Hammerquist: Thank you, again. This is Bridget Hammerquist. I apologize. I forgot to identify myself earlier. Ms. Parker raised a very valid point, and that is the discretionary aspect of the request. I guess that is what I was speaking to when I said what I could find in the State law, it looks like the very first thing is to have a retention policy that is uniform, so it is not left up to discretionary calls and someone to make an error, destroy something, not have it digitized, and then regret the fact. I think all of our testimonies have been illustrative of the fact that there are projects that have continued for well over seven (7) years. Looking back to see what was done, and like I said yesterday, a project was shut down and it was old records that established that what was being done was not permitted, so I just think a retention policy and discretionary calls are dangerous. Thank you.

Council Chair Rapozo: Thank you. Troy, if you could come back up.
Councilmember Cowden.

Councilmember Cowden: Yes. The physical space where all these documents are sitting, is it over in the old Government Employees Membership (G. E. M.) Department Store area? Where is it and how much room is it taking up?

(Councilmember Kualii was noted as present.)

Mr. Tanigawa: These documents are kept in filing cabinets. I do not have the actual footprint.

Councilmember Cowden: Are they still in filing cabinets and it is not like they are in boxes and boxes and boxes on the shelves?

Mr. Tanigawa: That is my understanding.

Councilmember Cowden: Do you have any kind of gut feeling as to how many of them have been scanned? My presumption is...and so I appreciate the speakers for asking...my presumption is that most of these would have been scanned. I know five and a half (5½) years ago, the County bought all these scanners for exactly that purpose, so how much of this has been scanned?

Mr. Tanigawa: For the Building Division, these are card files for building permits that were issued.

(Councilmember Carvalho was noted as not present.)

Mr. Tanigawa: I understand that none of it has been scanned, but information has been entered into the AS400, so we have a record in the AS400, but as far as scanning and having a photocopy of it, that has not been done for these documents.

Councilmember Cowden: Okay, thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: I do not know if you can answer me, Troy. Perhaps this is a question for a technological person who implements the program. Is there a way that these documents could be digitally removed, hacked, or go missing somehow? It is the same with soft copies. We can have rain, like with the sprinklers, and it is damaged. I want to know how sound proof this is.

Mr. Tanigawa: It is as safe as the County's security system. I cannot speak to that. That would be a question for the Information Technology (IT) Division.

Councilmember DeCosta: Are we running out of space to keep to both? Do we not have enough space to keep the hard copy and the digital?

Mr. Tanigawa: The hard copy is what takes up a lot of space. I do not think we have a concern as far as constraints for digital copy space.

Councilmember Cowden: I have a follow-up.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: Have we talked to the main part of the Administration and see if there is a place that we can put in that area that I want to say is the old G. E. M. store, where we could be backing those up? We could at least put them in there, where they can stay, because there are so many old files that are in that area. Maybe we would have them in that area. Is that possible? Has that been looked at?

Mr. Tanigawa: There is a designated area for the storage of these documents.

(Councilmember Carvalho was noted as present.)

Mr. Tanigawa: We wanted to try to keep that area the same size as much as possible, because other areas are used on a periodic basis for different things. If there is a desire to keep these and actually photocopy them, we can certainly look into that and see how much more useful that type of record keeping could be.

Councilmember Cowden: Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: Troy, you know how it says, "important documents"? Who decides what is important? Is it various? How high up? Is the person making the decision working with the County Attorney in any way?

Mr. Tanigawa: These requests go through the Office of the County Attorney for approval.

Councilmember Kualii: Okay. The question based on one of the testimonies received, something vague, controversial, and problematic for so many years now, like Coco Palms Resort, does the County really just keep everything, at least digitally? Before it is destroyed, does the County at least digitize it so the County keeps everything? Is that something you can answer, or should I ask the County Attorney?

Mr. Tanigawa: We do not have anything from the Engineering Division in this particular approval. The Engineering Division has a lot of those documents with critical information that refer back to developments, whether it is reviews, reviews and comments, final decisions—those are not part of this request. The closest to development that we are looking at is the Building Division permit cards for which we are requesting approval.

Councilmember Kualii: Thank you. Thank you, Chair.

Council Chair Rapozo: Has the County ever looked into the process and the cost of digitizing across the board? I have always had a problem with this destruction where everything is gone. Has the County ever looked into what that would entail or even utilizing the space at the old Big Save for storage? Is that a possibility?

Mr. Tanigawa: I believe that is where the storage area is for the Engineering Division and other divisions in the Department of Public Works. We also have a storage area below the round building, on the bottom floor. Different departments have space there. I think they did away with storage we had at Vidinha Stadium. I think everything has been cleaned out and is currently consolidated in the existing spaces I mentioned. To answer your question, yes, that has been looked into and we are trying to keep the spaces from growing beyond the current sizes that they are.

Council Chair Rapozo: It would make sense that documents would be digitized and then destroyed. It is interesting. We can pull records here from the '50s, the '40s, and the '60s. There are handwritten minutes of Council meetings. By Statute, we could destroy them to save space, but we actually still use those things, believe it or not.

Mr. Tanigawa: The Engineering Division has a dedicated person whose main task includes digitizing as much of the archives in the Engineering Division. However, we have not looked into detail regarding how much it would cost to do everything.

Council Chair Rapozo: Thank you. Councilmember Kagawa.

Councilmember Kagawa: Following up to your question. I do not think the public has any idea how many things we have and how it has been organized. You are hearing, "Digitize everything," but I wonder if there is any way we can get pictures or a video of what that area really looks like? Maybe it would help us to understand the cost of digitizing. It would probably be so outrageous, because someone could say that everything is important, right? Do we digitize everything? I once walked through looking for some old planning documents with the Planning Department. That place is a mess. Things are not where they should be and a lot of it is because the employee who stored the documents left. I think that as new employees join, they think, "Why should I clean up the mess of the person who retired?" I do not know. Is there any way that you can paint a better picture so that the public and the Council really knows how many things we are talking about when we say, "Let us digitize everything," because on the Council, I think we see maybe this, but the real picture is the whole room?

Mr. Tanigawa: We could provide pictures to spatially show how much area this destruction would free up for future records.

Councilmember Kagawa: Also, maybe to show pictures of what I actually saw and how that place is messed up. I think we need to have each department go in and clean up their areas so that there is more room for things that we say are important, so that we do not need to destroy, but there is so much clutter. These are really big rooms. They are huge rooms and a lot of it is rubbish, but no one wants to pull the

trigger and get rid of it. It is hard to free up room for organizing things that are of importance. Although everything is important in one's opinion. I was looking for an important document regarding a house, but the plans could not be found. I think this was from the '70s or '80s, but it pertains to how to fix my house. It is my fault. I should have a copy, too, but with the fact that I lost my copy, I cannot go to the County and expect them to find something from sixty (60) years ago, right? It is not that easy.

Mr. Tanigawa: We follow the guidelines as far as what needs to be provided in this request. If more information is needed, like the spatial information of pictures and whatnot that you mentioned, we can also provide that if it is required.

Councilmember Kagawa: I think to answer the question of digitizing everything, let us be real. The cost to digitize everything could be in the millions. Is that really where we want to spend taxpayers' dollars? Will everything be digitized when ninety-nine percent (99%) of it is rubbish?

Mr. Tanigawa: That is a good point.

Council Chair Rapozo: Are there any other questions for Troy?
Councilmember Carvalho.

Councilmember Carvalho: I have a clarifying question, Troy. Earlier you mentioned that there was already an effort to consolidate everything somewhere. Where is everything? Are they still all over?

Mr. Tanigawa: That is my understanding. There is a space in the old Big Save.

Councilmember Carvalho: That is my understanding, too. That is the location where everything is. Are you still in the process at least of doing that? Are you done with that and now you need to digitize?

Mr. Tanigawa: That is where some of the items are now stored. We also have storage space below the Moikeha building. It is on the bottom floor of the round building section. We are just trying to keep the need for storage space from increasing. In doing so, we are asking for approval to dispose of current records.

Councilmember Carvalho: Obviously, the big point is having accessibility to that in a way that it is not all over the place. I just wanted to make sure that the effort is moving forward and to understand where we are with that.

Mr. Tanigawa: We do make efforts to keep the areas as orderly as possible.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Troy, for the testimony I heard today, the questions dealt mostly with the Engineering Division. None of these documents are from the Engineering Division, correct?

Mr. Tanigawa: That is correct.

Councilmember DeCosta: Okay. I wanted our constituents who testified to know that the questions they asked are still in hard copy form through the Engineering Division.

Mr. Tanigawa: That is my understanding.

Councilmember DeCosta: Thank you.

Mr. Tanigawa: None of the Engineering Division's records are being requested for disposal.

Council Chair Rapozo: Troy, this request does include the Building Division, right?

Mr. Tanigawa: Building Division, for vertical construction.

Council Chair Rapozo: Okay. Are there any other questions for Troy? Go ahead.

Councilmember DeCosta: Council Chair Rapozo made my lightbulb go on. I know the Building Division will be part of this project, but in the Engineering Division, are the building plans or important things for building also in the archives of the Engineering Division?

Mr. Tanigawa: The Engineering Division receives their own submittals. The Engineering Division is part of the building permit review process, but the plans that are uploaded to the Building Division's side are basically the construction plans for the vertical construction.

Councilmember DeCosta: Does the Engineering Division have the same exact copy?

Mr. Tanigawa: They have the copies that pertain to the types of review that they do. They keep records of that.

Councilmember DeCosta: If the Building Division destroyed their documents, the Engineering Division should have the exact same documents of the construction of the building or vertical growth, right?

Mr. Tanigawa: No, they just have what pertains to what they review. The Building Division reviews vertical construction components. The Engineering Division reviews the civil portion of the project—grading, grubbing, drainage, and those types of things—but just the civil portion, so the Engineering Division's records include all the ground work that happens before the vertical construction starts.

Council Chair Rapozo: That includes the inspection reports on your side as well, right?

Mr. Tanigawa: Our side. That is correct.

Council Chair Rapozo: I think that is critical when we start looking at litigation going back to when these activities or actions occurred before the seven-year period. Once those records are gone, they are gone. That is the concern I think I am hearing from the constituents. Does anyone else have any questions? Councilmember Kualii.

Councilmember Kualii: These two (2)...it is a lot of records, right, from 1979 to 1984 with the Building Division, but it is very old? They are about thirty-six (36) years old. Process-wise, my question for you, for at least the records you are in control of is should we not need less storage going forward, because with all the new systems we are digitizing everything, right? People are submitting things electronically. We should not need to free up all this space because all these new things are coming in. There are a lot less new things coming in, right? This is for the records that you know of and you work with.

Mr. Tanigawa: Yes.

Councilmember Kualii: Even though the rule is seven (7) years or something like that, we are keeping much more than that, like twenty (20) years or thirty (30) years. The things you are requesting disposal of is thirty-six (36) years old. It is from 1979 to 1984.

Mr. Tanigawa: That is correct. It is also from 1965.

Councilmember Kualii: The other side to it is less new storage is needed. Also, if you pick out of this...of all the Building Division's records, if you pick the most important things that could potentially be needed for a case or whatever...I see other nonprofit organizations dealing with it. They may have interns that come in and actually help with the digitization, which is extra, right? It is more work than people can handle with the regular staff in the Department of Finance or wherever. There are ways to also address it so the public is less worried.

Mr. Tanigawa: We involve the Office of the County Attorney, because the Office of the County Attorney is also involved in reviewing any type of legal issues that come up. They are involved in litigation, whether they do it themselves or whether they contract out to special counsel. We do not go through the detailed discussions that they may have with the divisions when divisions submit information for review before we come to you folks, but we understand that those discussions happen at that level, so any information that is proposed for disposal excludes information that the attorneys feel are important and should be retained. That is my understanding of why we go through it with the Office of the County Attorney, at least for a major portion.

Councilmember Kualii: Thank you. Thank you, Chair.

Council Chair Rapozo: Are there any other questions for Troy? If not, I have a question for the County Attorney.

MATTHEW M. BRACKEN, County Attorney: Matt Bracken, County Attorney.

Council Chair Rapozo: Thank you, Matt. You know that I do not like to do this. What is the process when a department or division comes to your office? Are the hundreds or thousands of different files spelled out? Does an attorney go through each one and say, "This one is done. This one is done"?

Mr. Bracken: No, not necessarily. It depends on the request. Most often, it comes in a spreadsheet and lists the documents they want to destroy. We look at it for two (2) things: spoliation and the potential for litigation. Spoliation is the intentional destruction of documents that deal with litigation, so from our perspective, we are looking for things that we have active litigation with, but we also look at the statute of limitations and the potential for litigation. When we look at files, for instance, a lot of these documents are old contracts, and so for the old contracts, the statute of limitations for contracts is six (6) years. If there is no dispute from the County's side, six (6) years have passed, and the contract is fulfilled, then yes, we will determine those are totally fine to be destroyed. We generally receive a list. It is a long list of all these documents and we look through it for active litigation, potential litigation, and statute of limitations. If we have any concerns with them needing to be held longer based on the type of document it is.

Council Chair Rapozo: Are there any other questions for Matt? Thank you.

Mr. Bracken: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: I know the motion is to approve. I am not ready to vote on this today for the simple reasons that we have heard, but I always had a problem with destroying documents that should be digitally stored somewhere, because why would you destroy documents that could come back and bite you in the 'ōkole? I know some of the things from 2011, like the vacation and sick leave applications are done, and I do not think there are any issues with destroying those, but when we talk about permit applications and inspection reports...there are a couple of things on here that I am not willing to support simply because I am looking at proposing a couple of audits in the coming months that may, in fact, require some of these documents to be used by the auditors, investigators, or whoever. I think the procurement documents and the contract documents are things that I do not want to see destroyed, because it may be necessary for the audit, so my ask today would be to refer this to the committee where we can have a further discussion and to perhaps have the Department of Public Works share with us the actual list of documents that they are looking to destroy, because I want to make sure that we are not destroying something that will come back later and we cannot get the documents. To me, that is wrong. Coco Palms Resort was mentioned.

For all of our developments, the permitting and the applications were done and sent prior to the seven-year threshold, and we do not know what we do not know. We do not know what will surface once these developments start. Can you imagine coming back and saying, "Sorry, we destroyed that"? No, you cannot destroy that. It needs to be set up in a cloud somewhere before the physical documents are destroyed. That has always been my position. I do not know what the pleasure of this Council is. Councilmember Cowden.

Councilmember Cowden: I am pleased to hear what you are saying, because I think that we should not be eager to destroy these elements. I regularly attend Planning Commission meetings. Even yesterday, at the Historic Preservation Review Commission, had the Numila Plantation Camp demolition on the agenda. I look at things like Hanalei hill, which is clearly falling down. It is frightening to look at that and we did not know that there was an active flume buried in the hillside. For probably close to one hundred (100) years, that was eroding that hill. I was just looking at it again yesterday, the police station, the fire station, and the medical station are right there on the very edge of what looks like is ready to collapse at a tight pinch. There are important comparatives when I look down here with the Wastewater Division, the Solid Waste Division, the landfill, and even abandoned and derelict vehicles, and when we look at these various Wastewater contracts, if we do not have anything to be able to push it against, it makes all these lawsuits that we end up facing to drag on for years and years as this discovery process is long. If we had the information, whether the County would win or lose, whether the developer will win or lose, if the information is there, we will save by making the best choices that are the most appropriate. I appreciate what it is to have overflow files and you never know what you are going to need, until you need it, so especially in that Po'ipū area right now that we are seeing and certainly up in Princeville, all these things were done in the early '70s and that includes building things. I appreciate that we had some speakers come to testify and put an extra highlighter on the importance of this. I am generally always uncomfortable when we are destroying files and I realize many of it across the departments are tiny receipts or something...we just need to have judgment. When I was so enthusiastic about approving the six million dollars (\$6,000,000) that we put in for things like scanners in 2019, to my understanding, the goal was to get all this stuff cleaned up and that meant being scanned. I will also not be approving of this.

Councilmember DeCosta: After hearing both sides, it seems like we have a lot of questions and it seems as though they need some time to prepare their answers.

Councilmember Kualii withdrew the motion to approve C 2024-33. Councilmember DeCosta withdrew the second.

Councilmember Kualii moved to refer C 2024-33 to the March 6, 2024 Public Works & Veterans Services Committee Meeting, seconded by Councilmember DeCosta.

Council Chair Rapozo: The agenda for next week's Committee Meeting needed to be posted because of the Sunshine Law, so we will not be able to have this back up until March 6, 2024. Councilmember Kagawa.

Councilmember Kagawa: I have a different take on this item. I feel there is a process to make sure that what we do discard is in the eyes of the people who are professionals—the engineers, the County attorneys—I trust their judgment in knowing what to keep and what to dispose of, and I do not think the Council would provide any expertise in that area if given a list of what to dispose of and what not to dispose of. It is micromanaging. The problem is already there. The storage situation is bad. All of you should walk through it. With old documents, I feel like there is a fifty percent (50%) chance of you finding what you want with our current storage situation. There are too many years of unnecessary things and we need to have a process that allows the Administration to clean it up and to make sure that what we have that is current is on file. That is why we have laws like the statute of limitations. There is also a burden on the side of the person who is contesting the County. Provide those documents if we cannot find ours. You need to show proof as well. It cannot be a situation where you can bring up any hypothetical situation and say to the County, “Show me the document from seven (7) years ago,” and expect the staff to find it. A lot of time has gone by. I think we just need to trust the County engineers and attorneys. That is why they have their degrees and their expertise. I do not think the Council has better judgment in that area. I would support the motion to approve in that there needs to be a process for the County to discard things that are beyond the statute of limitations that are not active or pending litigation and move forward, because I do not see a reasonable process where the Council can decide what to keep or discard that will improve the process. Thank you, Chair.

Council Chair Rapozo: Thank you. Is there anyone else?
Councilmember Carvalho.

Councilmember Carvalho: I just want to clarify that, to me, any type of documents from the past approvals and working with the Office of the County Attorney, they are the ones who review everything and say yes or no. That is the bottom line, but I am willing to look at it again and see how the process would be. I know there are documents that we need to save, whether they be digital or not. At the same time, there are documents that do not need to be kept and that should be determined by working closely with the Office of the County Attorney, making sure that works with the Administration, and then move from there. I think that is the process that works well.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I can see why it would behoove the County departments to want to destroy the materials, because that basically preempts any future litigation. While litigation is a bummer for our economic bottom line, it is our job as the Council to provide that balance because we represent the people in a separate way where there is a pathway to check homework. We are a check and balance, and I see how much replacement we have, even with the short terms that are over in a heartbeat, there is no institutional memory left. We cannot hold onto staff for the Housing Agency. I do not have faith that we have a long memory with all the pressures that are on the population, which includes the people who work in government.

Council Chair Rapozo: Is there anyone else? Councilmember Bulosan.

Councilmember Bulosan: I would like to echo all Councilmembers thoughts that were shared on this specific item. I am in agreement with looking to preserve and making sure the institutional knowledge is preserved in a way that is accessible to the community. At the same time, I am in agreement with Councilmember Kagawa that creating more steps in the process may not necessarily be needed. At my initial review of this information and the process in which the departments handled it seemed appropriate, meaning that they looked at the financing side of it and shared it with the financing team and the legal team, and followed all the rules and regulations that we set forth to make sure this is as safe as possible. At the same time, with the testimony, it allowed us to really see which things we need to look at and make sure we do it properly as this body's role is to investigate those things so that we can improve the things that we do. We are in a constant and challenging balance of creating more efficient ways to solve our community problems and at the same time, provide ways for us to be accountable for these decisions. In efforts to be more efficient, we like to create better systems and I am in support of that, so I agree with referring.

Council Chair Rapozo:

Councilmember Kualii:

Councilmember Kualii: When you initially made your comments, those were the exact feelings I was having and would have said if you did not. Just take a little more time. Look at it a little more closely. There is no rush. These files have been sitting there for thirty (30) years or what have you. There is no rush. Let us look at it a little deeper. Let us ask more questions as to what the process even is. Yes, there is a law in place where the State says what is allowed, but what do we as a County have as our procedures. We can be a little more stringent than what the State is allowing if we have particular concerns. For sure, this body is one (1) of the three (3) decision makers. We have a role and when we vote we agree to it, so if we are not comfortable, let us look at it a little closer. Primarily, I am not comfortable because we heard the concerns and it is also our role to try to alleviate the concerns that were expressed by the public. I think we can do that in the Committee when we have more people before us, we ask the questions, and we get the answers. I am ready to vote to support the referral.

Council Chair Rapozo: The process is the process. The Charter requires the Council, and the reason for that is because the lawsuits do not go the Administration. It comes to the Council. The Council is the body that needs to agree or disagree, settle or not settle. I will give you a simple example of the dangers of disposing of records. Let us say, God forbid, that someone is in a bad traffic accident and either loses their life or is seriously injured on a County road. The design and maintenance records of the road are from eight (8), nine (9), or ten (10) years ago, because that is how long ago the road was paved or built. The maintenance and the design of that road becomes a very key factor in the investigation of that type of accident. Now, you have someone suing the County for a defective road maintenance and we go back and say, "We do not have those records, because it was over seven (7) years old so we just destroyed it." That is just one (1) simple example and is a real-world example, because we will not have it. The policy should really be...timesheets from 2011? Toss it, burn it, trash it. Mileage Claim Records prior to 2011? *Adios*. We do not need those things. The permits...I am not a lawyer, so maybe Matt can correct me if I am wrong, but as far as I know, in many cases, the statute of limitations does not start until the discovery of the issue. If you do not know, you do not know. If I was a white-collar detective and if the

employer found the fraud, that is when the clock starts. It does not start when the fraud happened. It starts when you determine that the fraud happened, so the statute of limitations may not always be seven (7) years, six (6) years, or three (3) years. It depends on when the discovery of the issue happened, so in any of these files that could come up to bite us in the 'ōkole...we talked about the AS400. Since we have had the AS400, there is some trail of what we have done in the AS400 system, which is our computer system, but this request is for documents that occurred the AS400 was implemented, which means there is no record. That is gone. Even the AS400 does not have the complete file. Yes, you have the trail of what was done, but prior to 1984, we have zero (0). What are the chances of something coming back to bite us? It is probably slim, but what if? Permitting and all of these things...remember, we are not in the same world as we were in twenty (20) years ago. Now, the lawsuits fly and we go back and say, "We do not have the records." That is why this process is in place. It is because the Council has that say. If the Council feels those documents are not necessary to keep, then we get rid of them. I appreciate the Council taking another look at it, and it will give us extra time because of the time before our next Committee Meeting that is open, but in that time I hope we can determine what...maybe use this agenda item as an opportunity to redefine the policy so that we can determine what...if we started digitizing ten (10) years ago or fifteen (15) years ago, we would not have an issue today, but we did not. We just threw things away. I think the Administration needs to get to a point where they start looking at a preservation plan for these documents. Again, it is not for all documents. Some of the documents can be disposed of, but those that may come back—permitting, inspections, engineering...Mr. Lindner brings up a great example of the subdivision. If we dispose of the records, how do we go back and look into that? We do not. I appreciate you folks doing that and we will have a better and more robust discussion on March 6, 2024.

The motion to refer C 2024-33 to the March 6, 2024 Public Works & Veterans Services Committee Meeting was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

C 2024-34 Communication (02/02/2024) from Councilmember Bulosan, transmitting for Council consideration, A Bill For An Ordinance Adding A New Article To Chapter 6, Kaua'i County Code 1987, As Amended, Relating To General Provisions Relating To Finance.

Councilmember Kualii moved to receive C 2024-34 for the record, seconded by Councilmember Cowden.

Council Chair Rapozo: There is a presentation on this.

(Councilmember Kagawa was noted as not present.)

Council Chair Rapozo: Will the presentation be done during the Communication or during the Bill For First Reading section? I am okay either way. I know we have someone here to testify on the Proposed Draft Bill as well. We have a testimony via Zoom on this item, right? Is the presenter here?

Councilmember Cowden: Yes.

Council Chair Rapozo: Are they here in person?

Councilmember Cowden: Yes.

Council Chair Rapozo: Okay. Are you folks okay with waiting?

Ms. Fountain-Tanigawa: We also have a testifier on Zoom.

Council Chair Rapozo: Are you in communication with the person on Zoom? Does he want to wait? Are you there? What is his name?

Ms. Fountain-Tanigawa: His name is Michael.

Council Chair Rapozo: Michael, are you there?

There being no objections, the rules were suspended to take public testimony.

MICHAEL YAKI (*via remote technology*): Yes, I am here. I was going to testify to the Proposed Draft Bill. When is convenient for you?

Council Chair Rapozo: Okay, we will do it during the Bill For First Reading. I hope you are enjoying the show.

Mr. Yaki: I used to live on Kaua'i. I love that place, so it is no problem at all.

Council Chair Rapozo: Perfect. Thank you. Is there any public testimony on this Proposed Draft Bill? We can take the testimony now and attach it to testimony for the Proposed Draft Bill if you need to leave. If not, we are good with that as well. Is there any further discussion? Seeing none.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2024-34 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Rapozo: The motion is carried. Next item, please

LEGAL DOCUMENT:

C 2024-35 Communication (02/01/2024) from the County Engineer, requesting Council approval of a Dedication Deed, from BBCP Kukui'ula Infrastructure, LLC to the County of Kaua'i, for land dedicated for public beach parking in the Boyden's Pond

area, pursuant to Ordinance No. PM-2004-370, located at Tax Map Key (TMK) No. (4) 2-6-019-028.

- Dedication Deed

Councilmember Kualii moved to approve C 2024-35, seconded by Councilmember Carvalho.

(Councilmember Kagawa was noted as present.)

Council Chair Rapozo: Troy, are you here for this, too?

There being no objections, the rules were suspended.

Mr. Tanigawa: Yes, I am.

Council Chair Rapozo: Could you explain to us what this is?

Council Chair Rapozo, the Presiding Officer, relinquished Chairmanship to Council Vice Chair Kualii.

(Council Chair Rapozo was noted as not present.)

Mr. Tanigawa: This is a request to sign a dedication deed that transfers property from a developer...I believe it is Kukui'ula Development, over to the County. I provided a photograph of the property. The photograph shows the property in a blue highlighted boundary. It is a parking lot with some grassed areas to the west. The parking lot is public parking for visitors or for people who want to visit Boyden's Pond. Boyden's Pond is that highlighted patch of sand right there to the southwest of the parking lot. The parking lot and that beach area is currently being maintained by the Department of Parks & Recreation. They will be providing perpetual maintenance there. The request is for Council approval and the County Clerk's signature will finalize execution of the document.

Councilmember Kualii: Members, are there any questions?

Councilmember Cowden: I have questions.

Councilmember Kualii: Councilmember Kagawa, followed by Councilmember Cowden.

Councilmember Kagawa: What is that big building to the west of it?

Mr. Tanigawa: The building is actually on the east side of the parking lot. There is a smaller condominium establishment that is the closest to the parking lot.

Councilmember Kagawa: It is to the east, right?

Mr. Tanigawa: When you go further east, I believe that is Lāwaʻi Beach Resort.

Councilmember Kagawa: Is it next to Lāwaʻi Beach Resort?

Mr. Tanigawa: Yes.

Councilmember Kagawa: Thank you.

Councilmember Kualīʻi: Councilmember Cowden, followed by Councilmember DeCosta.

Councilmember Cowden: If I am understanding it correctly, this is currently being leased to the County and the County maintains and manages it, so this represents a change in title to it, not a change in use.

(Council Chair Rapozo was noted as present.)

Council Vice Chair Kualīʻi returned Chairmanship to Council Chair Rapozo.

Councilmember Cowden: This is already used for public parking and public beach use. It is not adding anything to our cost. What it does is it protects the public from a change in decision or a change in lease to a private entity. Basically, are we taking over what we have been leasing?

Mr. Tanigawa: I am not sure if there is a lease there. It is actually a dedication. We have already taken over the maintenance.

Councilmember Cowden: Are we taking over what we are already taking care of?

Mr. Tanigawa: That is correct.

Councilmember Cowden: It is not adding to our workload. It is not adding to the cost. Is it a gift? Is there no cost?

Council Chair Rapozo: It is a condition.

Mr. Tanigawa: It is a one-dollar transfer of property over to the County.

Councilmember Cowden: Alright. It is a one-dollar transfer. Can you tell me the difference between a condition and land title transfer?

Mr. Tanigawa: It was a condition that was set by an ordinance that this body approved several years ago. The condition was to transfer this piece of property. It is to develop the property, put in pavement for a parking lot, stripe it, and then transfer it to the County.

Councilmember Cowden: They are following through on an existing agreement.

Mr. Tanigawa: It is the ordinance requirement.

Councilmember Cowden: Yes, the ordinance requirement. We have been gone all week, so I have not had as much time to do all my research. Thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Troy, this is great. I just want to advise that if the County will now own this, let us get a blinking crosswalk installed as soon as the County gets this property, because we do not want to be liable for anything. Get that blinking crosswalk in and I think we should be good when the local people park and go across to the beach. Thank you.

Council Chair Rapozo: Councilmember Carvalho.

Councilmember Carvalho: I have a clarifying question. It is everything within the blue area or the blue line, right?

Mr. Tanigawa: Yes, within the blue line.

Councilmember Carvalho: Obviously, additional parking spaces will be added?

Mr. Tanigawa: It could be if the needs present itself in the future.

Councilmember Carvalho: Okay. I just wanted to make sure.

Council Chair Rapozo: Are there any other questions? Councilmember Kagawa.

Councilmember Kagawa: To follow-up, if they are giving us everything in the blue line, why was only a portion of it paved?

Mr. Tanigawa: What is shown in the map is what is in the real property site that I pulled the image from. The lines do not always line up with the boundaries, so may not have that much extra area.

Councilmember Kagawa: Okay. There may not be as much space as it seems.

Mr. Tanigawa: It could just be a retention area.

Councilmember Kagawa: I got excited. I thought that it was an additional row that could possibly be paved.

Mr. Tanigawa: If there is additional space, then we could provide additional parking in the future. If there need presents itself, we would definitely look at that.

Councilmember Kagawa: Thank you.

Councilmember Carvalho: That is why I asked my question. I thought it was an additional area. Is it just not specifically the parking stalls?

Mr. Tanigawa: Yes. I should also mention that there is a strip of property that runs across the driveway. It is not aligned with the sidewalk, but I believe that when the subdivision was done and the parcel was separated out, the intent was to eventually deed that over to the County also. That has not yet occurred. I mention it here because it comes across the driveway to the parking lot.

Council Chair Rapozo: Are there any other questions? Seeing none. Thank you, Troy. Is there anyone in the public wishing to testify?

Ms. Fountain-Tanigawa: Chair, we have two (2) registered speakers and one (1) testifier on Zoom.

Council Chair Rapozo: Okay.

Ms. Fountain-Tanigawa: The first registered speaker is Bridget Hammerquist, followed by Elizabeth Okinaka.

(Councilmember Bulosan was noted as not present.)

Ms. Okinaka: Aloha, Councilmembers. I just wanted to...

Council Chair Rapozo: Could you please state your name?

Ms. Okinaka: My name is Elizabeth Okinaka. For the record, I am obviously not against the County taking this over. I think it is sad that Kukui'ula has gotten as far as it has and that we are just now receiving these things. I think we know that this was a condition of Kukui'ula being approved. If you go down to this pond frequently, it is one of the last little areas for families with children. We can go there. I do not think the general public knows this is public parking, so by the County taking it over and letting the public know...I do not know if there are towing signs in the front, but I personally know that I have parked there while visiting the pond and been worried if I will be in trouble or if my vehicle will be towed.

(Councilmember Bulosan was noted as present.)

Ms. Okinaka: I am happy to know that the County is actually taking it over and that the community can use it, but once again, I think that this is a very small condition and that they need to start meeting the other requirements. We were supposed to have a seven-acre school expansion. It also states that inside of Kukui'ula there should be a public walking system and a community park. Along with

drainage issues, the harbor, not having access as a cultural practitioner to these archeological and burial sites, I think it is time we start holding this massive...one of the largest landowners on the island to these requirements. There are homes that are being constructed there every single day that are upwards of twenty million dollars (\$20,000,000), and at the very least I feel like if we want to go for a walk in there and walk on those sidewalks, and that was a condition of their approval, we should be able to do it. Personally, I have been harassed. I know many community members. If you try to take your dog in there, go down the sidewalk, or take your children, security will immediately harass you. They will ask you for your name. They will write down you license plate number and the make of your car. It has intimidated so many of our community members, and Kukui'ula has created this assumption that they are a gated community and that we do not belong inside there. That is how I feel. I do not drive inside there and if I do, I feel uncomfortable and I feel like I am going to be harassed, and I think that this is measly. I am happy that the County is doing it, but let us start holding Kukui'ula to the actual conditions. Let us see the expansion of our school. Let us see these public walking trails and this community park, that was also supposed to have an attached 16.2-acre preserve on top of the twenty-acre park. I will be sending you folks more information in an email, but it really concerns me. Last night, I located the property that is sited as the 16.2-acre archeological preserve and the twenty-acre park. If you look it up right now, the Planning Commission has approved a resort on top of the community park.

Council Chair Rapozo: I need to stop you right there. You can come back for your second three (3) minutes. We will give Bridget her first three (3) minutes.

Ms. Hammerquist: Thank you. Bridget Hammerquist, resident of the South Shore and testifying on this issue. I echo what Ms. Okinaka said. I strongly support the Council accepting the deed transfer. Some of these deed transfers may have a little expense involved, but Elizabeth is correct. If you have the...and you have to go back to 1982 or earlier, but if you have the permit and conditions pulled for the development of Kukui'ula, there are quite a few conditions as she just alluded to. One of the big ones that came up before the Planning Commission on January 9, 2024 was the grass lawn area just above the beach at the boat harbor. That was supposed to be deeded to the County to be a park in perpetuity for the public because there was a recognition by the Land Use Commission and the County that once the development was built, it might be a situation where the effect would keep local residents and their children from using the boat harbor, like they so like to do or like Boyden's Pond. Elizabeth is right. It is not well marked. The public does not know they have a right to be there, so it is wonderful if you not only accept the deed transfer, but then ask for a little assistance from the Road Divisions or whomever within the Department of Public Works to put up signage for public beach access or something of that nature, which would be really great. The grass lawn right above the beach at the boat harbor? That was supposed to be deeded to the County and the County's Planning Director's explanation on January 9, 2024 was, "They never accepted the deed because the Department of Parks & Recreation would have to mow the lawn and they did not want to take it on." I think to leave the land with the developer in violation of a condition is really not a good place for the County to be, so I would just encourage whatever committee that looks into these things to look into all the conditions and to certainly enforce this one as well. It was supposed to have a minimum. According to the condition,

it was supposed to be well paved and have a minimum of twenty (20) parking stalls. Thank you very much for my time. *Aloha*.

Council Chair Rapozo: Thank you. Do we also have someone on Zoom?

MAUNA KEA TRASK (*via remote technology*): *Aloha*. Mauna Kea Trask, for the record. Can you hear me?

Council Chair Rapozo: Yes, we can hear you.

Mr. Trask: Thank you very much, honorable Chair and County Councilmembers. For the record, Mauna Kea Trask, counsel for BBCP Kukui'ula Infrastructure, LLC. I am not here as a lobbyist today. I am not intending to influence your decision at all. I am here simply to provide a brief legal context for this request. As you know, I requested to appear today as a resource, but instead, it was kindly informed to provide public testimony. I am glad I am here. I would just like to acknowledge certain things that Mr. Tanigawa said for the record and correct a couple of small misconceptions that were made. This is a 0.34-acre improved parking lot. It was constructed by Alexander & Baldwin (A&B) after the 2004 approval of Ordinance No. PM-2004-370 on July 23, 2004 was passed unanimously by the Council and approved shortly thereafter by Mayor Baptiste. There are currently twenty (20) parking stalls. It is across from Boyden's Pond, where a lot of local people take their children to swim. It is also heavily used by the local surfing community down there, especially on the southside when the waves start cranking and the parking lot in front of Lāwa'i Beach Resort and along the shoulder of Lāwa'i Road, *mauka* of Prince Kūhiō Beach (PKs), surf break is crowded. A couple of things really briefly. Regarding school impacts, A&B entered an educational contribution agreement with the Department of Education (DOE) years ago to deal with that condition years ago. That was addressed. Regarding parks and open space, the Ordinance actually provides that A&B, and now Kukui'ula will develop and maintain in perpetuity the harbor park parcels...the three (3) parcels there, and they do. I think that Mr. Hull was misquoted earlier. It is that the County, as Councilmember Cowden said earlier, does not like to take liability and responsibility for large areas. This is an improved parking lot, so it is different. For those park parcels, the developer is required to maintain them. Regarding the sixteen-acre Kamalo'ula Cultural Preserve, that is not zoned or dedicated for hotel use. It was dedicated to the Royal Order of Kamehameha. It is *mauka* of the old Prince Kūhiō Park and now constitutes an extra sixteen (16) acres. It is maintained infrequently. Local children on their summer programs do work there. My son weed whacks and cleared the area with Chad inaudible, who does a great job restoring and maintaining that area. That is not at all threatened. There is a condition to develop walkways and trail system within Kukui'ula development itself, and the condition requires that upon completion of the construction of the path and trail systems and other developments within the area that an easement or easements will be prepared for acceptance of the same by the County. It is an ongoing process and this is an ongoing development. BBCP Kukui'ula Infrastructure, LLC acquired this property from A&B about 2001, and they, with myself, have diligently been working with the Department of Public Works and the Office of the County Attorney to complete these dedications, and I would like to thank Troy and his department, Mr. Bracken, and specifically, Deputy County Attorney

Mark Ishmael for working with me on this. These are complicated documents that require a lot of review. Thank you very much.

Council Chair Rapozo: Thank you. Councilmember DeCosta has a question.

Councilmember DeCosta: Hello, Mauna Kea. You brought up a statement about a seven-acre expansion of the school. Did I hear you correctly? The developer that you represent made an agreement with the DOE and you folks resolved that seven-acre expansion.

Mr. Trask: No. There was an education contribution agreement with the DOE that was entered into with one of A&B's affiliate entities. I believe this was years ago. I understand, and I apologize as I am not prepared to specifically address the nuance, but I remember it was a contribution agreement because DOE...you know, you are a teacher. Working with the DOE...

Council Chair Rapozo: Mauna Kea, my plan is to have an agenda item in the Planning Committee, probably on March 6, 2024, to go over the conditions, because that is not on the agenda today. I do not want to get into all of the conditions. I will say, though, that the condition on the school was...I was here when it was done...they needed to work with the DOE, not the County, if I remember it correctly, because we, obviously, do not control the schools. We will set up a separate agenda item so that we and the public can understand what conditions are still outstanding and when can expect those conditions to be filled or completed, so Mauna Kea, you may want to be here on March 6, 2024.

Mr. Trask: Yes, Chair. Thank you.

Council Chair Rapozo: Are there any other questions as it pertains to the pond and the transfer?

Councilmember DeCosta: I wanted to ask a question.

Council Chair Rapozo: Is it a question for Mauna Kea?

Councilmember DeCosta: No.

Council Chair Rapozo: Thank you, Mauna Kea.

Mr. Trask: Thank you.

Council Chair Rapozo: Is there anyone else in the audience wishing to testify? Would you like to come up for your second three (3) minutes?

Ms. Okinaka: I just want to say *mahalo*. I am glad to hear that there will be a further meeting. I know this is not a meeting addressing all of the other conditions, but I am glad that it has been brought forward. For the record, there was an agreement in 1999 between the Department of Education. Not only was there

supposed to be seven (7) acres, but there was supposed to be an additional twelve (12) acres. If that was not provided, there was supposed to be an in-lieu-of payment.

Council Chair Rapozo: What year was that?

Ms. Okinaka: It was 1999. It is supposed to be seven (7) acres, plus twelve (12) acres. It just shows that, overall, there have been so many conditions that have not been met and I am glad that the community will have an opportunity to speak on that. I think the community should know that the people who are coming forward in these meetings to give public testimony are actually the attorneys representing these developers, so I would like that to be clear for the record. Also, Prince Kūhiō Park is not part of the archeological preserve. That is a separate twenty (20) acres. Additionally, there is an additional sixteen (16) acres and a community park. I just wanted to clear that up. *Mahalo*.

Councilmember DeCosta: I had a question for her.

Council Chair Rapozo: Go ahead.

Councilmember DeCosta: Did you say that you walk around Kukui'ula, but you do not feel comfortable and feel you may be harassed?

Ms. Okinaka: Yes.

Councilmember DeCosta: Have you ever walked around at 5:00 in the evening?

Ms. Okinaka: Yes.

Councilmember DeCosta: I may have bumped into you, because I go with my hunting dogs on leashes and I walk in my camouflage clothes. I let them know that I will not be intimidated. My wife does not like my attire, but that is how I go around Kukui'ula. Thank you.

Ms. Okinaka: *Mahalo*.

Council Chair Rapozo: Is there anyone else wishing to testify? Seeing none. Is there any further discussion? Councilmember Kagawa.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you. I appreciate Mauna Kea coming and speaking about the status of the conditions. We want to make sure we get accurate information. Going back to 2004, it falls on the Council. Being brought up on the Westside, growing up surfing, and spending time in Po'ipū, I would never have approved of Kukui'ula. Look what has happened to Kaua'i today. We are losing massive amounts of properties to billionaires. My wife's family had a house right by the boat harbor, but today, it is nothing but transient vacation rentals (TVRs) and multi-millionaires. There

are no local residents. It is sad. I love golf. I think that course is one of the most beautiful courses, but what is it at the expense of? We have Ag land there that has turned into this multi-billion-dollar resort that does nothing for the middle class and poor local residents, except for the ones who benefit from jobs. I appreciate their hard work and them serving the private resort, but it is sad. If any decision like that comes before future Councils, I am hoping future Councils put the middle class and the poor first and do not approve that type of thing again, because besides conditions being given and met it really did no good for the island of Kaua'i in the end. Thank you, Chair.

Council Chair Rapozo:

Is there anyone else? Councilmember DeCosta.

Councilmember DeCosta: I just got a little bit of information. If we look on the State of Hawai'i Land Use Commission (LUC) website, it shows that in 2005 there was a fee paid to DOE in lieu of not putting up the seven-acre park and the additional twelve (12) acres. Do I agree with that? I do not. I believe DOE is not administration. DOE is not the teachers. DOE is the families whose children go to our local schools and those schools should have gotten what they could have benefited from. I do not know where that money went. Did it go to salaries? I do not know. I do know one thing. When I look at this map, I see some black lines. I do not know how accurate these black lines are to show the State highway, the County highway, and properties, but if I look at the property, right next to the yellow highlighted area is a black line that does not give access around the grass part of the reef. The black line is actually in the water in one part of that property. As you go around the backside, I believe the black line crosses the house roof. If that was a local family's house...I do not think a local family could live along the beach there, but I could be wrong...that house would be under a permit violation. That houses roof is sticking out of the black line. I agree with Councilmember Kagawa. I grew up on the Westside and enjoy Po'ipū. What has transpired is a shame. I do know one thing. I made it clear a few minutes ago. I go walking through Kukui'ula. I have been stopped by someone on a golf cart. I asked the person on the golf cart if they have tax and license on the golf cart to drive around there and asked people if they have any business being here. The person panicked, because they do not. They do not, so you can have a picnic on the sidewalk if you want. I do not like it when big developers push out our community members from enjoying five (5) minutes to an hour of walking when they can live in their five thousand square foot (5,000 ft²) house. Thank you.

Council Chair Rapozo:

Is there anyone else? Go ahead.

Councilmember Kualii: Chair, could I just say that I appreciate that you are putting an agenda item on for March 6, 2024 so we can get into the details more.

Council Chair Rapozo: I was here. We went through that process with Kukui'ula for a really long time and they already had the entitlements to build a lot of units. They came for rezoning to create fewer, but bigger units. When they did that, the conditions were added. I am frustrated that it is taking this long to get some of these conditions done and I am kind of disappointed to hear that the County said it would not take land because they do not want to mow the grass, but we will find out on March 6, 2024, where we are at and why we are not expediting some of these conditions, because I think that we need to. Kukui'ula is growing rapidly. I just received an email

from a realtor, whose mailing list I guess I am on, and I receive one every week. He was just talking about three (3) big Kukui'ula sales. This was just within a two-week period. It was eight million five hundred thousand dollars (\$8,500,000) in cash for a three thousand nine hundred square foot (3,900 ft²) house. The other one is a three thousand two hundred square foot (3,200 ft²) house for eight million one hundred fifty thousand dollars (\$8,150,000) in cash. There is one that is three thousand eight hundred seventy-seven square feet (3,877 ft²) for seven million eight hundred fifteen thousand dollars (\$7,815,000) in cash. Of course, there is one in Hanalei. It is three thousand seven hundred six square feet (3,706 ft²) for seventeen million eight hundred thousand dollars (\$17,800,000) in cash. It is growing, but we will have it on the agenda on March 6, 2024 and we will go through each condition piece by piece. Councilmember DeCosta.

Councilmember DeCosta: Chair, this is only relevant to what you said. It is not relevant to this. When those houses are for sale for that expensive price, I do not blame them. It is being advertised at the airport. As soon as you get out of the airport it says, "Come buy the dream home on Kaua'i." Is that for me? Is that for local resident flying in and out of Hawai'i? I do not think so. I am sorry, Chair.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I just wanted to thank you. I had already put it on my list to ask for a briefing on this. I am really happy that we are going to have, I assume, the Planning Department come before us and I know it is a lot of work to attend all of these Planning Commission meetings. I am asked to go again and again and again. I go to a lot of them. I apologize for not noticing a layer the conditions. I want to also emphasize how important that is for institutional memory. We are lucky that you were here then, Chair. It helps for greater accountability when we are demanding or encouraging. There is a new owner since that time, so hopefully, we will find that this new owner will be generous, embracing of the community, and looking at how to do a fresh start. I appreciate what you brought up at looking at the listings, because that is constant. It happens nearly every week, if not in Po'ipū, then certainly on the North Shore, where it is double the cost.

Council Chair Rapozo: Is there any other discussion?

Councilmember Kualii: I have one more thing and I will just say it. It says, "For public beach parking in the Boyden's Pond area." I just want to tell the Administration that I would really like you to use the Hawaiian names for our natural places. It hurts me every time I do not see it. If people refer to it as that and so it is the only way they will know it, then use both names. Use the Hawaiian name and the other name.

Councilmember Cowden: What is the Hawaiian name?

Councilmember Kualii: I do not know, but find out. I will find out.
Thank you.

Council Chair Rapozo: Go ahead.

Councilmember DeCosta: You just triggered another thing.

Council Chair Rapozo: We are past the caption break, so we need to hurry up.

Councilmember DeCosta: When I look at this paper, I see that there are cars parked in parking lots. I see there are cars parked on the side of the road. There are no cars parked in this parking lot. I do not see a chain against it. What is your first name? I am sorry. You brought up a good point. I do not think local residents know they can park there, because they are not parking there right now.

Council Chair Rapozo: They know now.

Councilmember DeCosta: Go to the Hawaiian beach. Give it a Hawaiian name.

The motion to approve C 2024-35 was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. We will take a ten-minute caption break.

There being no objections, the meeting recessed at 10:42 a.m., for a caption break.

The meeting was called back to order at 10:55 a.m., and proceeded as follows:

Council Chair Rapozo: Can we have the next item, please?

CLAIMS:

C 2024-36 Communication (01/05/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Allstate Insurance Company as subrogee of Jeffrey Aguinaldo, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2024-37 Communication (01/25/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Hawaiian Telcom, for damage to their property, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2024-38 Communication (01/29/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by National Tropical Botanical Garden, for damage to their property, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2024-39 Communication (01/30/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Carol Kimura, for damage to her property, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2024-36, C 2024-37, C 2024-38, and C 2024-39 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to refer C 2024-36, C 2024-37, C 2024-38, and C 2024-39 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2912) – A BILL FOR AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 6, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO FINANCE

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2912) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 13, 2024, and that it be referred to the Committee of the Whole, seconded by Councilmember Carvalho.

Council Chair Rapozo: This is being introduced by Councilmember Bulosan. Councilmember Bulosan, would you like to go ahead?

Councilmember Bulosan: I want to start off by saying *mahalo* to the Council for allowing me to introduce this new Proposed Draft Bill for first reading. I want to *mahalo* the County staff, especially Allison, for assisting me with the Proposed Draft Bill, the Department of Finance, and lastly, the experts I have been working with over the last few months, and to the community members in looking at proposing this Proposed Draft Bill. Essentially, this Proposed Draft Bill is focused on and who it will benefit is our local people. The Commercial Property Assessed Clean Energy (C-PACE) program, which this Proposed Draft Bill is looking to implement in the County is in alignment with the County General Plan and the Hawai'i Clean Energy Initiative. It is focused on supporting our community in their efforts to build green infrastructure around very difficult infrastructure challenges that our community faces. This Proposed Draft Bill is looking to allow us to utilize the C-PACE program as the finance structure. We have a presentation by one of the experts shortly, so they can share exactly how this will function. Lastly, I want to say that we all know the pressing issues intimately. The biggest one is cesspools conversions. It is one of the biggest road blocks for local housing for our local residents, and they are just regular people. They are regular people who are trying to do the right thing to take care of the environment, use solar, do the things that will take care of our community in the long run and one of the biggest challenges is access to finance. This program will allow us to have better solutions to those challenges. I hope this body can look at those solutions as part of this Proposed Draft Bill and it can be passed today, so that we can get this to the Committee where we can work closely with the

experts and allow you folks to further craft it, if it needs to be changed, so that it can best serve the community. Thank you, Chair, for allowing me to introduce this.

Council Chair Rapozo: Okay. With that, we will have a twenty-minute presentation. We will go through the presentation and reserve questions for after the presentation. Please introduce yourselves and start your presentation.

There being no objections, the rules were suspended.

NONI TOLEDO: Good morning, Chair Rapozo, Vice Chair Kualii, and Members of the Council. Thank you very much for the opportunity to present this program to you. The program's name is C-PACE. My name is Noni Toledo. I am a consultant. We have Gwen Yamamoto, who works for the State in the Hawai'i Green Infrastructure Authority (HGIA).

C-PACE stands for Commercial Property Assessed Clean Energy, and it also has a "R" in Hawai'i, because it also addresses resiliency issues. It can finance resiliency issues, such as a hurricane or infrastructure structures. In 2022, the State passed Act 138, and what it does is it authorizes any of the counties to adopt this program. This program is completely voluntary for all parties involved. What it does is it provides for a special assessment that is an ad valorem assessment, so it is not affected by the actual property tax, but the assessment is levied along with the property tax to provide private capital, so there is no State money and there is no County money. There are private financiers who are willing to fund types of improvements for commercial properties that would help clean energy, mitigate greenhouse gas emissions, or provide structural infrastructure to shore up our aging properties. There is no impact to property tax at all and really what this private financing does is it provides a public benefit, because it does help the buildings become more code ready, it lessens insurance for the residents and the business owners. It is eligible for both new and existing commercial properties and if elected by the County, it can be serviced by HGIA, the State program, or the counties can choose to do it themselves. That is an option. However, in terms of what this Act 183 did authorize, it says that the county can adopt it and the county would need to adopt it by ordinance. As an example, in the City and County of Honolulu, they adopted the ordinance this past December, so they are very excited to start implementing very shortly. As an example, one of the key reasons that the City and County of Honolulu did it was because they had unfunded mandates that they put upon people and businesses. One of those unfunded mandates was that you must have fire safety standards, which is good for all of us. However, there is no way to access easy financing in order to put fire sprinklers in, for example. C-PACE can come in, provide private capital for those unfunded mandates, and do it at a very low cost and very long-term amortization to try to help make it more affordable. For instance, in the City and County of Honolulu, they are facing a large number of buildings that are uninsurable because people have stopped putting improvements because they could not afford it in the commercial buildings, so this really helps to fill the gap.

C-PACE got started in 2009. The reason that C-PACE got started is that the U.S. Department of Energy found that there is a real gap, again, in terms of this

financing of clean energy. What happens is when you are financing clean energy, the traditional model has been that is a piece of equipment, so the banks or the financial institutions will only finance it for eight (8) years to ten (10) years, so no one was taking advantage of doing energy efficiency, even though that brings the cost of running your building lower, because they could not get that affordable financing. They figured out they needed to get private capital involved in order to help finance this and to do it for a longer term, and the way to do it was to do special assessments along with the property tax. That is how this got invented and since then there has been two thousand five hundred (2,500) properties, over two billion five hundred million dollars (\$2,500,000,000) in funding nationally and thirty-six (36) states have authorized C-PACE, Hawai'i being one of the last ones to authorize it.

GWEN YAMAMOTO LAU: Who is the HGIA? We are an agency that is attached to the State of Hawai'i Department of Business, Economic Development & Tourism (DBEDT) and we were created by the Legislature to provide nontraditional financing for underserved ratepayers who are not able to get financing for solar installations. Our policymakers found that the early adopters to solar photovoltaic (PV) were affluent, and they were concerned that ratepayers that will be left holding the grid and supporting the aging grid infrastructure would be the underserved, low- and moderate-income households, small businesses, and nonprofit organizations. That is why we were created. We do this financing through an on-bill mechanism through the Hawaiian Electric Company's territories, so, unfortunately, we are unable to offer that particular program on Kaua'i, but we did that throughout the rest of the State. In 2022, we started expanding our mission to provide access to capital for small businesses and nonprofit organizations through our federally funded program, called the Hawai'i Small Business Capital (HI-CAP) Loan program. There are a couple of businesses that we were able to help get financing here to start their businesses on Kaua'i, then, of course, the C-PACE program. Finally, the Legislature approved an additional fifty million dollars (\$50,000,000) to us last year and the Governor just released the funds, so now we are able to finance Kaua'i rooftops with asset limited, income constrained, employed (ALICE) households, so we will be working with the Kaua'i community on designing that program.

What are the characteristics of C-PACE? Again, as Noni mentioned, it is voluntary. It is just another financing option for your commercial property owners on Kaua'i. The beauty of C-PACE is, unlike a regular bank loan, which is typically five (5) years to seven (7) years, maybe ten (10) years, C-PACE financing is stretched over the useful life of whatever is being installed. If it is a thirty-year fire suppression system, it is a thirty-year amortization, fully amortized. If they are installing a couple of different retrofits, what the C-PACE lender does is they blend the terms to maximize the repayment. What that does is it improves the cash flow for your commercial property owners on Kaua'i. One hundred percent (100%) of the cost, including soft costs, can be financed. It is non-accelerating, meaning that in the case of delinquency, only the amount past due and currently due is owed. Unlike a traditional bank loan, where when it is in default, the lender wants the entire bank loan paid off, in this case, it is non-accelerated. It is just what is past due and currently due. It is non-recourse. I am a recovering banker. Typically, banks prefer having personal guarantees for loans. Because of this financing mechanism, it is typically non-recourse or with no personal guarantee. Again, when the property is

sold, the obligation is transferred to the new owner, so it does not need to be born by the existing property owner. The reason for this is because the installation benefits the new property owner because it is on the property. Lastly, it does not interfere with the existing mortgages. Especially in today's interest rate environments, when it is very high, we do not want to have to refinance that first mortgage, because that will just bring up the capital cost for the entire project.

How does C-PACE work? That is a triangle of risk. At the very top of the triangle is the least risky area and that is where real property taxes are. C-PACE financing comes right underneath that, then the first mortgage, second mortgage, and equipment loans. As you go down the triangle, the risks increase for the lender. When the risk increases, the term gets shorter because it is riskier, and also the interest rate gets higher, so the riskier it is, the higher the rate. An equipment loan is typically higher than a mortgage loan. You see that C-PACE falls right below the property tax, and that is where it allows us to stretch out the term and have a lower rate than what they would get with an equipment loan. The right side is a capital stack of a traditional...this particular one is a new construction project, so a traditional construction project and a C-PACE construction project. With a construction project, the property owner would typically want to stuff as much as they possibly can into the first mortgage loan, so that would be sixty-five percent (65%). Inevitably, there might be a portion of the loan that cannot be put into the first mortgage and currently what is available to developers is known as mezzanine debt. Mezzanine debt is very expensive and it is very short-term. Then, of course, there is the equity of that property owner. C-PACE replaces the mezzanine debt. What it does is it brings down the interest rate of what would be in the mezzanine debt and it also expands or lengthens the amortization, so it lowers the debt service.

Councilmember Cowden: Could you explain mezzanine debt a little better?

Ms. Yamamoto Lau: Yes. There is the first mortgage loan. The first mortgage for any lender is the least risky, right? They are in the first position. Typically, though, a first mortgage needs to have a certain loan-to-value ratio in order to be conforming, so maybe it is eighty percent (80%) loan-to-value. If a project, especially now, if you talk to your developers, they will confirm that because of the pandemic, supply chain issues, and inflation, construction and development costs have gone up, so what might have been able to be financed in the first mortgage loan is now more costly, so the developer would want to get a conforming first loan mortgage, so they need to fit that box. Anything above that is what is called a mezzanine debt. It is a debt above it, and that is just a bridge loan to help them qualify for...because they need all the financing that they need to get in order for the project to move forward.

Councilmember Cowden: Okay.

Ms. Yamamoto Lau: Actually, there is a project on O'ahu that will be unable to go forward without C-PACE because they cannot cash flow it with the mezzanine debt. They need the Commercial Property Assessed Clean Energy & Resiliency (C-PACER) financing in order to make it cash flow.

Councilmember Cowden: Okay.

Ms. Yamamoto Lau: That was a good question. Thank you.

Ms. Toledo: This chart gives an example of some of the things that can be financed. The nice part about the legislation that was built into the State is that Gwen has a board, and as technology changes and advances, they can also include more types of technologies that help resiliency or help clean energy. In the middle of the slide, you will see that you have the typical energy efficiency—air conditioning (A/C), lighting, water fixtures, elevators, ventilation, windows—so, for instance, if it is a new build, the developer will take tinting on the windows, water efficient flow, water fixtures, and they will put all of that into a C-PACE loan, if it cannot fit into their first mortgage. The other types of things, which is really exciting, is the renewable energy, so you could do electric vehicle (EV) chargers for commercial buildings, rooftop solar, solar water heaters, battery backups, and those types of things. Of course, what we really need in Hawai'i is water conservation, so to be able to reuse the gray water, so that will help in a couple of ways in terms of conserving our water, but also to be able to water the surrounding area, for instance. Then one of the main reasons why C-PACE was looked at by Gwen and her agency was cesspools. It is such a huge problem, in terms of cesspool conversions, so, of course, you can convert cesspools...again, this is for commercial properties at this point in time, but that will be a huge help. Fire sprinklers, as I said, the natural disaster protection for hurricane clips, seismic retrofits, weather proofing, and foundation storm retrofits can all be included. On the next slide, you will see who qualifies as a commercial property. For agricultural, some of the components could be water pumps, refrigeration, and processing centers in order to comply with the new Federal food safety laws, so those types of improvements can also be financed through C-PACE.

What can qualify for commercial properties? I think it is important to note that a commercial property definition for C-PACE is very different than a commercial property definition for your property tax, because it is stated in this statute that a commercial property can be not just what we think of as commercial—hotel, retail, office—but it also can include multifamily dwellings that are five plus (5+) units, so it can help to support affordable housing and workforce housing. It can also help to support agricultural facilities, like I mentioned, as well as nonprofit facilities, so think of your educational institutions, your community associations that have formed a nonprofit organization, cultural centers, and those types of things. It could really help with social welfare types of facilities as well. At this point, the only thing that it cannot support is anything under five (5) units in a multifamily dwelling, so it cannot support a single dwelling at this point.

As we have discussed and as you can probably deduce, there are many benefits to the property owner for C-PACE. With the rising cost of energy, for which we, unfortunately, see no end in sight, if you put on some renewable energy and batteries, or energy efficiency, of course, that will help to mitigate the cost of energy. With the hardening for hurricane and safety, it will help to lower insurance premiums for the business owner. Often the cash flow can become positive even though they are expending for these improvements because you are lowering your cost of energy or you are lowering your insurance cost, it can help to pay for itself. The net operating

income becomes better and eventually the building can help increase in value. Like we said, it is a separate capital stack. It does not affect your first or second mortgage. Typically, what we have seen across the U.S. is it could cover about fifteen percent (15%) to thirty-five percent (35%) of a new build. If it is a retrofit to help shore up an existing building, it will typically cover one hundred percent (100%) of those approved types of improvements. Basically, what that will do for the business owner is to help increase the marketability to tenants, because their maintenance costs or their common area maintenance (CAM) costs can be lower and their rent can be lower. What is also very interesting to note is that since 2009, there have been zero (0) foreclosures on C-PACE, so it is a tried-and-true type of financing mechanism.

What are the benefits to the county? Why should the county even look at this? Of course, number 1, there is no investment by the county. There is no cost associated because it is not an obligation of the state or the county. It is all private financing. There is also potential. If the county wants, there can be servicing by HGIA, and that would include administration of the program, billing of the program, and collection for the program.

(Councilmember Kagawa was noted as not present.)

Ms. Toledo: The resiliency measures will, of course, improve the durability of the building and upgrade the aging assets. Any foreclosures would be paid by the capital private provider, so the financial risks are really on the private capital provider. Your property tax collection will always remain in first position. There is no risk to the county tax collections. In fact, if a business owner, for example, makes just one (1) payment and they intend for it to go to C-PACE, that payment has to be provided to the property tax instead.

Ms. Yamamoto Lau: For clarification on the property tax, in the statute, it says that the C-PACE assessment is inaudible or equal to the real property tax, however in our agreement with the counties, the real property tax of the counties will, of course, be senior to the C-PACE assessments. I just wanted to share that.

Banks and financial institutions maintain control. As you saw in the triangle, C-PACE financing assessment comes above the first mortgage, right? What will be required is the commercial property owner who wants to get C-PACE financing will need to have their mortgage holder—their lender—if they have a first mortgage, consent to the C-PACE financing, so the banks will always have control. They will be able to assess what is going to be financed, see how it affects their cash flow, and consent to the financing or not, if they do not want to do that. One of the other things in the statute as the bill was going through, the lobbyists for the bankers wanted to make sure that any local bank, if they wanted to participate and become C-PACE lenders, would automatically qualify. Of course, we included that because I would love our local lenders to also be in this C-PACE lending space. There are other banks nationwide that are benefiting from this. I think one of your testimonies comes from a retired banker who did, I think, ten (10) years of C-PACE financing. Again, C-PACE does not replace construction loan financing. As Noni said, in new developments, we can only do about fifteen percent (15%) to thirty-five percent (35%) because we do not

do the structures. We only do certain qualifying improvements. We do not replace the bank financing.

If you can imagine, it is also an economic stimulus for the state and as well as the counties. There was a study done on if there was fifteen percent (15%) of commercial property owners in Hawai'i did C-PACE, it could create jobs, save water, save energy, and also have a multiplier effect.

There are a number of shovel-ready projects statewide. One of the things we found when we were going to the City and County of Honolulu council is Honolulu has a lot of condominiums. I think Kaua'i has a few. It is not as much as Honolulu, but what the council of the City and County of Honolulu found was they have condominiums that were built pre-1975. Most of them were built in that era and they are in dire need of re-piping. Fire suppression systems is one thing, but re-piping is another thing. When we were going through the statute in Honolulu, we discovered that condominiums are not part, even if they are five or more units, because of the condominium statute they were not eligible for C-PACE financing. We actually have a bill going through the Legislature right now to make adjustments to HRS Section 514B, the condominium statute, so that as an option, condominiums can also get this financing for them. We have strong support from both the insurance industry as well as the condominiums.

What is required? Having the ordinance passed and a memorandum of agreement negotiated with and signed by the County and HGIA. With that, we will be ready to launch. Are there any questions?

Council Chair Rapozo: Thank you. The thing about the condominiums is interesting. Any condominiumized parcel, like some hotels, are not eligible?

Ms. Yamamoto Lau: Currently, they are not eligible. We are defining condominiums as six (6) or more units, because that creates the Association of Apartment Owners (AOAO) board, the governing board over the condominiums.

Council Chair Rapozo: Councilmember DeCosta, followed by Councilmember Kualii.

Councilmember DeCosta: I will share my time. I have so many questions. May I ask what the benefit is for you folks, because you have told me that there is a benefit for you? Your company started in 2022, you have Federal money, and you want people to use this and borrow this money. What is in it for you folks?

Ms. Yamamoto Lau: We are a State agency. Actually, the impetus of this whole statute started in January 2022 when the Chair of my board, who was the Director of DBEDT...by statute, the Director of DBEDT is my board chair. He came into my office and said, "Gwen, what more can we do for the State? What more can we do to help the public?" He also said, "We have a cesspool problem."

Councilmember DeCosta: What is the name of the board chair and Director of DBEDT?

Ms. Yamamoto Lau: At the time, it was Mike McCartney. He was the Director of DBEDT.

Councilmember DeCosta: Did he want to know what more can be done for our cesspool owners?

Ms. Yamamoto Lau: He challenged me. He said, "Gwen, what more can you, as an agency, do to help our public and help the State?"

Councilmember DeCosta: Did you say in cesspools?

Ms. Yamamoto Lau: He said we have a cesspool problem.

Councilmember DeCosta: But we cannot do cesspools for residential properties.

Council Chair Rapozo: Hold on. Let her finish.

Councilmember DeCosta: I am just trying to follow, Chair.

Ms. Yamamoto Lau: Actually, this bill was drafted over a weekend because it was January and the Legislature was going to start. We drafted the bill and we got it into the administration bill package. It was for both residential and commercial property assessed financing. During the course of the legislation going through the Legislature, we had to remove residential, because, again, the C-PACE lien goes above a first mortgage. With the commercial, we always said, "Commercial property owners, you need to get lender consent." That was always a condition in the bill. For residential, we could not require it for two (2) reasons. One is because there are so many residential loans, but more importantly, residential loans are commodities. They are sold and resold in secondary market, so if I said to a residential property owner, "You need to get consent of your mortgage holder," they do not even know who owns their mortgage anymore. They might know who services it, but the servicer is not necessarily the owner of the mortgage, because it was sold, so we could not require it and because of that, the banks and the credit unions opposed it and in order to move the bill forward, we had to take out the residential.

Councilmember DeCosta: May I ask another question?

Council Chair Rapozo: Sure.

Councilmember DeCosta: You focus on commercial properties. Let us say there is a commercial building, like our mall, which is owned by one (1) owner, and yet there are many small commercial businesses in it. Now, because you folks provide financing, the State can say, "You folks are going to convert to cesspool now. It is mandated, because we have a form of financing. It is C-PACE." Right now, it is not mandated to the point they want to mandate it, but there is no financing for our

people. Now, let us just say the owner borrows from you folks. By the way, is it a fixed rate or an adjustable rate?

Ms. Yamamoto Lau: It is negotiated between the lender and the property owner.

Councilmember DeCosta: Yes, but most loans are fixed rate for thirty (30) years, or an adjustable rate, which is fixed for your first year or two (2), and then it is adjustable. I am asking you folks if you know if it is fixed or adjustable.

Ms. Yamamoto Lau: It is mostly fixed. We are not the lender, right? It is negotiated between the property owner and the lender, but it is mostly fixed-rate.

Councilmember DeCosta: Now, the owner of the commercial building upgrades and that poor “mom-and-pop” shop that is renting in that place has an increase in rent because that person who owns the building needs to pay for another loan, because they already have the first mortgage, the second mortgage, and will now have a C-PACE loan. Can that person be moved out of the “mom-and-pop” shop because they cannot afford the rent?

Ms. Yamamoto Lau: Let me just address two (2) things. One is on the cesspool. Large-capacity cesspools for malls or other commercial properties are already outlawed by the Environmental Protection Agency (EPA). EPA has deemed large-capacity commercial cesspools as illegal and you will find...I do not remember seeing any on Kauaʻi, but I know there were recent fines last year on Oʻahu and Hawaiʻi Island where EPA fined the owners.

Council Chair Rapozo: They do that here.

Ms. Yamamoto Lau: Right, so the large-capacity cesspool is already illegal. On the other one, it would depend on the terms of the lease between the “mom-and-pop” and the property owner. It is whatever the terms of that lease are.

Councilmember DeCosta: I want to share my time with others. Thank you.

Council Chair Rapozo: Are there any other questions?
Councilmember Kualīʻi, followed by Councilmember Cowden.

Councilmember Kualīʻi: Maybe the time will come when you can move on to add residential, but on the commercial side, we have schools, nonprofit organizations, and hospitals. There is a lot of benefit to our community that ends up helping all our citizens. On the slide that showed C-PACE benefits for the county, it says, “No burden to the county to implement, HGIA will independently administer the program and service C-PACE loans,” and then the Proposed Draft Bill talks about reasonable administrative expenses. Being that HGIA clarified that it is an agency, so like an agency with the DBEDT agency, and it was established by law, did the law

also establish what the reasonable administrative expenses are? Are you capped out at a certain percentage?

Ms. Yamamoto Lau: The law did not, but what happened after the bill was passed is we created a permitted interaction group to design the program. Representing the counties in the permitted interaction group was the Director of Finance for Hawai'i Island. There are loan fees because...we are not part of the lending stack, so we receive no income from this. The loan fees cover our overhead administration to approve the loan. That is fifty (50) basis points. We also included twenty-five (25) basis points for the county, which is a little bit different from other programs that I researched, but both have a cap of twelve thousand five hundred dollars (\$12,500) and seventy-five thousand dollars (\$75,000).

Ms. Toledo: Is it seven thousand five hundred dollars (\$7,500)?

Ms. Yamamoto Lau: Seventy-five thousand dollars (\$75,000) for the loan fee for HGIA, fifty (50) basis points.

Councilmember Kualii: I do not know what that means. What is the dollar cost to the project?

Ms. Yamamoto Lau: Whatever the loan amount is for the project...

Council Chair Rapozo: For us non-mathematics (math) people, let us just say one hundred thousand dollars (\$100,000).

Ms. Yamamoto Lau: For one hundred thousand dollars (\$100,000) it would be half ($\frac{1}{2}$) of one percent (1%). That is the fee. For the county, it would be one-fourth ($\frac{1}{4}$) of one percent (1%).

Councilmember Kualii: Okay. Thank you. Thank you, Chair.

Ms. Toledo: Excuse me. I would like to clarify that when we said agricultural lots, it could be one (1) house on the Ag lot, right?

Ms. Yamamoto Lau: If it is zoned Agricultural.

Councilmember Kualii: Ag workforce housing?

Ms. Toledo: Yes.

Councilmember Kualii: It can be housing?

Ms. Toledo: It qualifies.

Councilmember Kualii: The big one for me, too, is the affordable housing.

Ms. Yamamoto Lau: Affordable multifamily housing is also eligible.

Councilmember Kualii: Multifamily?

Ms. Yamamoto Lau: Yes.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: HGIA is you folks, who prospects the market for who will be the lender?

Ms. Yamamoto Lau: There are C-PACE lenders. What we will do is enroll them into the program.

Councilmember Cowden: What does CPS mean?

Ms. Yamamoto Lau: Commercial, and "PACE" stands for Property Assessed Clean Energy.

Councilmember Cowden: You said C-PACE?

Ms. Yamamoto Lau: Yes.

Councilmember Cowden: Okay. You said you are going to the market to get the money. Is it state or federal money?

Ms. Yamamoto Lau: It is not state and county money.

Councilmember Cowden: Whoever prospects in the market is going to be lending the money?

Ms. Yamamoto Lau: It is just like banks. If the local banks want to participate, they will become C-PACE lenders. There are thirty-three (33) active programs nationwide, so there are C-PACE lenders nationwide.

Councilmember Cowden: They are nationwide and they are already...

Ms. Yamamoto Lau: They are already in the space.

Councilmember Cowden: ...in the space. Okay. Are these fixed rates or are they adjustable rates?

Ms. Yamamoto Lau: They are typically fixed rates, but it is really negotiated between the lender and the property owner. It is just like if they went to the three (3) local banks here and said, "I want a commercial loan." Each bank would give them a proposal.

Councilmember Cowden: Is there flexibility where they can be refinanced or paid early, if they want?

Ms. Yamamoto Lau: Again, it is not my money, so I cannot speak for them. Sometimes, there might be a short-term, five-year prepayment penalty and after that it can be paid off, but, again, it is all dependent on the negotiation between the lender and the property owner.

Councilmember Cowden: Is does it require approval of the first and second mortgage holders?

Ms. Yamamoto Lau: Yes, it requires the approval of any mortgage holders.

Councilmember Cowden: What about when a mortgage default occurs? Will C-PACE move forward with the property?

Ms. Yamamoto Lau: Yes.

Councilmember Cowden: Let us say there is a mortgage default and it goes up for auction, is C-PACE paid off or not?

Ms. Yamamoto Lau: The delinquent and current portions get paid off.

Councilmember Cowden: Okay, and you called that out there. What about conditions for loan reassignments when a property transfers, either when it is purchased or foreclosed? How does that loan reassignment happen?

Ms. Yamamoto Lau: One of the requirements of the property owners is to disclose that there is a C-PACE assessment. It will also be public because it will be recorded in the Bureau of Conveyances, just like a mortgage is. When the escrow closes for the new, the assignments will also be done at the same time.

Councilmember Cowden: Would it hold the same interest rate?

Ms. Yamamoto Lau: Yes.

Councilmember Cowden: The reason I am asking these questions is sort of lined up with Councilmember DeCosta's questions, because what I am a little sensitive to is once this is available, if building owners will become pressured to go with a C-PACE loan because you gave the example of when there is lack of insurance. Maybe someone cannot get their fire insurance, so that might be a point when they need to get a C-PACE loan, right? The part of me that asks, "What could go wrong?" because I am always asking that question, I just have a little bit of concern that this can drive the speculative market, right? If you go and look at an older building, they could get pressured to sell it or be inspired by someone who might want to say it and say, "You could get this, this, this, and this, it would be all ready, and then you can

sell is for x amount of millions of dollars more.” Have you seen that happening anywhere?

Ms. Yamamoto Lau: A couple of things. One is this is just another financing option that the property owner will have.

Council Chair Rapozo: It is voluntary.

Ms. Yamamoto Lau: It is voluntary.

Councilmember Cowden: I am worried it will not be.

Ms. Yamamoto Lau: Like when they go to First Hawaiian Bank, Bank of Hawai‘i, or American Savings Bank, the property owner will have to apply for the loan. They will need to want it. Unlike a bank loan, C-PACE does not finance everything. We can only finance energy efficiency, renewable energy, resiliency, and things that harden stability.

Councilmember Kualii: Safety.

Ms. Yamamoto Lau: It is not like if they want to do massive upgrades in their lobby...I do not know, I am making it up...that is not what we do.

Councilmember Cowden: That will not happen?

Ms. Yamamoto Lau: Right.

Councilmember Cowden: One of the things I was most excited to see here...I gave a couple stars...is converting mixed-use office retail to a multifamily project. I would say we have an excess of underused commercial space and we have a deficit of places to live, so if we had a big shopping center, may it would be able to put the piping underground. That is one of the reasons why you cannot shift it, so this would help with that?

Ms. Yamamoto Lau: On the mainland, there are a number of office-to-housing projects going on.

Ms. Toledo: In Honolulu, there are a couple that are on the way.

Councilmember Cowden: That is something that I see as some real potential. That one little, tiny thing caught my eye on page 5 of our Proposed Draft Bill. It is Section 6-16.7 Lien of Property: Term of Lien, and here it says it shall be a non-ad valorem special tax assessment. When they do this tax assessment, it is never going to be ad valorem, right? Is it just going to be on the value of the improvement?

Ms. Yamamoto Lau: It is non-ad valorem because it is not about the value of the improvement. The special assessment is only on the loan repayment. It has nothing to do with the value of the property.

Councilmember Cowden: Okay. Thank you.

Council Chair Rapozo: Is there anyone else?

Councilmember DeCosta: I have two (2) questions. One, and I am not sure if you mentioned it, but can a person lose his or her commercial property if they have to split between paying their first and second mortgage versus their C-PACE mortgage, and they are delinquent for three (3) or four (4) months on the C-PACE mortgage payment? Can they lose their property?

Ms. Yamamoto Lau: The City and County of Honolulu wants to outsource the entire administration, including enforcement, to HGIA because they are strapped for resources, like a lot of different agencies and departments, so we would typically follow the county's existing rules regarding when enforcement happens. It could be one hundred eighty days (180).

Councilmember DeCosta: Can they lose their property if they cannot pay?

Ms. Yamamoto Lau: They could, but they will probably be delinquent on their first mortgage or second mortgage, also.

Council Chair Rapozo: In other words, they would not lose it to C-PACE. They would lose it to the bank for the mortgage.

Ms. Yamamoto Lau: Yes. Again, because my amount is very small compared to the lenders.

Councilmember DeCosta: I understand that. I am just asking. This is another mechanism to borrow money. People will now want to borrow money. They will have a third loan—first mortgage, second mortgage, and C-PACE—and it worries me that some people do not have good financial knowledge and they could dig themselves into debt. The next question I have is we have a lot of large Ag lots on the island and these Ag lots are pretty much commercial. If you go to any large Ag land owner, it is commercial. I see here they now qualify for funding to do clean energy. It says here, "Solar farms." Is this a solar farm? What is this?

Ms. Toledo: Let me clarify that it is to improve the property, not to put a solar farm to sell to the grid. It is only for their own property.

Council Chair Rapozo: Do you know the seed or the sprout?

Councilmember DeCosta: I am sorry. I do not have my glasses on. Thank you. That worries me, because food security, everyone is going green, moving to clean energy, and growing solar panels instead of food. They are growing trees instead of food.

Ms. Toledo: That has nothing to do with it.

Councilmember DeCosta: I am sorry.

Council Chair Rapozo: Actually, that is a Manoa lettuce.

Councilmember DeCosta: Thank you. It looked like asparagus. Thank you. I am sorry for being a little passionate, but I am because this has been around for only two (2) years, so I am a little worried. I would like to see it prosper on another island before we jump in naked, take a dive, and say, "Let us go all-in on C-PACE," but that is just me.

Ms. Toledo: If I could go back to your first question that you just brought up. Could a property owner get into too much debt? The reason why you have lender consent for the first mortgage and the second mortgage and the reason why you have this...when you apply for financing, you need to qualify. The first mortgager and the second mortgager as well as the institution that is looking to provide that funding are all making sure that this business can afford it and it will never go above what they can afford.

Councilmember DeCosta: But there are always unintended consequences. Someone could be injured, then you get a lawsuit. It is the business. There are ways to lose your property if you are too much in debt. That is all I was asking.

Council Chair Rapozo: Councilmember Kualī'i, followed by Councilmember Cowden.

Councilmember Kualī'i: I think, too, in some instances, them taking out the C-PACE loan to put in the solar or energy efficient...it will save expenses overall.

Ms. Toledo: That is correct.

Councilmember Kualī'i: I went blank because I jumped to that. Come back to me, Chair.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I think I know the answer to this question. A commercial use of property is vacation rentals. I am assuming it would not cover a vacation rental because it is still ultimately a house with a home mortgage that has probably been sold with derivatives built on top of that, so it would not be for a vacation rental home?

Ms. Yamamoto Lau: It would depend on if your zoning is in a Residential (R) zone and if it has less than five (5) units.

Councilmember Cowden: A lot of them do.

Ms. Yamamoto Lau: That would not qualify.

Councilmember Kuali'i: I got it back.

Council Chair Rapozo: Did you get it back?

Councilmember Kuali'i: Yes.

Council Chair Rapozo: Okay, Councilmember Kuali'i.

Councilmember Kuali'i: The slide on the qualifying commercial properties. I think you were answering and you jumped in and threw a little something in there, and I do not know if it fully answered the new question. The first one says, "Five plus (5+) unit multifamily dwellings," so could it be rentals, affordable or not? If it is five or more, it can.

Ms. Yamamoto Lau: Exactly.

Councilmember Kuali'i: The second bullet point says, "Affordable and workforce housing," and it is just a general category. In that instance, would a single-family...

Ms. Yamamoto Lau: No. I think we were just trying to say it includes affordable and workforce housing in the multifamily.

Councilmember Kuali'i: Is it more a subset of the five plus (5+)?

Ms. Yamamoto Lau: Exactly.

Councilmember Kuali'i: That also needs to be five plus (5+)?

Ms. Yamamoto Lau: Right.

Councilmember Kuali'i: What were you saying about agricultural lands? Is it also five plus (5+)?

Ms. Yamamoto Lau: If it is an Agriculturally zoned property, then it is also included as an eligible property.

Councilmember Kuali'i: As far as the housing units...

Ms. Toledo: It is irrelevant.

Councilmember Kuali'i: You have this other category, "Agricultural facilities," but not agricultural workforce housing one (1) unit at a time.

Ms. Yamamoto Lau: If it is Ag zoned in the county's records, it is eligible.

Councilmember Kuali'i: Okay. I need to get this all cleared because I am the Chair of the Housing & Intergovernmental Relations Committee.

Council Chair Rapozo: Councilmember Carvalho.

Councilmember Carvalho: Following up on what Councilmember Kualii said and the same slide. You have four (4) or less homes on one TMK, and the residential part. I just wanted to clarify that again.

Ms. Toledo: It is not eligible.

Councilmember Carvalho: It is not eligible, right?

Ms. Toledo: Not at this point. If the State statute changes, then.

Councilmember Kualii: When the State statute changes.

Councilmember Carvalho: Yes, when it changes.

Ms. Toledo: You folks need to lobby for that.

Councilmember Carvalho: It does not qualify?

Ms. Toledo: No, not at this point in time.

Councilmember Carvalho: I have one more question and it was under the characteristics of C-PACE. It says, "Amortized up to the useful life of the equipment financed." Could you explain that?

Ms. Yamamoto Lau: It just depends on what is being installed. If they are installing a large-capacity septic system...

Councilmember Carvalho: Septic system?

Ms. Yamamoto: Yes, and the life is thirty (30) years. The loan can be amortized for thirty (30) years. If they are installing a solar system and the manufacturer's warranty is for twenty-five (25) years, it would be a twenty-five-year amortization repayment. The way you look at it is as compared to a traditional equipment loan that you can get, which is a repayment of five (5) years to seven (7) years, maybe ten (10) years. Take a million-dollar solar system and pay for it over seven (7) years versus a million-dollar solar system paid over twenty-five (25) years. The payment becomes smaller and more affordable.

Council Chair Rapozo: Who determines the amortization schedule? Is there a blue book for solar versus lighting fixtures versus A/C?

Ms. Yamamoto Lau: The C-PACE lender will determine that amortization. What they will rely on is the manufacturer. For the solar financing that I currently do, I look at the manufacturer's warranty for the solar rate. If it is twenty-five (25) years, I can go twenty-five (25) years. If it is twenty (20) years, I go twenty (20) years.

Council Chair Rapozo: You mentioned earlier in the presentation that not only do you get the longer amortization period, you are saying that the interest rate on the C-PACE loan is...

Ms. Yamamoto Lau: It is typically lower than an equipment loan. That is what we are replacing. Everything we do is equipment-type based.

Council Chair Rapozo: The bottom line is it is a much lower cost for the borrower or the company, and would it not immediately increase the value of the property with this new addition?

Ms. Yamamoto Lau: It will increase the value, and as Vice Chair said, it actually...on the mainland, a lot of them are limited to energy efficiency and renewable energy, and when you install these things, it actually reduces your bill, so you save money. The net effective is increased cash flow, better cash flow.

Council Chair Rapozo: Right.

Ms. Yamamoto Lau: Because we wanted to add large-capacity cesspools and things to harden a building—hurricane windows, re-piping in buildings—that does not generate cash flow, so ours is not so cut and dry, but it is necessary because if the pipes break for an apartment building, it will cost them much more to fix it.

Council Chair Rapozo: Is there anyone else?

Ms. Toledo: Chair?

Council Chair Rapozo: Yes.

Ms. Toledo: I am sorry. Some of the Members asked several times if it is a fixed rate or a variable rate. We have Michael Yaki on the line, who is one of the lenders. If you have specific questions in terms of...

Council Chair Rapozo: Yes, he is up next. We just wanted to make sure we asked our questions to you folks first. Do you have another question for them?

Councilmember DeCosta: Yes, sir.

Council Chair Rapozo: Go ahead.

Councilmember DeCosta: Thank you. You mentioned amortization over twenty (20) years to thirty (30) years. That is what most mortgages give a loan for, but when I look at how many cesspools we have across Kaua'i, which is about nine thousand (9,000), some of those cesspools are sixty years old (60) to seventy (70) years old and they are still working. Why can you not make an amortization loan for fifty (50) years to bring the price really low and they can pay a really small portion over a longer period of time? Why can that not be done for our people?

Ms. Yamamoto Lau: It is over the useful life of the equipment. Typically, it is twenty (20) years to thirty (30) years.

Councilmember DeCosta: Who says, "typically"? I know people with cesspools that are over seventy (70) years old. Who says septic systems only work for thirty (30) years? I think maybe the first septic systems that went in are for only thirty (30) years.

Council Chair Rapozo: These people are not the ones that set that.

Councilmember DeCosta: I am sorry, Chair.

Council Chair Rapozo: Let us be fair to them. They are presenting a program. They do not manage the program. There are some cars being driven around that are one hundred (100) years old.

Councilmember DeCosta: This is my last question. Every business looks at its target audience. Your target audience is commercial users. How many commercial users do we have on Kaua'i that do not even fit into this category, that are not large box stores and large hotels that will benefit from this program and do nothing for our community? I want to know how many "mom-and-pop" commercial businesses on Kaua'i would actually benefit? That is your target market that I am concerned about.

Council Chair Rapozo: I can answer that because I have had this discussion. I will not mention any names, but hospitals would be jumping for this. Hospitals would participate in this program, because they do not have the capital to improve their heating, ventilation, and air conditioning (HVAC) system. Hospitals...just because I already started talking and I think it will benefit a lot of the nonprofit organizations and the hospitals. To your question, I almost wish I had a business that needed to be put in a photovoltaic system. I promise to God I would use this program. I definitely would.

Ms. Toledo: One more thing, Chair. You brought up how it improves the building and that is one of the reasons why the first mortgager and the second mortgager agree. It is because it lowers the cost and therefore makes their mortgage more affordable to pay, but it also helps the value of their assets that they are holding the mortgage on.

Council Chair Rapozo: It changes the loan-to-value ratio, which makes it a much better loan.

Ms. Toledo: Exactly.

Council Chair Rapozo: Are there any other questions? If not, thank you. We will take the Zoom testimony first.

Ms. Fountain-Tanigawa: Michael Yaki.

Mr. Yaki: *Aloha.* I am Michael Yaki. I am the Senior Vice President of Petros PACE Finance. We are the country's largest originator of C-PACE financing, but I also have a couple of other things, which is I have written a lot of the C-PACE statutes and set up a lot of C-PACE programs across the country. In response to one comment earlier, C-PACE has actually been around for over ten (10) years. We have just had some trouble getting established in Hawai'i, but I actually tried in 2016, believe it or not, so I can answer a lot of questions about how the programs are doing. It is something that has been a benefit across the country. It creates jobs. As many of you talked about before, we are seeing the conversion of offices to housing. We are actually working on a few projects of that right now in some of the cities across the country. We do a lot of work with the smaller chain businesses that we see. It is something where, again, because of the lender's consent, you have really strong underwriting of the property. This is not something where we say, "They have this much equity in there and we can lend on that." It is very much like traditional bank underwriting, except it is done three (3) times. The first time is by the senior lender or lenders are on the property. The second time underwriting is done by us to determine whether or not this is going to be too much of a burden on them. The third is going to be by those lenders again to determine whether or not their position and our position is going to jeopardized them or not and they have full discretion under the statute to say no for whatever reason. If they think it is too close or if they do not like the color of the sweater I am wearing, they can simply say no, but the fact is that it is why there are no foreclosures across this country over three thousand five hundred (3,500) projects and three billion dollars (\$3,000,000,000) worth of financing. We did seven hundred fifty-eight million dollars (\$758,000,000) as an industry in California alone last year. We are looking forward to doing what we can in Hawai'i, but to quell sort of common fears or perceptions is that we would love for this to be all over the place in Hawai'i and we would love for it to be all over the place everywhere, but because of lender consent, we tend to go slow. It takes some education of property owners and their lenders to get this thing done, but we are very happy that it was passed in Hawai'i. We support the Ordinance, we thank Councilmember Bulosan for sponsoring this bill, and if you want to ask any questions about how this works, how the interest rates work, or how we calculate anything, I am here as a resource. I do this all the time. Also, I just want to say that I used to be one of you. For many years, I was on the Board of Supervisors for the City and County of San Francisco, so thank you for your service. I appreciate the good work that you do and how much time and effort you are putting into this.

Council Chair Rapozo: I have a question. Out of all the projects that you are aware of across the country, what is typically the most common improvement that is utilized or purchased with this financing?

Mr. Yaki: It is usually for energy efficiency. Usually, it is taking really outdated HVAC systems, heating and cooling systems, and hot water systems that are old and very inefficient. The newer technology reduces energy costs by one-third (1/3) to one-half (1/2) in both of these. You see that as the most common improvement in buildings across the country that people are utilizing C-PACE for.

Council Chair Rapozo: Are there any other questions for Michael?

Councilmember Cowden: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: You said if we have any questions, we could contact you. What is your contact information?

Council Chair Rapozo: We will get that offline, because I do not want the whole world to be calling you.

Mr. Yaki: It is on my testimony. It should be in your packet.

Council Chair Rapozo: Yes, we have it.

Councilmember Cowden: Could you tell me your last name one more time?

Mr. Yaki: It is Yaki. Y-A-K-I.

Councilmember Cowden: Okay.

Council Chair Rapozo: Councilmember DeCosta.

Mr. Yaki: It is on the left side of a lot of menus.

Councilmember DeCosta: Councilmember Cowden, are you done?

Councilmember Cowden: Yes.

Councilmember DeCosta: Okay, thank you. I have two (2) questions. You said you tried in 2016 in the State of Hawai'i. Why did they not accept your C-PACE offer at that time?

Mr. Yaki: There was a little education in politics involved with some of the interests in the Hawai'i State Capitol and it took until this time for us to convince them that we were not a competitive threat or danger to them. It was politics. It was not about actual policy. It was just politics.

Councilmember DeCosta: Okay.

Council Chair Rapozo: The bank lobby was just too strong. The banks and savings and loans institutions lobby was...

Councilmember DeCosta: Was it not the politicians themselves?

Council Chair Rapozo: No.

Councilmember DeCosta: It was the private lobbyists?

Council Chair Rapozo:

Yes, it was the lobbyists.

Councilmember DeCosta: You made a really important comment and it just now resonated. You said, "We really like to work with smaller commercial users." Does that mean you are not really working with smaller commercial users right now?

Mr. Yaki: We do a range. There is a chain of carwashes that we do in the Midwest. None of them are very big, but they have water recycling technology that reduces their water usage by ninety percent (90%). That is something that we have been financing all across the Midwest. There are other kinds of smaller multifamily dwellings, in the ten (10) to twelve (12), that are usually owned by smaller property owners that we do a lot of financing for, so it runs the gambit from large to small. For example, what we see in Colorado...and Colorado is a good example of where I think the Hawai'i banks and savings and loan institutions could be very instrumental is that in Colorado, the banks and savings and loan institutions account for forty-two percent (42%) of the financings and most of them are under one million dollars (\$1,000,000), and almost all of them are small businesses. They are actually using it for their own customer base. We are hoping that working with the local banks here...actually, my brother-in-law is a general counsel for one of the banks in Hawai'i...is to work with them to sort of educate them about how we work together on these and they can tap their own customer base to put in the type of energy savings that increased the value, and it increased the value of their investment in their property as well.

Councilmember DeCosta: You spoke about the financing. I am trying to understand this. Is the money coming from the Federal government or is the money coming from other lenders, like your brother-in-law?

Mr. Yaki: They come from private sources. Most of the capital providers...it is that we are actually investing in some ways on behalf of other people who are seeking these types of long-term, secured investments. Big money managers like to balance their portfolios. You have high-risk, derivatives, hedge funds, and whatever else. This is just a little bit short of bond financing. It is in that same sweet spot of lower interest and very high security, so you have life insurance companies, pension funds, and other things providing a lot of capital for companies, like mine, then the banks have their own source of capital from depositors, but there are no Federal dollars, grant money, or loan money that goes into this program. There are no state dollars in any of our programs across the country. This is purely private money, but the beauty of it is that because of the security of the assessment, we are able to mimic bond finances in many ways by being able to offer lower fixed interest over a longer term, which as the Chair has pointed out, makes it much more affordable on a yearly cash flow basis for businesses to invest in these types of improvements, achieve savings, and pass that on to their tenants, if they have tenants, but also to just help them make it through. We were very busy during the recession, because we were helping businesses try to change the nature of their debt structure to lower their annual payments so that they could survive the recession. They did and they are all thriving now, but that is just one example. We just really hope to...I have a special bond with Kaua'i, so I am really hoping that we can move forward here, because it is one of my favorite places in the world.

Councilmember DeCosta: That is nice. I have another question, because you brought up something else. You said, "Like myself." What do you mean by "like yourself"? Do you have a bank? Are you a money lender?

Mr. Yaki: Petros PACE Finance is a capital provider. We provide financing for C-PACE.

Councilmember DeCosta: Can you benefit from our adoption of this C-PACE program?

Mr. Yaki: I am sorry. What was that?

Councilmember DeCosta: Can the lender or the bank that you are involved with benefit from us adopting this?

Mr. Yaki: Yes.

Councilmember DeCosta: Okay. I got it now. We like Kaua'i as a favorite place. That was a good one for me.

Council Chair Rapozo: Are there any other questions for Michael? Michael, could you stay online for a little bit? We may have some public testimony. If you could stay online, we will call up the public, and then we might bring you back.

Mr. Yaki: Sure.

Council Chair Rapozo: Is there anyone in the audience wishing to testify?

BRUCE HART: For the record, Bruce Hart. There is not enough time in three (3) minutes for me to ask all the questions that I have and to make all the comments that I would like to make. I will do the best I can. I am onboard with Councilmember DeCosta. I share many of the concerns that he put forward. He asked one of the questions and it was answered. I want to know who the lenders are. Another question I have is, What risk is there in this program to the lender? Councilmember DeCosta brought up the risk to taking on more debt and in general I am not for taking on more debt. I think most businesses are too far in debt to begin with and I question the wisdom of if you have a first and second mortgage, that you would then take on more debt, even if the first and second mortgagers approved of it. I wonder why they approve of it. What is the risk to the C-PACE lender? Is there no risk at all? Are they not concerned with the risk that this business has a first and second mortgage, but they are taking on more debt? They also say there have been zero (0) foreclosures and I am wondering about it. How is that possible? Has there been zero (0)? I am wondering whether there is any risk to the lender and if that is why there has been...if Council Chair Rapozo and I have a business, we take this on, we already have a first and second mortgage, and foreclosure comes in, who pays C-PACE? I know what happens on the first and second mortgage with the bank. I do not understand a lot of this, so I want to express my concerns. Thank you.

Council Chair Rapozo: That is why I asked Michael to stay. I can try to answer those questions, but I will let Michael answer those questions. Is there anyone else in the audience wishing to testify? Would you like to come back up? You may as well stay right there. Could you state your name again?

Ms. Yamamoto Lau: Gwen Yamamoto Lau, Hawai'i Green Infrastructure Authority. I just want to stand on my written testimony in support, but I also want to address that gentleman's question of why someone would take it. Again, this is voluntary. It is not a mandate. It is just another option for commercial property owners. There is a small business owner on the North Shore of O'ahu. She has a large-capacity cesspool and the EPA is breathing down her neck because, again, they are just ready to fine her. She has a first mortgage on her property. I think it is about five hundred thousand dollars (\$500,000). It will take about one hundred thousand dollars (\$100,000) to change her cesspool into a septic system. Her business focused on tourism and during the pandemic she fell behind on her payments, like a lot of our businesses did, and so her credit is not as good as it used to be. More importantly, if she was to do this, the bank might look at refinancing her first mortgage to secure it the way the bank needs to secure it, but what will happen is for this one-hundred-thousand-dollar retrofit, she will reprice her five-hundred-thousand-dollar mortgage for a six-hundred-thousand-dollar mortgage in today's interest rate environment as compared to what she had before. That is why property owners are looking at this as another option for...again, it is an option, not a mandate.

Council Chair Rapozo: Thank you. Can you answer the question about the...Should I ask Michael? Yes, he is the lender. Michael, are you still there? I think you heard the gentlemen's questions about what the risk is and zero (0) foreclosures.

Mr. Yaki: When I was talking about how it mimicked public bond financing, I meant it in all the good senses in that it is a very high security and lower risk type of investment by any investor. For example, if the retirement fund of the County of Kaua'i buys sets of municipal bonds, that is part of their portfolio, because it is steady, a lower risk, and has a lower interest rate, but that being said, there are a couple of things. One, if, for example, a property owner cannot pay C-PACE, and as Gwen said, they usually also cannot pay their property taxes, the one unique feature of this that makes it less onerous is that unlike a mortgage, where if you miss a mortgage payment, if you ever had the misfortune of doing that, you get a letter saying if you do not pay this, your entire mortgage becomes due, so the entire amount that you borrowed becomes due and payable, in C-PACE, it is only the amount that you missed. That is important for the foreclosure issue because what will usually happen and what should happen is that the reason why lenders will say yes, because they analyze what their risk is to having C-PACE in front of them, and they analyze it in terms of what the risk to them is. The risk to them is only the amount of money that they did not pay on the property tax that is due, not the whole thing. If they borrowed one million dollars (\$1,000,000), it is only fifty thousand dollars (\$50,000) in terms of the payment, not the whole one million dollars (\$1,000,000). A senior lender will look at that and say, "I have ten million dollars (\$10,000,000) invested in this property. I will not lose it for a

fifty-thousand-dollar foreclosure sale. I will pay that off." That is why the foreclosure rate is so low. It is because the risk to them to just pay it off and adding it to their escrow to the property owner is a lot easier than losing the property that way. That is where that secured risk is. The risk to us, though...there is absolutely a risk, which is you need to be careful about how you underwrite. You cannot do the types of things that get you in trouble, because we are not a business. None of the C-PACE lenders...and there are about a couple dozen at most in the country, not including the banks, all of whom are potential C-PACE lenders, but the ones who are purely C-PACE lenders, like Petros PACE Finance, we do not do thousands of these each year where we can bank on the fact that one (1), two (2), or ten (10) could go bad. We are doing a couple dozen. Every one of these needs to pencil out, or as much as we can, make it pencil out. It is not a business where you can take a calculated risk because it is a huge percentage of your own portfolio versus ten (10) homes out of fifty thousand (50,000) that you underwrite. There is a risk there. We try to mitigate it as much as possible, but there is always going to be the chance that in some economic catastrophe, no one can pay anything and everything will go to heck, we will be part of that as well, and we acknowledge it like anyone else, but because of the way we are structured, we are a little bit more protected, but the way we are structured also means that we cannot do a lot of them, because lenders are always going to protect themselves first and unless they give consent, we cannot do anything. There would probably be fifty thousand (50,000) more deals on the table if we did not have lender consent, but because we do, because we have to pass that hurdle before we even apply to the program, it narrows the pool that we can do, but it still is growing, it is still expanding, we are educating more every day, we are working with banks more and more every day, and more and more banks are getting involved in it. Again, I think that Hawai'i banks are going to be very active in the program here, because they know their customers and their customers trust them.

Council Chair Rapozo: Are there any other questions for Michael?
Councilmember DeCosta.

Councilmember DeCosta: Michael, thank you for being honest. What I heard you say about taking a risk and doing twelve (12) or thirteen (13)...I think you said twelve (12) loans a year versus fifty thousand (50,000) like every other company...was a really honest thing. When you mentioned the crash, would that take you back to October 23, 2003, when investors across the country lost seven trillion dollars (\$7,000,000,000,000), to when the whole Fannie Mae and bank think collapsed? Is that what you were alluding to?

Mr. Yaki: Yes, pretty much. When the value of real estate just completely...

Councilmember DeCosta: Just a yes or no, Michael, because I have follow-up if your answer is yes. If your answer is no, then I do not have a follow-up. Is it yes?

Mr. Yaki: I am sure...yes.

Councilmember DeCosta: My follow-up to you is the reason it crashed is because too many banks were lending money. Are you one of those banks right now that will lend out money?

Mr. Yaki: No.

Councilmember DeCosta: Okay. I will accept that.

Mr. Yaki: First of all, no, because we are not “too many.” Secondly, we are governed by other banks and really, other banks do not like to do this. They understand it, some of them are willing to do it, but the percentage of them that are willing to do it on any number of deals is very low, because they want to protect their interest first, so it is only properties that really need the improvement, that this financing is really going to benefit them, and therefore, benefit the other lenders on the property. That is essentially who will benefit from this. Where it strengthens the value of the property by lowering the operational cost and lowering the utility cost, that is where it is going to go. We would love to see it more and we continue our growth. Our growth has been like this, but it is like a medium-sized fish in a very, very large pool, whereas before, we were little, little, tiny fish in a very, very large pool, so it is all relative.

Councilmember DeCosta: Thank you for that. I am done, Chair.

Council Chair Rapozo: Thank you, Micheal. Mr. Hart, you can come up for your second three (3) minutes.

Mr. Hart: Again, for the record, Bruce Hart. Again, following along with Councilmember DeCosta, the situation that comes to my mind is the 2008 crash. It ushered Barack Obama in. These types of investments tend to become quite large if they are successful. That is what happened in the housing market. I am not a financier. My focus is not upon this, but I am wondering where this could go. To go back to my original testimony, I, in general, do not encourage anyone—individual or business—to incur more debt. Whether it is a “mom-and-pop” or an individual living your own life, operate with as low a debt as possible. Debt is necessary sometimes, but make sure it is necessary. Thank you.

Council Chair Rapozo: Is there anyone else wishing to testify? Seeing none. Is there any final discussion? Councilmember Cowden.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Cowden: This is sort of in response to Mr. Hart. I am also someone who tries very hard to stay out of debt. I think the key thing on this

particular opportunity with the C-PACER lending is that unfunded mandate. That is the thing that becomes unbearable for many people. I actually wish this worked for houses, because so many of us are facing this unfunded mandate of moving from cesspool to septic system, and people cannot do things like add another room. There are so many ways that people cannot make it happen, but I understand why it will not work, but I think that is the real key thing here. As long as it would not be used to absolutely leverage someone into having to take a loan to be in compliance, I support it. It is one of those things that sounds too good to be true. Usually, those things are. Especially if he is just talking about twelve (12) loans a year and he has California in his corner, that is not very many loans. It seems like we should be having more of those. When I look at these old buildings, improving old buildings, and especially as we are looking at things like what the pipes are made out of and challenges like that, it is a way to retain old buildings. Also, what I would hope people in our community might be inspired towards doing is people who have a shopping center that has largely sat empty for the better part of five (5) years...there is a good handful of those around...that maybe those can be retrofit into housing in an area where it is really going to be solving the problem. This is just the first reading, but I definitely support what I am hearing so far. That is my perspective.

Council Chair Rapozo: Is there any other discussion?
Councilmember Kualii.

Councilmember Kualii: I felt it was a very thorough presentation today. I have been a supporter of C-PACE for a very long time, since it first came out, when solar panels were the cool, but somewhat expensive, thing to do and only rich people were doing it, and it was a way to help poor people. I am not sure why we did not already originally have it for solar. I think we tried, but here we are, so this is great and I am ready to go.

Council Chair Rapozo: Is there any other discussion?
Councilmember DeCosta.

Councilmember DeCosta: I think you folks did a good job presenting. There is no doubt about it. It was very educational. I think you folks were really honest and it was the honesty that you brought forward that really troubles me. I will not support this. I will state my reasons why. One, the people who need it the most are residential people, and they are not included in this. The only people included in this are commercial property owners. You folks did admit to doing twelve (12) loans a year. I want to know how many commercial businesses are local families that would benefit from this. Right now, it only looks like large commercial businesses will benefit. Three, our friend on Zoom, Michael, said he and his brother-in-law are lenders and that he loves Kauai. When I go into the local bank, the manager knows my sons because they went to school with the manager's daughter. When I go to the bank, I have family working as tellers or I have a friend's son or daughter working in

the bank. Those are family banks. I do not know C-PACE bank. They are not a Hawai'i bank. Four, they have been here since 2022. Will it hurt us to just wait and see how it affects another county before we jump headfirst into this? Those are my reasons why. This is the last one I want to point out to you folks. Mr. Bruce Hart brought up an interesting one, because I was in that housing market at the time. The people who did not qualify for the loans and lost their houses...I want to see in the audience here who are in my age group and took out a mortgage close to thirty (30) years ago went "belly-up" because too many people were lending too much funding that people could not pay back. I did not. We paid our mortgage, but we were one of the very few. A lot of people lost their homes. I do not want to see people lose their businesses, since it does not qualify for four (4) or less homes on a property. Thank you.

Council Chair Rapozo: Is there anyone else? When I went to refinance, I had options. I am a veteran, so I got to go to the Veterans Affairs (VA). Is the VA the same as a bank loan? No, there are some differences. There is no closing cost, but there is a VA fee, which is pretty significant. I almost fell down when they showed me that price. I said, "What the heck? I thought there was no closing cost?" This is not a closing cost. This is a VA fee, so you pay VA, but when you look at the terminal loan and you look at the much lower interest rate, the savings outweigh the extremely high price you pay for the VA loan. I see it as being the same way. If the local banks do not get involved with C-PACE, I will be very surprised. I would think that they would, but if I am a small business and I want to do some improvements on my property...again, I think to compare this to the crash of too many people lending money is apples and oranges, because those were people selling homes and writing mortgages for properties. This is for improvements. This is only for improvements. This is for a solar system on your roof or a cesspool conversion. This is not a five-hundred-thousand-dollar mortgage. No, we are talking about a thirty-thousand-dollar, a forty-thousand-dollar, maybe a fifty-thousand-dollar improvement. If you go to the bank, the bank is going to give you a seven-year loan at twelve percent (12%), I will say, "I am not doing that," but if I can get a C-PACE loan, maybe at the same bank, and I get a thirty-year amortized loan at six percent (6%) or seven percent (7%), that payment is something I will be able to afford. The first mortgage holder benefits because your value is going to be worth more now, which makes that loan more secure and much less risky of going down. It is a choice. The fact that you need to get lender approvals, no lender will say okay if you do not have the financial means to pay your one-hundred-thousand-dollar C-PACER loan. I love the fact that you folks added the "resiliency" aspect in there. I am being honest, but I do not think we will ever see the day when the Legislature will allow for residential improvements because the bank lobby is just too strong. Yes, I would love to see residential. I would probably take advantage of it, but we will not get that. We just will not. I am a realist, but this is an option. Like we do with the community facilities districts, where we put a special assessment, like we just did with all the bond financing we do for affordable housing, it is an option and it is a very low risk,

in this case, no risk to the County. It is very low risk to the first mortgage lender. All those people who invested in these C-PACE loans have a risk, but I honestly do not see...because we are not talking about large loans. We are talking about loans that have probably survived three (3) levels of scrutiny before being approved, and unless something devastating happens, guess what? If it is not a C-PACE loan, it will be a bank loan that goes under. It is the same thing. The risk is the same. I believe the overall benefit is we are improving our environment, improving our...that is how this came about, right? It was to be energy efficient and to make sure we have lower carbon footprints and all of those nice buzz words that politicians like to use. This is just one more tool. Unless I hear something completely different...and we all just came from the National Association of Counties (NACo) conference in Washington, D.C., we all got business cards from people who are in states that have the C-PACE program. I would suggest that before we speculate, we call and ask them how C-PACE is doing in their county or state, and get it from them. I honestly only see benefits. I think it is a good thing. After you presented this to us months ago, I have spoken to a couple of people who are interested. I could not explain the mechanics, because I could not really remember, but I remembered the basics, and they are all interested in participating. The most attractive part of this is the amortization of the terminal loan, so you can bring the payments down, so that businesses can afford it, because if they cannot afford it, they will not make the improvement. If they do not make the improvement, they do not make their business more efficient, their expenses are higher, and the loan-to-value does not change with the bank. I will definitely be supporting this today, and unless I hear something differently, that is going to be my vote throughout the process. Again, we will have a public hearing. Councilmember Bulosan, do you want to say something?

Councilmember Bulosan: Yes. Thank you, Chair, for your remarks, for everyone sharing your thoughts, for the difficult questions that were asked, and for the presentation. I just wanted to close by saying that in the initial intent of introducing this Proposed Draft Bill, I had two (2) local people in mind, two (2) local people who were born and raised on this island. One is the owner of Kaua'i Fish Express, the Tamagawa family. I grew up with him.

Council Chair Rapozo: He is my classmate.

Councilmember Bulosan: The 2004 Kaua'i High School graduate bought that business from them, and they were almost ready to close during the pandemic because they could not afford the challenges of owning a small business going through the pandemic. Had they had the opportunity with C-PACE, their lives would be much different, but the two (2) children are making sacrifices every day. One is a police officer at night and cooks for them during the day. He works two (2) jobs to survive. C-PACE could have helped them in the beginning when they were looking to convert some of these things to lower the cost of the business and better survive. I think of them. The second one I think of is Po's Kitchen. It is a local business run by a local

family. They have a property across the street. They have been trying to develop the property because they want to bring their two (2) children, who are living on the mainland, back home. They cannot afford to develop it because they cannot afford a traditional loan. They want to do things the right way. They want to hook up to sewer, do green energy, and do affordable housing, but because they cannot access something like C-PACE, they are just enough out of reach of making this happen. They want to do all local housing. I see this as a vehicle for them. For many other small businesses that I have spoken with across Kaua'i, this is finally the tipping point that might allow them to bring back their children, to hopefully allow the small business to stay within the family and have prosperity for the rest of their lives. Most importantly, fighting this whole challenge of keeping Kaua'i residents here and giving them the opportunity to have a chance. I see this as opening doors for local people versus keeping them shut. During the public testimony, I hope we hear more information from local residents and business owners, people looking to do mixed-use projects, and people looking to do affordable housing share some of the cool things that they are looking to do if this was available, and hopefully, we can tackle the things we want to address in the Committee meeting to make this bill even better and pass this as soon as possible, because every day local people cannot afford to live here and this will definitely help. Thank you.

Council Chair Rapozo: Go ahead.

Councilmember DeCosta: Chair, I think I may have missed something, because you said this does not cost the County anything, but they said that they are going to charge us one-fourth of a percent (0.25%). Are they charging us anything for this loan?

Council Chair Rapozo: If the County participates...you may need to come up to clarify. There is absolutely no cost.

There being no objections, the rules were suspended.

Ms. Yamamoto Lau: It is to give the County twenty-five (25) basis points in fees. The County will earn that as part of it.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember DeCosta: Okay. I want to support my colleagues. I really want you folks to change my mind. I am really excited to have our next meeting.

Council Chair Rapozo: If you can improve your power generation, put up solar, and save thirty percent (30%) on your electric bill...I am talking about businesses...it is significant. It is huge. In many cases, it is the difference in whether

you open tomorrow or not. Some people are behind in paying for their utilities. I had two (2) offices behind Līhu'e Shell right next to one another, and it was rough. When you get that nice letter from your landlord saying your CAM will go up fifty cents (\$.50), it is devastating, so I think any opportunities that our small businesses or large businesses, like hospitals, can utilize to save thirty percent (30%) is significant. It changes the future of that operation. Roll call.

The motion for passage of Proposed Draft Bill (No. 2912) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 13, 2024, and that it thereafter be referred to the Committee of the Whole was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, Kagawa	
	Kuali'i, Rapozo	TOTAL – 6*,
AGAINST PASSAGE:	DeCosta	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

Ms. Fountain-Tanigawa: Six (6) ayes, one (1) no.

Council Chair Rapozo: Before we adjourn, Councilmember Kuali'i is asking for a moment of personal privilege.

Councilmember Kuali'i: This is in regard to the item regarding the Dedication Deed of the parking lot and that ocean area across the parking lot we had earlier. Someone sent me a text message saying the name is Ekaha Bay. I have not confirmed it, but I received a text message saying it is Ekaha Bay. Thank you, Chair.

Council Chair Rapozo: You are welcome.

Councilmember DeCosta: I would like to chime in. It is still pretty early.

Council Chair Rapozo: We have rules to follow.

Councilmember DeCosta: I want to chime in on his statement.

Councilmember Kuali'i: That was my point of personal privilege.

Council Chair Rapozo: Go ahead.

Councilmember DeCosta: The Hawai'i State Legislators want to make Hawaiian language a language across all schools—public and private—and I see our Councilmember passionate about calling a bay by its Hawaiian name. We have *moku* signs that you put up for each *moku*. Come on. Let us get with the program. I am a non-Hawaiian saying we should honor Hawaiians.

Council Chair Rapozo: Okay. I will be sanctioned by the Office of Information Practices. With that, there is no further business and this meeting is adjourned.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 12:31 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a long horizontal flourish extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk