

October 28, 2024

MEMO TO: DRIP-2(24) File

F R O M: Tamara Paltin, Chair

Tamara A.M. Paltin

Disaster, Resilience, International Affairs, and Planning Committee

SUBJECT: **DISCUSSION ON PROPOSED CHANGE IN ZONING FOR
PULELEHUA** (DRIP-2(24))

The attached informational document pertains to Item 2(24) on the Committee's agenda.

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Attachment

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TIMELINE:

- **November 18, 2011:** Council Ordin. 3889 included a condition that noted that the developer- Maui Land and Pine ("MLP") would provide its own potable water.

Ordinance 3889 (2011), Condition #2

"Maui Land & Pineapple Co, Inc. shall provide potable and non-potable source, storage and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply."

This condition was consistent with statements during deliberations made by the developer and the understanding of the full Council that the project already had its own private water source.

In the Land Use Committee meeting minutes August - October 2011, it is clear that the intent of the language's inclusion in ordinance 3889 was to reflect the fact that the project did have private source.

The project has a water agreement with MLP for the same surface water source, and since that time has added two additional groundwater sources (wells). What has changed since that time is the ability to use the surface water or groundwater source without CWRM approval.

It was stated on the record by former member and Land Use Vice Chair Pontanilla that he had spoken to DWS and MLP and heard from both parties directly that they were in consultation about the possibility of MLP through DWS not only providing water for this project, but also to the County.

In the minutes of 9/15/11, condition 2 was discussed at length and certain members agreed that it should be removed upon the request of MLP, who stated that the origin of the condition came at a time when DWS and MLP were in discussions about connecting to the Mahinahina Treatment Plant, which was no longer the plan.

Discussion surrounding removing the condition talked about its redundancy since the recently adopted "Show Me the Water" policy which accomplishes the same intent as the condition, made it irrelevant. (Baisa, Couch)

Concerns about the higher water rates that would be charged to lower income families if the system were to remain private were expressed, and one member objected to the condition's removal regardless of redundancy with the water policy in order to have the language stated in both the Water Availability policy and in the ordinance as well. (Cochran)

Corporation counsel was asked to opine, who stated that depending on the intent of the body, the way that the language was drafted (and adopted) does leave it open for the project to be allowed to use county sources in the future, as long as they are developed to the standards of the

county. -That in order for the project to not be allowed to do so, the condition would need to explicitly state: "They shall not be allowed to tap into the county system."

In the minutes of 10/5/11, Director of DWS stated that the department has been in discussions with MLP that if once MLP is connected to the treatment facility at Mahinahina, a deal could be made to allocate more of that ditch water and Mahinahina treatment capacity could be increased through CIP and DWS could serve the project. "We have it on our internal list of possibilities for a new source in West Maui."

In the 8/31/2011 minutes DWS discusses the public private partnering options being explored between MLP & DWS which would be mutually beneficial for the county, as well as to service the project.

This cooperative narrative is repeated throughout committee deliberations over the course of five separate hearings, as well as included in the water agreement for Kapalua Bay Golf Course, which reads: "MLP further represents and warrants to Buyer that MLP has existing commitments to the County of Maui Department of Water Supply ("DWS") to provide a maximum of 2.5 MGD of water that DWS uses to produce potable water, and that MLP has been negotiating with DWS to increase the amount delivered to DWS for potable water production to 4.5 MGD in order to secure DWS water service for MLP's proposed Pulelehua development adjacent to the West Maui Airport ("Pulelehua") which is projected to require approximately 1.0 MGD of potable water..."

TIMELINE (continued):

- **June 3, 2016:** Water Agreement executed between MLP & Pulelehua housing project. This water delivery agreement solidified the representations made to the council and identified an opportunity for the Department of Water Supply ("DWS") to participate in servicing the project.
- **June 14, 2022:** Lahaina Aquifer Sector Area designated a Surface and Ground Water Management Area including Honokohau Ditch
- **August 11, 2023:** In the wake of the Lahaina fire, Maui Oceanview LP. ("MOV") offered to expedite development of the project and to increase affordable housing density up to 1200 units total for the project's first 3 phases, and to forgo all market priced units for each as well, with the help of county and state subsidies.
- **October 6, 2023:** The Council passed Resolution 23-206 "Urging the Mayor to Expedite Assistance for the Pulelehua Affordable Housing Project" referencing the project's ability to provide up to 1200 affordable housing units for West Maui, with necessary financial subsidies and assistance from departments to expedite permits and approvals.

- **April 22, 2024:** DWS water service denial letter received by MOV listed three areas in need of attention before the DWS could consider servicing the project. (Source Development, Infrastructure and Ordinance 3889.)

DWS Denial Letter

1) Source Development

"DWS is actively pursuing 3.4 MGD of additional source via new wells, including the current construction of the Kahana Well in the Honolua Aquifer, all of which require approval by CWRM. The initial sources developed and activated will serve to fill the current gap between the demand of 5.6 MGD and the supply of 4.1 MGD. At the time sufficient source has been developed to exceed demand, additional uses will become eligible for new water service. CWRM approval of these new sources is not certain."

Since receiving the denial letter from DWS, concerted efforts have been made by MOV and MNRH to advocate before CWRM in support of CWRM's expedited review and approval of DWS's applications for new wells coming online to service municipal demand, as well as for an eventual submission for a new use surface water application for the anticipated retrieval of the full 2.5 mgd allotment from the Honokohau stream/MLP. Acknowledging that once DWS has secured longterm reliable source, new planned projects can be considered.

2) Infrastructure

"DWS does not have distribution infrastructure adjacent to the Pulelehua project perimeter. Establishment of a connection point, whether for temporary or permanent provision of water service, would require offsite improvements for the Pulelehua project. Due to the scale of the Pulelehua project, at least two points of connection are anticipated in order to provide adequate fire flow. Section 14.04.010.A of the MCC allows provision of water service to properties that are adjacent to a distribution main, which this property is not. While the recently installed polyvinyl chloride (PVC) water main in Akahele Street is DWS infrastructure, new connections to this main are not permitted as this main will be disconnected upon conclusion of the temporary school use that it serves. Further, should public water service distribution infrastructure be developed for the project, the upper elevation portions of the proposed 240 unit project appear to be at risk for insufficient residual pressure for domestic service as it is outside of the Department's service limits, per MCC Section 14.04.010.A."

Application of MCC Title 14 - Public Services to the Pulelehua Project

In DWS's service denial letter, Section 14.04.010 (Water Services- General Conditions) subsection A was read and interpreted alone without considering the language of 14.04.010 B & C (page 7 of this document), which outlines the next steps to be taken should DWS determine there is insufficient water supply available to service a prospective consumer.

These include informing the consumer of any special conditions and or additional charges to be imposed for the service, as well as the requirement for the applicant to install the required

improvements necessary in order to receive the service. (storage tanks, appurtenances and pipeline improvements.)

Pulelehua owns the rights to two reservoirs in the area with a combined capacity of approximately 25 mg, and is awaiting DWS and DPW final subdivision approval to begin infrastructure improvements that would satisfy any and all installation requirements pursuant to 14.04.010 B & C including addressing any insufficient residual pressure concerns for domestic service and if necessary, replacement of the existing water main on Akahele street should the DWS choose to invest in its removal, rather than continue to use it to service the surrounding developments needs.

3) Ordinance 3889

In 2011, this ordinance was adopted by the people of Maui County with the title "A Bill For An Ordinance to Change Zoning from Agricultural District to West Maui Project District 5 (Pulelehua) (Conditional Zoning) For Property Situated at Mahinahina, Kahana, Lahaina, Maui, Hawaii". In Exhibit "C" of the ordinance, Conditions of Zoning, Condition #2 states that "Maui Land and Pineapple Company, Inc. shall provide potable and non-potable water source, storage and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply". The requirement of Pulelehua to develop its own water source, storage and distribution system relieved DWS of the requirement to include Pulelehua in its ongoing demand and supply analysis; as such, Pulelehua demand has not been considered a burden to the municipal system since the adoption of the ordinance and no supply is considered available to Pulelehua for any temporary or permanent purpose.

The Pulelehua project was purchased from MLP with a water source, as detailed in their water agreement with MLP dated June 3, 2016.

The water agreement outlines the following:

DWS and Pulelehua, have priority for a full 2.5 mgd and 1 mgd (respectively) before non potable diversions from the Honokohau Stream by Hawaii Water Service ("HWS") used for luxury home landscape irrigation and golf courses in Kapalua (After IIFS and public trust uses) even in times of drought.

HWS currently extracts approximately 1.5 mgd per day for non potable purposes (luxury home landscape irrigation and golf courses in Kapalua)

To reiterate, the MLP water delivery agreement provides the project with 1 mgd of surface water from the ditch fed by Honokohau Stream and the project has submitted a Surface Water Use Permit Application ("SWUPA") currently under review by CWRM.

Pulelehua has also drilled two wells that have capacity to serve all potable needs of the project at full buildout, with Groundwater Use Permit Applications ("GWUPA") requesting 473,000 gpd, currently under review with CWRM.

The entire 304 acre Pulelehua project, at full build out of 5 phases over the next decade, will require approximately 591,000 gpd according to County DWS standards, however, projected actual potable water daily demand of only 334,000 gpd due to R1 water used for landscape irrigation project wide.

Phase I.: 240- 100% affordable rental units (multi family units) will require only 65,000 gpd within the next 2 years; However, assuming a daily demand consistent with the values prescribed in the DWS "2002 Water System Standards" ("WSS"), the project must provide 136,000 gpd for phase one (560 gpd per unit for low rise multifamily use).

Actual projected potable water use for phase I, is projected to be 65,000 gpd.

The project has secured and/or developed more than sufficient supply to service the project at full build out in excess of 334,000 - 591,000 gpd of potable water.

The project has requested to be able to move forward with constructing infrastructure improvements, but is unable to receive final subdivision approval nor building permits without approval from DPW and DWS after verification of long-term, reliable water source, per Chapter 14.12 Water Availability (MCC).

The project meets the qualification standard for two exemptions in the water availability policy, which would allow DWS & DPW to approve final subdivision and building permits so the project could proceed, but DWS points to Ordinance 3889, condition 2 as the rule.

This is the purpose for the request to delete condition 2 entirely.

14.12.030 - Exemptions.

This chapter does not apply to:

E. Residential workforce housing units developed by a qualified housing provider under chapter 2.96 and are within the service area of the department's central or west Maui water system;

F. Residential development projects with 100 percent affordable housing units and are within the service area of the department's central or west Maui water system;

The project qualified under subsection E. before conversion to 100% affordable in phase I.; However, Ordinance 3889, Condition 2 has stood in the way of this consideration by DWS, as noted in the denial letter for water service dated April 22, 2024.

TIMELINE (continued):

- **July 1, 2024:** FY25 Budget was made effective which contained a line item grant from the Affordable Housing Fund.

The project's first phase was entitled to build 60 affordable for sale, 40 affordable for rent and 120 market rate units, but amended in the grant condition to accommodate 240 affordable rental units:

"The previously executed Workforce Housing agreement for Pulelehua must be amended to reflect the following details: all 240 units in Phase I must be built for rental purposes only and will be divided in equal parts within the following AMI categories: 80 units within 80-100 percent AMI, 80 units within 101-120 percent AMI, 80 units within 121-140 percent AMI. If Low-Income Housing Tax Credit (LIHTC) funding is approved for the project, the aforementioned AMI categories will be adjusted to reflect the requirements of LIHTC funding for 40 units out of the 80-100 percent AMI category, as well as to redistribute and increase the number of units within the 80-120 percent AMI categories as much as possible without risking the financial feasibility of the project."

- **August 16, 2024:** MOV was informed by DHHC that amendments to the existing Residential Workforce Housing Agreement ("RWHA") need to be drafted by MOV.
- **August 21, 2024:** MOV submitted the amended RWHA to the Housing Department.
- **October 15, 2024:** RWHA is with Corporation Counsel under review.

In order for infrastructure construction to begin, Pulelehua also needs:

- 1) *Executed RWHA - Corp Counsel/ Housing*
- 2) *Executed line item grant from AHF - Corp Counsel/ Housing*

These two executed contracts would allow for the correct application of a reduction in permit fees for the 100% affordable housing phase I. by DPW, and a fast track approval process for processing through DPW, Planning, Fire and other reviewing agencies. The amended RWHA would also solidify the qualifying criteria in the Water Availability Ordinance Exemptions.

Applicable MCC Sections

14.01.020 - Purpose.

The County water code is intended to comply with and complement the State water code, chapter 174C, Hawai'i Revised Statutes. The County water code seeks to provide a just and fair distribution of water to the people of the County of Maui. It is the policy of the County of Maui to provide clean, healthful, and plentiful water to its residents. The County water code shall be liberally interpreted and applied in a manner that conforms to the general plan.

"Long-term, reliable supply of water" means:

2. The total water supplies from a private, non-County source that will meet the projected demand associated with a proposed development, in addition to existing and planned future demand, as established by an approved engineering report.

Chapter 14.04 - WATER SERVICES

14.04.010 - General conditions.

- A. Any prospective consumer whose premises are within service limits established by the department and adjacent to a distributing main, where pressure conditions permit, may obtain water service; provided, that the department has a sufficient water supply developed for domestic, irrigation, and fire protection purposes to take on new or additional service without detriment to those already served, and the consumer agrees to abide by the provisions of this chapter.
- B. Where an extension of mains is necessary, where large quantities of water are required, or where a substantial investment by the department is necessary to provide service, the consumer will be informed by the department as to any special conditions and/or additional charges to be imposed for the service, such that water can be delivered in adequate quantities and pressures for domestic and irrigation uses under peak conditions, and for adequate fire protection.
- C. Applicants for water service for premises where improvements to the department's water system have not been installed pursuant to the requirements of chapter 14.05 of this code, shall install and pay for the required storage tanks, appurtenances, and pipeline improvements from the storage tank to the applicant's premises in accordance with chapter 14.05 of this code.

