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PUBLIC HEARING CONCERNING THE  
DRAFT UNDERGROUND INJECTION CONTROL (UIC) PERMIT  
FOR THE LAHAINA WASTEWATER RECLAMATION FACILITY

PUBLIC HEARING  
AUGUST 20, 2009  
7:03 P.M.

LAHAINA CIVIC CENTER  
SOCIAL HALL MEETING AREA  
1840 HONOAPI`ILANI HIGHWAY  
LAHAINA, MAUI, HAWAI`I

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REPORTED BY: Tonya McDade  
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ATTENDANCE  
David Albright, Hearing Officer, Groundwater Office,  
Environmental Protection Agency  
Nancy A. Rumrill, Environmental Engineer, Groundwater  
Office, U.S. Environmental Protection Agency  
Brett P. Moffatt, Office of Regional Counsel, U.S.  
Environmental Protection Agency,  
Wendy Wiltse, U.S. Environmental Protection Agency  
Chauncey Hew, Environmental Management Division, State  
Department of Health  
PRESS: Akaku, Maui Community Television, Inc.

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AUGUST 20, 2009  
TRANSCRIPT OF PROCEEDINGS  
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1 HEARING OFFICER ALBRIGHT: Welcome, everyone.  
2 Thanks for coming tonight. My name is David Albright.  
3 I'm the Manager of the Groundwater Office at the U.S.  
4 EPA in San Francisco. And we are here for the next  
5 couple of hours to take oral comments, oral testimony on  
6 our proposed Class V Permit for the County of Maui's  
7 Lahaina Wastewater Reclamation Facility.

8 And I have a few people up here who I want to  
9 introduce. Brett Moffatt is on the end, he's with our  
10 Office of Regional Counsel. And then Nancy Rumrill, who  
11 is in my office, she's an Environmental Engineer with  
12 the Groundwater Office. And then we have Wendy Wiltse,  
13 who is also with EPA, U.S. EPA, and she's based in  
14 Honolulu, and focus is on water quality issues. And  
15 then we also have Chauncey Hew who is with the  
16 Underground Injection Control Program with the State  
17 Department of Health.

18 So this is an opportunity to provide oral  
19 testimony on the proposed permit. We have a court  
20 reporter, who is over here, who will be taking a  
21 word-for-word transcript. And we'll make that  
22 transcript available. There is an opportunity tonight

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1 to provide comment.

2 And we've had people sign up on these speaker  
3 request forms. So if you would like to provide oral  
4 testimony and have not yet signed up, there are some  
5 forms over on the table. And I would ask you to sign  
6 up. And then we'll -- we're going to call people in the  
7 order that they signed up.

8 In addition, if you have written comments that  
9 you wish to submit, you can submit those tonight as  
10 well. And, actually, if you have testimony that you're  
11 reading, for example, it would be good to give it to the  
12 court reporter so that she would have that as she is  
13 recording your testimony.

14 So we're going to ask if people could try to  
15 restrict their comments to no more than five minutes.  
16 We have a good list of people who want to speak, and we  
17 wanna make sure that we have an opportunity for everyone  
18 to be heard tonight.

19 And what we're going to do -- actually, we  
20 have Mayor Tavares with the County of Maui here. And  
21 she has asked to provide testimony. And so we're going

22 to have her start us off, and she will give her  
23 testimony, and then we'll move into the other folks who  
24 have signed up.

25 (Applause.)

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1 MAYOR CHARMAINE TAVARES: Thank you.  
2 It's kind of weird being with my back to the  
3 audience.

4 MEMBER OF AUDIENCE: You wanna use this?

5 MAYOR CHARMAINE TAVARES: No. That's fine.

6 Mr. Albright and Ms. Rumrill, thank you very  
7 much for being here, Wendy, and the rest of you. It's  
8 nice to see you again after many, many years.

9 Good evening and aloha.

10 I am Charmaine Tavares, Mayor of the County of  
11 Maui. And I want to thank you for the opportunity to  
12 provide comments during this hearing on the Lahaina  
13 Wastewater Reclamation Facility's UIC Permit.

14 All of Maui County, as well the State of  
15 Hawaii, and the world, for that matter, have experienced  
16 drought conditions for a number of years, decades, in  
17 fact. Attention has been focused on water and water  
18 availability. It is becoming increasingly more  
19 difficult and expensive to develop potable water.

20 I have long regarded wastewater as a water  
21 resource that can actually help preserve precious  
22 potable water for human consumption while providing for  
23 non-potable uses, such as irrigation and toilet  
24 facilities.

25 I personally feel that injecting treated

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1 wastewater is a waste of a resource that we could be  
2 using more productively.

3 My administration has been exploring options  
4 for reclaimed water besides the obvious landscape and  
5 other irrigation applications. New uses related to  
6 renewable energy are surfacing and are quite attractive.  
7 I am proposing to dovetail the production of algae as a  
8 fuel source with the need to redirect nitrogen-rich  
9 treated wastewater to a new use.

10 For example, the cultivation of algae as a  
11 transportation fuel source is creating much interest.  
12 In this case, wastewater would be delivered to a holding  
13 pond or other such device in order to provide the food  
14 source for algae. The algae would be harvested and then  
15 processed to produce the transportation fuel.

16 The possibilities are exciting as algae can  
17 thrive in nitrogen-rich water. We have a source of  
18 nitrogen-containing wastewater that has been treated  
19 here at our Lahaina Wastewater Treatment Plant. And we  
20 can use that. We may have to add many more other  
21 nutrients in order to feed those hungry little algae,  
22 but at least this is a part of their diet. And we could  
23 supply part of that diet.

24                   We request that the County of Maui not be  
25 required to spend scarce resources to reduce nitrogen in  
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1     our treated wastewater now. Instead, let's use the  
2     nitrogen-filled water to attempt to grow algae that can  
3     be used for this transportation fuel.

4                   When we expand our vision to include removal  
5     -- include removable and sustaining resources, we find  
6     new opportunities in a fast-changing world.

7                   Over the past year, my administration has been  
8     exploring and researching an algae pilot project for  
9     Maui. We are in the preliminary stage and will actively  
10    continue pursuing and solidifying a project that will  
11    work for Maui. I intend to continue to actively pursue  
12    this prospect.

13                  Oahu, Kauai, and the Big Island of Hawaii have  
14    pilot algae projects either ongoing or soon to commence.  
15    Maui is in a position to build on their own efforts and  
16    move forward with our own.

17                  Why the excitement? An algae energy project  
18    will move us closer to renewable energy sustainability  
19    and, at the same time, reduce our need to place treated  
20    wastewater in injection wells.

21                  I request that the EPA consider a five-year  
22    extension of the UIC Permit to operate the Lahaina  
23    injection well. This will give my Administration time  
24    to formulate a plan for the reduction of injected  
25    wastewater. If the EPA so desired, benchmarks or

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1    milestones could be included as conditions of the  
2    permit, in 12 to 18 months, on a clear and detailed plan  
3    to reduce the volume of wastewater being injected. We  
4    need time to identify options; analyze costs, time and  
5    other factors; and set volume reduction targets.

6                  Late last year, Director Okuma presented me  
7    with her idea of forming a community advisory group to  
8    assist in addressing wastewater concerns. In February  
9    of this year, she presented a draft proposal for the  
10   formulation of this working group. After revisions over  
11   the past few months, the working group concept is ready  
12   to be implemented.

13                  And I believe that a group of interested  
14    citizens will frame a plan that is comprehensive,  
15    implementable and beneficial to all of us. This group  
16    will be convened next month, September 2009.

17                  As you are aware, my Department of  
18    Environmental Management has continued to request the  
19    comment period September -- comment period to September  
20    21st, in order to develop and suggest permit language  
21    for a five-year extension of the existing permit.

22                  In closing -- in closing, I believe that we  
23    all have the same goal. We can put our ideas,  
24    experiences and expertise together in order to create a  
25    better Maui for all of us on land and in the sea.

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1 Thank you very much for your consideration.  
2 (Applause.)  
3 HEARING OFFICER ALBRIGHT: Thank you for those  
4 comments, Mayor Tavares.  
5 And I understand that her testimony is  
6 available. I think there's still copies of it back on  
7 the back table if people are interested.  
8 So the next speaker will be Tony Povilitis.  
9 MR. POVILITIS: I think this is the first time  
10 I followed the Mayor in making a statement. I'm  
11 honored. It also makes me feel a little emboldened at  
12 the same time.

13 Like so many of us on Maui, I am deeply  
14 concerned about the future of our coral reefs.  
15 Scientific authorities and progressive environmental  
16 agencies worldwide are calling for bold measures to save  
17 coral reef ecosystems. Regional and local threats,  
18 including pollution from injection wells, must be abated  
19 if our coral reefs are to stand a chance, given  
20 increasing stress from higher sea temperatures, ocean  
21 acidification, and greater storm surges as a result of  
22 global heating.

23 Well, you know all this. And I -- I guess I'm  
24 perplexed -- or thoroughly perplexed as to why you have  
25 not come to Maui to hold a public hearing on the need

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1 and options for phasing out the -- the -- the wastewater  
2 injection well, replacing it with an entirely  
3 non-polluting wastewater treatment system, in order to  
4 protect coral reefs and provide other benefits. I just  
5 don't understand what's up with government these days.

6 This community needs your leadership. It's  
7 actually begging for it, from the testimony that I've  
8 heard previously. Less so in dotting the "I"s and  
9 crossing the "T"s on permits, but in helping us tackle  
10 the growing coral reef crisis.

11 Fortunately, Maui -- or Maui's DIRE Coalition  
12 has provided private sector leadership by addressing the  
13 ecological, human health, economic and legal aspects of  
14 this issue. We hope DIRE's testimony will convince you  
15 to change course.

16 Some 40 years ago, David Brower told writer  
17 John McPhee that he would do everything possible to get  
18 people back into balance with the environment, that they  
19 are, in fact, way out of balance. Our environment won't  
20 last and we won't, said Brower.

21 Given the course of history since, please get  
22 together with your colleagues at EPA and help this  
23 community save its coral reefs. It can be done. It  
24 must be done. And this is -- and there's absolutely no  
25 time to waste.

0011

1 EPA has a clear choice. You can allow

2 substantial coastal pollution from Lahaina for years to  
3 come under the current permit or you can issue an  
4 alternative permit that both reduces pollution in the  
5 near term and ensures rapid transition to sustainable  
6 reuse of properly treated wastewater.

7 So in closing, I'd just like to thank you for  
8 this opportunity to comment. And I am one of many  
9 citizens, I'm sure, that is looking for government  
10 leadership on this important matter.

11 Thanks a lot. Mahalo.

12 (Applause.)

13 HEARING OFFICER ALBRIGHT: Thank you for your  
14 comments.

15 The next commenter is Jeff Schwartz.

16 MR. SCHWARTZ: Sorry I don't have copies of  
17 the whole long document for everybody, but the short  
18 version is here. And we'll get you extra copies if you  
19 want it.

20 Thank you, EPA Hearing Officers, and -- and  
21 State representative from the Department of Health. We  
22 appreciate your holding this hearing. I very much  
23 appreciate the earlier meeting, question-and-answer  
24 meeting, that enabled us to have a discussion about  
25 these matters.

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1 I'm -- my name is Jeff Schwartz. I'm speaking  
2 on behalf of the DIRE Coalition, which is a group of  
3 Maui County residents, visitors and organizations who  
4 seek to protect the County's reefs, the public health  
5 and the economy by urging the County to phase out  
6 wastewater injection wells, improve wastewater  
7 treatment, and reclaim and reuse properly treated  
8 wastewaters on land for a variety of beneficial uses.

9 I wanna emphasize that we have never said,  
10 "Shut down the injection wells now." That is not our  
11 position. We recognize that there has to be some kind  
12 of transition or program.

13 Before I go any further, I really neglected to  
14 do one thing that I ought to have done at the outset.  
15 And that is to honor the memory of Uncle Ed Lindsey,  
16 who, for all of us, taught us not only the importance of  
17 the land and the ocean, but addressing the kinds of  
18 discussions that we're having with aloha spirit. And so  
19 as we might find disagreement, nonetheless hear us all  
20 working as a community to try and bring that kind of  
21 aloha spirit and shared -- shared ethos to our common  
22 goals.

23 And in that spirit, we applaud the visionary  
24 goal of 100 percent wastewater reuse and zero injection  
25 that Mayor Tavares has announced on May 22nd and

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1 reiterated today. We are here to support the Mayor's  
2 goal and to ask EPA and the Mayor and the City [sic]  
3 Council, and the Department of Environmental Manager --

4 Management to work together to achieve this goal as soon  
5 as possible. And we welcome the Mayor's indication that  
6 she -- she is interested in doing exactly that.

7 And while we don't have -- haven't had time to  
8 meet and talk about -- as the DIRE Coalition yet, the  
9 request for the extension for an additional month in  
10 order to work -- work out a plan for a five-year permit  
11 approach, my sense is the group would be very positively  
12 inclined to support at least another month of the  
13 extension period.

14 At the November 2008 hearing, the testimony  
15 was unanimous. We -- every public witness and all those  
16 present made clear on the record their support for  
17 ending Maui's discard of wastewater into injection wells  
18 that run into the ocean and for reusing inadequate --  
19 adequately treated wastewater as a valuable resource on  
20 land as soon as possible. Since that time, EPA has  
21 revised its proposed permit in beneficial ways. And we  
22 wanna acknowledge that we see progress and appreciate  
23 the progress in the revised proposal over what was  
24 initially proposed. But the proposed permit would allow  
25 10 more years of wastewater injection without ensuring

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1 sufficiently higher levels of treatment and reuse of the  
2 wastewater. And that's why we cannot support the  
3 proposed revised proposal.

4 Again, public opinion has been nearly  
5 unanimous. The record shows nearly 200 groups and  
6 individuals who are opposed to the proposed revised  
7 permit for the overriding reason, as well as others.  
8 For the record, we have specified the basis of our  
9 concerns with EPA's revised proposal in the written  
10 testimony that I've handed you and submitted online,  
11 which we will provide only major highlights and  
12 conclusions of these thoroughly documented comments.

13 Overall, we wanna make four main points.

14 First: EPA should not grant the 10-year  
15 injection well permit at Lahaina, which, in 19 -- which,  
16 in 2019, may leave us no closer to realizing the Mayor's  
17 goal than we are today. In our view, any permit for  
18 injection at Lahaina must be conditioned on a number of  
19 specific requirements leading to achievement of the  
20 Mayor's goal as promptly as possible.

21 The essential conditions include reductions of  
22 nitrogen and phosphorous levels, and effective  
23 disinfection of pathogens, effective monitoring of  
24 groundwater and ocean water quality, and bio impact of  
25 public reporting. Within one year, development

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1 submission to the public and the EPA and the State of a  
2 detailed plan with benchmarks of progress for design,  
3 financing, construction and operation of the necessary  
4 treatment upgrades and wastewater facility reuse and --  
5 and reuse facilities and phase-out of the injection

6 wells as soon as possible, but, in no event, later than  
7 January 1, 2015.

8 Second: EPA should require the County to  
9 submit an expedited compliance schedule for obtaining an  
10 NPDES permit for the injection well discharges to the  
11 ocean as a condition of any UIC Permit that the agency  
12 may approve. We think this is well within your  
13 authority. And, in fact, it may be your responsibility.

14 Because, Number Three, EPA may not and should  
15 not grant a UIC Permit which authorizes behavior that's  
16 expressly prohibited by the Clean Water Act. That is  
17 the discharge of pollutants into the ocean through the  
18 wells without an NPDES permit. And we cite chapter and  
19 verse as to the cases that show why the -- why, in our  
20 view, this is illegal behavior that must stop.

21 Four: The EPA should not grant the Lahaina  
22 well until the State has provided the certification  
23 required by Section 401 of the Clean Water Act,  
24 including the effluent limitations of other requirements  
25 necessary to ensure compliance with all applicable

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1 state, constitutional and regulatory policies and  
2 requirements. These, too, should begin conditions --  
3 should be added as conditions to any permit that the EPA  
4 may grant.

5 I urge you to look at the Hawaii State  
6 Constitution. It is very clear. And -- and it's so  
7 clear, as a matter of fact, that it constitutes water  
8 quality -- an element of water quality standards in  
9 Hawaii, that conservation is to be required, not  
10 discard, that the State has a public trust for all  
11 waters of the United States -- of the -- of the State,  
12 and that -- and under the case law, so does the County  
13 have that same responsibility.

14 As a result of the November 2008 hearing, and  
15 extensive research then -- since then, we've learned  
16 many important things relevant to this hearing. And  
17 I'll only quickly summarize these highlights.

18 One: As you folks have acknowledged, the  
19 wastewater effluent going into the Lahaina injection  
20 wells does not stay in the wells, but migrates into the  
21 ocean. That's now indisputable on the record.

22 Two: The wastewater effluent contains high  
23 levels of nitrogen. The nitrogen fuels algae growth --  
24 we already heard that from the Mayor. It can do that  
25 beneficially if it's done in the right circumstances,

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1 which, in turn, contributes to -- significantly to the  
2 decline of the reefs. We never said that this is the  
3 only cause of the problem for the reefs, but it's a  
4 significant one.

5 While nutrient releases from County injection  
6 wells are not the only cause of reef decline, a  
7 compelling body of scientific information, over 20



8 sources since 1993 that we've laid out, including  
9 reports from the National Academy of Science, DAR, EPA,  
10 and the -- and in U of H implicate the County injection  
11 wells at Lahaina, Kihei and Kahului as significant  
12 contributors to serious reef decline.

13 Number three: The proposed permit will allow  
14 over 800,000 additional pounds of nitrogen to go into  
15 these wells and into the ocean over the permit's 10-year  
16 life. That's just too much given the urgent need for  
17 protection of our reefs.

18 Four: The releases to the ocean through the  
19 injection wells without an NPDES permit constitute a  
20 violation of 402 of the Clean Water Act. Under the  
21 significant nexus doctrine of the Rapanos Supreme Court  
22 case, and, most tellingly, and more recently, the  
23 Northern California River Watch case, which specifically  
24 is a Ninth Circuit case addressing facts very similar to  
25 these.

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1 EPA should not and may not lawfully issue a  
2 permit under the Safe Drinking Water Act which  
3 authorizes illegal behavior under the Clean Water Act.  
4 Knowing these things, EPA should require the County to  
5 obtain an NPDES permit under the Clean Water Act as soon  
6 as possible.

7 Number five: Over 1,900 other communities  
8 throughout the U.S. are now raising levels of treatment  
9 and reusing more of their wastewater instead of  
10 discarding them into the ocean. They have found ways to  
11 pay for this. And we can, too.

12 Number six: We know that the injection wells  
13 at Lahaina cannot be shut down until there's a viable  
14 alternative. But a strict timetable needs to be set as  
15 a condition of the permit for developing that  
16 alternative. The County has not borne its burden of  
17 proof. And we urge you to look at the cases cited as to  
18 why it has the responsibility in this case to show that  
19 a 10-year-or-more year of injection is necessary or  
20 desirable.

21 Again, we're pleased by the Mayor's decision  
22 announced tonight to try and work out a situation that  
23 will get us more like a five-year permit. And we think  
24 that's progress. And we're happy to work with her.

25 We believe that, within one year, Maui County

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1 can establish a plan, schedule required benchmark of  
2 progress for the design, financing and construction of  
3 wastewater treatment upgrades and the facilities  
4 necessarily to safely and beneficially reuse the  
5 effluent on land.

6 We believe that five years is adequate to  
7 complete the process and have provided information to  
8 that effect. If the County can show us why that is not  
9 the case, well, we'll be open to listening to it, and so

10 should you, but, so far, we haven't heard that.

11 Number eight: The DIRE website, Don't Inject,  
12 lists a number of communities in which this has been  
13 accomplished. The wastewater reuse recycling has been  
14 accomplished, including Prescott, Arizona, which  
15 auctioned off its rights to reclaimed water effluent for  
16 up to \$67 million.

17 Number nine: Our website also references  
18 federal grants of tens of millions of dollars made in  
19 the last year to help alleviate drought and enable  
20 communities to improve treatment of wastewater and reuse  
21 of effluent. Moreover, the County estimates that the  
22 necessary improvements will cause no more than three to  
23 five percent increase in waste management fees. Planned  
24 development could help pay for these costs.

25 Number 10: Working together, we are confident  
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1 that we can achieve the Mayor's goal. And we are very  
2 pleased at the overtures from the County to its citizens  
3 to work with -- with the County on that direction. And  
4 we welcome that.

5 For the reasons stated here, but elaborated in  
6 our -- in our written testimony, we at the DIRE  
7 Coalition urge EPA not to move forward with the proposed  
8 revised permit, but, instead, to work with all concerned  
9 parties to develop a permit that includes compliance  
10 with the Clean Water Act and a binding schedule for  
11 realizing the Mayor's goal no later than five years at  
12 Lahaina.

13 Number 11: We not only believe this is wise  
14 policy, we believe this is the only permissible outcome  
15 based on the science and the applicable federal and  
16 state law, and the record of the proposed permit that  
17 you have before you.

18 Number 12: The cost of ensuring reuse will  
19 only increase over the next 10 years. And as the  
20 appendices to our testimony show, we can find the funds  
21 if we have the will to take action now to protect our  
22 reefs and preserve our precious water resources for safe  
23 and beneficial use on land for the current generation  
24 and for future generations.

25 We thank you for the opportunity to testify.

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1 (Applause.)

2 HEARING OFFICER ALBRIGHT: Thank you for your  
3 comments, Mr. Schwartz.

4 Next is Teri Leonard.

5 MS. LEONARD: First of all, aloha. And thank  
6 you for allowing this opportunity to speak.

7 I represent myself here, but I'm going to tell  
8 you that I'm the manager of Maui Dreams Dive Company in  
9 Kihei, and I have been employed as a scuba instructor  
10 there for 10 years. I'm also a member of the Maui Nui  
11 Marine Resources Council, the Maui Reef Fund, Sea Link,

12 and I chair the Reef Sustainability Committee of South  
13 Maui Sustainability as well.

14 Tonight I'm addressing three major issues  
15 surrounding the Lahaina injection well permit process;  
16 reef pollution, water wastage and permitting precedence.

17 First, through my job experience, I have dove  
18 thousands of dives along the Maui coastline and have  
19 witnessed the ongoing degradation of our reef system.  
20 What began as a subtle layer of algae building across a  
21 vibrant coral reef has now become a thick and solid  
22 carpet of algae which smothers more and more of our  
23 coastal areas.

24 Scientific evidence gathered by the University  
25 of Hawaii and the State of Hawaii Department of Land and  
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1 Natural Resources clearly indicates that pollutants and  
2 contaminants entering the ocean from injection wells are  
3 having a direct effect on the health of our Maui coral  
4 reef systems.

5 Yes, it is true that we have many areas of  
6 human activity which contribute to reef pollution that  
7 must be addressed; overfishing, misuse and loss of  
8 wetlands, runoff issues, overdevelopment and  
9 overpopulation are just a few. But here tonight, we  
10 have an opportunity and, according to the Clean Water  
11 Act, a responsibility to reduce and ultimately end the  
12 injection of pollutant wastewater into our coastal  
13 waters and our reef environment.

14 Second: With water shortages always imminent  
15 here on Maui, the waste of millions of gallons of water  
16 per day that could be used for irrigation purposes seems  
17 criminal. I would like to see a mandate demanding the  
18 investigation into and the enacting of alternative  
19 methods of water disposal and reuse included in the  
20 permit as well as a shorter permit lifespan.

21 As more qualified experts and scientists than  
22 I are telling you tonight, incredible amounts of reef  
23 pollution and wastage of water will result with the  
24 status quo being maintained over the next 10 years.

25 Third: I am concerned with the precedent set  
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1 with the Lahaina -- with the Lahaina permit, that they  
2 will affect the permit process when it comes to my home  
3 in Kihei.

4 And -- and, lastly, I would like to address  
5 funding for the County's benefit. The County's  
6 injection well website and page mentions many times that  
7 any improvements or alternative disposal methods will  
8 cost taxpayers. However, as recorded in the Water Trust  
9 Fund Summary of July 14, 2009, from the U.S. Treasury  
10 Department, according to Title 1, Section 101 of the  
11 Proposed Water Protection and Reinvestment Act, monies  
12 collected from corporate profits will fund appropriate  
13 public wastewater treatment and reuse programs. Section

14 406(a) establishes a national water infrastructure  
15 research development and demonstration program within  
16 the EPA to develop, demonstrate and transfer innovative  
17 or improved technologies and methods for the treatment,  
18 control, transport and reuse of drinking water and  
19 wastewater. This will help the agency, as well as local  
20 treatment works and water systems, meet the needs of the  
21 21st Century.

22 Section 102 states that 48 percent of that --  
23 of those monies will be spent on the Clean Water State  
24 Revolving Funds, almost \$5 billion. These funds are  
25 grants to capitalize state funds which then provide

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1 loans to publicly-owned treatment works for wastewater  
2 treatment construction to meet Clean Water Act  
3 requirements and provide sewage services.

4 Yes, we would have to pay the money back, but  
5 the investment will ultimately save untold future lost  
6 revenues if we allow the reef to perish.

7 Therefore, I support Mayor Charmaine Tavares  
8 and County Council Members Wayne Nishiki and Michael  
9 Molina on their choice to commit to ending County  
10 injection well usage. Many challenging steps are ahead,  
11 including the determination of alternative uses for the  
12 15 million gallons per day of water that is currently  
13 being thrown away into Maui coastal waters and onto Maui  
14 reefs. Now is the time for actions to speak at least as  
15 loud as words.

16 The first step is for the EPA to not issue  
17 another 10-year permit to the County for the operation  
18 of the Lahaina injection wells. A much shorter time  
19 period for these permits must be established, along with  
20 the mandate that alternative methods of wastewater usage  
21 are to be investigated and ultimately be used to replace  
22 this incredible waste and misuse of our precious water.

23 You represent our Environmental Protection  
24 Agency. Please protect our environment.

25 Thank you.

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1 (Applause.)

2 HEARING OFFICER ALBRIGHT: Thank you for those  
3 comments, Ms. Leonard.

4 Rene Umberger.

5 MS. UMBERGER: I also wanna thank you for the  
6 question-and-answer session. I thought that was really  
7 beneficial. So thank you for that.

8 My name's Rene Umberger. Thank you for the  
9 opportunity to comment today. I speak on behalf of the  
10 Maui Nui Marine Resource Council, which is dedicated to  
11 the restoration of our nearshore waters and marine life.

12 We also appreciate that the current permit  
13 proposal is an improvement over the original. However,  
14 many of our requests have not been adequately addressed  
15 in this new draft. And in addition, we are aware of new

16 information.

17 As Jeff has already gone over a lot of this in  
18 detail, but there is -- we know there's a large body of  
19 evidence confirming that nutrients in coastal waters are  
20 a problem associated with the mismanagement of waste.  
21 According to statements made here this afternoon and  
22 previously by current and former County wastewater  
23 personnel, the nitrogen-laden effluent from the County  
24 wells does make it into the ocean.

25 There's evidence that was submitted by the

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1 Division of Aquatic Resources Director, in November,  
2 that there is evidence that there is a substantial reef  
3 degradation immediately offshore of the Lahaina  
4 facility. That they have years of data clearly showing  
5 a correlation between wastewater injection, decrease in  
6 coral cover, and increased problems with invasive algae.  
7 And there is scientific evidence that the injection well  
8 plumes are percolating up into the nearshore waters.

9 We ask you to keep in mind that coral reefs  
10 are a national and global resource. And a large  
11 percentage of the U.S.'s coral reefs are in Hawaii.

12 Yes, they are threatened by more factors than  
13 nutrient pollution. However, according to leading  
14 scientists, we no longer have the time for arguments  
15 over which factor is the worst culprit. Each one needs  
16 to be addressed if we value coral reefs and want to stop  
17 their degradation.

18 As you may know, the socioeconomic value of  
19 Maui's coral reefs is tremendous. Continued habitat  
20 degradation will spell disaster for our fish  
21 populations. And fishing for sustenance is a very  
22 important part of Hawaii's culture. In addition,  
23 healthy coral reefs are critically important to Maui's  
24 economy. For instance, Kihei reefs annually contribute  
25 at least \$28 million to the economy from property

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1 biodiversity and recreational value. West Maui reefs  
2 are at least equally valuable.

3 These are just some of the reasons why  
4 developing the infrastructure for higher levels of water  
5 reuse is economically, not to mention legally,  
6 justifiable. The costs of not doing so outweigh the  
7 costs of creating alternative methods of treatment and  
8 reclamation.

9 We all know that very substantial progress has  
10 been made in other communities to address reuse issues.  
11 Here on Maui, using more reclaimed water, instead of  
12 injecting it, will help solve critical water shortage  
13 issues by helping to alleviate competing water uses.

14 Given all of this information, we stand by our  
15 earlier request asking EPA to address comprehensive  
16 watershed planning to ensure that decisions and  
17 solutions are beneficial to all concerned.

18 We also ask for timetables for Maui County to  
19 meet all EPA Clean Water Act requirements.

20 We ask for deeper cuts to nitrogen loading as  
21 soon as possible. 27,000 pounds quarterly is too much  
22 today. And nitrogen injected today won't enter the  
23 ocean for years. Our reefs require better than that to  
24 survive.

25 We also ask for groundwater/ocean water

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1 quality and marine resource monitoring that is  
2 implemented with resolution, that can detect change over  
3 time, so it's possible to know if mandated changes are  
4 sufficient.

5 In addition, we support the Mayor's goal of  
6 100 percent wastewater reuse and ending all injection  
7 wells. We support substantially upgrading the  
8 treatment, reusing the water and shutting down the  
9 injection wells as the new water reuse system is built.  
10 And we request a less than 10-year duration on the  
11 Lahaina permit.

12 Thank you.

13 (Applause.)

14 HEARING OFFICER ALBRIGHT: Thank you for those  
15 comments.

16 Next will be Robin Knox.

17 MS. KNOX: Hello. My name is Robin Knox. And  
18 I am a water quality professional with 25 years  
19 experience in Clean Water Act regulation and water  
20 pollution control, wastewater treatment, that kind of  
21 thing.

22 I would like to say aloha and welcome to Maui.  
23 And mahalo for all of your hard work. We really see  
24 improvements in this revised draft permit.

25 And I support -- I'm speaking for myself, but

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1 there are many like-minded souls who agree with me. I  
2 support what you've done with injectate volume limits  
3 and mass nitrogen limits and bacterial limits. As  
4 you've pointed out, I think those are absolutely  
5 necessary to meet the mandates of the Safe Drinking  
6 Water Act and to protect underground sources of drinking  
7 water. I think it's a great benefit that it also  
8 reduces loading to the ocean, as we've been talking  
9 about. So I support you in concept in those limits.

10 I do think that the limits still need to be  
11 tightened up some. Like, for instance, injectate  
12 volume, you still have 7 mgd, but the County website  
13 says that the reliable design capacity of the plant is  
14 4.5 mgd on an average dry basis, which would be like  
15 about 5.5 long-term average mgd. And that makes a big  
16 difference.

17 If you look at nitrogen loading rates, if we  
18 can get rid of a million gallons a day of the -- of the  
19 water, then that cuts the nitrogen -- at seven

20 milligrams, that cuts almost -- or more than 20,000  
21 pounds per year out of the discharge. So limiting that  
22 injectate volume is important. So I don't wanna see the  
23 permit limits being any higher than they absolutely need  
24 to be in terms of volume.

25 And then, of course, we also could reduce  
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1 nitrogen. And in talking to the Mayor this week, I'm  
2 really encouraged that there are some really short-term  
3 solutions. Because looking at some of the numbers, that  
4 maybe we can reduce concentration just a little bit, get  
5 a little bit better performance out of the plan, and  
6 reuse just a little bit more water, we can significantly  
7 start reducing the nitrogen loads. And I don't think  
8 that's gonna take five years. I think, within five  
9 years, we could figure out how to reuse a million  
10 gallons a day of water. I just can't believe that that  
11 can't be done.

12 And I would encourage you to ask the County to  
13 show you why it can't be done if they're telling you  
14 that it can't be done.

15 Also, I would like everyone to realize that we  
16 need to finalize this permit. I think it's great to  
17 keep having these opportunities to have input, but as  
18 long as we keep talking about it, there are no limits on  
19 nitrogen. And I really feel that clock ticking. Every  
20 day, it's 200 more pounds of nitrogen on the reef.  
21 Every year, it's 70,000 more pounds. So when you're  
22 talking about compliance schedules, please remember  
23 that.

24 And I'm very encouraged by the Mayor and the  
25 County. Talking to some of the treatment plant

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1 operations people this week and the Mayor, I feel like  
2 we're really close to having some agreements that will  
3 work with everybody and move forward.

4 I would like you to add monitoring of  
5 groundwater, ocean and additional effluent monitoring.  
6 I think that we really need to understand this system  
7 more.

8 The County has rightfully said that we don't  
9 really know what level we need to reduce the total of  
10 all nitrogen discharges to in order to protect the reef.  
11 We know what we have today is too high. We know it  
12 needs to be reduced. But some monitoring and  
13 understanding of the groundwater movement of that plume  
14 and what kind of degradation is going on in the  
15 groundwater would really help us understand where that  
16 bottom line is on nitrogen load that we need to get to.

17 I think the limits need to be in the permit to  
18 get the nitrogen out of the permit. The County has  
19 their choice of ways of doing that. As we've said, it  
20 could be reducing flows, it could be reducing  
21 concentrations. So it can either be treatment, reuse or

22 other options. I really don't care, as long as we get  
23 it off the reef. I think there's a number of good  
24 things we can do with it.

25 So that's the extent of my kind of technical  
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1 comments.

2 On a personal basis, I would just like to  
3 share with you what I've seen personally. I came here,  
4 I moved here, I left my home of 51 years, the house that  
5 I grew up in, my children and my grandchildren, to come  
6 here to tell you this, to work here for three years so  
7 that I really understood this. Because I am horrified  
8 at the lack of implementation of the Clean Water Act  
9 here.

10 And I will remind you -- I will reiterate  
11 everything Jeff said about the nexus and the fact that  
12 we think that this might be unlawful to continue to  
13 permit this to happen. I will remind you that knowing  
14 violation of the Clean Water Act is a criminal act. And  
15 what is happening out there right now is criminal. And  
16 I think any one of the scientists or recreational users  
17 or professionals in the marine industry who are out  
18 there every day feel the same way. We cry about this.  
19 Scientists cry at meetings. You know what, we're  
20 supposed to be all cold and logical and factual, we're  
21 crying.

22 I have to worry about getting sick when I go  
23 to do my job. My co-workers are sick. They have the  
24 antibiotic resistant staph infections. It's from diving  
25 in the places where the injection wells are come --

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1 effluents are coming out on the reef.

2 I have seen a friend come to the island for a  
3 week and swim in the ocean with a cut, and his foot  
4 swole up this big and had to go to the emergency room.

5 There is no requirement for disinfection for  
6 most of the wastewater on this island. It goes into  
7 cesspools. And some of it, thank goodness, gets some  
8 treatment in the County plants. And even that's not  
9 disinfected unless we reuse it. It gets injected out.

10 I mean, this is like third world. Let's stop  
11 it. Because my personal observations are that this is  
12 an outrageous, appalling, possibly criminal negligence  
13 to implement the Clean Water Act.

14 The Clean Water Act came about because people  
15 were angry. People here on Maui are sad and angry about  
16 what's happening to our water quality.

17 And I thank you for reaching the fullest  
18 extent of your authority under the Safe Drinking Water  
19 Act and this permit. I can see what you're doing, and I  
20 appreciate it and I encourage you to continue it, to  
21 protect our drinking water supplies and, also, to  
22 protect our surface water supply.

23 So please go home, tell your administrators



24 that we told you, you can't say it's not your table.  
25 It's -- it's EPA's table. It's EPA's job. And we have  
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1 every faith that you will help us resolve this.

2 Thank you.

3 (Applause.)

4 HEARING OFFICER ALBRIGHT: Thank you for that  
5 testimony.

6 Next speaker is Irene Bowie.

7 MS. BOWIE: Aloha, EPA officers and State  
8 Department of Health staff. I'm Irene Bowie, Maui  
9 Tomorrow Foundation. And I wanna thank you for  
10 returning to Maui to hold this meeting.

11 Maui Tomorrow Foundation is a member of the  
12 DIRE Coalition, representing the interests of many  
13 members of our community concerned with the state of our  
14 County's reefs, public health and economy. We strongly  
15 support Mayor Tavares' goal of 100 percent wastewater  
16 reuse and zero injection. And ask the County's  
17 Wastewater Management Department to work with the  
18 community and DIRE Coalition to achieve this goal.

19 We ask that EPA not grant the requested  
20 application as written, but, instead, issue a permit for  
21 no longer than five years conditioned on a number of  
22 requirements, including more stringent waste treatment  
23 of nitrogen removal and effective disinfection of  
24 pathogens; effective ground and ocean water quality  
25 monitoring and public reporting; development, within one  
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1 year, of a detailed plan for building and funding  
2 necessary treatment upgrades in wastewater reuse  
3 facilities.

4 EPA should decline to approve a 10-year  
5 renewal permit for Maui County to continue to discharge  
6 inadequately treated wastewater effluent into the  
7 injection wells because this effluent flows into the  
8 ocean, stimulates algal growth, harms coral reefs, and  
9 releases pathogens that threaten the health of those  
10 using West Maui's nearshore waters.

11 Maui Tomorrow believes it is feasible to end  
12 all reuse within five years. We ask that EPA not grant  
13 a UIC Permit as it allows behavior prohibited by the  
14 Clean Water Act.

15 A five-year term is warranted to ensure that  
16 progress is made and to also ensure that this situation  
17 is revisited more than once in a decade.

18 We ask for reductions in nitrogen loading and  
19 injectate rates during the five years as Maui County  
20 moves towards an ultimate goal of eliminating  
21 underground injection as a disposal option.

22 With the 2030 Maui Island Plan projecting  
23 growth of more than 5,000 units in West Maui, it is  
24 imperative that we move towards more water reuse and  
25 away from detrimental practices.

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1 Maui Tomorrow Foundation asks the EPA not  
2 approve the permanent renewal application as the current  
3 wastewater injection practice at Lahaina violates the  
4 policies of the Federal Pollution Prevention Act, Hawaii  
5 State Water Pollution Control regulations and policies,  
6 and the Hawaii Constitutional requirement that the  
7 counties, as well as the State, treat all waters of  
8 Hawaii as a public trust.

9 We ask that the County of Maui phase out  
10 wastewater injection wells and reclaim and reuse  
11 properly treated wastewaters on land for a variety of  
12 beneficial uses as soon as possible, and no later than  
13 January 1st, 2015.

14 And, again, ask EPA to issue a permit for  
15 Lahaina Wastewater Treatment Facility for only five  
16 years.

17 Again, we applaud Mayor Tavares' commitment to  
18 100 percent wastewater reuse and zero injection and look  
19 forward to working together towards that goal.

20 Thank you.

21 (Applause.)

22 HEARING OFFICER ALBRIGHT: Thank you for your  
23 comments.

24 Next speaker is Ramon Madden.

25 MR. MADDEN: Hi, folks. My name is Ramon K.

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1 Madden and I'm here representing myself as a citizen of  
2 West Maui.

3 First of all, I would like to just start by  
4 saying that this is -- we're celebrating our 50th year  
5 of statehood here. And Maui has seen a lot of changes  
6 over the past 50 years, but, unfortunately, they haven't  
7 all been for the better.

8 In the early Seventies, a new deal for  
9 development was implemented over here on West Maui. And  
10 the people knew that there would be issues with the  
11 wastewater treatment. They were promised that -- and  
12 assured that the environment would be protected. And in  
13 my opinion, they failed miserably.

14 We have problems with our coral reef. We have  
15 problems with our turtles, they have fibropapilloma,  
16 they have cancer. We have algae blooms. They're  
17 disgusting to swim in. Not to mention rampant staph  
18 infections. All of these could be attributed to  
19 improper wastewater treatment, among other things.

20 Now, our population is already overburdened  
21 with this current wastewater treatment. And we're  
22 asking for another 10 years. I just -- if you look at  
23 this map for a second, this is a -- all the colored  
24 areas are proposed new developments in accordance with  
25 the -- with the 2030 plan. So as you can see, our

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1 population is gonna be hugely, massively increased, but

2 this would all be happening during this time that this  
3 -- this 10 years. So I'm not sure how you can say that  
4 under the -- that we'll be able to stick with the  
5 current standards with increased population.

6 In addition, I'd like to say that, you know,  
7 clean water is a -- is a global challenge and a key  
8 concern in many industries.

9 The nitrogen produced is responsible for  
10 uncontrolled algae blooms. Virtually, the high cost for  
11 waste disposal, mostly can be attributed to not having  
12 enough power. Because the cleaner the water needs to  
13 be, the more power that gets consumed.

14 So I took the time to do a little bit of  
15 research. And I found this company that does fuel cell  
16 energy which, basically, what they do is they do a  
17 direct full -- a direct fuel power plant and they use --  
18 recycle the sludge and create batteries that not only  
19 power all the necessary -- the electricity needed to  
20 create 100 percent clean water, but, also, they give  
21 power back to the community.

22 So as I -- as I go back down, I would like to  
23 give you some -- some of these.

24 In -- in closing, I would like to say that  
25 Hawaii's coral reefs, on Maui and elsewhere, have an

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1 exceptionally high biodiversity. They don't -- it's not  
2 just fishing, but it's also an integral part of our  
3 economy, with -- with tourism. And we can't afford to  
4 kill the goose that laid the golden egg like that.

5 And so, with that, I'd just like to thank you  
6 for your time in coming here tonight. And I'll drop  
7 these off.

8 (Applause.)

9 HEARING OFFICER ALBRIGHT: Did you want to  
10 submit the map as part of your testimony?

11 MR. RAMONE: Yeah. Thanks. Thank you very  
12 much.

13 HEARING OFFICER ALBRIGHT: Okay. Thank you  
14 for those comments, Mr. Madden.

15 And the next speaker is Hannah Bernard.

16 MS. BERNARD: Hi, again.

17 I will pass out my written testimony after I  
18 speak since I don't have enough for everybody right now.

19 I do have two hats that I'm wearing tonight.  
20 I am representing the Hawaii Wildlife Fund, and this  
21 nonprofit organization is a member of the DIRE  
22 Coalition, and the Ohana Coalition, Maui political  
23 action committee.

24 So, first, I'll share -- basically, what I  
25 have to say is ditto to what Jeff Schwartz said, and

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1 most of the other speakers.

2 Once again, I just wanna thank you so much for  
3 this second opportunity on Maui. And especially for the

4 earlier opportunity to have the exchange. We -- we --  
5 the DIRE Coalition, as you know, really lobbied for  
6 that. And we really appreciate your willingness to be  
7 here for that. That meant a lot to us. And it helped  
8 us a lot.

9 I also would like to have -- take this  
10 opportunity to say a special mahalo to our Mayor Tavares  
11 in the audience for her leadership in this issue, for  
12 her willingness to step forward and support reduction in  
13 the 10-year permit process, and finding ways to reuse  
14 the water rather than having it go down the injection  
15 wells.

16 (Applause.)

17 MS. BERNARD: We really appreciate her.

18 (Applause.)

19 MS. BERNARD: So, you know, it was nearly a  
20 year ago that we stood before you and voiced our  
21 opposition to having another 10-year permit for the  
22 injection well in Lahaina.

23 And as you know, millions of gallons of  
24 wastewater continue to flow down into the injection well  
25 and seeping -- eventually, they'll seep into the ocean

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1 during this time. And I would just like to reiterate  
2 that we don't have time. And you folks know this. And  
3 folks in the audience know this. We don't have time to  
4 -- to waste.

5 We cannot support the proposed revisions to  
6 the permit as you represented them. Even though the  
7 burden of proof under the Federal Administrative  
8 Procedures, the Federal Safe Drinking Water Act, and the  
9 Hawaii State Constitution is on the applicant, County of  
10 Maui, for the renewal of the underground injection well  
11 permit, not -- not those of us who oppose the issuance  
12 of this permit, we've prevented -- we've presented more  
13 than enough documentation, both legal and scientific, to  
14 persuade the EPA, and the County of Maui, as a public  
15 trustee, that this permit should be modified, at least  
16 according to the DIRE Coalition's suggestions.

17 And that this situation is urgent. It impacts  
18 our reefs, possibly our own health, our quality of life,  
19 and our way of life. So we definitely, Hawaii Wildlife  
20 Fund, support the expanded DIRE Coalition testimony  
21 given by Jeff Schwartz, and -- and even the 15-page  
22 document that he submitted to you as well.

23 I've also attached to my testimony the two  
24 pages that he read to you. Just to reiterate, we're  
25 proponents of that testimony and -- and participants in

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1 the coalition.

2 We agree with the basic four principles that  
3 he's already shared, and so have several of the other  
4 members. And I'm just gonna quickly go over them for  
5 the record.

6 We wanna see reductions of nitrogen and  
7 phosphorous levels and effective disinfection of the  
8 pathogens, effective monitoring of ground and ocean  
9 water quality, on bio impact, and public reporting,  
10 within one year, development and submission to the  
11 public and the EPA of a detailed plan, with benchmarks  
12 of progress for design, financing, construction,  
13 operation of necessary treatment upgrades and water  
14 reuse facilities. And, finally, phase out the injection  
15 wells as soon as possible, but in no event later than  
16 January 1, 2015.

17 So, once again, thank you for much for you  
18 being here and for working with us. And we look forward  
19 to working with our Mayor, who's already demonstrated  
20 her willingness to support our wishes on this issue.

21 And I'm just gonna quickly go over the Ohana  
22 Coalition testimony, which is very similar.

23 The Ohana Coalition welcomes you to Maui. We  
24 deeply appreciate your coming to explain the terms and  
25 conditions of the Draft UIC Permit and to consider

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1 community input on the issue.

2 The Ohana Coalition is a political action  
3 committee formed in 2002 by citizens of Maui County,  
4 including, already mentioned, our beloved kupuna, Ed  
5 Lindsey. It was formed to serve the best interest of  
6 the people and the `aina. And since then, we have been  
7 active in each election, raising public awareness on  
8 issues, promoting candidates who meet our criteria and  
9 reaching thousands of voters. Our mission is to support  
10 the election of ethical government representatives who  
11 are committed to protecting the culture and the  
12 environment and promoting sustainability, social  
13 justice, education, and island-style small-town living  
14 for Maui. The Coalition also communicates with elected  
15 officials about relevant community issues.

16 The issue of injection wells was featured in  
17 our discussions with candidates in the last election.  
18 We asked them where they stood on the issue of  
19 transitioning from injection well disposal to reuse of  
20 treated reclaimed water. And I want to emphasize  
21 "treated reclaimed water." This matter is of great  
22 concern to our group and, obviously, our community.

23 So at present, we understand that one  
24 committee chair of the Maui Council is drafting  
25 legislation to submit to the Council which would phase

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1 out injection wells for all of Maui County. And, also,  
2 once again, that Mayor Tavares announced, in May, her  
3 goal of 100 percent phaseout of injection wells and  
4 recycling reclaimed water at Maui wastewater plants.

5 And although she did not specify that -- that  
6 she also could commit to the end of injections wells in  
7 five years, we support her intention to have a plan in

8 place and bring our community together to formulate ways  
9 to -- to reduce injection well water. We do need an  
10 expedited timetable. And, once again, feel like one  
11 year is pretty much the maximum we need to work on this  
12 plan. A five-year term for the permit is something that  
13 we agree with and not -- not another decade.

14 If it is not feasible to end injection  
15 practices in five years, then the Ohana Coalition would  
16 ask for reductions in nitrogen loading and injectate  
17 rates during that five years, toward the ultimate goal  
18 of eliminating underground injection as a disposal  
19 option. Every small amount of reuse is better.

20 I'm gonna skip over some of it. It's been  
21 already stated by a number of the other participants who  
22 testified, some a bit redundant.

23 Once again, we're concerned about the amount  
24 of nitrogen that is already going to be percolating  
25 through the groundwater and into the reefs.

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1 So, once again, the Ohana Coalition wants to  
2 see a strong water quality monitoring plan with  
3 information accessible to the public as part of the  
4 permission -- permit conditions.

5 With regard to funding, more and more housing  
6 and commercial development is being proposed, as you  
7 already heard, for West Maui. And most of it will  
8 depend on the present treatment facility. So having  
9 that cap on the nitrogen that was proposed is at least a  
10 good start.

11 The County should have a plan in place also to  
12 use these -- to use new user fees to help fund a  
13 transition to cleaner and more efficient use of treated  
14 effluent.

15 So, once again, on behalf of the Ohana  
16 Coalition, Maui Steering Committee, of which I am a  
17 member, mahalo for coming to Maui and giving us this  
18 opportunity.

19 (Applause.)

20 HEARING OFFICER ALBRIGHT: Thank you for those  
21 comments. I just want to make sure we have what you are  
22 submitting. Okay.

23 The next speaker is Shawn Reid. Is Shawn Reid  
24 here?

25 MR. REID: Halfway.

0046

1 Aloha. My name is Shawn Reid. I'm a citizen  
2 of the land, a child of the sea.

3 And I would like to thank you for everything  
4 that you've done so far today in reviewing the permit  
5 and making revisions.

6 However, I'm slightly upset that there's so  
7 much emphasis on the drinking water and ground surface  
8 water, and not the reefs. You're gonna hear more  
9 testimony tonight regarding the reefs. I read the

10 document online, it was 108 pages. Every testimony on  
11 there was regarding the reef. And I'm really  
12 disappointed that the revisions haven't been put into  
13 place in the new permit, application requirements that  
14 address more of those concerns.

15 I echo everything that everybody here has  
16 said, is going to say.

17 You know, I wanna thank all you, too. You  
18 fill my heart, definitely. Thank you so much for coming  
19 out here and being a part of this process. It's  
20 important.

21 With that being said, I know that, you know,  
22 your jobs are -- you have to follow laws and regulations  
23 and standards that are put into place by law.

24 The UIC -- I believe it's UIC Permit, okay,  
25 it's about injection wells. I also -- I would like to  
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1 see more revisions put in place for a five-year maximum.

2 We're looking at 15 years now from the last  
3 time, right? Okay, 10 years. Five years from now, so  
4 we're almost at 15 years, I believe, since the last  
5 permit.

6 So five years, get rid of all the -- all of  
7 them. I want to see a president -- a precedent set.

8 Teri said that she was concerned about  
9 precedent being set here for injection well permit  
10 renewals. Those things need to be phased out  
11 completely, especially on an island. They may work on  
12 the mainland somewhere, but we're a reef system, a  
13 continental shelf system, on the coastline. They do not  
14 work here. They have not worked here.

15 I know on the north shore of Oahu, four more  
16 or five hotels are planned. And they're also requesting  
17 that a injection well treatment plant be allowed for  
18 that. If the State is here, I'm asking you to take a  
19 look at that, deny that, whatever, at all costs, come up  
20 with a different method.

21 And I don't have written testimony. I'm  
22 speaking from my heart. And I'm asking you to do the  
23 same, think with your heart. I know you have to follow  
24 the rules and regulations. And please do whatever you  
25 can, also, to bring the laws and regulations up to  
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1 today's needs.

2 One other gentleman said we have a lot more  
3 buildings coming in or wanting to come in. Our  
4 infrastructure can't hold what we have now. And they  
5 put up another monstrosity across the street -- right  
6 across the street from the current treatment plant.

7 That, luckily, one good thing coming out of  
8 this crisis of -- of economics, is that they don't have  
9 all those units sold and filled. Someday they might.  
10 And the current treatment plant that we have right  
11 now -- I'm speaking overall treatment plant, not just

12 injection -- also needs to be reviewed and looked at.

13 So thank you again. And thanks.

14 (Applause.)

15 HEARING OFFICER ALBRIGHT: Thank you,

16 Mr. Reid, for those comments.

17 And the next speaker is Russell Sparks.

18 MR. SPARKS: Good evening. And thank you for  
19 coming back again.

20 My name is Russell Sparks. And I'm  
21 representing the Division of Aquatic Resources,  
22 Department of Land and Natural Resources.

23 Last time you guys came, I thanked you and  
24 expressed the fact that I'm normally in that seat  
25 listening to the public. And what was interesting is,

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1 shortly after you left, I was in that seat, listening to  
2 the public again. And I heard a very strong message  
3 from many people in the public that they were not happy  
4 with us for always picking on fishermen and fish.  
5 Unfortunately, the same way you explain your  
6 jurisdiction and legal authorities is the same way that  
7 I felt.

8 But I -- I did comment to a lot of people in a  
9 lot of discussions in the past, that our division is --  
10 is committed to working out holistic approaches to  
11 better managing the nearshore reef environment.

12 Coral reefs are very complex, probably a  
13 little more complex even than the bureaucracy and the  
14 working arrangement of the EPA. Maybe just a little  
15 bit.

16 On a very simplistic note, however, coral  
17 reefs can be broken down, or at least reef degradation  
18 where -- associated with problems with algae, can be  
19 broken down to things that control the growth of the  
20 algae, fish, grazing, sea urchins, things of that sort,  
21 and things that promote the growth of algae. And a  
22 simple -- or explanation there is nutrients, oftentimes  
23 coming from land.

24 The reefs off of the Lahaina Wastewater  
25 Reclamation Facility have experienced somewhere around

0050

1 50 percent coral decline since we've been monitoring it,  
2 since 1994. The Department decided to do what we could.  
3 And we took measures to protect grazing fish, to help  
4 control the algae. And not everybody may be aware, but  
5 that rule was actually passed and was effective July 25,  
6 2009.

7 (Applause.)

8 MR. SPARKS: But that, as I said, is only part  
9 of the problem. And we do not expect the reef to come  
10 back if we're not able to address this holistically.

11 And so we really do need measurable steps taken to  
12 reduce the factors that promote algae growth and  
13 degradation, i.e., land-based nutrient loads.



14 I'm not gonna read everything because we're  
15 going to go on all night here, but I wanted to mention  
16 something else that is kind of important.

17 The Division of Aquatic Resources Coral  
18 Program is funded by the United States Coral Reef Task  
19 Force. Okay. Your EPA Administrator does sit on that  
20 task force as well. The funds that they give the State  
21 to better manage and reduce coral reef loss has been  
22 prioritized for two areas in the State of Hawaii. One  
23 of those areas is, in fact, the reefs at North  
24 Kaaupali. So there will be a fair amount of research  
25 and priority put to this very reef to further study it

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1 over the coming years. And we fully expect that there  
2 will be a fair amount of natural etching as well.

3 This is good, I think. Hopefully, this will  
4 help for the problem we've discussed about, within the  
5 EPA, within the State Department of Health, even within  
6 the County, willingness to really get together and  
7 address this holistically and deal with the overall  
8 problem.

9 With all of this in mind, I offer the specific  
10 recommendations. The protocols for the Underground  
11 Injection Control Program within the EPA and the Hawaii  
12 State Department of Health need to be modified so as to  
13 assess impacts to Hawaii's coastal waters. The Clean  
14 Water Act, in addition to the Safe Water Act, must be  
15 considered when regulating existing and future injection  
16 well permit applications.

17 We applaud the efforts that you've made, that  
18 the EPA has made, in implementing permit -- or  
19 attempting to implement permit conditions to regulate  
20 all the nitrogen loads and wastewater injectate volume.  
21 We're particularly happy with the efforts to encourage  
22 wastewater reuse by requiring treatment of all  
23 wastewater to R-1 standards, and by gradually reducing  
24 permitted levels of daily nitrogen over the -- over the  
25 course of the permit's 10-year time period.

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1 We feel, however, that the draft permit  
2 conditions do not go far enough. And we offer the  
3 following specific suggestion.

4 Currently, the County injects between three to  
5 five million gallons a day, average's around 3.34. This  
6 data comes from 2006 to 2008. The draft permit would  
7 allow for daily rates of seven million gallons per day,  
8 whereas we're currently averaging 3.34. It would even  
9 allow for maximum daily limit of 10 million gallons. We  
10 feel this allowed average injection rate should be  
11 capped at no more than what is currently being injected,  
12 four to five million gallons per day.

13 Furthermore, we feel it's appropriate to  
14 implement stage reductions in injectate volume over  
15 time. At the very least, we would like to see the

16 permit conditions set as to prevent any further  
17 injection volumes from current levels.

18         Although much concern has been placed on  
19 nutrient loads, marine scientists have also expressed  
20 concerns that high volumes of fresh water entering  
21 marine ecosystems can alter water chemistry and  
22 adversely affect coral reef health. This concern is  
23 especially important in areas where coral reefs have  
24 evolved in the absence of natural fresh water or, at  
25 least, significant fresh water. Real short, you can

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1 change the chemistry of the water, change the pH, and  
2 adversely impact the way corals fix calcium and build  
3 the skeleton that supports 'em. Reefs off of Lahaina,  
4 or outside of the wastewater injection facility, are  
5 collapsing on themselves. We feel this could be one  
6 reason why.

7         Currently, the wastewater treated at the  
8 wastewater facility has an average total nitrogen action  
9 level of 6.87 milligrams per liter. The draft permit  
10 would allow this to be a 10. We suggest the permitted  
11 total nitrogen action level be capped at 7, with permit  
12 conditions set to further reduce this over time.

13         Currently, the facility injects total daily  
14 nitrogen loads of about 192 pounds per day. And monthly  
15 loads that average about 5,788. Your permit conditions  
16 limit these loads at levels well above these current  
17 levels.

18         The draft permit conditions required to be  
19 implemented in December 31st, 2015, are actually about  
20 where we're at today. So we suggest that the permitted  
21 caps, the maximum daily nitrogen loads, be set at the  
22 current levels, and that further reductions be required  
23 by the year 2015.

24         The current 10-year permit timeframe is too  
25 long. Science and technology is rapidly increasing our

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1 ability to identify wastewater plumes and to measure  
2 their impacts on natural aquatic ecosystems.

3         The designation of the North Kaanapali area  
4 has a priority research site for the Hawaii Coral Reef  
5 Program, will likely increase our understanding and  
6 impacts from the facility. As new information is  
7 gathered, the EPA needs to be able to apply these  
8 findings as quickly as possible. We suggest the permit  
9 timeframe to reduce to no more than five years. And  
10 just so happens, that seems to be the timeframe  
11 everybody else is talking about tonight. So our stars  
12 must be all aligned.

13         Just -- just in -- in concluding, the -- we  
14 appreciate the willingness of you folks to continue to  
15 come back and hear from us, continue to work towards  
16 permit conditions to help reduce impacts of Lahaina  
17 Wastewater Reclamation Facility.

18                   We applaud the Mayor's testimony tonight. The  
19 reality of the world, however, is that if there is not  
20 real conditions to ensure this, I'm afraid political  
21 winds may change, and things may never ever get funded  
22 and done. So we really need the County to work together  
23 with the EPA, with the Department of Health, and with  
24 all of the citizens of Maui to -- to really work forward  
25 to that goal of reducing or eliminating completely

0055

1     injection wells and using that water for a reuse.

2                   Thanks again for coming.

3                   (Applause.)

4                   MR. SPARKS: I have a copy. I think you got  
5 one in the mail, but I'll leave it with the reporter.

6                   HEARING OFFICER ALBRIGHT: Is that -- Russell,  
7 is that your letter, the August 13th letter?

8                   MR. SPARKS: Yes.

9                   HEARING OFFICER ALBRIGHT: Okay. Thank you  
10 for those comments.

11                   Okay. The next speaker is Lucienne de Naie.

12                   MS. De NAIE: It's a tall person.

13                   Thank you. Lucienne de Naie, once again,  
14 speaking on behalf of Sierra Club, Maui Group.

15                   Well, I'm really glad that we had that earlier  
16 session. That was so helpful to try to get questions  
17 answered. Because, you know, for the average citizen,  
18 this is a very complex and convoluted process. And the  
19 more we can understand, the more we can have some sort  
20 of solution where everybody can, you know, put their  
21 ideas in the same direction rather than just arguing  
22 about details, because nobody understands what is going  
23 on. So mahalo nui loa, as we say here.

24                   The Hawaii Chapter of the Sierra Club has a  
25 long history of working with the EPA to improve water

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1     quality in our fresh water and marine environment. In  
2 fact, we've been at it in Honolulu, I think, for 15, 18,  
3 20 years, something like that. The Maui Group of the  
4 Sierra Club is part of the state-wide chapter. And I'm  
5 the vice president of the State Chapter and I'm also a  
6 member of the Maui Group. Sierra Club is also part of  
7 the DIRE Coalition.

8                   And at the November EPA hearing last year  
9 here, we presented testimony in support of setting a  
10 specific timetable for conversion of the injection well  
11 disposal system at Lahaina into a system which allows  
12 all reclaimed water to be processed to a level that  
13 meets State and Federal standards for reuse.

14                   Now, we also supported the UIC Permit,  
15 including conditions which require planning and  
16 implementation of the infrastructure that's gonna be  
17 necessary to deliver the plant's reclaimed water to  
18 non-potable use in extremely water-deficient West Maui.  
19 So we're grateful that the EPA's staff has returned to

20 Maui for an update before final decision is made on this  
21 permit and its conditions.

22 Like others before us, we do support the  
23 shorter timeframe for the permit. In part, because we  
24 all wanna stay involved. And, you know, we're glad to  
25 hear that the Mayor feels that that would be reasonable,  
0057

1 too.

2 You know, it's like government and the public  
3 work together. It's hard for the government to do  
4 things without knowing that there's public support and  
5 public involvement. And it's hard for the public to  
6 give that support and involvement if there is no  
7 opportunity to learn what's going on.

8 So you're our opportunity. So we -- we are  
9 grateful for that.

10 Well, Sierra Club Maui was among the earliest  
11 groups to question the assumption that injection of  
12 nutrient-rich waters into the nearshore waters of  
13 Maui -- of West Maui would have no effects. Now  
14 scientific studies have come to support the presence of  
15 those same nutrients in the algae that's smothering West  
16 Maui reefs in the immediate vicinity of the Lahaina  
17 injection wells.

18 And I, for one, in 1995, was pushing to see if  
19 we could get Earth Justice to sue you guys, you know.  
20 And I have to admit it, because we were just so  
21 disgusted by what was happening with our waters.

22 Well, it hasn't gotten any better, but I think  
23 our -- our conditions between government and federal  
24 regulatory agencies are improving. So I have little  
25 hope for the future.

0058

1 We are in full support of Mayor Tavares'  
2 stated goal to have a solid practical plan to phase out  
3 the injection wells and use the water in all of Maui's  
4 wastewater facilities, to -- to reuse it. This sensible  
5 strategy can help alleviate water shortages and return  
6 the valuable resource to a more natural ecological  
7 cycle.

8 And this is very important. I mean, it is not  
9 the natural cycle for all this water to be gathered from  
10 our streams and our underground aquifers and then sent  
11 out in a different state out into the ocean. This isn't  
12 what nature does. Nature does send water out into the  
13 ocean, but it sends it out with different stuff than  
14 what we're doing here.

15 So the more that we kind of go against nature,  
16 the more problems we're going to have, that then we have  
17 to spend money and time to clean up. We would like to  
18 avoid that part of the puzzle here.

19 One thing is very clear. It's time to act.  
20 And we are counting on the EPA, the watchdog of our  
21 irreplaceable natural resources, to lead the way.

22 Now, we don't know -- you know, Sierra Club,  
23 too, like other members of DIRE, we've not analyzed the  
24 Mayor's plan. It's my understanding that there aren't  
25 any operant algae-to-energy plants that -- right now

0059

1 that we can, you know, point to and say, hey, yeah,  
2 that's really a great thing. They're all like in the  
3 experimental stage. So that might be where we go, but  
4 it may not.

5 However, I think it's very good that the  
6 Mayor's convening a task force. I would urge this task  
7 force to have a very finite timetable.

8 And I'm just saying this -- you know, I'm an  
9 old battle veteran here. I remember years ago when the  
10 Iao Aquifer was being overpumped. This is 1995, 1996,  
11 1997. And a group of citizens appeared before the Water  
12 Commission and say, you know, you're gonna decimate this  
13 aquifer, you know, it's being degraded. And, oh, no,  
14 no, no, a task force was proposed. Well, guess what?  
15 All we did was see our chlorate levels get higher and  
16 higher over the five years that that task force  
17 operated. And, finally, we had to sue and get  
18 designation as the eventual result of that.

19 So task forces are great, but let's make sure  
20 that they're really directed and that they have some  
21 goals that they have to meet. And we're not back here  
22 five years from now saying, well, the task force tried  
23 this and tried that, and we're still injecting a lot of  
24 nitrogen into the ocean.

25 So I believe the Mayor has, you know, a good

0060

1 effort here, but I just wanna put that caveat in. You  
2 know, we all need to be aware we don't live in the  
3 perfect world. So let's give a little nudge.

4 Now, Maui's reefs, as you probably know, are  
5 extremely important to Hawaiian cultural practices. And  
6 these practices are protected under Article 12, Article  
7 12, Chapter 7 of the State's Constitution. In fact,  
8 there's no action that can really legally take place in  
9 this state that has a deleterious effect on Hawaiian  
10 cultural practice. Now, this ain't what happens all the  
11 time, but it is the law.

12 And you may be familiar that in the Creation  
13 Chant that the Hawaiian people have, that tells about  
14 the evolution of the Hawaiian islands, the very, very  
15 first life form to emerge is the coral polyp. It is the  
16 building block of all life for the Hawaiian view of the  
17 world.

18 And traditional Hawaiian land management  
19 considered the actions from the summit all the way to  
20 the reefs, not to the edge of the shore, but all the way  
21 to the reefs. So we feel, you know, if we're gonna give  
22 lip service that we live here in Hawaii and we respect  
23 Hawaiian culture, we need to look at our actions from

24 the summit to the reefs, whether they're an injection  
25 well or a grading permit. We cannot stand by and watch  
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1 while one of the cornerstones of Hawaiian culture is  
2 degraded to the point of lifelessness simply because  
3 change comes with a price tag. We need to figure out a  
4 way to meet that price tag.

5 Maui's reefs are also an integral part of the  
6 island's economic infrastructure. A Sierra Club survey  
7 done of 1,000 randomly selected visitors in 1998 found  
8 that swimming in ocean waters and observing reef life  
9 was the activity most drawing visitors to Maui. A  
10 similar survey by the Hawaiian Tourism Authority, in  
11 2006, found exactly the same response. This is why  
12 people come. It's such a unique experience to swim in  
13 warm, hopefully clean, water and see this amazing world  
14 under the surface, on our reefs.

15 We, at Sierra Club, have used the courts for  
16 years to seek compliance with the Clean Water Act  
17 policies and provisions. And we note that a group of  
18 citizens in Maui recently got impatient and filed suit  
19 to compel the County to phase out injection wells in  
20 South Maui and to create infrastructure to distribute  
21 reclaimed water. We were approached to consider  
22 becoming part of this suit, the Sierra Club was, but we  
23 felt there were better opportunities to work in  
24 partnership with Mayor Tavares' administration and the  
25 EPA to achieve the same goals through a collaborative  
0062

1 process.

2 So I just wanna state this for the record, you  
3 know. But we wanna see something happen here because  
4 Sierra Club is famous all over the nation for suing on  
5 sewage treatment plants. San Diego, you name it, you  
6 know, you name it, they've sued. We don't wanna go that  
7 route, but we wanna see something happen.

8 Based on the stated intentions of the Mayor  
9 and her administration, we ask the EPA to craft a  
10 shorter term permit with strong benchmarks and  
11 conditions that will result in support for turning good  
12 intentions into sound actions.

13 The draft proposal does not currently meet  
14 this need. Please keep in mind that between 3,000 and  
15 6,000 new residential units and scores of new commercial  
16 units are being supported by County planners to be built  
17 in the West Maui area as part of our new General Plan  
18 Urban Growth Boundary. This does not even take into  
19 account the thousands of units that could also be built  
20 on Hawaiian Home Lands parcels that flank the Kaanapali  
21 area. They're just on either side of the sewage  
22 treatment plant area, and will not be subject to any  
23 County review. All of these are likely to be depending  
24 on this treatment facility. Not all, but the majority.  
25 And these units will be constructed over the next 20

0063

1 years and are a potential source of funding for repaying  
2 bonds which may be necessary to finance improvements  
3 needed in Lahaina, to make the changeover from injection  
4 wells to high-quality recycled water. If there was no  
5 vision and no plan to make this change, every new unit  
6 will just become part of the problem rather than part of  
7 the solution.

8 So we ask this agency to craft a permit that  
9 gets answers to the tough questions regarding the  
10 treatment plant's compliance with Clean Water Act rules.

11 We note that the nearshore waters around  
12 Honokowai Stream, which is just a few thousand feet from  
13 where these injection wells are, are listed as impaired  
14 on the State's 303D list. We can and must do a better  
15 job of protecting our marine and fresh water resources  
16 and the public health that depends on them through the  
17 current permit process.

18 We ask that the permit address the following  
19 concerns:

20 A clear transition plan, in a timely manner,  
21 to deal with physical, infrastructure and economic  
22 aspects of ending the injection of wastewater, and  
23 producing and distributing reclaimed water, and specific  
24 benchmarks and timetables to set incremental goals  
25 during this transition process.

0064

1 We also support the reduction of nitrogen and  
2 phosphorous levels in affluent during the phaseout, and  
3 state-of-the-art treatment testing and monitoring for  
4 pathogens.

5 This is a must. We hear complaints all the  
6 time. Robin Knox is not making this up. This is a fact  
7 of life here. It's a dirty little secret. People are  
8 getting sick from swimming in our waters, people that  
9 have to spend a lot of time in the waters. So they're  
10 boat captains, they're scuba dive leaders, they're  
11 surfers, they're people who, you know, just like to  
12 snorkel every morning. And it's not fair. And it's not  
13 right. We're the health state. And we got to do  
14 something about it.

15 We also support improved and continuing  
16 monitoring the ground and ocean water quality.

17 So we look forward to working with the EPA and  
18 Maui County to find the best ideas, technologies and  
19 sources of funding to make 100 percent reuse of Maui's  
20 wastewater a practical reality. Hopefully, we'll go a  
21 long way in the next five years.

22 Thank you.

23 (Applause.)

24 MS. De NAIE: By the way, I'm not gonna turn  
25 this in, but 50 other people who couldn't be here signed

0065

1 a petition saying they more or less support these same

2 things. I'm gonna Xerox these and mail them to you,  
3 because I wanna keep touch with these people.

4 HEARING OFFICER ALBRIGHT: Okay. Thank you  
5 for those comments.

6 The next speaker is Ke`eaumoku Kapu.

7 MEMBER OF AUDIENCE: Not here.

8 HEARING OFFICER ALBRIGHT: Okay. And Vilani  
9 Kapu.

10 MEMBER OF AUDIENCE: Not here.

11 HEARING OFFICER ALBRIGHT: Then Darla White.

12 MS. WHITE: Aloha. As you mentioned, my name  
13 is Darla White. I am testifying this evening on behalf  
14 of myself.

15 I have been a coral reef research diver here  
16 in Hawaii for nearly a decade now. I currently work for  
17 the Division of Aquatic Resources here on Maui and  
18 collaboratively with the University of Hawaii's Botany  
19 Group to conduct research on the reef at Kahekili.

20 I know I speak on behalf of the greater island  
21 community when I say mahalo for the time and attention  
22 the EPA has given to the revision efforts of the Lahaina  
23 UIC Permit. There has been substantial positive  
24 progress towards incorporating the concerns of the Maui  
25 community. And we sincerely thank you.

0066

1 However, there's a lot more that can be  
2 accomplished. And I hope that the EPA and the County  
3 will commit to a plan to move forward towards reduced  
4 wastewater injection, reduced nitrogen, disinfection of  
5 the injectant, advanced treatment, and increased water  
6 reuse under the revised permit.

7 The reef at Kahekili, as you may well know by  
8 now, is -- it's in trouble. It's been declining at an  
9 incredible rate. A lot of time and money and manpower  
10 have been dedicated to try to understand what's going on  
11 and implement measures to save it.

12 The university, federal and state researchers  
13 have spent an inordinate amount of effort trying to  
14 collect data and understand the complexities of the  
15 reef's deterioration. And they've done a great job in  
16 furthering our knowledge of the impacts there.

17 In addition -- this is just gonna echo what  
18 Russell said a moment ago. The new Kahekili Herbivore  
19 Fisheries Management rule that was designed to help  
20 reduce the algal threats, and recently signed into law  
21 by the governor, the Hawaii Coral Program and the U.S.  
22 Coral Reef Task Force has identified Kahekili as the  
23 number one priority site in the main Hawaiian islands.  
24 That's pretty big stuff. Scientists from NOAA and  
25 Scripps are starting to come here to design and

0067

1 implement new research strategies because this area is  
2 so incredibly important.

3 We have a few of them sitting right over



4 there, all the way from Scripps.

5 This ecosystem is in peril. And any  
6 successful recovery will depend on efforts to remove  
7 impacts of land-based pollution, a major component of  
8 which has been identified as wastewater intrusion. We  
9 note that the current levels of wastewater are too high.

10 One of my primary concerns, being one of the  
11 people that always works there and gets sick all the  
12 time, is the antibiotic resistant pathogens, things such  
13 as endocrine receptors and toxic and hazardous compounds  
14 that are found in wastewater. I know that there's  
15 probably a lot I don't understand as far as definitions  
16 and semantics goes, but if it's hazardous and toxic by  
17 any standard, it should be considered.

18 I would like to see the UIC Permit address  
19 this issue for the health of the public and the  
20 nearshore environment. The levels of toxins and even  
21 nitrogen in the environment, even at acceptable levels  
22 for people, can be deleterious to more sensitive  
23 organisms such as corals. Several coral diseases to  
24 date have been linked to land-based pollution. And I  
25 can tell you there is a lot of coral disease at Kahekili

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1 and a lot of reefs around Maui.

2 I personally have also had MRSA seven times,  
3 three of which have been confirmed by hospitals, with  
4 one minor surgery. MRSA is not fun. And I have a  
5 number of colleagues and friends who are also water  
6 researchers, water people, who are constantly getting  
7 sick. And if you haven't had this before, it's just not  
8 fun. It's a super bug.

9 Public health and safety is a very important  
10 issue here, and so is the health of the marine  
11 organisms. Testing needs to be done and treatment needs  
12 to be consistent with potential health threats. We know  
13 enough to take action and enact better requirements.  
14 The Clean Water Act is applicable here.

15 I want fishable, swimmable waters that support  
16 my personal health and the health of the coral reef  
17 ecosystem.

18 I would also like to ask for accountability  
19 for the environmental monitoring as an aspect of the  
20 permit for injectant as well as reuse. This could come  
21 in several forms, such as working collaborative --  
22 collaboratively with state, federal and university  
23 institutions. The fate and transport of pollution,  
24 including nutrients, pathogens and toxins, needs to be  
25 monitored and accounted for.

0069

1 The burden of proof should not always be on  
2 the scientific community to define causal connections  
3 when an ecosystem is headed towards collapse. It should  
4 be on the polluter to demonstrate where it is going and  
5 it is not causing a problem.

6           Again, monitoring is needed for reuse as well  
7 as injectant.

8           There's much too much to cover, so I would  
9 like to state my emphatic support for the testimonies  
10 provided this evening and in writing by the Hawaii DLNR,  
11 Division of Aquatic Resources, the DIRE Coalition, Robin  
12 Knox, Meghan Dailer and Liz Foote, who have yet to  
13 testify, but you'll hear them.

14           And thank you again for your time.

15           I would also like to thank Mayor Tavares for  
16 her willingness to commit to reuse of this important  
17 resource. I know that it is an achievable goal. And  
18 with a political will, it will succeed.

19           Thank you again.

20           (Applause.)

21           HEARING OFFICER ALBRIGHT: Thank you for those  
22 comments.

23           Did you want to submit something in writing or  
24 were you -- oh, you did. Okay. I'm sorry about that.  
25 Thanks.

0070

1           Liz Foote.

2           MS. FOOTE: Hello. Thank you. Thanks for the  
3 chance to provide my testimony. I'm Liz Foote. And I'm  
4 testifying as an individual, but I do serve as the  
5 Hawaii Field Manager for the Coral Reef Alliance, as the  
6 Executive Director of the project S.E.A.-Link.

7           I would like to state that I support the  
8 testimonies of DIRE Coalition, the Hawaii DLNR Division  
9 of Aquatic Resources to address many of the details that  
10 have been brought up here today by others, so I will not  
11 waste time by repeating those now. However, I do want  
12 to take this opportunity to make a few general comments  
13 that I feel are necessary in these deliberations.

14           First, I recognize that this is a complex  
15 issue, that there are a lot of factors involved, such as  
16 feasibility and cost. However, I think that the science  
17 as well as the local community have demonstrated that  
18 the issue of injection wells and wastewater treatment  
19 needs to be addressed sooner rather than later.

20           The main thing I'd like to speak about today  
21 involves the nature of science and its role in forming  
22 political action.

23           When we say that management decisions need to  
24 be based on the best available science, that has a lot  
25 of implications. What it should not imply is that a

0071

1 particular question must be proved in order to justify a  
2 particular decision. The reality is nothing can ever be  
3 proved through scientific processes; scientists can only  
4 fail to disprove something. And in doing so,  
5 methodology is constantly refined and improved, and  
6 supporting evidence is gathered so that a more thorough  
7 understanding can be achieved.

8                   It's also important to note that marine  
9 ecological processes are complicated and dynamic. It is  
10 often difficult to develop effective methodologies, to  
11 conduct the sampling necessary for question-driven  
12 research. Many interrelated factors may be at work and  
13 are difficult to tease apart due to all sorts of  
14 constraints and confounding factors. Science is an  
15 adaptive process and is constantly refining itself.

16                   In addition, an absence of studies and  
17 significant data don't necessarily imply the absence of  
18 a particular condition; it only indicates a study may  
19 not have been conducted or that they are still in the  
20 process. Research activities and peer-reviewed results  
21 are themselves constrained by funding, agency  
22 priorities, research available, technology and so forth.  
23 A key responsibility of science is to inform the  
24 rulemaking process, but the presence or absence of data  
25 should not be the sole determinant factor.

0072

1                   In this case, I do believe we have some  
2 compelling evidence from the University of Hawaii Botany  
3 Department and DIRE that demonstrates the impact of  
4 injection wells and provides support for mitigative  
5 action. I absolutely applaud those scientists who are  
6 willing to stand up for their data -- you know who you  
7 are -- and get involved in shaping public policy.  
8 Science often needs translating. And we need to look to  
9 those who have carried out the studies for clarification  
10 and assistance when applying their findings.

11                   In closing, the many human-induced threats  
12 that impact reefs are interconnected and will all need  
13 addressing in a concerted effort between community  
14 stakeholders and resource managers. Addressing the  
15 injection wells is one part of what should be a  
16 comprehensive data strategy to reduce all types of local  
17 threats to our nearshore resources and to maintain our  
18 water resources.

19                   We should always seek to employ the  
20 precautionary principle and base decisions upon a  
21 combination of sound science, relevant anecdotal and  
22 common sense, erring on the side of caution.

23                   Thank you very much.

24                   (Applause.)

25                   HEARING OFFICER ALBRIGHT: Thank you for your

0073

1                   comments.

2                   Tamara Paltin.

3                   MS. WHITE: She had to leave.

4                   HEARING OFFICER ALBRIGHT: Victoria Martocci.

5                   MS. MARTOCCI: Aloha. Good evening. My name  
6 is Victoria Martocci. I'm a Lahaina resident. I'm here  
7 tonight on behalf of the Maui Reef Fund. And thank you  
8 for this opportunity to express our point of view.

9                   The Maui Reef Fund is a group of

10 conservation-minded individuals, organizations and  
11 businesses. That's right, you heard me,  
12 conservation-minded businesses. We are part of the DIRE  
13 Coalition. And I know I am so ecstatic to hear the  
14 community's all in support of your working toward a new  
15 plan here. And so I'm gonna go with the DIRE  
16 Coalition's recommendations here, and spare us all a few  
17 moments of our time.

18 So thank you very much. And thanks to the  
19 Mayor for her recommendation. So thank you.

20 (Applause.)

21 HEARING OFFICER ALBRIGHT: Thank you for your  
22 comments.

23 We have four more speakers who have signed up,  
24 so we're doing pretty good here on time, I think.

25 Andrew Lehmann.

0074

1 MR. LEHMANN: Hi. My name's Andrew Lehmann.  
2 I'm here tonight on behalf of myself.

3 I just wanted to testify that I'm really glad  
4 the EPA is here because I really think that our  
5 nearshore waters need some protection.

6 My case is that if I go in the water between  
7 Launiupoko and North Kaanapali, I get staph. It's  
8 gotten worse over the last 15 years. Initially, I could  
9 just come home and put Neosporin on a cut or something  
10 like that, and I'd be fine. In the last five years,  
11 it's gotten to the point where I have to take  
12 antibiotics at least five to six times a year. Right  
13 now, I have staph right there that developed since  
14 Sunday.

15 Sick case in point: I -- earlier this summer,  
16 I went for a surf here in town. I had a small nick on  
17 my shin, on this shin. And two days later, I left for  
18 Australia. When I get off the plane there, my foot was  
19 swollen and I had staph. I went to the doctor there,  
20 was prescribed an antibiotic. And I asked that doctor  
21 if I should stay out of the water. He said that's not  
22 the problem, you can go in the water, just take your  
23 antibiotics. And I spent a month there and got a few  
24 cuts here and there while I was there, never developed  
25 staph. I have been home for two weeks, I went in the

0075

1 water for the first time on Sunday, and I have staph  
2 again.

3 So I think the thing about this is I have a  
4 choice, I cannot go in the water here, which is pretty  
5 much becoming the case, but the reef has no choice. And  
6 it's being killed.

7 So I just really appreciate if you do  
8 something to stop these injection wells because they  
9 definitely have made this water unsafe for people. I'm  
10 probably an extreme case, but it's gonna happen to  
11 everybody soon. So anything you can do, we would

12 appreciate it.

13 Thank you.

14 (Applause.)

15 HEARING OFFICER ALBRIGHT: Thank you for your  
16 testimony.

17 Next is Ellen Levinsky.

18 MS. LEVINSKY: Good evening. My name is Ellen  
19 Levinsky. I've lived in Lahaina for 25 years.

20 I wanna thank you so much for coming here to  
21 hear our testimony.

22 During my 25 years, I've been the adult taking  
23 a lot of children out surfing and swimming. And I have  
24 seen many cases of staph. From 25 years ago until this  
25 year, they're constantly getting it. It's really sad to  
0076

1 see. And a lot of the kids here don't have adequate  
2 medical coverage, so a lot of times it keeps going and  
3 gets worse and worse. And adults, also.

4 I've worked in many hotels on the west side  
5 during this 25 years. And I've also heard different  
6 guests, visitors, complaining about rashes and  
7 irritation on their skin from swimming. And I've also  
8 heard people in the hotels talking among themselves and  
9 blaming it on what's in the water, whether it's been  
10 runoff. Or, you know, every once in a while in the  
11 newspaper, on radio, we hear there was a spill at the  
12 sewage treatment plant, but none of it got in the ocean.  
13 90 percent of the time, it always includes "didn't get  
14 into the ocean." But where did it go? It goes down  
15 into the soil, it's gonna filter into the ocean.

16 Also, driving up north, many times, I can  
17 smell, going by the sewage treatment plant, which is --  
18 always makes my kind of shudder going by.

19 The other point, with -- doing something  
20 besides the injection wells is there's quite a few  
21 communities in other states that recycle, reuse the  
22 water, rather than just putting it through injection  
23 wells. Here in Hawaii, we're dependent on the weather  
24 for our fresh water, drinking water, bathing water,  
25 water for the hotels, for their swimming pools, for the  
0077

1 ponds and fountains, the farmers are dependent on it.  
2 And it just seems to make so much more sense to recycle  
3 that water, reuse it, instead of just injecting it and  
4 it goes away.

5 Our water rates keep increasing. It's more  
6 costly to get water. There's articles in the newspaper  
7 about how the farmers, especially the taro farmers,  
8 aren't having enough water for the crops. And if it's  
9 possible to recycle this wastewater, then why not.

10 I was in Australia 20 years ago and went to a  
11 golf course. And they said it was all recycled sewage  
12 water watering the grass there. If we could, if nothing  
13 else, use the water to water the golf courses here on

14 Maui. That would certainly save a lot of fresh water  
15 usage.

16 So I wanna thank you for coming. And, also,  
17 to everyone else who's testified, especially the people  
18 with the scientific information. And, hopefully, we can  
19 improve the water quality and conditions here on Maui.

20 (Applause.)

21 HEARING OFFICER ALBRIGHT: Thank you for your  
22 comments.

23 Next speaker, Daniel Kanahele.

24 MR. KANAHELE: Aloha ahiahi, good evening,  
25 representatives of the EPA and the State and the County.

0078

1 And mahalo nui loa, you know, for going the second mile,  
2 for having this public hearing. Thank you so much for  
3 the previous meeting, because I think it helped to give  
4 the -- the public who attended a context for this  
5 meeting and the parameters of your jurisdictional  
6 authority.

7 I think that each of you here are, you know,  
8 no doubt, very concerned about the environment, if not  
9 passionate about what you do, Brent, Nancy, David,  
10 Wendy, and Mr. Hew. And you're in a field where you can  
11 do a great deal of good. And I'm sure sometimes it must  
12 be very frustrating for you to not to be able to do  
13 everything you would like to be able to do, but may be  
14 constrained by budgetary or jurisdictional restraints,  
15 regulatory restraints, what-have-you. And I can  
16 appreciate that. And -- and I'm sure that you're very  
17 sympathetic and empathetic to many of the testimonies  
18 that have been given thus far.

19 And personally, I -- I -- I support the  
20 testimonies. Many of the speakers, including Jeff  
21 Schwartz from DIRE, and Russell Sparks and Robin Knox  
22 and -- and some others, also.

23 Having said that, I -- I wish you could put on  
24 your other hat for a second, the hat that tasks the EPA  
25 with the protection of our aquatic wildlife and

0079

1 recreational uses of our surface water so that our  
2 waters will be fishable and swimmable. Now let's  
3 pretend you're wearing that hat for a second.

4 Now, I'm wondering how many of you here have  
5 ever seen a drowning victim. Growing up here in Hawaii,  
6 all my life, I have seen many drowning victims pulled  
7 out of the water, out of the surf, male and female,  
8 young and old. And some of them have been resuscitated  
9 and saved. And some of them, unfortunately, haven't,  
10 and the blanket is put over them and they're left on the  
11 beach until someone comes to take away the body.

12 That is kind of the way that I think I and  
13 many of us here are viewing our aquatic wildlife, our  
14 pukua, the reef, and the marine animals that depend on  
15 the reef, that they are in critical condition. And so

16 many of us are here because we're doing CPR on the reef.  
17 We wanna do CPR on the reef. We're doing everything we  
18 can on our aquatic resources to save them before they  
19 are gone forever.

20 Because, sadly, once it is gone, in many  
21 cases, it's gone forever. And it doesn't matter what  
22 laws you have down on the books and regulations. Once  
23 it's gone, it's gone forever.

24 Many of the deleterious effects to our reefs  
25 are man-made. We are doing CPR, but maybe CPR isn't

0080

1 enough. Maybe we need a defibrillator. And maybe, for  
2 some of us, we see the Clean Water Act as a  
3 defibrillator that's going to save some of our aquatic  
4 wildlife before it's too late.

5 You folks have a defibrillator and you have  
6 the power to implement -- we're pretending you have that  
7 hat on right now, okay -- the Clean Water Act. And so  
8 we're coming to you as the voice of the people to bring  
9 consciousness to what is happening here. Because we  
10 believe that you're caring people.

11 And it will be hard for me to believe that  
12 you're not gonna go back home and tell somebody  
13 something, you're not going to take some of this emotion  
14 back with you. I know you are. And I know -- and I  
15 appreciate it ahead of time.

16 I would just like to conclude by saying, as  
17 Lucienne de Naie talked about the creation story, it's  
18 called the Kumulipo, it's the ancient Hawaiian story,  
19 the Kanaka Maoli story of the creation of the world.  
20 And in the genealogy of creation, the very last creation  
21 is man, man, and we're the last ones. We're the  
22 youngest siblings. And as the youngest siblings, we are  
23 responsible for everything else that came before us; the  
24 trees, the plants, the things that live in the ocean,  
25 coral reefs. We, as youngest siblings, have the

0081

1 responsibility to our kupuna -- kupuna means our elders,  
2 it's one of the meanings -- to take care of that. We  
3 have a kuleana, a moral obligation, and a  
4 responsibility. So it's not just you, everyone in this  
5 room, including me, we all have a moral responsibility  
6 to take care of our national resources.

7 So we're all in this canoe together, but you  
8 have the defibrillator and we could use it. And we hope  
9 that the Clean Water Act will make a difference in  
10 saving some of our reefs before they're gone forever.

11 Mahalo.

12 (Applause.)

13 HEARING OFFICER ALBRIGHT: Thank you for your  
14 comments. I appreciate that.

15 And Maury King.

16 MR. KING: Daniel, you stole some of my best  
17 material. But I wanna thank everybody else that came

18 tonight and shared their wisdom. So I won't go over any  
19 of that because I -- I hope you at least believe what  
20 you are being told about our reef suffering and the  
21 concerns people have in sickness and all these issues.

22 I feel like we've come full circle. I was the  
23 very first person up after Nancy gave her initial  
24 report. And my comments were about how all I heard  
25 about was drinking water, and a lot of people were

0082

1 concerned about the reef. And what I got was you guys  
2 have a limited job. So when people are talking about  
3 improving the waste treatment plant, it's really not  
4 your job to do that. In fact, what I got is you would  
5 be happy if we weren't putting anything into injection  
6 wells at all, but, if we are, then it's your job to  
7 regulate it.

8 So what I'm hoping is that you can just go  
9 home and find a way to include your Clean Water Act  
10 buddies in this conversation, find a way to include 'em,  
11 instead of finding every way you can not to. If it just  
12 means that we prove there's poop on the reef finally,  
13 whatever it is, you have some power here. I realize  
14 you're -- you're defined by the niches of your jobs, but  
15 open up your hearts, open up your minds and get creative  
16 and find a way to partner and bring it all together in  
17 one piece. And I think that would really make a  
18 difference to this issue. And I hope there's a way you  
19 guys could do that.

20 Thanks.

21 (Applause.)

22 HEARING OFFICER ALBRIGHT: Thank you for your  
23 comments.

24 Vilani Kapu? Ke`eamoku Kapu? Okay. That  
25 brings us to the end of all the speakers who requested

0083

1 to speak. We need to take just a moment to confer, if  
2 you'll just give us a moment or two.

3 (Pause in proceedings.)

4 HEARING OFFICER ALBRIGHT: Okay. Thank you.  
5 I, first of all, will ask if there is anyone who didn't  
6 sign up who still would like to provide any oral  
7 testimony before we wrap this up? Okay.

8 MS. KELLY: I'm sorry. I apologize, I'm  
9 feeling a little bit unprepared to do so, but, also,  
10 very excited to have this opportunity.

11 I'm a graduate student -- my name is Emily  
12 Kelly. I'm a graduate student at the Scripps  
13 Institution of Oceanography in San Diego, part of the UC  
14 system. And myself and a number of other people are  
15 here from the Scripps Institution of Oceanography, a few  
16 have been here earlier this summer as well, and we are  
17 some of the people that are spending some of that  
18 research money from the Federal Government at the reef  
19 at Kahekili.



20                   And just from our perspective, the reef  
21 brought us down here and the issues surrounding the reef  
22 brought us down here. Unfortunately, not for happy  
23 reasons, but for the reasons that there are a number of  
24 different threats to this ecosystem. As a number of  
25 people mentioned, there's a new herbivore fisheries

0084

1 management in place at this time, but, also, the  
2 nutrient levels, in addition to the fishing pressures,  
3 are issues that we're looking at as part of our  
4 research.

5                   So I am particularly looking at the  
6 interactions between fish, algae and -- excuse me -- and  
7 coral. And others have been looking at the microbes on  
8 the reef as well as other impacts in the ecosystem,  
9 ranging from the little guys that exist in the rubble  
10 that help break down dead pieces of the reef to some of  
11 the microbes that have caused staph infections, from  
12 people who have spoken, to coral cover which you know  
13 has decreased by about 50 percent over the last 15 years  
14 or so of this particular reef.

15                   So I just wanted to comment that there are a  
16 number of us working on this issue, and we find it  
17 extremely important to look at, and that's why we're  
18 here. And so we're also very interested in seeing how  
19 this can be improved in the future so that, as our  
20 research continues, including our Ph.d, which will last  
21 about five or six years, we can, hopefully, see positive  
22 changes in the reef and see recovery, also.

23                   Thanks.

24                   (Applause.)

25                   HEARING OFFICER ALBRIGHT: Thank you, Emily,

0085

1 for your comments.

2                   So, again, thanks to everyone for coming  
3 tonight and providing testimony.

4                   We did get a few requests to extend the  
5 comment period. We got a request, a specific request  
6 from the County, and we had several testifiers also make  
7 that request. So I am going to extend the comment  
8 period for this proposed permit for 30 days. So the  
9 comment period is now extended to September 21st. We  
10 are going to put a notice on our website. We have a  
11 website that we've put up with information about the  
12 permit, with all the comments that have been submitted  
13 thus far, and that will reflect the extended comment  
14 period to September 21st.

15                   If people have additional comments they wish  
16 to submit, they should submit them to Nancy Rumrill.  
17 And Nancy's information is on that website. You can get  
18 to our website at [www.epa.gov/region9](http://www.epa.gov/region9), and follow  
19 various prompts to get to the permit site. And if  
20 anyone has a question about how to do that, when we  
21 break up here, we'll be around, we can give you our

22 card, and you can contact us for further information.  
23 So, again, I just wanna thank everyone for  
24 coming out for your comments. We really appreciate the  
25 interest of the community in coming out. We appreciate

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1 the County and Mayor Tavares for being here as well, and  
2 Chauncey with the Department of Health. Thank you all.  
3 And with that, the hearing has ended.  
4 (Applause.)  
5 (Hearing concluded at 9:00 p.m.)  
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CERTIFICATE

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4 I, TONYA MCDADE, Certified Court Reporter of  
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7 Broadcast Captioner, do hereby certify that the  
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12 accurate transcript of the proceedings had in the  
13 foregoing matter.

14 I further certify that I am not an attorney  
15 for any of the parties hereto, nor in any way concerned  
16 with the cause.

17 DATED this 23rd day of September, 2009.  
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