

## WR Committee

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**From:** thorne abbott <thorneabbott@yahoo.com>  
**Sent:** Tuesday, October 27, 2015 2:03 PM  
**To:** WR Committee  
**Subject:** Testimony in support of the Wellhead Protection Overlay District  
**Attachments:** 10.27 WellHead.pdf

Please see the attached and I would appreciate verification that it was received in good order.

Mahalo!  
Thorne Abbott

For additional information visit <http://www.CoastalZone.com>

Council of the County of Maui  
Water Resources Committee  
[wr.committee@mauicounty.us](mailto:wr.committee@mauicounty.us)

October 27, 2015

Honorable Chair and Members of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

**RE: Wellhead Protection Overlay District Ordinance (3/29/14 Draft)**

Dear Chair and Members:

We are surrounded by water, we have lots and lots of it in the form of the Pacific ocean. Unfortunately, we can't drink it without considerable expense in terms of treatment and energy for the same.

- 1. I fully support the bill,**
- 2. It will be an added burden on businesses, and**
- 3. That's ok!**

Allow me to explain.

When you submit a building permit it is routed to a number of different agencies. Two agencies traditionally slow permit processing: the Planning Department and the Water Department, with the latter being the last to sign on almost all permits.

The Planning Department may require a special management area permit to evaluate if a project could negatively impact our valued, limited coastal resources. If new construction is proposed in a flood zone, a flood development permit (FDP) is required. This may result in new building construction having to be elevated above predicted flood waters rather than slab on grade. That increases the cost of construction which is a burden on business, but results in less (or no) damage to the building and its contents such as flood waters soaking a retail store's merchandise. Furthermore, because of Maui County's aggressive FDP program, coastal properties save 45% on their flood insurance – the maximum discount offered and the most of any County in the State of Hawaii. While that is a burden on business, its an acceptable one and that makes it ok!

Protecting our drinking water sources through minimal best management practices is common sense and prudent planning for an island that is slated to grow considerably in the future. Contaminating even one drinking water source could result in substantially more costs than implementing preventative measures.

Further, using zoning as the vehicle to apply the ordinance on a project by project basis is a relatively easy mechanism that segues with other existing regulatory requirements, such as the FDP, landscape plans, parking and building permits, etc.

If the Council is truly interested in streamlining the system or reducing burdens on business, there are a number of measures the Water Department in particular could take. These relate to exactions requested during the building permit review process. As is prudent, the Department requires evidence of compliance with modern standards and codes. However, such improvements should be required to:

1. Have nexus with what is being proposed (in the building permit), and
2. Be proportional in terms of cost to the project proposed.

If a retail shop within a commercial complex wants to change its shelving displays and doesn't have any water using fixtures in its building (i.e., no sink, commode, etc.), then requiring tests of all back flow prevention devices on the entire commercial property is not reasonable, not proportional, and is a burden on business.

Requiring the same shop that has no water fixtures to install back flow prevention devices on water meters that are not connected to any water using devices on the property is also burdensome and lacks nexus.

Lastly, requiring upgrades to the fire suppression system when it has already been previously approved by the County's Fire Prevention Bureau, and is found by this agency to presently be in compliance, exceeds both proportionality and nexus. Upgrades such as these can cost ten's of thousands of dollars but can be triggered for projects costing only several thousand dollars. Each Planning Commission is educated annually about nexus and proportionality (*Dolan v. Nolan* for example) and such training may be useful to staff at the Water Department, if the Council wants to facilitate a more business friendly environment.

Below are some recommendations to streamline the implementation of the ordinance. There are a number of aspects of the bill that could benefit from improvement as follows:

- 19.94.060 B. Item 16. Subdivisions creating 3 or more "Residential" lots.

Recommend residential be defined using existing 19.04.040 definitions clarifying where dwellings and ohana (accessory, MCC 19.35) constitute one (1) residence for purposes of this bill. Similarly, the definition should consider 1<sup>st</sup> and 2<sup>nd</sup> farm dwellings (principal and accessory use), which are not necessarily residential but rather agricultural buildings (MCC 19.30A.050. B.).

County zoning is 'stacked' which allows houses to be placed on lands designated for more intensive uses such as M-1 or M-2 light and heavy industrial. Clarify applicability of subdividing non-residential land into 3 or more lots intended for residential use.

- 19.94.060 C. Item 11. Prohibited Uses - dry wells / sumps.  
 Many properties use dry wells and sumps within dry wells for storm water capture, control and slow discharge over time. Clarify the applicability of the ordinance to these uses, particularly parking lots, and if applicable, provide reasonable alternatives for storm water treatment especially for small (3' x 3' x 3') dry well structures.
- 19.94.060 C. Item 12. Prohibited Uses – irrigation with reclaimed wastewater.  
 Please ensure that this would not interfere with the prudent use and potential for expanding beneficial uses of reclaimed effluent for water conservation.
- 19.94.080 B. Permit processing.  
 Sub-section #2 should limit the length that the direct can renew a permit for to a specific time frame (i.e. 10 years).  
 Add sub-section #4 to require the Director to make a decision within a specific period of time (i.e., 60 or 90 days) so that an applicant can take appropriate action. The Director should be held accountable and not allowed to take years to make a determination. In practice, Department staff will find reasons for an application to not be deemed 'complete' and will delay permit processing until schedules allow its processing.  
 Clarify if a permit fee can be charged, and if so, add 'reasonable' fees and 'reasonable' permit conditions.
- 19.94.080 C. Appeals  
 Recommend that appeals have its own section ("D") and that a specific variance procedure be added beyond merely appealing the Director's decision. An appeal must be based on a clear error in judgment or fact, not unusual situations. A variance process should have evaluative criteria that is broad enough to capture future unforeseen circumstances but narrow enough to capture intent.
- 19.94.090 D. Best Management Practices  
 Clarify how previous references to residential subdivisions in the bill relate to residential un-sewered lots of less than one acre.  
 Clarify if "one residential unit per acre" means one principal dwelling, or a principal dwelling and an accessory dwelling (i.e., ohana).  
 Clarify applicability to 1<sup>st</sup> and 2<sup>nd</sup> farm dwellings.  
 The State Department of Health prohibits more than one septic tank per 10,000 square feet and limits the number of bedrooms using a singular septic tank to five (5). This allows a 4 bedroom house and one bedroom ohana or two duplexes each with two bedrooms or one 5-bedroom house. It may be prudent to mirror State restrictions rather than introduce the one-acre parameter.

Thank you for your consideration. Please feel free to contact me by phone at 808-344-1595 or by email at [Thorneabbott@yahoo.com](mailto:Thorneabbott@yahoo.com) if you have any questions. I appreciate the opportunity to submit testimony and recommendations on this important initiative.

Mahalo!

A handwritten signature in black ink, appearing to read 'Thorne Abbott', written in a cursive style.

Thorne Abbott  
Maalaea, Maui, Hawaii

Maui resident and registered voter.