

RCFC KEHALANI, LLC

September 30, 2015

Committee Chair Gladys Baisa and
Members of the Water Resource Committee
200 South High Street, 8th Floor
Wailuku, Hawaii 96793

SUBJECT: Wellhead Protection Overlay District, WR-1 – Resolution Transmitting
Ordinance to Planning Commissions

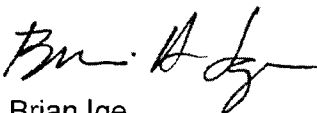
Dear Chair Baisa and Members of the Water Resource Committee:

RCFC Kehalani LLC the owner of Wailuku Project District's 2 (Piihana) and 3 (Kehalani) strongly opposes the proposed Wellhead Protection Overlay District Ordinance. Attached is RCFC's written testimony submitted to the Board of Water Supply on January 16, 2014 when the Board initially reviewed the proposed ordinance. After much deliberation the Board of Water Supply concluded that they could not support the proposed ordinance as drafted. Attached is the Board's letter dated January 16, 2014 to the Department of Water Supply.

We understand the Department of Water Supply is currently asking the Board of Water Supply to reconsider their position with respect to the proposed ordinance. Until the Board of Water Supply has an opportunity to re-evaluate their current position with respect to the proposed ordinance we ask that the Council's Water Resource Committee delay transmitting the proposed ordinance to the various Planning Commissions. We believe the Board of Water Supply is the appropriate body to review the merits of the ordinance and only at the time the Board concurs that the ordinance is in the best interest of the public should the ordinance be moved forward for review by the various Planning Commissions.

Thank you for the opportunity to provide our comments and concerns regarding this matter.

Sincerely,



Brian Ige
RCFC Kehalani, LLC

Attachments

RCFC KEHALANI, LLC

January 15, 2014

Honorable William Kamai, Chair,
and Members of the Board of Water Supply
County of Maui
200 South High Street
Kalana O Maui Building, 5th Floor
Wailuku, Maui, Hawaii 96793-2155

SUBJECT: Proposed Bill for an Ordinance Amending Title 19, Maui County Code, to
Establish a Wellhead Protection Overlay District

Dear Chair Kamai and Members of the Board of Water Supply:

On behalf of RCFC Kehalani, LLC, we appreciate the opportunity to offer comments on the proposed bill that is intended to ensure the protection of drinking water sources from certain land uses which may contaminate groundwater sources, by establishing Wellhead Protection Overlay Districts ("WPODs"). The purpose of the proposed WPODs is to 1) protect the public's health, welfare and safety by minimizing the risks of contamination of aquifers; 2) preserve and protect existing and potential drinking water sources; 3) implement land use policies consistent with the Maui County General Plan and Community Plans; and 4) to restrict and prohibit land uses that are incompatible with groundwater protection.

We have reviewed the report of the Board's Regulatory & Legislative Committee citing several concerns pertaining to the proposed bill. The Committee recommended that the Board review the actual WPOD Zones for each of the County wellheads that will be affected in order to better understand the impact upon existing properties. RCFC Kehalani, LLC concurs with the Committee's recommendations and supports disapproval of the bill for the following reasons:

1. The proposed WPOD program duplicates the existing Federal and State laws, rules and regulations relating to safe drinking water, which continue to successfully protect the public's health, welfare and safety. The existing Federal Safe Drinking Water Act and Federal and State regulations governing injection wells, hazardous waste, solid waste management facilities, underground storage tanks, pesticide use, and petroleum and hazardous material storage already effectively address the ground water contamination concerns that are cited in the proposed bill.

The State Water Code, Hawaii Revised Statutes ("HRS"), Chapter 174C, provides that the Department of Health ("DOH") has the jurisdiction over the

State's "water quality control program." The State Water Code also empowers the State Commission on Water Resource Management (CWRM) to regulate water use and to designate Ground Water Management Areas based on criteria which includes the actual or threatened water quality degradation as determined by the DOH, and whether the regulation is necessary to preserve the diminishing ground water supply for future needs.

These existing laws, rules and regulations, and current agency enforcement have been effective in minimizing the risks of contamination of aquifers and in preserving and protecting existing and potential drinking water sources.

2. Unlike the State DOH and CWRM, Maui County may not possess the technical expertise, and currently does not have the ability to effectively fund, manage and staff such a WPOD program.

The proposed bill does not include financial impact information regarding the need for additional employees, equipment, and other costs which would likely be duplicative with the work of other Federal and State agencies. The bill's financial impact should be evaluated and assessed by the Board.

3. The additional requirements imposed by the proposed bill will make the development of additional ground water supplies on Maui even more expensive and cost-prohibitive. Private landowners will be less willing to provide land for new water well sites since the bill will restrict uses on lands that surround water wells.

The proposed bill could have unintended negative consequences on the development of new water resources by Maui County. To avoid restrictions and impacts on surrounding land uses and landowners, it is likely that the County may have to site future drinking water wells in remote locations. This will also increase the costs of new water development due to higher storage and transmission costs required by such remote well locations.

4. The proposed bill would prohibit certain uses in the vicinity of existing or future water wells and require five-year permits. These new restrictions and requirements will affect property owners' ability to expand, reconstruct, or develop their property.

The Kehalani Master Planned community is a project district which requires an extensive review and permitting process through the County of Maui. It is unclear how the proposed five-year permits will be coordinated with existing development permits and approvals required for any development within our project. It is also unclear how this permit will affect future property owners in our project once development is completed. Are we placing restrictions on property

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and Members of the Board of Water Supply
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owners, especially future developers of our Kehalani Village Center, which will be too onerous for them to comply with?

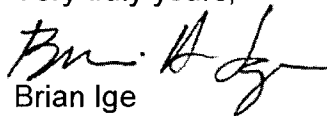
Another concern that has not been addressed is the financial impact on future development. Are there any unintended consequences to future developers that may restrict lending institutions from financing their developments?

We have also reviewed the draft letter from the Board to Director David Taylor noting the Board's concerns. We support the Board's efforts in conveying its concerns and agree that the Board cannot support the proposed draft ordinance in its current form.

The entire Kehalani Project District (Kehalani) is located in Zone B and will be negatively affected by this additional permitting process. Kehalani is a residential project district providing affordable and market homes to Maui residents. The impacts of these new restrictions on housing must be addressed to ensure we do not create unintended consequences to our ability to provide affordable housing for our Maui residents, as well as negatively impacting the existing residents of Kehalani.

Thank you for the opportunity to provide comments and concerns regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian Ige".

Brian Ige
RCFC Kehalani, LLC



COPY

BOARD OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
TELEPHONE (808) 270-7816 • FAX (808) 270-7951 • www.maulwater.org

January 16, 2014

Mr. David Taylor
Director
Department of Water Supply
200 South High Street, 5th Floor
Wailuku, HI 96793

Dear Director Taylor:

**SUBJECT: THE BOARD OF WATER SUPPLY CONCERNS WITH DRAFT
ORDINANCE TITLE 19, MAUI COUNTY CODE CHAPTER 19.94
WELLHEAD PROTECTION OVERLAY DISTRICT**

Please review the County of Maui Board of Water Supply's (Board) concerns as summarized below.

1. Requirement For This Ordinance

The Board has reviewed the forty (40) plus county, state and federal overlapping regulations meant to protect our groundwater systems as provided in recent testimony.

While the department's concern for additional protections is well intended, there did not appear to be any justifiable need, nor were there any historical examples presented during testimony that showed any failures of these current county, state and federal regulations. Adopting additional groundwater regulations, such as this ordinance before the Board, would be redundant unless there could be some clearly demonstrated scenarios presented by the department detailing prior failures within our current regulatory system. Neglecting to show such a need has become a primary source of our concerns for supporting this additional groundwater regulation.

2. Source Water Protection Models (SWAP)

The Board is also concerned that the single peer review, and the related methodology that was applied to support the SWAP, does not rise to a sufficient acceptable level when it comes to implementing a program that would set into motion an overbearing set of parameters with increasing reviews and oversight that will cripple

"By Water All Things Find Life"



Mr. David Taylor
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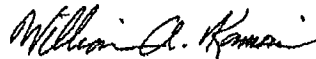
a property owner's allowable use. The Board, however, **would be in favor of having additional studies** performed by other experts prior to the acceptance of, or the shelving of this proposed county policy.

3. Impact of Establishing Wellhead Protection Overlay Districts (WPOD)

This ordinance would fortuitously instigate newly prohibited uses that will not be clearly understood by the public-at-large. Such a vastly imperious ordinance will affect most, if not all, property uses and their related property values if that property falls under the purview of these WPODs. This proposed ordinance, with its rather large WPOD envelopes, will literally have the unintended consequence of a *taking* of the affected owner's property.

The Board, consequently, cannot support the current Draft Ordinance Title 19, Maui County Code Chapter 19.94 Wellhead Protection Overlay District in its present form.

Sincerely,



William Kamai
Chairman