

WAI-25, Resolution 26-123 - Request for a Code-Compliant Waiver Record or Formal Disapproval Without Prejudice

Aloha Chair and Committee Members,

My name is Edward Codelia, and I am a resident of Kula. I recognize the Department of Public Works' responsibility to control vegetation that creates genuine roadway, pedestrian, and worker-safety hazards. My concern is narrower: Maui County Code Section 2.50.060 requires a waiver application to contain specified information and permits approval only after the Council can make the findings specified in subsection (C).

The attached Vegetation Management Plan does not support the full, County-wide and category-wide waiver that Resolution 26-123 would approve. I request that the Committee not recommend adoption of Resolution 26-123 or the proposed CD1 unless the application is completed and the approval is narrowed. Because the Code contains a 180-day automatic-approval clause, the Council should formally disapprove the application without prejudice by resolution if the deficiencies are not cured; simple deferral may not protect the public or preserve the Council's authority.

1. The application does not contain several items that Code Section 2.50.060(B) says it "must include."

The nine required application elements and the record supplied are as follows:

Mandatory element	What the packet contains	Compliance concern
1. Location map for the proposed usage area	Maps for seven intersections and two roadway segments	No usage-area maps for County-wide pavement-preservation projects, sidewalk sites, guardrails, roadside infrastructure, or tree-removal sites. Appendices A, D, and E contain photographs, not maps. Appendix C contains one sidewalk photograph at Mill and North Market Streets but no map delimiting a sidewalk treatment area.
2. Landscape plan	Section 3's narrative descriptions	The packet does not explain how a category-wide narrative constitutes a landscape plan, especially for unmapped locations.
3. Photographs of areas and vegetation	Photographs appear in Appendices A through E	Substantially present, although photographs do not substitute for the separately required maps and site information.
4. Summary of existing plants, soils, and	Section 4 gives one general paragraph and	It supplies no soil information and no environmental-condition summary for each proposed area.

environmental conditions for each area	names several plant species	
5. History of vegetation practices, including fertilizer and pesticide amounts and frequency	Section 5 identifies past Roundup ProMax use and some current mechanical-maintenance frequency	It says prior herbicide use was "limited" but gives no pesticide amounts or application frequency and no fertilizer history or statement that fertilizer was not used. It gives no total mileage, acreage, number of sites or trees, total two-year cost, implementation schedule, or complete timeline. One material-rate assumption is inconsistent with the cited EPA label, as explained below.
6. Cost estimates and a timeline	Unit-cost assumptions and several application frequencies	The mapped intersections and road segments have some support; the broad, unmapped categories lack site-specific incident, sight-distance, engineering, or hazard information.
7. Information showing how public health and safety are threatened	General narratives and some site photographs	
8. Evaluation and results of alternative methods and materials	Steam pilot in 2022 at unspecified locations; weed mats on Hansen and South Alu Roads; Avenger and Weed Zap photographs from 2015; mowing and manual cutting	These results are not linked to many of the proposed usage areas and do not show that allowed substances and alternatives are insufficient across every broad category for which approval is requested.
9. Explanation of greatest-practicable minimization of impacts on abutting properties, human health, and the environment	General procedures in Section 7	Unknown locations, unspecified "equivalent" products, no site-specific soils or drainage conditions, and no numerical or label-linked operating limits prevent an informed finding for the full scope.

The plan's Table 1 says each requirement is addressed, but a cross-reference is not the missing information itself. Resolution 26-123 and CD1 recite that the plan contains the information required by subsection (B). On the face of the attached plan, that recital is not adequately supported for several mandatory elements.

2. The waiver scope contradicts the plan's promise of discrete, identified locations.

Section 2.1.3 says applications will be limited to "discrete, identified locations," and Section 3 says any expansion requires a separate waiver and Council approval. Yet the requested uses include:

- pavement-preservation projects "across the County";
- unspecified sidewalk cracks;
- unspecified guardrails, signposts, utilities, and roadside infrastructure; and
- hazardous or invasive tree removals on unspecified County-maintained property.

Only seven intersections and two road segments are mapped. Approving "the locations identified in the application" would therefore create an avoidable ambiguity: either the unmapped categories are not approved at all, or the resolution delegates future site selection to Public Works without the maps and site-specific information the ordinance requires.

To make the approval track the application required by subsection (B), a compliant resolution should list or incorporate a map for every approved treatment area and state that no other location is authorized.

3. The proposed CD1 does not cure the application defects.

The amendment summary received on August 14, 2026 says CD1 clarifies the action granted, makes the two-year period run from adoption, adds the Mayor as a recipient, and makes nonsubstantive technical revisions. It does not add maps, soils, site conditions, pesticide-use history, a complete cost and timeline, alternative-testing evidence, or product-specific safeguards.

Corporation Counsel's August 10 response approved the proposed CD1 as to form and legality and included no substantive comments. That review is important, but it does not add missing facts to the application or itself establish that the factual findings in subsection (C) are supported.

4. The product description is too open-ended for the required findings.

The plan proposes "Specticle Total or an equivalent product" for road and right-of-way uses and "Garlon 4 Ultra or an equivalent" for cut-stump and root treatment. The Code does not expressly require a brand name or EPA registration number. But the Council cannot evaluate human-health, environmental, abutting-property, label, rate, runoff, and drift controls for an unidentified future substitute.

Any approval should identify each exact product, active ingredients, EPA registration number, current Hawai'i registration, current label, maximum rate, application method, and approved site. Substitution should require a new or amended waiver supported by the same information.

The Council should also separate invasive-species control that may already fall within the exception in Code Section 2.50.040(B)(3) from hazardous-tree or other uses that actually require a waiver. "Non-native" and "invasive" should not be treated as interchangeable without an identified species and legal basis.

5. The Specticle Total cost and application-rate assumptions do not match the EPA label cited by the plan.

The plan assumes Specticle Total costs \$400 per gallon and will be applied at 18 fluid ounces per acre. That produces the plan's approximately \$56-per-acre materials estimate.

The EPA label cited in the plan, EPA Registration No. 432-1532 dated September 30, 2016, directs 16 fluid ounces of product per 1,000 square feet and caps use at 32 fluid ounces per 1,000 square feet in 12 months. Sixteen fluid ounces per 1,000 square feet equals 696.96 fluid ounces, or approximately 5.445 gallons, per acre. At the plan's own \$400-per-gallon price, the cited label rate would cost approximately \$2,178 per acre before labor - almost 39 times the plan's \$56 estimate.

This discrepancy could reflect a typographical error, a proposed reduced rate, or reliance on a different label. It must be resolved before the Council relies on the cost comparison.

The 18-ounce-per-acre proposal is not automatically unlawful. HRS Section 149A-31(1)(A) generally permits a dosage, concentration, or frequency lower than the label specifies if efficacy is maintained, subject to the statutory conditions. But the application supplies no field data showing that a rate about one thirty-ninth of the cited label rate will maintain efficacy. Without that evidence, both the projected cost and the finding that the proposed treatment will solve the asserted safety problem are unsupported.

6. The plan's environmental description does not reconcile the cited label warnings.

Section 7 says the selected products exhibit low soil mobility and that applications will not occur before or during rain or during high winds.

The cited Specticle Total label says the product:

- is toxic to fish, aquatic invertebrates, and plants;
- must not enter or run off into storm drains, drainage ditches, gutters, or surface waters;
- should be applied in calm weather when rain is not predicted for the next 24 hours;
- may leach into groundwater in permeable soils, particularly where groundwater is shallow; and
- has high potential to reach surface water through runoff for several months or more after application.

These warnings do not prove that lawful, label-compliant use is impossible. They do show why the missing soil, drainage, groundwater, and site-specific environmental information matters. The plan's generic "low soil mobility" statement and unspecified rain and wind controls do not reconcile the label on which the application relies.

Federal and Hawai‘i law prohibit pesticide use inconsistent with the applicable label, subject to defined exceptions. A resolution cannot authorize off-label use, and Code Section 2.50.070 expressly preserves federal and State law.

7. The findings required by subsection (C) cannot safely be made for the proposed scope on this record.

The Council may approve a waiver only upon finding that:

1. a situation threatens public health and safety;
2. alternative control methods and allowed substances have been evaluated and are insufficient; and
3. the prohibited application will, to the greatest extent practical, minimize impact on abutting properties.

The application may support further consideration of particular, mapped sightline hazards. It does not support those findings for every future County pavement project, unidentified sidewalk, guardrail, utility, signpost, or tree-removal site. Nor can the Council assess greatest-practicable minimization for unidentified products and sites.

Approving the full waiver despite missing mandatory application information would create a substantial argument that the Council acted outside the limits it imposed on its own waiver authority. The legally safer course is to require a complete, narrowed record before making the findings.

8. Deferral alone is risky because the Code provides for automatic approval.

Code Section 2.50.060(F) provides that if the Council fails to approve or disapprove a waiver application by resolution within 180 days, the application is automatically approved.

Public Works transmitted the application on June 23, 2026. A simple 180-calendar-day calculation reaches December 20, 2026, although Corporation Counsel should confirm the legally controlling receipt date and counting method. Merely returning the application as incomplete or deferring the item may not stop the statutory clock.

If a complete supplemental application and narrowed CD2 cannot be adopted in time, the Council should formally disapprove the current application without prejudice by resolution, expressly allowing Public Works to submit a complete new application.

Requested action and compliant path

I respectfully request that the Committee not recommend adoption of Resolution 26-123 or CD1 in its current form. A legally supportable path would require:

1. A Public Works supplement containing all nine items required by Code Section 2.50.060(B).
2. A map and definite boundary for every proposed treatment area; unmapped categories must be excluded.
3. Site-specific plants, soils, drainage, nearby surface water and storm drains, groundwater considerations, abutting uses, and safety conditions.
4. Complete pesticide and fertilizer history, including amounts and frequency, or an express statement where none was used.
5. Total acreage, mileage, sites, trees, quantities, two-year costs, and an implementation timeline.
6. Alternative-method results sufficient to support each use category and the subsection (C)(2) finding.
7. Exact products, EPA registration numbers, current labels, rates, methods, and evidence supporting efficacy and cost assumptions; no open-ended "equivalent product" authority.
8. A revised CD2 limited to the completed application and imposing conditions authorized by subsection (D), including label compliance, weather and runoff controls, advance public notice and signage, restricted access until dry, application logs, incident reporting, and periodic public reports.
9. A clear two-year expiration measured from adoption, with no site or product expansion absent a new Council-approved waiver.
10. Formal disapproval without prejudice by resolution if those corrections are not completed before the 180-day deadline.

This request does not deny the reality of vegetation-related safety hazards. It asks the Council to follow the completeness requirements and factual findings the County itself enacted before allowing otherwise prohibited pesticide use.

Mahalo,

Edward Codelia
Kula, Maui