

# INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

Council of the County of Maui

## MINUTES

March 22, 2016

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

**CONVENE:** 1:35 p.m.

**PRESENT:** VOTING MEMBERS:  
Councilmember Elle Cochran, Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Stacy Crivello  
Councilmember Mike White (in 1:38 p.m., out 3:16 p.m.)

**EXCUSED:** VOTING MEMBERS:  
Councilmember Riki Hokama, Vice-Chair  
Councilmember Don S. Guzman

**STAFF:** Autumn Ness, Executive Assistant for Councilmember Elle Cochran  
Sarah Pajimola, Executive Assistant for Councilmember Elle Cochran  
Scott Jensen, Legislative Analyst  
Steve Selee, Legislative Analyst  
Raynette Yap, Committee Secretary  
Josiah Nishita, Deputy County Clerk, Office of the County Clerk  
  
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Tina Thompson, Council Aide, Molokai Council Office (via telephone conference bridge)

**ADMIN.:** David Goode, Director, Department of Public Works  
Kaala Buenconsejo, Director, Department of Parks and Recreation  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

*In the gallery:*

John Smith, Civil Engineer V, Department of Public Works  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works  
Robert Parsons, Administrative Assistant II, Office of the Mayor

**OTHERS:** Gretchen Losano  
Tulsi Greenlee  
Barbara Barry  
Sierra Knight

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

Sunny Savage-Luskin  
Steve Rodgers, Maintenance Superintendent for State Department of  
Transportation, Maui Highways  
Duane Sparkman, local landscape professional  
Jay Feldman, Beyond Pesticides (via Skype)  
Joe Jankauskas, CEO, Cutting Edge Formulations (manufacturer of Avenger)  
(via Skype)  
Stephanie Neimiller, Cutting Edge Formulations (via Skype)  
Sylvia Wu, Staff Attorney, Center for Food Safety (via Skype)  
Plus (8) Others

**PRESS:** Colleen Uechi, *The Maui News*  
Akaku Maui County Community Television, Inc.

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CHAIR COCHRAN: . . .(*gavel*). . . Will the Infrastructure and Environmental Management Committee please come to order? Today is March 22, 2016. The time is about 1:34 in the afternoon. Please silence all cell phones or any noise-making devices. And from here on out, for everyone, please speak directly and clearly into the microphone. We will be having multiple people Skyping in and all this stuff; so for everyone to hear what we're all talking about, it's really, really important today—everyday—to speak directly into the microphone very clearly, so we all can hear what's happening. I am Elle Cochran, the Chair. Excused is the Vice-Chair of this Committee, Mr. Riki Hokama; but present with us is Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR COCHRAN: Good afternoon. Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR COCHRAN: Thank you. And Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR COCHRAN: Aloha. Thank you, folks, for being here. Excused also is Don Guzman; and Council Chair Mike White will be joining us shortly. From the Administration, we have Director Goode of Public Works.

MR. GOODE: Good afternoon.

CHAIR COCHRAN: Aloha. And Director Buenconsejo of Parks and Rec.

MR. BUENCONSEJO: Good afternoon.

CHAIR COCHRAN: Aloha. And also Richelle Thomson of Corporation Counsel.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. THOMSON: Good afternoon, Chair.

CHAIR COCHRAN: Hi. From our Staff, we have Scott Jensen, Legislative Analyst; Mr. Steve Selee, also Legislative Analyst; Committee Secretary, busy handing out a lot of paperwork, is Rayna Yap. And in Hana, we have Ms. Lono; Lanai, Ms. Fernandez; Molokai, Ms. Alcon. And joining us for the very first time and it's her first rodeo, it is my Executive Assistant from my office, Autumn Ness, is joining us today for assistance. And we have a lot of wonderful, exciting people on the panel. And in front of us physically is State Department of Transportation Maintenance Superintendent, Maui Highways, Steve Rodgers. Aloha, thank you for being with us, sir. And a local landscaping professional, Duane Sparkman. Aloha, Mr. Sparkman. Thank you very much for taking your time to be here. And by Skype, we have Executive Director of Beyond Pesticides, Jay Feldman; CEO of Cutting Edge Formulations which is the manufacturer of Avenger, Joe Jankauskas; Cutting Edge Formulations, Stephanie Neimiller will also be joining us; and Staff Attorney for Center for Food Safety, Sylvia Wu. Eventually, they will be up here on the big screen below our clock there. Items, we just have one, one big item, Members, on our agenda, IEM-52, Integrated Pest and Environmental Management on County Property. And the Committee is in receipt of County Communication 16-37, from myself, Elle Cochran, referring the matter of integrated pest and environmental management on County property. And today we shall receive multiple presentations and discuss related issues to this item. No legislative action will be taken, Members, but a lot of information and awareness for us all to learn from. And at this point I will open the floor up for testimony. Anyone wishing to sign up, please do so at the table in our front lobby here. And please testify to the item on the agenda. You're given three minutes to testify, and please state name, organization that you may be representing. And I want to recognize Council Chair Mike White. Aloha, Chair.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COCHRAN: Thank you for being here. And let me check in with our District Offices. In Hana, Ms. Lono, are you there?

MS. LONO: Good afternoon, this is Dawn Lono at the Hana Office.

CHAIR COCHRAN: Aloha, thank you, Dawn. Do you have any testifiers?

MS. LONO: There's no one waiting to testify.

CHAIR COCHRAN: Thank you, Ms. Lono. In Molokai, Ms. Alcon, are you there? Ms. Ella Alcon in Molokai?

COUNCILMEMBER CRIVELLO: It's Tina.

CHAIR COCHRAN: Let me...oh.

MS. THOMPSON: Aloha. This is Tina Thompson –

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: Oh, it's Tina.

MS. THOMPSON: --at the Molokai Office, and there is no one waiting to testify.

CHAIR COCHRAN: Oh sorry. Thank you, Tina. Thank you for being there. And on Lanai, Ms. Fernandez, are you there with testifiers?

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

CHAIR COCHRAN: Ladies, thank you very much. And if you do get people come in for testimony, please notify our Staff here. Thank you, ladies.

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

CHAIR COCHRAN: At this point I'll open up the Chamber for testimony. Mr. Jensen, do we have anyone signed up?

MR. JENSEN: Yes, Madam Chair. The first testifier is Gretchen Losano. Ms. Losano will be followed by Tulsi Greenlee.

CHAIR COCHRAN: Thank you. Ms. Gretchen, you ready to testify? Thank you.

MS. LOSANO: Aloha, my name is Gretchen Losano, I am representing myself. I want to talk about true cost, because I think historically true cost has been mainly about numbers. And I think moving forward into a sustainable future, we need to start adding in the environmental costs of what our current practices mean. So I've written something out so I don't lose where I am. Okay, when putting together cost analysis of things that utilize multiple natural resources, air, water, land, et cetera, it becomes increasingly irresponsible to account for only the monetary cost of a procedure or product. Moving forward into a truly sustainable future which Maui has committed to through the Aloha+ Challenge, NextEra merger, and various other pending environmental projects, we must restructure cost analysis to account for the true cost of our behavior. Environmental degradation must now be taken into account as well, if moving forward using products that have been proven to be harmful to both the land and the water, as well as humans and animals. The cost of what those things take to recover must also be added to the monetary cost of said products. When you compare pricing using true cost analysis to include these tangible and measurable factors, the price of using products that are harmful to the environment becomes much greater than those which have no adverse effects to the surrounding environment. People have spoken about this concept as if it were somehow less important than monetary value of a chemical. In reality, the only responsible reality a governing body should be concerned about is the future. The future is considered equally, if not more, important than the present. Thank you.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: Thank you, Ms. Losano. You concluded? Members, any need for clarification of our testifier? Seeing none, thank you for your time.

MS. LOSANO: Okay, thank you.

CHAIR COCHRAN: Next testifier?

MR. JENSEN: The last testifier is Tulsi Greenlee.

MS. GREENLEE: Hello, aloha. My name is Tulsi Greenlee. Thank you for allowing me to testify today on this important subject. Thank you, Elle, for chairing and for caring so deeply about the environment. I strongly support the County stop spraying Roundup and other toxic chemicals on our roadsides and our parks, and where our children play and practice sports.

COUNCILMEMBER WHITE: Excuse me, could you bring the microphone closer to your mouth? Thank you.

MS. GREENLEE: I support more mowing and the use of an organic citrus product called Avenger, which the State Department has already switched to, as you know. Entire countries are banning the use or sale of Roundup. Examples are the Netherlands and Sri Lanka. Store chains are pulling Roundup from their shelves because of public pressure, and due to public health concerns. The European Environmental Committee just decided to reject the glyphosate renewal license as of last week, I believe so. Farmers are suing Monsanto because of family members' deaths attributed to Roundup. There's a woman on the Big Island who is a coffee farmer, and she is suing them because she believes that her husband died of cancer because of his constant, long use of Roundup. We have a lot of endangered species here in Hawaii. And they all need to be protected as well as we all need to be protected. Everything we spray ends up in our rivers, our oceans, and our aquifer. When we know better, we should do better. Thank you.

CHAIR COCHRAN: Thank you, Ms. Greenlee. Members, any need for clarification of our testifier? Seeing none, thank you very much for your time today. Any further testifiers, Mr. Jensen?

MR. JENSEN: No one at this time, Madam Chair.

CHAIR COCHRAN: Has any of the outer Districts called in for any testifiers on their behalves at this time, Mr. Jensen? No? Oh, is there someone? Anyone in the gallery wishing to testify? You may approach the podium and sign up after, or, however. Thank you, take your time, don't fall.

MS. BARRY: That's okay.

CHAIR COCHRAN: Don't trip.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. BARRY: Aloha.

CHAIR COCHRAN: Miss, identify yourself and any organization you may be affiliated with. You'll have three minutes to testify.

MS. BARRY: All right. My name is Barbara Barry, and I'm a registered voter here in Haiku. And I'm very concerned about the amount of herbicides that are put down onto our public parks and our highways. I'm a horticulturist. I've been a private landscaper for 30-some years. I did begin using herbicides for weed control, and found that I was not only risking my own health, but the health of the environment and people that might come into contact with that since I was doing a lot of commercial landscaping in downtown Seattle around the office buildings. So I became educated about how to manage a lot of these problems that I was dealing with in a fashion that was, you know, more in alignment with taking care of the environment and not exposing people to unnecessary harm through pesticide exposure. So when I've...since I've moved to Maui in the last couple years, I've been very appalled at how much of this glyphosate is used here, and how easy it is to control weeds and manage roadsides without the wholesale spraying of the environment and any people, children, pets that might come into contact with that. So I strongly support a holistic approach to this problem. And I know it can be done through proper mowing, weed whacking, using non-toxic herbicides when applicable and, you know, protecting the environment which is so precious to me. So thank you very much.

CHAIR COCHRAN: And thank you for your time. Members, any need for clarification? Yes, Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Thank you for your testimony. In your written testimony you make the comment "I made the transition to IPM with my clients 15 years ago." What does IPM stand for?

MS. BARRY: Integrated pest management.

COUNCILMEMBER WHITE: Okay, great.

MS. BARRY: Yes.

COUNCILMEMBER WHITE: Thank you very much.

MS. BARRY: Thank you.

CHAIR COCHRAN: Thank you for your time. Any further need for clarification of our testifier? Seeing none, thank you again.

MS. BARRY: Thank you so much, aloha.

CHAIR COCHRAN: And was there someone else who wanted to testify? Yes, you may approach the bench...podium.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. KNIGHT: Aloha.

CHAIR COCHRAN: I'm a judge here.

MS. KNIGHT: My name is...thank you. My name is Sierra Knight, and I am a resident of Makawao. And I come here today thanking Elle so much for taking this as something that is absolutely crucial for our County, and actually for our country. And so I'm really happy to testify in support of this, and really hopefully that you will take this so seriously. I also come to you as an educator. I come to you as a garden educator. I come to you with having worked with children and organic gardens for many years. And I know that this is a very important issue in terms of helping to teach our children, and to their future, that they can grow up in a very pesticide-free environment, because are already seeing how important that is in the food realm. And they understand that organic gardening is a healthy way for them. So, of course, the same would be that we create an environment that is also healthy for them. And we know that the studies that have come out recently against glyphosate as being a very powerful problem. We know that the studies that have been done have been scientifically verified. And so that even in the State of California, they are recognizing glyphosate is a probable carcinogen. We know this. This is not something that is questioned at this point. What we need is the action that's going to go behind this information. What we need is for our government to stand up for us, the children, the teachers, the promotion of health and wellness. And you have that responsibility, and I really...please take that seriously.

CHAIR COCHRAN: Thank you.

MS. KNIGHT: Please do. Thank you.

CHAIR COCHRAN: Thank you, Ms. Knight. And, Members, any need for clarification of our testifier? Seeing none, thank you very much. Do we have another testifier? Yes? Okay, you may come down and fill out your forms later. Is that right? Oh.

MR. JENSEN: She needs to sign her form.

CHAIR COCHRAN: Oh, okay, sorry. One moment. Ms. Knight?

MS. KNIGHT (*from gallery*): Yes, I have it.

CHAIR COCHRAN: Oh, okay, thank you. Thank you for filling out the form. Yes, you may proceed.

MS. SAVAGE: Aloha, my name is Sunny Savage-Luskin. And this looks like just such a fabulous panel. I'm really excited to start listening to what everyone has to say. I just wanted to say that after I had brought and submitted in some photos of spraying that I witnessed personally at Haiku School and at the Haiku Reservoir, I went and looked on the Maui County Parks and Rec's listing, and had no idea that there were 125. I

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

sat on the computer and counted 'em up. And it's really a significant amount of land that the County is managing. And so I wanted to frame it in this way that for most residents on Maui County, this is their point of contact with the natural world, and with the biodiversity that is unique to the island. And so being that it is such a powerful point of contact, I'd like to just bring to the Committee's attention one of the lenses that I see the world through which is as a forager. So I bring my family down to Hookipa, and through the seasons of time I'm watching the sea grapes, you know, the *Coccoloba uvifera*, if you speak Latin, scientific plant language, ripen. And, you know, they're sprayed year after year after year. And I watch that. And I know that's food that could be feeding my family. I go to Kanaha Park, and I watch the aweoweo, the, you know, *Chenopodium oahuense*, which is an endemic species that also has some edible qualities to it. And I watch that get sprayed year after year after year, in a place where it is so abundantly growing. I also go to Keokea Park. What a fabulous, dynamic interplay of, you know, grasslands meeting the forest. And I see the incessant use of pesticides there on multiple species of wild food plants and medicinal plants. So, you know, we've moved into this idea of manicured areas are what the general public wants. But I think the general public wants health and safety. And so I'm, you know, really excited about a possible panel of people who can provide real solutions and a real model for us to go by. So, you know, and I also just wanted to bring up this accountability factor. And it's so ingrained into our governmental structures. I mean I think of PCBs and, you know, insurance agencies were, you know, required to use PCBs. And I've seen the infiltration of glyphosate containing herbicides from Monsanto, and other pesticide and, you know, biotech companies pushing these products, and so it's become part of our policies. And I think like the previous testifier mentioned, we know that, you know, we've been lied to again, and that we have an opportunity to move forward. So anyways, I just, you know, I hope that the new vision...I'm hopeful where roadways and parks are kept clear through appropriate plantings and mulching techniques, mechanical management and emergency application of organic pesticides will also include a shift in the language and value we put on our wild food and medicinal plants in these public places. Imagine a place where Hawaiian traditional practitioners can gather food and medicine, people can walk their dogs at the park, and have their children play without worry of pesticide exposure. It is okay if it doesn't look so manicured. A healthy environment with manual clearing of trails and facilities is safe, giving people a beautiful connection point with nature, a place outside of their homes to connect with the natural world is satisfying...

CHAIR COCHRAN: Ms. Savage? It's at four minutes so, I mean, if you have that --

MS. SAVAGE: Sorry.

CHAIR COCHRAN: --in writing --

MS. SAVAGE: I do.

CHAIR COCHRAN: --can you...we could --

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. SAVAGE: I e-mailed it.

CHAIR COCHRAN: --disburse copies for you. Okay.

MS. SAVAGE: I e-mailed it and --

CHAIR COCHRAN: Okay.

MS. SAVAGE: --I have some copies.

CHAIR COCHRAN: Okay, so we have it. Okay, so sorry.

MS. SAVAGE: Thank you.

CHAIR COCHRAN: Not enough time to get it all out.

MS. SAVAGE: Thank you for your time.

CHAIR COCHRAN: But as long as --

MS. SAVAGE: And I really look forward to hearing...

CHAIR COCHRAN: --we have it in writing, we can...okay, Members, at this point do you have any clarification needed of the testifier? Okay. Thank you, thank you for your time. And anyone else in the gallery wanna come down? Seeing none then, Members, without objections, I shall now close public testimony.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COCHRAN: Thank you very much, so ordered.

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

**ITEM NO. 52: INTEGRATED PEST AND ENVIRONMENTAL  
MANAGEMENT ON COUNTY PROPERTY (MISC)**

CHAIR COCHRAN: And on to our item, IEM-52, Integrated Pest and Environmental Management on County Property. I would like to address the handouts that Ms. Yap has given to you. So, one, is a copy of a violation letter that was sent from Department of Ag to Department of Transportation. And I'm basically submitting this for the record. The letter of warning, like I mentioned, from Hawaii Department of Ag, Pesticides Branch, to Hawaii Department of Transportation, Maui Highways Division about pesticides law violations, and we do have Mr. Rodgers here to shed light on it. This letter clearly states that pesticides label warnings do not allow entry into areas

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

until sprays have dried, must be adhered to according to Hawaii Pesticide Law. Any violation by persons who knowingly violate any provisions of the Hawaii Pesticide Law may result in criminal action pursuant to Section 149A-41 of the Hawaii Pesticides Law. Hawaii Pesticides Law applies to all users of pesticides State, County, or private. And in light of this, it's clear that we obviously need to follow pesticide law to the letter, and perhaps, you know, look for alternate means to working in our parks and roadways. Item two that is handed out are actual legislation from other counties, and these are two counties in California who have restricted the use of synthetic pesticides on county property, except in cases of a public health emergency. And due to the Syngenta and Kauai ruling, it was determined that State preempts the County on all pesticide regulation. Even if that is true on private property, the case on appeal, these are examples of other municipalities showing that county maintains the right to regulate what it does on its own property. So Richmond and Irvine, California both have much stricter preemption laws than we do in Hawaii, and have moved forward, you know, in this aspect...in this respect. Sylvia Wu, who will be introduced later, will expand on this topic further during her presentation on County and State preemption. Item number three that was handed out is from the American Academy of Pediatrics, policy statement on pesticides. And it was just handed so let me just briefly quote something from it, Members, and the public. "Children encounter pesticides daily and have unique susceptibilities to their potential toxicity. Epidemiological evidence demonstrates associations between early life exposure to pesticides, and pediatric cancers, decrease cognitive functions and behavioral problems. Recognizing and reducing problematic exposures will require attention to regulatory actions on pesticides. Policies that promote integrated pest management will enhance safe use." So that's kind of these three handouts that had been put on your desk, and hopefully you folks can get to it, and read it in more detail later. At this time, Members, for your information, we will receive presentation from each of our panelists, and then open up the floor for questions, discussions after they have all concluded. That way we can kinda just roll through all the information, jot down notes. We have hard copies of their presentations, so you can make note and questions as we go. That way, you can refer back to them after the presentations have been done. So, with that, I believe I've laid down, I guess set the stage for us all. I'm gonna first turn to Mr. Steve Rodgers from State Department of Transportation, Maintenance Superintendent, on Maui highways. So Mr. Rodgers, thank you so much for being with us. I know you're a busy man. You got a lot of highways out there.

MR. RODGERS: Is it on? Oh, okay.

CHAIR COCHRAN: So thank you. The floor is yours.

MR. RODGERS: Okay, without going into too much history, our move away from the use of Roundup more or less began in 2012 when the Highways Department as a whole became acutely aware of our need for NPDES permits to spray near waters, National Pollution Discharge Elimination System. It's a Federal permit. And we all had to...we had a moratorium of all spraying for...it was a year while we digested what we were going to do. And in Maui's case we decided to drastically reduce the sheer area of what we spray and where we spray, which means many areas of Hana Highway will

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

never see herbicide again because we'd have to have a permit that's just way too complicated to manage. We determined we'd have to establish a department to manage it. So we decided to start to improve our processes so that we didn't have to spray as much. And I wanna try not to ramble here, but we actually had another moratorium after we restarted spraying in 2013 because of a violation on another island. We had to fall back again and decide if we were vulnerable to that. And then finally...through all this, we could see this controversy not going away, in fact getting worse. And that's when we made the decision to try and eliminate the use of Roundup, and finally in February of 2015 through...actually I can't remember how we learned of Avenger, but we made our first order. I had to modify the contract, and we made our first order, and since then that's actually all we've been purchasing, so since February of '15. And we've...we had some startup issues with it because you use it differently than Roundup. We have crews that have been doing things the same way for many, many years, and so we had some learning curve there. Not only that, in-house we've been guilty of spraying everything because it was easier. We'd spray tall weeds, we'd spray short weeds, we sprayed everything. And it's to the consternation of a lot of public. So it's been a bit of a long road to get us out of those old habits and become more efficient, and we're not done yet. I'm not gonna say we are. For example, this recent warning was about what's called reentry time in all these labels. In fact, all these products have a reentry time warning and that you can't let people contact spray while it's wet. Even Roundup has that. And we haven't actually completely solved that yet, because we spray miles of roadway. Not so much as we used to, but a crew does not stop moving and stand around once they spray. So how do you prevent someone from coming in contact with it? We...signage and other things can help, but I'm not gonna tell you we've solved that problem completely yet, and we're still working on it. As to cost, I did a little look at our cost data. I went back to 2007 actually, and yes, Avenger costs more for any given...and this might be true of other products which we haven't researched yet, but I looked at our history of spraying, and actually our peak year in purchasing gallons of product was 2007...no, 2009. We bought 565 gallons of a mix of Roundup and Garlon and other products, and then we had no purchases from 2012 to 2015. But and by that time we had a big backlog of weeds because we had had a long moratorium. But in 2015 we purchased the lowest...no, second lowest amount we ever purchased, we bought 360 gallons of product, of a product that you had to use more of. So that kinda is an indication that we figured out how to use less. And then as far as cost is concerned, our average cost per year for herbicides in general prior to 2012, our moratorium, was \$31,000 and some change a year, and since then, it's been \$21,700. So we somehow managed to...I sometimes can't even figure it out myself, how did we do that? But it's just through an overall change in focus. And to get to the personnel issues, our personnel at first, of course new things are hard, but they realized this is probably safer for me and my family and everyone. And they decided it wasn't such a bad idea, so they pretty much embraced it for the most part. And but to be...to state it most pragmatically, getting away from all the environmental issues and everything, this is a very controversial issue and it's not gonna go away. My personal opinion, and much like the tobacco issue didn't go away. We're a small crew with a big job and we work for the public, State Department of Transportation, we should not be in the controversy business. And so at its lowest level, stripped down of all the fancy

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

language, I needed us to be out of that controversy, so that we weren't confronted out on the street, out on the highways with the public angry at us for us doing our jobs. We needed to become part of the solution, not part of the problem, and not being in that controversy sure feels good. And I'm sure we're not done with problems, but I think that we are representing ourselves and where the taxpayer dollar goes more efficiently and better, and just by being out of that controversy. I can't tell you how many quality conversations I've had, long conversations I've had, with angry members of the public prior to this change. And that's pretty much changed now, which is a good feeling. I have way more details and history if anybody's interested. I didn't wanna bore everybody with it, but a lot of internal stuff that we had to go through around the NPDES issue and other permits. But that's the short version of what we're doing.

CHAIR COCHRAN: And, Mr. Rodgers, thank you very, very much, and, you know, getting straight right down to the point. And if there's questions, we shall be asking after all presenters. And next then, we'll be doing Sparkman. And he is a local landscaping professional. Thank you, Mr. Sparkman, for being with us today.

MR. SPARKMAN: Thanks, Chair. My name is Duane Sparkman. I moved here in 1995 from Texas. It was really kind of my deal to come in here, and I wanted to be an astrophysicist, but realized I couldn't go visit those places and wanted to get up in the mountains. So actually spent my life here doing a lot of volunteer work as well as restoration work with Auwahi as well as a lot of West Maui areas and East Maui areas. My passion, to be honest, is to do the right thing, be pono, plant pono, do everything correctly. And it's not just for me, it's for everybody here on this island. It's also for the future. It's very important that we do things right so that that way we set a precedent, set a model, for the people that are coming up behind us to keep that going, and if not, do things better. I'm an OSHA certified trainer, and they always tell us to do the best that you can, but then always do something better because that sets a better precedent. They never will complain if you do something better. They'll complain if you don't do it at all. I just want to let you know that I work at the Westin Maui Resort and Spa. I've been there for the past three years. Prior to that I worked for the Haleakala National Park for the Department of Interior doing restoration work, as well as out plantings and maintenance. Prior to that I owned a landscape company and managed 65 acres of oceanfront properties. It was my big...*my, my*, I took it upon myself to switch over and go organic, and get away from using glyphosates. Many herbicides actually going routes of...the people just really don't go. The industry here is wrong. The landscape industry here is wrong. They do it wrong here, and they need to start doing it right. They use way too much chemicals, and we need to get away from it. I use composting. I have gotten away from using heavy metal fertilizers. They all have an impact on our environment. And it's better that we use recycled goods that we can use sustainably here like Maui EKO Compost, that is part of our recycling situation we have at the Maui County facility. And I greatly appreciate the fact that we're doing that. I can utilize that material in my landscape because my plants will eat it, and I don't have to put that out into the ocean. So it's actually a really good thing. So, I mean really where it comes from for me is to do the best thing for the public as well as my employees. Me being in a 12-acre resort, I'm only 12

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

acres, I don't have what this guy's got. I don't have what you guys are up against with parks and the amount of parks you have to maintain. But on my 12 acres I do what I can. And I'm trying to set a precedent in the landscape industry to change the way that they do their work. Use less heavy metal fertilizers. Use less crazy chemicals. Those things stay in the water. The last research that came out of UH proved that the glyphosate can actually stay in saltwater for 310 days. That's almost a year that glyphosate can sit inside of saltwater, and have an adverse effect on humans, any type of invertebrate fish, as well as algae and limu. Those are all very culturally significant as we know. We're a very much a mauka to makai society, and we need to recognize that. Anything we do in the mountains has an effect on the ocean, and we need to reconnect that and keep that established. The best way to do this, to be honest, is gonna be a lot more manual stuff, looking at technologies. Also, it's really about timing and paying attention to your labels. Labels say exactly when to spray, and when not to spray. The situation has to be that it's organized and well thought out. It can't be just, oh boys, go out and spray today. The weather has to be taken into effect, the heat has to be taken into effect, the cold has to be taken into effect. All of these factors are on the labels of these materials, and that all has to be taken into consideration when it's time to use these products. I recently met with an individual from Syngenta, and he actually said he is not a big fan of overusing chemicals. Kinda shocking from a chemical guy. But his point is, you use the right amounts. There's reasons why they tell you to use the right amounts. These plants only take up so much, and then that's it. So the point is, don't overdose, because where is that overdose going? It's going into our water, it's going into our soil, and staying there for up to a year in some situations. So we really, really need to watch out with our protocols on a County level. I'm glad the State's already taken that step because as a landscape professional, we have to look at the people above us and see what they're doing, to try to emulate them and be better. It's kinda weird to come in from the private sector and try to tell you guys your job. Really, it should be you guys telling us what we need to do, to be honest. And I'm looking forward to getting more information from you guys telling us how to do our job better across the board. And this is across...I'm talking...I'm not talking about just commercial properties. A lot of it is private. There's no regulation on private properties. They can pour Roundup right into the ground, and nobody can say anything, and there's nothing we can do about it. So I'm not saying that we need to set legislation to stop that, what I'm saying is that it needs to be considered. Public areas, public lands, people using the wrong chemicals. There needs to be seriously almost a moratorium on some of the chemicals we even bring onto this island. In reading some of the labels and some of the chemicals that the County uses for certain lawns and areas, they're really used for golf course, and I know you guys go to the parks. And how often do you see it at golf course level? I don't. So I don't see the necessity to bring in certain chemicals that are to keep these parks at a golf course standard. They're very expensive, and they're highly toxic. When I first entered into the Westin as a manager, the first thing I did was went right to my chemical storage shed and eliminated everything out of that chemical storage shed that did not need to be there. Partnered with Hawaii Grower Products to say what can I do with these chemicals 'cause I don't want 'em on my property. They came and got 'em, and they disposed of them for me, okay. So it's one of those things where as a conscience individual, I wanna try make a change. So I'm just really, really

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

glad that Elle's allowed me to have a voice in this. So I thank you for that, and I'm really excited to see the State taking a big step to go the right direction. I really hope, I really hope the County can follow suit. And I know it can be done, it can be done. So, and that's all I have to say. Thank you.

CHAIR COCHRAN: And thank you for your time and willingness to come and speak to us today, Mr. Sparkman. Thank you so much. And the next person we have, our third panelist, we're gonna look to the screen here, I guess, Mr. Jay Feldman, who is Executive Director of Beyond Pesticides. And there you are, Jay. Aloha from Maui. Can you hear us?

MR. FELDMAN (*via Skype*): Aloha, thank you.

CHAIR COCHRAN: Hi.

MR. FELDMAN (*via Skype*): Thank you, Madam Chair and Members of the Committee.

CHAIR COCHRAN: Yes.

MR. FELDMAN (*via Skype*): I guess should I wait for the screen to come up, or the PowerPoint?

CHAIR COCHRAN: Oh, I don't know. Josiah, are we on? Yeah, bear with us. We're pulling up your --

MR. FELDMAN (*via Skype*): There we go.

CHAIR COCHRAN: --presentation here. And there you are.

MR. FELDMAN (*via Skype*): Great. Okay, so let me just by way of...

CHAIR COCHRAN: Jay, are you there?

MR. FELDMAN (*via Skype*): I'm here.

CHAIR COCHRAN: Okay, yeah...

MR. FELDMAN (*via Skype*): Well, thank you.

CHAIR COCHRAN: Okay, yeah, we couldn't hear you for a second.

MR. FELDMAN (*via Skype*): Thank you very much for this...okay. Thank you very much for the opportunity to be here today. I'm Jay Feldman with Beyond Pesticides. We're a national grassroots membership organization based in Washington, D.C. with membership in the 50 States, including Hawaii and Maui. And our organization advances pest management strategies that are not dependent on pesticides. So if we could skip to the first slide, please. A lot of our inspiration comes from Rachel Carson

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

and her landmark book, *Silent Spring*. And the important point...I'm not gonna read all these slides because we don't have time, but you have a copy of them I believe.

CHAIR COCHRAN: Yes, we have our copies.

MR. FELDMAN (*via Skype*): Great. Her...she is...her writing is rooted in scientific understanding of biological systems that are essential to sustainability. And that's what I'd like to talk about today. Next slide, please. She gave us a couple of concepts that I think are important as elected officials think about their role, or your role, in this issue that we're dealing with complex biological systems, and that much of what we're using in those systems, meaning pesticides, have not been...have only been tested against a few individual species, but not against living communities. And this is what Rachel Carson said in the '60s. It's still true today. Even at that time, she said we must make wider use of alternative methods. Next slide, please. So as we move through this presentation, I wanted to just share with you a framework for thinking about this as elected officials and as a community. We speak with a lot of city councils and county councils across the country, and we try to explain that the use of pesticides has to be considered in relationship to nature, understand chemical effects at the cellular level. Rachel Carson wrote about this in terms of resulting cancers, neurotoxic effects, genetic and reproductive effects, and insect and weed resistance. But most importantly, Rachel Carson gave us a framework for moving off the chemical treadmill of increasing chemical dependency. Next slide, please. Okay, so when we're talking about a pesticide, it's really important to understand that we're really talking about a formulation of chemicals that includes the active ingredient which isn't even always the majority of the pesticide formulation. So we, as decision-makers, need to understand what is actually in the product we're using. The active ingredient is listed on the label. The inert ingredients which are the balance of the formulation, they make up the solution, or the dust, or the granule, in which the active ingredient is delivered, and we don't get that information on the product label. In addition to that, there are contaminants and impurities. We see dioxin as an example of a contaminant, breakdown products that are often more toxic than the parent compound. Malaoxon is an example of a malathion breakdown product, nitrosamine compound. And then we also have metabolites, which are as well breakdown products that form as a result of exposure to the elements, whether it's air, water, soil or living organisms. Next slide, please. So that's the basis of what we're dealing with when we use the word pesticide. But we also have to understand that we are, as community members, wholly reliant on a Federal system of registering or reviewing these chemicals. And to understand why it's so important for local elected officials to engage on this issue, you really need to look at some of the inadequacies. And these aren't really inadequacies that I am identifying. These are documented in numerous studies, reviews by the General Accounting Office and National Academy of Sciences, and independent studies. So we have a number of key issues. I'm not gonna go in detail through all of them, but risk assessment flaws are one of them, conditional registration, which means that we don't have all the data before the chemical actually comes to market. You experience in Hawaii you experience the issue of experimental use permits, and I know you've debated that issue. Lack of efficacy, that is, do we know that we really need the chemical? And what does it

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

actually do? How does it perform? Are the labels adequate for enforcement? And then this issue of emergency exemption and special local needs. Next slide. So we could go through each one of these, but the bottom line here is that these are issues we all need to discuss at the community level because they raise a lot of issues around questions of, are these pesticides, and the label requirements, and compliance with the label, addressing the uniqueness of the island, of Hawaii, and the values of the community. The same is true when we get down to the standard of unreasonable adverse effects. That's the legal standard, and so that deserves a community discussion. What is reasonable for EPA may not be reasonable for Maui. Next slide, please. Okay, so we also have a number of complexities, and I think you can relate to this because you know that just by eating, breathing air, buying different product, that there are mixtures of things. We're not exposed to chemicals individually. We're exposed to mixtures, and yet we don't test chemical pesticides for mixtures with other pesticides, or with pharmaceuticals. So it's a deficiency. There's synergistic effects. We don't test for that. We don't get full information as I said earlier on the inert ingredients. We're not testing for endocrine disruption, which is a topic onto itself because these are chemicals where the dose makes the poison theory of toxic chemical exposure does not apply because we're seeing effects at minute doses that are not evaluated. We're also assuming 100 percent compliance which, as we know, there are accidents, there's failure to follow the label. And then there are a lot of arbitrary assumptions about additional margins of safety and uncertainties. Next slide. Next one. Okay, so...I'm sorry. Could you back up one? So the key thing to understand here is that most of what we see in terms of pesticide use is coming as a result of the U.S. EPA, okay. The Department of Agriculture in Hawaii is the primary enforcement agency, but typically, and this isn't unique to Hawaii, but the State does not really do additional reviews and assessments beyond that which EPA does. There are some exceptions to that. Next slide. And this, by the way, is why we need local involvement and why we think it's so important that, Madam Chair, you're addressing and Members of the Committee addressing this issue. When we look at the lawn pesticides, for instance, that are used, this is just a breakdown of what we have found from government records. So of the 30 lawn care chemicals, and we have citations on this, 16 are probable or possible carcinogens, 17 suspected endocrine disruptors based on the European Union review, 12 are linked to birth defects. You can see reproductive, kidney effects, and sensitization. Next slide, please. And when we talk about environmental effects, we see similar things. Now on Page 7 of the testimony, you can see the, or a written form of this, I guess it's also in the PowerPoint paper document you have, but we tried to do a little chart here of just quickly what we know about the chemicals that are used by the Parks Department. I don't have time to go through each one of these chemicals, but I'd be happy to talk with you at length about these. Next slide, please. And the same thing goes for the golf course pesticides that are used. Next slide. And the Public Works pesticide, I guess. Next slide. So these are the environmental effects. I mentioned the health effects earlier. Again, drawn from EPA registration documents, these are groundwater contaminants, toxic to birds, toxic to fish, and toxic to bees. Next slide, please. Thank you. And then environmental impacts. Obviously in Hawaii, we're concerned about aquatic microorganisms, amphibians, fish. The relationship to water is a critical issue for the County. Next slide, please. And you're probably familiar with the studies that are

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

showing this is found in nature, frog deformities that have been linked to a number of pesticides including atrazine, glyphosates, and other herbicides. Next slide. And then there's the issue of the butterflies, and the bees, and we can talk at length about the kinds of chemicals now that are being widely used called systemic chemicals, systemic pesticides, and the family neonicotinoids, which means that the chemical being systemic is taken up by the vascular system of the plant, and expressed through pollen, nectar, and guttation droplets. Next slide. So we set out to look at all the scientific literature on pesticide-induced diseases, and we did this because there's so much in the literature on the relationship between pesticides and cancer, in Parkinson's disease, in diabetes, in immune and neurological diseases, respiratory illnesses, and learning disabilities as well. So we now have a database. You can get on this database. I urge you all to look at it at Beyond Pesticides, and you'll see over 750 studies. These are epidemiologic studies, these are replications of real-world exposure, and it's pretty frightening actually. Next slide, please. So, you know, I'm not gonna go through...but there are these effects we need to look at. Next slide. Okay, so we are constantly, when we're talking to local officials like yourselves, we're constantly asking you as you make these decisions to do an independent assessment of whether, when you look at the Federal law and the State law by association, whether you feel that there's adequate review of pesticide efficacy, whether the labels seem realistic to you, the label information, and whether you feel that the regulatory agencies have sufficient information before they allow for experimental and emergency exemptions. Next slide, please. So when you look at what's going on in the U.S. and you compare that to what's going on in Europe, you'll see that other countries have taken more restrictive action on chemicals than we've done. And the two great examples are glyphosate where it's been classified by the International Agency for Research on Cancer as a probable carcinogen. This is really the strongest classification one can get from laboratory animal testing. And then we saw the suspension of neonicotinoids in the European Union. Next slide. I'm gonna defer all this to Sylvia who'll be speaking later about preemption, but again, you know, Hawaii is in an interesting situation where we don't have explicit preemption in the law, but an argument is being made that there's implied preemption. Next slide, please. And we did a little study which you can find on our website which explains the distinctions here, but again, Ms. Wu will address this later. Next, please. So we feel that the role of the local government is to incentivize the use of non-toxic systems. We'd like to see this done at the Federal and State level, but it's really within...in your hands to do this especially as it pertains to public property which is really under discussion today. We are...we want to sort of push back against the institutionalization of products and practices with acceptable risk, based on risk assessments with inherent limitations. So that takes some study. I recognize that, but there's a lot of independent literature to look at on this issue. Next slide, please. Next slide, yeah. So we've come up with a model that we think you can apply in Maui, and that's the really good news in this story, that we can talk about the problems, but we can also talk about solutions. And the solution we have is actually in Federal law, and it's called the Organic Foods Production Act, which establishes a natural list of allowed and prohibited substances that are compatible with organic systems. Next slide. And this is a result of that. An organic system has a richer soil, sequesters carbon, has a lot of microbial activity in the soil, beneficial fungi, beneficial bacteria, and that the soil cycles nutrients.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

Instead of adding synthetic fertilizers to parks and recreation areas and playing fields what we're doing is naturally cycling nutrients through the microbial activity in the soil. Next slide. And so you, you know, you see the results of this with improved soil quality. This is a study out of Washington State recently published. Minimization of energy use, increases in biodiversity, minimizing water pollution because of limited runoff, that type of dark organic base, organic material in the soil retains moisture and water, less leaching and runoff, minimizes pesticide residues, reduces worker exposure, improves ecosystem services, and equal or less cost in the long term while maintaining quality landscapes. Next slide. And this is the result. I mean you can't ask for more beautiful playing field as this one in Marblehead, Massachusetts where we have a very rich soil. We have a high degree of organic matter. We're cycling nutrients. We're retaining moisture, and we have a more resilient turf system that's more resilient to play. Next slide, please. So we believe that we can apply the organic framework to decisions on pest management, and we do this on a lot of levels. But the key thing here is that we have to, in the absence of Federal action and State action, we really depend on you as local elected officials to really get involved in this issue. Next slide. Now I'm gonna sorta shift to what's been going on around the country. It was mentioned earlier, Irvine and Richmond, are two really good examples of a city council coming together and having this discussion, and deciding that it could manage its public lands organically using a system of organic-compatible materials, but also adopting cultural practices, dethatching, aeration, overseeding, proper fertility through composted materials and compost teas, and building the system up in a way that is no longer relying on toxic chemical inputs. And Montgomery County actually references in their law, now this applies to private property as well 'cause they have not been preempted either by state law or by any litigation, they reference by statute the materials that are allowed under their Organic Foods Production Act. And they also launched an education campaign in which they're going to distribute, you know, information to the local community, PSA radio announcements, television, et cetera. Next slide. And we're seeing similar types of things in other communities, actually Takoma Park, next slide. And the next community, Ogunquit, Maine, both adopted ordinance that are similar to Montgomery County. Takoma Park is a little different in that it identifies a list of prohibited substances. Ogunquit, like Montgomery County, identifies a list of allowable materials. Next slide. Now, all of those three communities have authority, now they exercise their authority to restrict chemicals on both public and private land. The rest of these slides are in communities where they're simply looking at public land restrictions. And they, you know, they're all looking at this issue. They're debating it, they're discussing it. And they've come up with different approaches, slightly different. For instance, Greenwich, Connecticut has identified, again, a list of disallowed, or prohibited substances. Next slide. And then Camden, Maine, and the next slide, please, also in Maine, New Brunswick have also identified allowed materials. Next slide. And then Cuyahoga County, which had a similar discussion to what we're having today, took an IPM approach, but IPM has a decision making process which was defined as allowable materials defined as least toxic materials. And so it really doesn't matter what words we use. What's important is what definitions do we bring to those words. You have to be very careful with the integrated pest management term because it's not defined in law, and even when we do see attempts to define the term or the phrase, these definitions vary widely. But

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

Cuyahoga County came up with a pretty strong definition. The beauty of using the term “organic” is that we have a very clear definition in Federal law, and we have an ongoing process of evaluating new materials as they come online. So in a sense, the process of listing material that’s allowed on the national list of allowed and prohibited substances, does the work for the county. You can point to that list, and you can...it’s a public process by which the list is developed, and at that point you can refer to that list and reference that list by citation. Next slide, please. And of course I’m ending this section with the focus on Irvine because they just recently adopted this, and they said on their...during their hearing that this is a no-brainer. You know, we can adopt these practices. So let me...next slide. Let me try to share with you in a minute here, in addition to the growing number of communities across the country, which again is on our website. And you can see, I just gave you a taste of this. You can see what’s going on around the country. Next slide. What we’re trying to do with communities and developing a partnership around making this transition to organic, so we’ll go into a community or a county, like Maui, where the community’s committed to identifying target, or what we call pilot or demonstration sites, and we’ll take soil samples. And we won’t just look at soil chemistry, you know, and we won’t just look at nutrients, and we won’t just look at soil structure, sand, clay, silt. We will look at microbial activity which is called the soil food web, and in so doing we will be able to evaluate how we structure a program, advise your practitioners, the people you work with in the County, on carrying out a plan that focuses on soil health, feeding the soil to feed the plant. We’ll conduct a walkthrough. We’ll do the sampling. We’ll issue a questionnaire to identify current practices, and your expectations for the site as a community. And then we’ll prepare a report, and in that report provide actual practices, timing of practice, materials that are organic compatible with those practices, timing of application, cost of application. And in our experience, most of these programs are cost competitive with existing programs that you have in place. So we’re not selling anything, just to be really clear about this. We believe, and we’ve done this in a number of communities, this is the end of my presentation, that there is an incredible bank of resources out there to make this a reality. The resources can be brought to the community and we’d be happy to partner with you on this. Next slide, final slide. Which I’ll leave you with a Rachel Carson quote “Can anyone believe it is possible to lay down such a barrage of poisons on the surface of the earth without making it unfit for all life?” Thank you so much for listening to this. We appreciate the opportunity to be part of this... Thank you.

CHAIR COCHRAN: And thank you so much, Mr. Feldman. And I believe you have another handout that you gave us all.

MR. FELDMAN (*via Skype*): Yeah, I gave you actually a written summary of...not as long-winded as this one, but a written summary of the statement with a couple of appendices that will give you some of the history and background that, in our view, serves as justification for County action on this very critical public health and environmental issue.

CHAIR COCHRAN: Okay, thank you very much. And just briefly, Members and the public, on Page 3 of the handout if it’s...the title has “Beyond Pesticides” with the blue circle

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

and the dragonfly on it, and it does hone in specifically on resources available to us, Maui County. So in particular I think that page is very beneficial to us, and thank you very much, Mr. Feldman, for this.

MR. FELDMAN (*via Skype*): Oh, you're very welcome.

CHAIR COCHRAN: Lots of information.

MR. FELDMAN (*via Skype*): And thank you again for our leadership on this.

CHAIR COCHRAN: Yes, thank you very much for your assistance. And we shall move on now to next presenter, Joe Jankauskas, CEO, Cutting Edge Formulations, which by the way is the manufacturer of Avenger that we've been hearing a lot about this afternoon; and Stephanie Neimiller, also with Cutting Edge Formulations. So not sure...I guess Mr. Jankauskas will start? Or both of you will be onscreen and...okay. Well, the floor is yours.

MR. JANKAUSKAS (*via Skype*): Well, thank you, thank you so much for having us, and we hope we can add some good stuff to what Jay just brought up here. And...but I'm gonna turn it over to Stephanie because she's in control of the PowerPoint. And thank you again so much, and any questions you need, I'd be happy to answer.

CHAIR COCHRAN: Thank you. Ms. Neimiller, yes. The floor is yours.

MS. NEIMILLER (*via Skype*): Hi, everyone. Thanks for this opportunity that you're giving us to tell you about our alternative to synthetic chemical herbicides, Avenger. It's a natural herbicide that's nice to nature, but not to weeds. If you could bring up my PowerPoint.

CHAIR COCHRAN: Okay, we're on.

MS. NEIMILLER (*via Skype*): Awesome. It's popping up, here we go. Okay, next slide, please. We have Avenger Weed Killer. We're just gonna just give you the facts today. I'm gonna give you a brief overview. Avenger is a non-selective, post-emergent, which is an after growth herbicide, or weed killer, that quickly and effectively kills weeds, grasses, and broadleaves without causing harm to the environment. Our active ingredient is d-Limonene, which is citrus oil that naturally strips away the waxy plant cuticle causing the plant to dehydrate and die. We've done numerous university and independent testings to prove that Avenger is effective as synthetic chemicals, but it's also faster acting when compared against these leading synthetic herbicides such as glyphosate, or Roundup as most people know it. People are concerned about chemicals staying in the atmosphere. What we found with Avenger was not only does it work quickly to dissipate into the atmosphere, entirely biodegradable, and so it doesn't affect soil or groundwater. This is a patented product that's been approved for use by the Organic Gardening, a division of the USDA's National Organic Program. It's also been listed by the Organic Materials Review Institute, OMRI, for organic use. So our products have been used on organic farms, organic...losing my mind

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

here...organic flower growers to really, so it does not impact on the environment. Next slide please. So what is d-Limonene? I'm gonna go through this pretty quick. You all have a handout, so you can read this more in depth. But basically d-Limonene is found in over 300 fruits, vegetables, herbs and spices, and the major component of the oil extracted from citrus rinds. How they do this when citrus is squeezed for juice, a layer of oil remains on the top of the juice. That oil is d-Limonene. They continue this process by taking the rinds to a steam extractor. This extracts the oil from the peels as well. This creates a technical grade d-Limonene. Today d-Limonene is used widely in commercial and industrial cleaners because of its effectiveness as a degreaser. It's also used in full strength as a biodegradable and natural solvent. So you'll find d-Limonene in soaps, in your food, lotions, mouthwash, and perfumes. And most recently, a lot of natural pet products are using it for flea and tick control. The use of d-Limonene in its natural state has contributed to making Avenger a safe, highly biodegradable, non-selective, post-emergent weed killer with no negative side effects to the earth's soil, water supply, animals, or people. Next slide, please. So here's where you find d-Limonene, in grapefruit, lemons, limes. That's primarily where you get it. The Avenger product is made up of water and 17.5 percent d-Limonene. The remaining ingredients are proprietary non-toxic and safe surfactants to help dissolve the d-Limonene in water. Our concentrate formula, which contains 70 percent d-Limonene, but then it's diluted down one part Weed Avenger to six parts water. Although we have a new formula that's about to come out that is gonna be able to be diluted down even further, and still be as effective. Next slide, please.

CHAIR COCHRAN: Oh, hang on. Ms. Neimiller --

MS. NEIMILLER (*via Skype*): Sure.

CHAIR COCHRAN: --you're kinda going in and out, so I'm not sure...your audio, so I'm not sure if maybe need to be really on the microphone. Yeah, I'm not sure.

MS. NEIMILLER (*via Skype*): I'll move a little closer.

CHAIR COCHRAN: 'Cause you are kind of fading in and out, and also I don't know if Joe has your audio...his audio on, and maybe it helps if that's muted. I'm not sure. Mr. Nishita, do you think...yes? Okay, and maybe that'll help. But, yeah, please carry on.

MS. NEIMILLER (*via Skype*): Okay.

CHAIR COCHRAN: Thank you.

MS. NEIMILLER (*via Skype*): People wanna know if d-Limonene is safe. With the growing concern for our environment, Cutting Edge almost 12 years ago, accidentally stumbled upon how d-Limonene could be used for...as a weed killer. Joe had a lawn care service, and one day the chemicals just become too much for him. So we started looking for a natural product. He was using a natural product with d-Limonene to clean his car, and it spilled over. And it killed some of the grass, and so he put two

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

and two together. Now he doesn't want to kill the grass, he just wants to kill the weeds, so he went to work finding a way to make this work for weeds to keep it on the leaves. So that's how he came up with the surfactants. We worked with numerous specialists from around the country in different universities. They helped up devise this formula. Now d-Limonene being safe. The FDA classifies d-Limonene as Generally Recognized as Safe, or GRAS, and there's essentially no measurable toxicity for certain uses. The EPA states d-Limonene is practically non-toxic to birds, fish and mammals and is also highly biodegradable. We went another step. We submitted our product to OMRI, and we achieved OMRI-listed status, which means that organic growers can use our product on their crops and around their buildings, around their animals. So we really covet that listing. We also got approved by the EPA under their USDA National Organic Program. Next slide, please. Now Avenger Weed Killer is approved for use in organic gardening, or with our RTU in our concentrate. We also have an agricultural version that is approved for use for organic agriculture. The...Avenger carries the caution warning which is the lowest verbiage allowed on pesticide labeling. Now d-Limonene can cause slight eye irritation, like if you were to squeeze a lemon and get some of the juice in your eye. It can be an irritant. It also can be a slight skin irritant for those who are sensitive to citrus oils and juices. It may be irritating when inhaled due to sensitivities or allergies in high concentrations. We have people ask us all the time, if Avenger Weed Killer is a safe, organic product, why does the label say, "harmful if absorbed through the skin," or "flush skin 15 to 20 minutes," if it's safe to use? Bottom line is d-Limonene is a very effective degreasing agent. While it's organic and safe for the environment, it's also powerful and care has to be taken when handling any strong substance. One of our favorite features of d-Limonene that we get some of other contractors when they spray it, there's a pleasant citrus aroma instead of a chemical smell. Next slide, please. Okay, so we told you what we know about the product. In 2005, the EPA did a special review on d-Limonene. For risk characterizations, they say that d-Limonene is expected to rapidly vaporize from dry soil, wet soil and water, therefore exposure through the drinking water routes is considered very unlikely. Going into your drinking water considerations, d-Limonene is only somewhat soluble in water, and has an estimated octanol/water partition coefficient of 4.2, which means that it's expected to rapidly vaporize from water to the atmosphere with an estimated half-life for vaporizing from a model river of 3.4 hours. Now what we found in our product is that it dissipates, vaporizes into the atmosphere anywhere from 1 to 2 hours, depending on climate. Next slide, please. The environmental fate/ecotoxicity, again they went through and tested it through water. They found it to be rapidly vaporized from both dry and moist soil to the atmosphere, and although adsorption to soil may attenuate the rate of this process, which means it weakens the process. So as you can see . . .(inaudible). . . d-Limonene is safe, well practically nontoxic to birds, slightly toxic to freshwater species, both fish and invertebrates. But it's also shown that d-Limonene is practically non-toxic to mammals. Next slide, please. What other ingredients are in Avenger? Well, the remaining ingredients, besides water and the d-Limonene are just proprietary non-toxic and safe surfactants to help dissolve d-Limonene in water. What Avenger doesn't contain is glyphosate, corn gluten, acetic acid, no vinegar, no fatty acid, salt or synthetic chemicals. Avenger also doesn't contain any GMO ingredients.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

In fact, to be considered for its National Organic Program and for OMRI, it could not contain any GMO ingredients. Next slide, please.

CHAIR COCHRAN: Ms. Neimiller?

MS. NEIMILLER (*via Skype*): Yeah.

CHAIR COCHRAN: You're only at like your halfway point, and you got a lotta slides going on here, so --

MS. NEIMILLER (*via Skype*): Right.

CHAIR COCHRAN: --just a warning there 'cause --

MS. NEIMILLER (*via Skype*): We're gonna...

CHAIR COCHRAN: --we're gonna...yeah.

MS. NEIMILLER (*via Skype*): Okay, we're gonna fast forward here.

CHAIR COCHRAN: And you're still...I'm sorry, but you're still going in and out so I think...I know people are having a really hard time hearing and deciphering 100 percent what you are saying right now. Is there a way to shut down your end of the video, I guess? That way it can free up some bandwidth on our behalf, and maybe it'll clear stuff up?

MS. NEIMILLER (*via Skype*): Sure.

CHAIR COCHRAN: Sorry. I mean it's...yeah, never did this before, so sorry, just trying to work through the kinks here.

MS. NEIMILLER (*via Skype*): Not a problem. Is that a little better?

CHAIR COCHRAN: Okay, cool. Yeah, continue talking.

MS. NEIMILLER (*via Skype*): Okay, so...

CHAIR COCHRAN: I think so. Yes.

MS. NEIMILLER (*via Skype*): We explained that Avenger works by stripping away the plant cuticle of the weed, grass or broadleaf causing it to dehydrate and die. What's also great is it works down to conditions of 40 degrees Fahrenheit. It does not have to be a hot sunny day to work, although that is ideal situation. Another bonus of Avenger is that it can be planted within two to three hours after application, or after it dries. And through a half-life process, Avenger dissipates and turns into CO<sub>2</sub> after it is dried; this also prevents seepage into the ground. Next slide, please. With the economics of weed killer, our weed killer, we dilute down 3 to 1. I mean, compared to other natural weed killers or synthetics, we dilute down 7 to 1, which makes Avenger more economical

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

than other weed killers. Next slide, please. Why offer Avenger? Plain and simple, it's safer for the environment. It's not gonna hurt your pets, wildlife, seep into the ground or water. Next slide, please. And again, you've just heard some of the things, you know, the other pesticides that are linked to cancer, et cetera. Next slide, please. I'm gonna show...go to next slide. You can look this over in your handout. This compares some of the MSDS comparisons with us and other popular herbicides. Next slides. These are our general comparisons. As you can see, we're EPA-registered, OMRI-listed, approved for organic use, we've won awards for best acting, proven and tested, non-toxic, and we also smell good. Next slide. Well, the proof is in the testing. Next slide, please. And you can peruse through this. Next slide. You can go to Slide 22, please. Okay, this was a test done in Florida, and I believe that there are ten examples of different weeds that they tried this on. Each time you find that Avenger beat the glyphosate product hands down. Can you go to Slide 33, please? Next is an example that was done in 2005 in France. Next slide. And again, you can see our Avenger at different percentages still outperformed a glyphosate-based product. And can you go to 43? Now you need more proof? Next page, please. This is some examples...this was done in Yuba City, California showing untreated versus treated with Avenger. And can you go to the next slide? And the next slide. And again you can peruse these in your handout. If you can go to Page 55. Okay, stop there. Yes, we like to brag. Avenger was the first organic weed killer to be invited to a SafeLawns.org project on the Washington's National Mall. They used Nature's Avenger...I mean Avenger to breakdown all the weeds, and within an hour they were able to turn it back under the ground and replant. Next slide, please. In 2008, we also won the coveted Green Thumb Award for innovative products that work organically and help the environment. Next slide, please. And we're even going global. Currently Avenger is being used in countries that have banned glyphosate, such as Japan, down in Brazil, Mexico, other South American countries, and across the U.S. Next slide, please. And just to recap, we finally hit our stride. People around the country and around the world are taking serious consideration as to the condition of our planet, and the many chemicals which are proven detrimental, not only to the environment, but to all inhabitants. We hope that we have given you an alternative that will not hurt the environment. As you can see, we're EPA-registered, OMRI-listed, approved for organic program, made here in the United States, and you can spray areas that can be planted within hours. It's made from natural products, and as I stated before, nature knows what nature needs. So that's why we recommend our product. Thank you so much for this opportunity to present, and I'd like to end with a quote that is near and dear to my heart. If we can...oh, now I forgot. So much for trying to be poignant.

CHAIR COCHRAN: Okay, Ms. Neimiller. Well, you'll still be online --

MS. NEIMILLER: Thanks, folks.

CHAIR COCHRAN: --so when you remember it, you can let us know. But thank you --

MS. NEIMILLER (*via Skype*): Okay.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: --so much for your presentation, and wrapping it up as quickly as you did, and it's very informative. So thank you so much. Next...

MS. NEIMILLER (*via Skype*): Thank you.

CHAIR COCHRAN: You're very welcome. Next on the...next presenter is Staff Attorney for Center for Food Safety, Sylvia Wu. Ms. Wu, are you online? Miss...oh, there you are.

MS. WU (*via Skype*): Hi.

CHAIR COCHRAN: Ms. Wu, we see you.

MS. WU (*via Skype*): Can you guys hear me okay?

CHAIR COCHRAN: Yes, very clear so far.

MS. WU (*via Skype*): All right. Thank you, everyone. It's really a privilege and an honor to have the opportunity to speak to all of you. I'm waiting, I guess, for my presentation to load before I start.

CHAIR COCHRAN: Okay, we're getting there. Mr. Nishita is working on that. Here we go. All right, we're up and running, Ms. Wu.

MS. WU (*via Skype*): Okay, great. So again, it's a great honor to have an opportunity to speak to all of you on a subject that I think has been on many of your minds, which is the issue of State preemption. My name is Sylvia Wu, and I am a Staff Attorney with the Center for Food Safety. The Center for Food Safety is a national nonprofit membership organization. We work to protect public health and the environment, focusing specifically on the harms of industrial agriculture and harmful food technologies. As a Staff Attorney of the Center for Food Safety, I've been engaging on this issue in multiple ways. I work a lot with legislative aides and councilmembers to develop legislative strategies. I also actively work on litigation involving, you know, pesticide use and other issues, both at the Federal and State level. I'm one of the attorneys on all three cases that are currently on appeal involving the County's right to regulate pesticides in genetically engineered crops in the State of Hawaii. So I know you guys had gone through several presentations by now, so I'm gonna try to keep mine fairly brief. I'm gonna focus specifically on the question of preemption, and whether or not Maui County has the right to establish a pesticide policy, an integrated pest management program on County property. Next slide, please. So Jay at Beyond Pesticides actually covered a lot of this so I can skip over this rather quickly. I wanted to just remind folks again of why it is important that the County take an active role in setting up an integrated pest management program for County property. What's at risk here is the risk of pesticide exposure, both to the unique environment of Maui County, and also to the children and other sensitive populations . . . (*inaudible*) . . . You've already seen a lot of overwhelming evidence of pesticide harm and risk of pesticides, both, you know, overwhelming medical, scientific literature point to the facts. And I think the one thing I want to add, in addition to the overwhelming

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

national evidence of this, is that many of you might already know, but just a little over a week ago, the Kauai County's joint fact-finding report reached a lot of the same conclusions that, you know, the American Academy of Pediatrics report has shown, which is that exposure to pesticides can be harmful to children and to other sensitive populations. The same joint fact-finding report also concluded that currently there are major gaps in the pesticide regulation in the State of Hawaii, which is why it's important for the County to come up with its own management program for County property. Next slide, please. Okay, so I apologize if this might be a little bit repetitive for some folks, but I thought we'd start from the beginning with an overview of preemption. Preemption at its most basic level, it's . . . *(inaudible)* . . . by a higher-level government, contains, you know, a statutory or regulatory scheme that trumps the regulatory regime of the lower government. So Federal law can trump or preempt State and local law, and State law can trump or preempt county and other municipal laws. There are a lot of different theories of preemption, but they breakdown into two general categories. The first is express preemption, which is as the name indicates, where a statute expressly preempts, or expressly states, that this is the regulatory regime. There should be no lower-level regulation on the same issue. So for example, the State of California's pesticide statute expressly provides that the California statewide pesticide law . . . *(inaudible)* . . . statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, and use of pesticides to the exclusion of all local regulation. Now the Hawaii Pesticide Law does not contain any such language, so there's no express preemption in the State of Hawaii's pesticide laws. But there's also this other concept of preemption, which is implied preemption, which just means that even though there's no express language prohibiting local regulation, a court's interpretation of the higher-level statute concludes that it is intended to occupy that field of regulation. In Hawaii, this is subject to what is called a comprehensive statutory scheme test, which means that a court finds that a statute indicates a legislative intent to be exclusive and uniform throughout that state. And this is what Judge Kurren held in the Kauai litigation concerning the Hawaii Pesticide Law. He concluded that, you know, Hawaii's Pesticide Law impliedly preempted local regulation. Next slide, please.

CHAIR COCHRAN: Real quick, Ms. Wu. Your audio is also going in and out.

MS. WU *(via Skype)*: Okay.

CHAIR COCHRAN: So I'm not sure if you're moving your head around, or if maybe shutting down your end for video will free up the bandwidth on our end to get clearer reception.

MS. WU *(via Skype)*: Okay, let me try shutting down the video.

CHAIR COCHRAN: Okay, thank you.

MS. WU *(via Skype)*: Does this help?

CHAIR COCHRAN: Well, yeah, just proceed, and then we'll see.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. WU (*via Skype*): Okay, yeah. Wanted to talk a little bit about the current ongoing appeals. As most people know, there's three, starting with the Maui Ballot Initiatives that you guys are all very familiar with. As you all know, the Maui initiative, it was a moratorium. It imposed a moratorium on the cultivation and testing of genetically-engineered crops. Then there's the Big Island ordinance which was a ban, and that banned the cultivation and testing of genetically-engineered crops. And finally there's the Kauai ordinance, Ordinance 960. And like Hawaii and Maui, Ordinance 960 covered...had different provisions that can be sort of summarized into two major categories. One considering pesticide disclosure and notification, and imposing pesticide buffer zones. And the other requiring annual reporting of genetically-engineered crops. What I wanna emphasize here is there sounds like there are three ongoing cases about preemption, but the only one that applies...that might even apply to whether or not Maui County proposes an integrated pest management program is the Kauai litigation, because that is the only one that concerns Hawaii's...the scope of Hawaii State Pesticide Law. Next slide, please. Are you guys hearing me a little better?

CHAIR COCHRAN: Yes, a lot clearer, thank you very much.

MS. WU (*via Skype*): Okay, all right. So, yeah, let's dive into what the Kauai decision held. As I stated before, in that decision Judge Kurren held that the Hawaii Pesticide Law covered the regulation of pesticides by implied preemption. However, it's important to note that in that situation, the Kauai ordinance covered pesticide disclosure notification and buffer zones that are applicable to large-scale commercial agriculture producers. None of the requirements apply to what the County did in terms of County management of County property. So it had no application to whether or not the County imposed certain pesticide regulations on how it uses pesticides on County lands. It's also important to note that in that decision, the Court held that there was no Federal preemption. So it held that the only reason why the Kauai ordinance concerning pesticide regulation was barred, was by State implied preemption. And there, the regulation only applied, again, to certain large-scale commercial agriculture producers. If we go from here--next slide, please--to examples of actual county regulations of pesticide use on county properties though, I think we can find a lot of successful examples of why it is entirely within Maui County's authority to adopt an integrated pest management program . . .(*inaudible*) . . . So as I mentioned before, the State of California's pesticide law has an expressed preemption clause. It explicitly states that there should be no local regulation of pesticide use. However, two municipalities in California have adopted integrated pest management programs to regulate pesticide use on over its . . .(*inaudible*) . . . jurisdiction. So first the city of Irvine, just over a month ago, adopted an integrated pest management policy that places importance on use of organic pesticides, and ban the use of non-organic, chemical-based pesticides on city property. Similarly in 2012, the city of Richmond enacted the pest management program that banned the uses of different classes of pesticides on city property. For example, pesticides that were listed on California's Prop 65 statewide statute which basically are pesticides that are said to be probable carcinogens. And it also designated all of the city's playgrounds and picnic areas as pesticide-free zones. Finally, also in 2012, Cuyahoga County in Ohio also adopted an

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

integrated pest management policy whereby it prohibited the use of pesticides on all county property, with limited exceptions as to when pesticides might be used. So I think all these examples, all, these three counties are all within jurisdictions where the state's pesticide laws have expressed preemption clauses that explicitly prohibit local regulation of pesticide use. Yet, none of these policies have been challenged. There's been no litigation . . . *(inaudible)* . . . these issues. So these are great successful examples showing why Maui County's entirely within its right to enact an integrated pest management program on County property. And it's really logical if you think about it. For example, the County regulates parking and has parking restrictions. But at the same time, we know that condominium associations may impose additional parking requirements within its private property, and it might have its own pesticide use policy within the condominium association. The fact that the State, the pesticide law that has been held . . . *(inaudible)* . . . local regulation doesn't prohibit these condominium associations from imposing policies on how they would like pesticides to be applied on their . . . *(inaudible)* . . . areas. By that same logic, Maui County can impose an integrated pest management program directing how pesticides should be used, and what kind of pesticides should be used. Next slide, please. So I wanted to end with less text and a cartoon. But I also wanted to emphasize that the old saying that no news is good news is very, very appropriate here. There's no . . . *(inaudible)* . . . precedent of a county being sued over regulation of pesticide use on its own land, even though, as I just went through, there's several existing examples of such ordinances. This is support that counties have the authority to do this. Moreover, it also highlights that regulations that are challenged in court are pesticide regulations that apply to third parties that directly impact private parties, which is not the case here. The California Department of Pesticide Regulations stated in its manual explaining pesticide regulation in California where there's an expressed preemption clause, it stated that local governing bodies may pass ordinances that regulate or restrict pesticide use in their own operations. For example, a city council may pass an ordinance that restricts or bans pesticide use in municipal buildings and public parks. This is exactly what an integrated pest management program would do for Maui on Maui County property. So I respectfully urge you to take actions necessary to fill in the significant gaps in the State's pesticide regulation starting in your own backyard by adopting an integrated pest management program on County property. Thank you.

CHAIR COCHRAN: And thank you very much, Ms. Wu. At this time, this is...I think, Chair White, you're gonna be departing the meeting at this point? Are you?

COUNCILMEMBER WHITE: I have a little more...

CHAIR COCHRAN: Okay, well, it's kinda the timeframe for the midday break also. So I thought...I mean, you know, you would be departing, and then we could take our...whatever, about a ten-minute break. Everyone can collect notes, and thoughts, and questions together, I suppose, and then come back. So that's...if that'll work out, do you think, Mr. Nishita? Is that gonna work out? Is that okay? So can the participants hear me? Is that good? Maybe you folks can go and grab something from your fridge, or I don't know. Take a ten-minute breather yourselves. If that'll work out.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. NEIMILLER (*via Skype*): Yes, thank you.

MR. JANKAUSKAS (*via Skype*): Thank you.

MS. WU (*via Skype*): Perfect.

CHAIR COCHRAN: Okay, so very well then. We shall be in recess for ten minutes and we'll all be back same place, same station. Thank you. . . .(*gavel*). . .

**RECESS: 3:16 p.m.**

**RECONVENE: 3:34 p.m.**

CHAIR COCHRAN: . . .(*gavel*). . . Will the Infrastructure and Environmental Management Committee please reconvene? And we are now back from all our wonderful presentations from our visitors through Skype, and also here in the Chamber. At this point, time, I will turn comments and some discussion over to the Administration. So I wanna start off with Corporation Counsel, Ms. Richelle Thomson, and then to Parks and Rec, and then to Public Works. As I understand, Director Buenconsejo will be departing in about 25 minutes. So I would like to get as much discussion as possible. And, Ms. Richelle Thomson, the floor is yours.

MS. THOMSON: Thank you, Chair. I just have a brief comment to share with the Committee. There were many legal opinions and advice given by some of the presenters today. I would caution the Committee not to rely on those legal opinions and our office welcomes the opportunity to assist you as you go through and analyze this issue. Thank you.

CHAIR COCHRAN: Thank you, Ms. Thomson. And, Members, did you have any questions for Ms. Thomson at this time? Okay, seeing none, mister...Director Buenconsejo, you have any comments to the presentations, or general comments?

MR. BUENCONSEJO: Chair, no, no questions for us in Parks and Recreation Department. We look forward to any alternatives that there are, and we're here to kinda just standby and hear the presentations.

CHAIR COCHRAN: Okay, thank you. And, Mr. Goode, did you have any comments, or any...you have questions or comments?

MR. GOODE: Thank you, Madam Chair and Members of the Committee. Dave Goode here, Department of Public Works Director. We were before your Committee about a month ago, I think, when we talked about this issue, and what the Department's been doing. For those that missed it, just a quick summary is that we have been experimenting with a couple different products including Avenger, but there's others as well. Our tests were very inconclusive in terms of their efficacy. Basically the plants just...they grew right back, so we're not sure if we applied it in any way incorrectly. So we've

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

actually been speaking with Joe from Avenger. Yesterday we had our team talk to him, and so we'll learn some more from that. But we're, you know, we definitely wanna try to do the right thing. We wanna try other products. We're not married to one particular product. Changes in product use will cost money, and so those funds would need to be appropriated by the Council if we ever got to that point. So we'll keep trying, and look forward to working with you and the Committee as you go forward.

CHAIR COCHRAN: Thank you very much, Director. Thank you for the willingness. And I guess in reference to the Organic Land Management Action Plan that sort of agreement of sorts that the entity comes in and helps train and, you know, suss out practices, soil, whatever. Have you had a chance to look at that? Do you think the Department would entertain such things to help assist in any way, or...

MR. GOODE: If the question's for me, Madam Chair. I mean I just was given a copy of it today.

CHAIR COCHRAN: Right.

MR. GOODE: About two minutes ago, so I have to take a look at it. You know, we're interested in getting, you know, as many people knowledgeable about this subject to assist as possible. So, yeah, this is a possibility, but I believe it comes with some catches, and so it would need to be reviewed by Corp. Counsel and others.

CHAIR COCHRAN: Right, and so, Director, this is just a sample, and the wording, and anything of that sort can be pretty much done on our behalf and how we wanna word it. The overall gist of it is that they come in free of charge, but they just wanna make sure that this County has some type of commitment, and is going to want to go through with the program, because they're gonna send in staff, and do all the training, and all that stuff at their own expense. So obviously they don't wanna show up, and then, you know, just have kind of a half-bought-in sort of idea. That's all it is, it's not...but anyway, again I know you just saw it, but that's really the kind of overall intent by Beyond Pesticides to do such a program. And others have taken advantage, implemented it, and have come out with favorable results. So that's what that was about. But, anyways, okay, thank you, thank you. Members, I can open the floor up to you folks to see if you have any questions or comments. So remember the presenters are also here via Skype, I think, at this point. We need to see how the audio is working, and that's where we're at. Hi, yes, Ms. Baisa?

COUNCILMEMBER BAISA: Ms. Cochran, actually I don't have a question, but I have a comment. You know, this has been very interesting. We've had a whole lot of information thrown at us, and we have stacks of it that we haven't really had a chance to take a look at. So I really don't feel that I'm in a position to intelligently discuss this this afternoon. So I really don't have a question. I'd like to have time to sift through all this, and maybe deal with it later.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: And I understand. I knew this was gonna be quite a lot of information handed your way, and it's...so by all means. And again, we're not taking any legislative action.

COUNCILMEMBER BAISA: I understand.

CHAIR COCHRAN: Nothing is being forced through here. I just want all of us to get information, educated, brought aware to certain practices that are being implemented right here in Kaanapali, and also here with State Department of Transportation. And we've heard that Department of Public Works has started to venture, and start working towards some good practices. So that's what we're here for. I just want us all to be on the same page, which I can see we are.

COUNCILMEMBER BAISA: Right, and I am real happy to hear the Director say that, you know, he is open to looking at other things and that we're doing experiments. I think that's good. Thank you.

CHAIR COCHRAN: Yes, very good, thank you, Ms. Baisa, for your comments. And, Members, anyone else have any comments, or any questions? Yes, Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. I don't have any questions. But I just wanna thank you for this overview too. Yeah, it is quite a lot to digest. But good information because when you talk about preemption and County, it can apply to other issues as well. So thank you. I, you know, I just leave it up to the departments what they would like to do, or what they would like to consider as far as cost savings and everything else that applies. Yeah, thank you.

CHAIR COCHRAN: Okay, very good. Thank you, Ms. Crivello. And so, Mr. Carroll, Mr. Carroll, did you have any comments or questions for our panelists or anything?

COUNCILMEMBER CARROLL: Not at this time.

CHAIR COCHRAN: Oh, okay, all right, thank you very much. Or, Department, if you did have any questions that you wanted to ask of our presenters, that's fine, too. Otherwise, I can go to questions that were sent to your departments and get some elaboration here on the floor. So for Parks since I guess you'll be departing soon, in our binders, Members, we have Parks' letter...questions sent March 14<sup>th</sup>, and then February 29<sup>th</sup>. Oh, sorry, March 14...no, wait, must be March...February 29<sup>th</sup>...okay, what's going on here? Where's the answer? Correspondence was on the 9<sup>th</sup>, and response was on the 29<sup>th</sup>. And in reference to your response, it shows you're giving the summary of what's used on sports turf...in reference to sports turf herbicide schedule? So can you elaborate? I mean I'm taking it that that is strictly like ball fields. Is that what you're --

MR. BUENCONSEJO: Chair, yes.

CHAIR COCHRAN: --saying?

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MR. BUENCONSEJO: Unfortunately, our turf management, our beautification team, happens to be currently on vacation. But as that target does show, regarding the schedule, yeah, that particular item is strictly for our playing fields, and our park fields. And so those are those applications for that, very nominal for anything compared to what the State uses, or even with Public Works. And also as far as some of our tests, that we've also already have gone to Avenger in spot treatments Upcountry and other areas. So we've already started that process with Public Works a few months back.

CHAIR COCHRAN: Okay, and then I guess what confuses me is that the question wasn't asking specifically just sports, parks. It was all parks. So that's why I feel like the response isn't complete at this point.

MR. BUENCONSEJO: If you look at the list, Chair, it is all the parks, not just sport parks. So all of our parks that actually have fields on 'em, was the park name. So Ainakea Park down to Wells Park. It kinda lists those parks in alphabetical order.

CHAIR COCHRAN: I think all the Kamaole Parks weren't on it, Rice Park wasn't on it. And I think we sent you further questions and with...

MR. BUENCONSEJO: Yeah, Chair, so that's the correspondence with the Kamaole...that was back...when was it? In the March 18<sup>th</sup> transmittal. So those questions were answered on that question number three, I believe it was. So for Kamaole I, II, III, and Rice Park, so I don't have an exact number as far as how the other parks do have the gallons, or ounces that are sprayed there. For Kamaole, from my understanding, from what I was told prior or briefed with it was more of a touch basis as needed.

CHAIR COCHRAN: And so you don't keep track of that, though

MR. BUENCONSEJO: We do. We do keep track, but those are touch bases. I mean it's very nominal, but I can get back. We are working with the district and the beautification team. And as I mentioned earlier, the one chemical manager that we do have is not on the island.

CHAIR COCHRAN: Okay.

MR. BUENCONSEJO: So I wanted him to be here today.

CHAIR COCHRAN: Okay, and I guess...what was...what I was asking was I guess the list of pesticides used in and around all parks, and haven't really got a full detailed list yet. And then in regards to Rice Park--there are photos too, Members, that go with all this kind of line questioning--there seems to be like a drainage. As we all know, it's a big, hilly park and all, and it kinda all would settle down into this ditch along the highway itself. And does something like that fall under needing an NPDES permit?

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MR. BUENCONSEJO: Chair, I would have to pass that. That ditch wouldn't be by us right there. That spraying or the maintenance of that particular ditch near that roadway wouldn't be Parks. I can confirm that, but it doesn't look that's...

CHAIR COCHRAN: Oh, okay.

MR. BUENCONSEJO: Just based on the picture alone, I can't identify exactly what...

CHAIR COCHRAN: I guess the question can also go to Director Goode in regard to NPDES permits, as to any of you...no, not for the picture, Director Goode, but for your Department and practices that you...places that you folks...you spray. Is there anything having to do around waterways 'cause, you know, drainage and stuff? Do you folks have a need for NPDES permit to do your applications with any type of jobs that you're...under your purview?

MR. GOODE: Madam Chair, none that I'm aware of.

CHAIR COCHRAN: Okay, so currently neither departments have any need to have a NPDES permits due to the, I guess, the practices of your spraying? Either department.

MR. GOODE: No, I don't believe so.

CHAIR COCHRAN: No, okay. And is this...have you folks, the first item I put to this Department, the letter of warning that had gone to State Department of Transportation, is this...have you folks seen that before? The warning letter that was given to Mr. Rodgers? Department?

MR. GOODE: Yes, yeah, for Public Works, your office sent it to us about a month ago. So that's the first time I saw it.

CHAIR COCHRAN: Okay, about a month ago. Director Buenconsejo, had, you had seen that before? Or is today the first day?

MR. BUENCONSEJO: Chair, I don't recall seeing it, but it doesn't mean our Department didn't get it.

CHAIR COCHRAN: Okay.

MR. BUENCONSEJO: But I can clarify on that.

CHAIR COCHRAN: Oh, okay. I guess in reference to that question, is if so, then what...has there been any adjustments in your practices? Having...

MR. BUENCONSEJO: Chair, like I said, from our aspect, from Parks, compared to Department of Transportation, our nominal use is way...nothing compared to what the quantity that they're using. And again, I didn't see the letter so I can't physically say

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

what has changed from that. But our practices and their practices are two different categories.

CHAIR COCHRAN: Yeah, I don't think the letter of warning was about how much you're spraying. And, Mr. Rodgers, maybe you can elaborate on what prompted the letter, and what that led to in, I guess, you folks adjusting your practices?

MR. RODGERS: Well, there were two...

CHAIR COCHRAN: Oh yeah, please speak into the microphone.

MR. RODGERS: Yeah, sorry. There were actually...there's actually more than one warning that we've had. But the one about reentry time...oh, you were asking about NPDES permits. Okay.

CHAIR COCHRAN: Oh, well, that too, but I mean I think first the letter, you know, the letter, the warning letter.

MR. RODGERS: Yes.

CHAIR COCHRAN: And I was just...was my question to the departments if they had seen it, and how have they adjusted their practices. So I'm just now going to you since it did go to you, and how did you respond to the letter?

MR. RODGERS: That one --

CHAIR COCHRAN: And what was it about?

MR. RODGERS: --is in regards to reentry time. The labels for most of these chemicals have a statement about reentry time. And to simplify it, it's...you don't want people to touch it when it's wet, regardless of what it is. And our warning in regards to reentry time was that as we travel down a highway, and we spray, say, a guard rail. How do we prevent a pedestrian or a bicyclist from coming up right behind us, and coming in contact with the wet material, whatever it is, Roundup, or Avenger, or whatever? And we actually didn't have a very good answer for it because we don't post sentries, and...or...because it's a moving operation. Think of a guardrail on Piilani Highway. In a matter of a few minutes, perhaps before it is dried, the truck and the spray equipment would be a quarter of a mile down the road. So our response to that is not complete yet, but we're gonna end up having to increase our signage, and change the signage, the wording on the signage to indicate...let's say someone comes out of a side street so if they turn right and they're going down the shoulder, they'll see a sign that says, "herbicide spraying" and we'll have to come up with appropriate terminology that warns them that don't touch wet...to not touch wet spray. Perhaps it's a little bit too many words on a sign for a passing motorist, but not for a pedestrian. And but that's the only way we know to control reentry time other than just not using the herbicide, because of the nature of our operations. Now in a park, I would, you know, I would imagine it might be a little simpler because we don't have driving motorists, and we

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

don't wanna, you know...we're careful to not just wanna distract people so they run into a guardrail, because people tend to steer where they're looking, and all these other things. So, but for us, the answer is not easy. And we still have not completed our response to it.

CHAIR COCHRAN: Well, thank you, Mr. Rodgers, but I'm sure the DOH...DOA is appreciative of your efforts to make it...

MR. RODGERS: We're working on it.

CHAIR COCHRAN: To start, you know, to getting towards that compliant action. So thank you very much. So I guess in that example, as Mr. Rodgers stated...oh, Director Goode?

MR. GOODE: Yeah, thank you, Chair. Yeah, since we were made aware of the letter about a month ago, we actually had the Department of Ag inspector come to our operations, and they saw some photos of our folks in action. And they were satisfied with the way that we were handling it in terms of reentry because we're not generally driving a vehicle. We're doing spot applications. They had one caution for us, and at least one of them mentioned wearing long-sleeved shirts. It is important to note that, you know, say Avenger, and I think the other products as well, have the exact same warnings as Roundup as it relates to reentry for people and for animals. And in terms of the product use, storage, et cetera, it all has exact same, with the exception of a couple words here and there, 'cause I did a side by side comparison. And so that has to be, you know, thought through, you know, as we look at our different applications. I did wanna note that in Fiscal Year '17...I mean it's calendar year...excuse me, calendar year '15, we cut back our use by two-thirds. So we were using about 50 gallons a year, and we were down to 16½ gallons. Now to give you some context, we have about 1,000 lane miles of road, and we don't use it all along the sides of the roads. Mostly we use mechanical means. But we have spot applications around guardrails, some are under DOT sign posts, bridges, the walls of flood controls where something might be growing out of it, and 16 gallons over 1,000 lane miles is 2 ounces. Imagine 2 shots sitting right here. That's 2 ounces per mile, per year. So I think the Department's use is incredibly small now. Going to another product, we might use a little bit more, and we may have to go in there more often, so that's where the cost factors might come in. But I think in terms of context, all you have to do is go to Home Depot and look at the amount of Roundup that's on the shelf, okay. It's way more than what we use. So I just want, you know, as the Members plow through the materials that's in front of them is to keep that numbers in the back of their mind. Thanks.

CHAIR COCHRAN: Okay, thank you. And I guess, Ms. Neimiller, you're still online still?

MS. NEIMILLER (*via Skype*): I sure am.

CHAIR COCHRAN: Oh, okay. I guess the same practice or treatment versus a glyphosate product and your product, organic product, is the same though. So as Mr. Rodgers

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

said, spray, you have to wait for it to dry. I mean that's all where the labor, the hardship is in making sure nobody steps in it right after the trucks and signs go away, or, you know, so I'm trying...I've heard Departments say, well, it's basically the same practice either way whether it's, you know, the chemical versus your product, the organic. So like where is the lesser I guess labor cost or something like, you know...

MS. NEIMILLER: (*via Skype*): Well, one of the things to remember is the reason that they have them stay out of an area until it's dry on a lot of our competitors, is the fact that that chemical can get into people's skin. It has been known to cause cancer in the pads of dogs, or in their nose, unless it's dry. Whereas our product, the reason we tell you to stay out of there is because if you have grasses like a lawn area, I mean translocate that by stepping in it, and going on the grass, it lays the possibility of killing the grass. But it's not going to hurt anybody. And I'll tell you straight up, Joe has sprayed this in his mouth to prove how not dangerous it is. So if people were to get it on them, it's not going to hurt them. It's not going to give a dog cancer. It's not going to hurt our wildlife. The only reason we have that on there, is to make sure that it doesn't spread to desirable plants, and it doesn't harm any desirable plants.

CHAIR COCHRAN: Okay, well, thank you for very much. That's a good point in the difference. So thank you for that.

MS. NEIMILLER (*via Skype*): You're welcome.

CHAIR COCHRAN: Comments from Department?

MR. GOODE: Thank you, Chair. So the product datasheet, you know, that they publish basically is word for word the same as Roundup. So whatever the purpose is, I don't know. But I do know that we're required by law to follow this. So we don't have a choice of saying, well, it's because of this or because of that. The law says we have to follow the datasheets. So we'll follow the datasheets, you know, as required by law, and go from there. So I can't speculate on why this was printed up this way, or what the requirements were. But the fact is, is that's how it's printed up.

MS. NEIMILLER (*via Skype*): May I make one comment here?

CHAIR COCHRAN: Ms. Neimiller?

MS. NEIMILLER (*via Skype*): One of the things...yes, I just have one comment. And this is just background information so you kinda understand. When we came out with this product ten years ago, the EPA didn't have any product that worked. And because they wanted us to get this registered, we went through the regular EPA like any other pesticide would. What we should've done, or what, this is hindsight and we're doing this with our new formula, is going through the bio departments, which hopefully will rectify all of this, and it won't be an issue in the future.

CHAIR COCHRAN: Okay.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

MS. NEIMILLER (*via Skype*): So that's just a little background.

CHAIR COCHRAN: Oh, okay. Yeah, unfortunately, you're kinda going in and out on the audio again. But thank you for your comments. And so, and I understand, Director, and I believe everyone here, we all know that the label is the law, and it needs to be followed. But I guess a lot of the photos and people's comments that kinda prompted this whole discussion in order to learn and, you know, figure out better practices and what have you, is pointing towards that sometimes I guess the label isn't being followed. So that's where the concern in this community has arisen. This is where people are saying where...and we heard from Mr. Rodgers that it's not a easy one to tackle and figure out overnight. So I understand that we all wanna do our best, put our best foot forward of following the label because it is the law. But it's unfortunate that it's, I guess, easier said than done. And that is why we've been getting complaints, and photos, and e-mails, and what have you, and videos, and you name it out there, that's pointing towards practices are leaning towards, you know, something otherwise. There's a couple...and thank you, Director Goode, you said that your usage, I guess, I think you're speaking towards Roundup in particular is very minimum, or gone down? 'Cause I'm just kinda glancing at your report you had given us on March 15<sup>th</sup>, and it shows the drop in Roundup. But Aqua Master is at the same level, and it looks like Kleen Pro you don't really use a whole lot. And being that all of these are glyphosate products, not to pinpoint any particular brand name or anything, but I guess that main ingredient that a lot of people seem to have concerns about, are in all of these products. And so Aqua Master in particular, that's seems to be on a steady use, is used where? Do you know offhand, or...

MR. GOODE: I'm not sure exactly where, Chair. It might be in different districts, or in certain applications.

CHAIR COCHRAN: Okay, I guess what...do you know what it's used for in particular, Aqua Master? 'Cause that's something to do with weeds in your water, or pests in your water?

MR. GOODE: Yeah, it might, yeah, it might. I'm not really sure exactly.

CHAIR COCHRAN: Oh, okay, so that...all right. We'll have to get further --

MR. GOODE: Right.

CHAIR COCHRAN: --detail from your Department, from I guess who would know the answer to that one. And I guess the...Rice Park, though, Director is County, the park itself up in Kula?

MR. BUENCONSEJO: Sorry, Chair, you said Race Park, or...

CHAIR COCHRAN: Rice.

MR. BUENCONSEJO: Rice Park. Yes, that is County.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: And so the...it's a hill and it goes...of course, sloping. With gravity, rolls, you know, things roll downhill. Whatever is done up on the Park itself, would, I guess, seemingly flow down into that ravine or ditch or whatever that is, which I guess you're saying is not a County, per se, section. But what runs off into that, does the County...I guess wondering if there's, I don't know, a type of permit? Or do you know what is sprayed there and what could possibly be flowing down into that section?

MR. BUENCONSEJO: Chair, for that particular park in general, we don't need a permit for what we spray. And based off of the letter that was given to the State, after reading that briefly here, as you can see in some of the photos that were submitted to submission for our testimony, all of our Parks guys have the signs up, wearing the proper gear, OSHA requirements and everything else that they need to do. So that letter doesn't really pertain to the Parks at all. But back to your question regarding Rice Park, you know, the real runoff is if it's raining, and of course we don't spray in the rain. A lot of, again, back again to our spraying, is more spot treatments next to fencing, posts. And again, our...just based on Roundup, you know, we're like I said, probably the most minimal for Roundup from the Parks Department. So to answer your question with that, the runoff doesn't really affect that because we're not saturating anything. It's spot treatments, and again, if it's raining where you would have runoff running into basins and things, you know, we wouldn't be spraying at that day to begin with.

CHAIR COCHRAN: Okay, thank you. And I see the photos where the signs, and the attire, and I guess some families have seen also where spray, the signs go out, and as the worker sprays, they end, they pick up the sign, and drive away which definitely...most likely that's, whatever got sprayed, wouldn't have been dried by the time they went from one end of the field to the next. So that has been a concern in this community too. So is there a way to maybe leave the signs out for X amount of time to hopefully for sure know that it's dry? 'Cause I've been getting those comments from our community. They physically have seen it happen, taken pictures, and have evidence of that.

MR. BUENCONSEJO: Chair, no, no question that's something that we could definitely leave up the signs. And again, the signs shouldn't be picked up until he leaves, but I do understand the concern that possibly by the time he finishes up with spraying, there could be sections that maybe possibly aren't dry at that time. So there are things we can definitely look into. And then, again, working with the public, when they see those signs up, I mean obviously, you know, we shouldn't be entering the park when those signs are up. So those are things that we can definitely work on for sure.

CHAIR COCHRAN: Okay, thank you. Sorry, Mr. Rodgers, did you have a comment?

MR. RODGERS: No.

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: Oh, okay. I wanted to just briefly go to Mr. Sparkman, and ask about your model and, you know, cost-wise, I guess. Let's just hone in on the money part of it.

MR. SPARKMAN: Well, the money part for me is negligible because I'm a small 12-acre resort, so I'm able to offset that by planting native plants and doing less out plantings. So that's actually been easy for me to switch over and go organic. I do believe it's gonna be a little bit more difficult for the Maui County to go that route, but it becomes a situation of feeling good about it, and your employees feeling good about it. So it's really something to buy into. I know that it works. I've used it at the resort for the past year, and I've only actually used just over a pint and a half of Scythe in the past year at my property. So it's very little that I use, and actually Scythe only costs \$2 more per 2½ gallon container than Roundup. So it's only a \$2 more increase per 2½ gallon. Yes, there might have to be extra trips that have to go back to use those things. But it's really also possibly using turf mark, blocking parks. There's different, you know, ways to look at doing that, but I'm not here to tell you your job. Thank you.

CHAIR COCHRAN: Well, thank you very much for your comments, Mr. Sparkman. And, you know, just you're a living example of how changes have happened. And as you say, I know it doesn't compare to the State or County level of scope, but yet it is still an example, and I don't wanna minimize you and your efforts whatsoever.

MR. SPARKMAN: It's about taking the first step.

CHAIR COCHRAN: Right, there you go. Thank you so much. So I think we're gonna be losing a few people here, and in that sense we'll also be losing quorum, folks. So unfortunately, we will need to be closing out this meeting. But needless...it's definitely not the end of the discussion with this subject. This has just been the first introduction just to get all of us on the same page, and to be educated and brought awareness to. And I just wanna thank the efforts on the departments' behalf to be here to wanna, you know, learn too along with us all. That's what we're here for, to work together in a positive manner forward from here on out. And that's gonna take a lot of openness though, and working with, and definitely figuring out how we can adjust things and redo, if need be. But...and Budget's around the corner, so by all means if there's things that need to be done in a budgetary sense, we can hopefully work towards that and come up with some solutions. And I wanna thank especially our Skype people from across the United States chiming in with us today. Really appreciate your expertise that you brought here to the table. And I hope that we can call on you again to help us along and educate us. And obviously you heard from Director of Public Works. We can look into this program that Beyond Pesticides is willing to work with on your behalf. So definitely appreciate your reaching out to the different municipalities that way. Members, any final closing comments or questions needed? Okay, well, seeing none, thank you Staff, and especially thank you Autumn Ness for really organizing pretty much most of this.

**ACTION: DEFER pending further discussion.**

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE**  
**Council of the County of Maui**

**March 22, 2016**

---

CHAIR COCHRAN: And, Members, with that, unfortunately, we shall have to adjourn.  
Mahalo for your time. . . .(gavel). . .

**ADJOURN:** 4:09 p.m.

APPROVED:

A handwritten signature in black ink, appearing to read "Elle Cochran", written over a horizontal line.

ELLE COCHRAN, Chair  
Infrastructure and Environmental  
Management Committee

iem:min:160322:rk

Transcribed by: Reinetta Kutz

**INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE  
Council of the County of Maui**

**March 22, 2016**

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CERTIFICATE

I, Reinette Kutz, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 12<sup>th</sup> day of April, 2016, in Makawao, Hawaii.

  
Reinette L. Kutz