

WR Committee

From: mark albers <omwao@icloud.com>
Sent: Wednesday, March 02, 2016 12:19 PM
To: WR Committee
Cc: MARKER
Subject: we need "show me the water"

Aloha.... I can't believe what the developers are doing to Maui. The irresponsible over development of West Maui, and specifically the proposed Makila Ridge project is going to be one more project that will ruin this island. It's really a shame that greed and profit are being considered over doing the right thing, which is to keep Maui from becoming like Oahu.

Now everyone is wondering if the developers will be allowed to take over the sugar cane land as well! If the developers are allowed to take over and build on the land that should be used for agriculture, it will be very tragic, because we all will know why it happened.. GREED.

We voted for people in leadership roles who would care about what is best for our Maui. Please be the guardians our our land and do not allow these things to happen. Can't you see what is going on? Do you ever drive the Pali in traffic gridlock?? It's happening all the time now. There should be some kind of moratorium on building on the west side.

It absolutely is common sense to require developers to prove there is enough water before any building is approved. We, the citizens, are constantly fighting to preserve our beautiful island by showing up at meetings to give testimony and, or writing letters on a regular basis to voice opposition to developments that are so obviously wrong that it makes me wonder what is really going on with our leadership.

The citizens should not have to work so hard to make sure that our leaders in office vote the right way. We are happy to sign petitions to voice our opinions, but showing up testifying all the time at meetings is very difficult for some of us who have jobs or for senior citizens. It is just not fair. That's what our leaders are paid to do. Why not let the citizens vote yes or no on proposed projects?

Please protect our island from being ruined and polluted by overdevelopment. Do not sell out Maui.

Sincerely,

Suzanne and Mark Albers

Lahaina

3/2/2016

WR Committee

From: David Arakawa <darakawa@lurf.org>
Sent: Tuesday, March 01, 2016 5:26 PM
To: WR Committee
Subject: WR-19 Water Availability Policy Amendment - LURF testimony (WR Committee, Wednesday, March 2, 2016)
Attachments: 160302 MAUI - Water Resources Committee Agenda_03-02-16.pdf

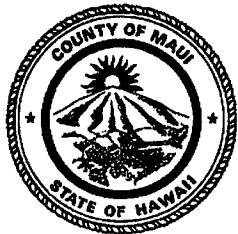
Aloha Water Resources Committee Clerks,

Attached is the testimony of the Land Use Research Foundation of Hawaii (LURF), **in support** of Agenda item **WR-19 Water Availability Policy**

Please feel free to contact me if you have any questions.

Mahalo, Dave

David Z. Arakawa
Executive Director
Land Use Research Foundation
of Hawaii
1100 Alakea Street, Suite 408
Honolulu, Hawaii 96813
Telephone: (808) 521-4717
Direct Line: (808) 521-4718
Cellular: (808) 783-9407
Fax: (808) 536-0132
E-mail: darakawa@lurf.org
Website: www.lurf.org



PUBLIC MEETING NOTICE

WATER RESOURCES COMMITTEE

COUNCIL OF THE COUNTY OF MAUI

www.MauiCounty.us/WR

Committee Chair
Gladys C. Baisa

Committee Vice-Chair
Michael P. Victorino

Voting Members:
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Mike White

Non-Voting Members:
Don S. Guzman
Riki Hokama

Wednesday, March 2, 2016
9:00 a.m.

MEETING SITE:
Council Chamber
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, Hawaii

OFFICE OF THE
COUNTY CLERK

2016 FEB 25 AM 9:04

RECEIVED

A G E N D A

WATER AVAILABILITY POLICY (WR-19)

DESCRIPTION:

The Committee is in receipt of the following:

1. County Communication 16-15, from the Chair of the Committee, relating to Chapter 14.12, Maui County Code, entitled "WATER AVAILABILITY."
2. Correspondence dated February 22, 2016, from the Director of Water Supply, transmitting concerns and suggestions relating to replacing or modifying the water availability policy.
3. Correspondence dated February 23, 2016, from the Director of Water Supply, transmitting additional information relating to replacing or modifying the water availability policy.
4. Correspondence dated February 24, 2016, from Presiding Officer Pro Tempore Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY." The purpose of the proposed bill is to amend the water availability policy to exempt subdivisions within the central or west Maui water systems that have entered into a residential workforce housing agreement with the County, pursuant to Chapter 2.96, Maui County Code.

STATUS:

The Committee may discuss, but will not take action on the proposed bill. The Committee may consider the information submitted by the Director of Water Supply. The Committee may consider other related action.

REMOTE TESTIMONY SITES

Hana

Council District Office
Hana Community Center
5091 Uakea Road
Hana, Hawaii

Lanai

Council District Office
Lanai Community Center
8th Street
Lanai City, Hawaii

Molokai

Council District Office
100 Ainoa Street
Kaunakakai, Hawaii

MORE →

CONTACT INFORMATION	Office of Council Services 200 South High Street Wailuku, Hawaii 96793 www.MauiCounty.us/WR Committee Staff: Kimberley Willenbrink and Clarita Balala	(808) 270-7838 (phone) (800) 272-0098 (toll-free from Lanai) (800) 272-0026 (toll-free from Molokai) (808) 270-7686 (fax)
TESTIMONY	For information on testifying please visit www.MauiCounty.us/how-to-testify or contact the Office of Council Services. If written testimony is submitted at the meeting site, 16 copies are requested to ensure distribution at the meeting.	
DISABILITY ACCESS	People with disabilities requiring special accommodations should contact the Office of Council Services at least three working days prior to the meeting date.	
LIVE CABLECAST	Available on Akaku: Maui Community Media, Channel 53.	

AGENDA ITEMS ARE SUBJECT TO CANCELLATION.

wr:150302:kcw

WR Committee

From: Tom Blackburn-Rodriguez <tominmaui@icloud.com>
Sent: Tuesday, March 01, 2016 4:51 PM
To: WR Committee
Subject: Water Resources Committee meeting on Wednesday, March 2, 2016, 9:00 a.m., Providing testimony for Item #4, Correspondence dated February 24, 2016 from Presiding Officer Pro Tempore
Attachments: TBR 3-2-16 Water Committee Testimony.docx

Honorable Gladys Baisa, Chair
Water Resources Committee
Maui County Council
Wailuku, Hawaii 96793

Aloha Chair Baisa and Members of the Council's Water Resources Committee.

My name is Tom Blackburn-Rodriguez and I live in Kihei.

First, a sincere thanks you to yourself, and to the committee, for continuing your work in this difficult area and for not giving up on finding solutions. We are grateful for your constant efforts.

I am testifying in support to Item #4 on your agenda: a proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY." The purpose of the proposed bill is to amend the water availability policy to exempt subdivisions within the central or west Maui water systems that have entered into a residential workforce housing agreement with the County, pursuant to Chapter 2.96, Maui County Code."

I respectfully request that the committee pass the bill and send it forward to the County Council for a final vote.

There has been testimony that we should wait for the final version of the Water Use and Development Plan. That Plan has not been formally updated since 1992. Since that date, nearly a quarter of a century ago, how many more families and children have become trapped barely able to afford the housing they have, working 2-3 jobs and spending 50% or more of their monthly income while they are being pushed toward homelessness? No one has asked for that list.

Madam Chair, workforce housing and market-priced housing are linked by county policy in which the sale of market-priced homes subsidizes the affordable home prices.

It is inconsistent with existing County housing policy to give the affordable housing in a project access to water and then to deny it to the larger project of which the affordable housing is a part. If the market-priced homes cannot get water, then they cannot be built and sold and there is no subsidy for the affordable housing, which also would not get built.

Previous testifiers in meetings on this issue have issued a long list of questions they want answered before any action to open this window for affordable housing takes place. They want more regulations and more reports and hearings.

But, as you know, we are in a crisis and real people are feeling the pain. They cannot wait for another 24 years before action, action that like justice has been delayed for far too long. It really is an issue of justice for our working families, for Maui's residents, for the thousand of hard working, tax-paying Maui residents who are suffering every day.

Finally, a testifier raised the fear that in a drought water from Upcountry might have to be shared with other parts of the county and that might not leave enough for projected Upcountry needs and Hawaiian Homelands.

The testifier may not have known that the Upcountry and the Central Maui Water systems are not connected and so this is not a fear that would be realized.

Thank you again for your work and for allowing me to testify before you today.

Tom Blackburn-Rodriguez
808-283-4570
tominmaui@icloud.com

85 Manino Circle #202
Kihei, HI 96753

WR Committee

From: Gabriel P Castano. <gauchogabe@aol.com>
Sent: Monday, February 29, 2016 7:54 PM
To: WR Committee
Subject: Show me the water...

How is it possible that anyone with a clear state of mind and conscious can bring forward ANY NEW subdivision or new development in West Maui without addressing the water and traffic issues???...The availability of water is scarce and the roads are choking with traffic and delays.

Dont the Council Members have any concern for the Citizens they serve???

No,No, and No. PLEASE.

Gabriel & Linda Castano
Lahaina

Sent from my iPad
Gabriel

WR Committee

From: Stacy Ellamar <sellamar@prp-hawaii.com>
Sent: Tuesday, March 01, 2016 5:20 PM
To: WR Committee
Subject: Testimony - WR-19 Water Availability Policy
Attachments: Testimony_Water Availability Policy_02 March 2016.pdf

Aloha,

We would like to submit the attached testimony in support of the Water Availability Policy (WR-19). Please feel free to contact me if you have any questions.

Thank you!
Stacy

Stacy Ellamar



Pacific Resource Partnership

1100 Alakea Street, 4th Floor
Honolulu, HI 96813
www.prp-hawaii.com

PHONE 808.528.5557
DIRECT 808.380.8837
EMAIL sellamar@prp-hawaii.com



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Testimony of
Pacific Resource Partnership

Council of the County of Maui
Water Resources Committee
Gladys C. Baisa, Chair
Michael P. Victorino, Vice Chair

Subject: Water Availability Policy (WR-19)

Wednesday, March 2, 2016
9:00 AM
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, Hawaii

Aloha Chair Baisa, Vice Chair Victorino and members of the Committee:

We support the proposed revision of the current water availability policy enacted in 2007 by the Maui County Council was intended to give the Department of Water Supply time to develop additional water sources, but there has been no significant water source or water supply development since the law was implemented.

The issue of water availability has stalled home building on Maui. Specifically, it has created major challenges to producing workforce housing, which depends on the construction of market-rate units for subsidy. The island's water policy in its current form hinders Maui's newly revised workforce housing policy from meeting its potential to add more units of housing at a price point which is achievable for the average working family.

We appreciate WR-19 and support this proposed bill as it would exempt residential subdivisions within the central or west Maui water systems that have entered into a residential workforce housing agreement with the County, pursuant to Chapter 2.96, Maui County Code.

Thank you for the opportunity to voice our opinion.



(Continued From Page 1)

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

WR Committee

From: Gordon Firestein <gfirestein@seapact.com>
Sent: Tuesday, March 01, 2016 5:54 AM
To: WR Committee
Subject: Please Don't Amend the Water Availability Law!

Dear Water Resources Committee Members,

My wife Doris Lang and I live in Launiupoko.

We are aghast at the suggestion that the Water Availability Law (aka "Show Me the Water") might be amended as proposed by Mr. Victorino in the proposed bill you will be considering this Wednesday.

As I understand it, there is a requirement that new subdivisions have at least 25% of the housing reserved for work force housing.

Wouldn't the proposed bill, therefore, exempt ALL NEW subdivisions in central and West Maui?

Isn't that tantamount to completely gutting the Water Availability Law for those areas?

Water is a protected public trust resource. This hardly sounds like an approach designed to protect water in the public interest. In fact, the only conceivable motivation would be for the benefit of private developers.

Please reject this attempt to amend the law. Please leave it alone. We need developers to prove sufficient water availability before they are given approval to go forward with their developments.

Sincerely,

Gordon Firestein
Doris Lang

186 Paia Pohaku Pl.
Lahaina HI 96761

808-661-9185
510-384-2376

WR Committee

From: Trinette Furtado <peles808grrl@gmail.com>
Sent: Wednesday, March 02, 2016 9:38 AM
To: WR Committee
Subject: WR-11

Aloha Mai Kākou Chair Baisa, Vice Chair Victorino and Committee members,

'O Trinette Furtado ko'u inoa. No Hamakualoa mai au ma Ha'iku.

I am writing to OPPOSE Vice Chair Victorino's proposal to exempt certain developments from our Water Availability policy.

As I understand it, ALL proposed developments within Maui County MUST have a workforce housing component to it amounting to 20-25% affordable housing within the development.

Vice Chair Victorino's proposal to EXEMPT developments in the Central and west Maui areas that include workforce housing components from having to prove adequate water supply SOUNDS good, but it simply isn't. His proposal appears to exempt ALL development in the Central and west Maui areas because ALL developments are required to have this component already.

This appears to be a blatant gutting of our policy, plain and simple.

Would further proposals to amend follow this line of segmentation? Which area would be next to have developments be exempt from our Water Availability policy? Makena?

No one is doubting the very real fact that we need to manage our water resources effectively and intelligently. No one doubts that we need more affordable housing. But what we need to do is look at the SOURCES of our water when considering ANY type of exemption for large developments.

When examining information furnished by the Department of Housing and Human Concerns regarding affordable housing, it is clear that much of the problem with developers not building affordable housing isn't the lack of water, but the lack of funding on THEIR part.

This proposal does not offer suggestions or solutions to some of the issues surrounding our Water Availability policy. It merely gives developers in those areas, a way out of their kuleana to our greater community.

For this reason I OPPOSE this proposal and urge this committee to do the same.

Mahalo for your time and consideration of this matter.

Trinette Furtado
Hamakualoa, Ha'iku, Mauinuiakama

"It's never too late to be what you might have been."

WR Committee

From: Michael <mauimike10@yahoo.com>
Sent: Monday, February 29, 2016 5:47 PM
To: WR Committee
Subject: Show me The Water Law

Please do not change the Law or modify or find loop holes in favor of Developers. All Developers must prove their is enough water for the future for any new Developments. This is a good law and we as residence depend on our government officials to protect our resources. I am Pro growth, yet it must be done correctly and protect our future.

Respectful

Michael Hooks

WR Committee

From: Linda Jenkins <linda_m_jenkins@msn.com>
Sent: Tuesday, March 01, 2016 11:29 AM
To: WR Committee
Subject: Show Me The Water

Aloha Water Resource Committee Members

I am a resident of Lahaina and am writing to ask you to please keep the Show Me The Water Bill in place and intact, as it currently is.

I understand that there is the perception that the need to demonstrate a viable supply of water by a developer, before developing land, is curtailing the amount of affordable housing being built.

HOWEVER, regardless of the type of housing, no development should take place without an adequate and viable water supply. It makes absolutely no sense to create an affordable housing project without insuring that those residents have an adequate water supply. (By implication, are we suggesting that affordable housing residents do not have this right but luxury housing residents do???)

Let's not put the cart before the horse. The first step must always be insuring an adequate water supply.

If developers are not moving forward because of this needed first step, then that suggests that the water supply is indeed an issue. How much more disastrous then, if they did move forward without first ensuring adequate supplies!!!!???

Please vote to keep this bill in place.

with aloha

Linda Jenkins

WR Committee

From: kawamurag004@hawaii.rr.com
Sent: Tuesday, March 01, 2016 8:45 AM
To: WR Committee
Subject: Water Resources Committee meeting on Wednesday, March 2, 2016, 9:00 a.m.,
Providing testimony for Item #4, Correspondence dated February 24, 2016 from
Presiding Officer Pro Tempore

Honorable Gladys Baisa, Chair
Water Resources Committee
Maui County Council
Wailuku, Hawaii 96793

Aloha Chair Baisa and Members of the Council's Water Resources Committee:

My name is Georgina Kawamura, a resident of Wailuku. I am unable to testify in person but would like to offer my support to Item #4 on your agenda, from Presiding Officer Pro Tempore Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY." The purpose of the proposed bill is to amend the water availability policy to exempt subdivisions within the central or west Maui water systems that have entered into a residential workforce housing agreement with the County, pursuant to Chapter 2.96, Maui County Code."

This exemption by your Committee and the entire County Council is vital for residential workforce housing to have a chance at being developed in our County. While the affordable homes in a residential workforce housing agreement with the County are exempt from the water bill, the market priced segment of the project, cannot get water and if they cannot get water they cannot be built and sold. If that were the case then the subsidy from the sale of market priced homes that allows for the affordable housing would not happen.

Market priced homes support and subsidize affordable workforce housing. They rely on each other to succeed and as such need equal access to water. I urge your Committee's support of this exemption. A repeal of the Ordinance is not necessary.

Mahalo for your time and consideration.

Mahalo,

GEORGINA K. KAWAMURA
581 South Alu Road
Wailuku, HI 96793
kawamurag004@hawaii.rr.com
Cell: 264-3229

WR Committee

From: P Denise La Costa <pdenise@me.com>
Sent: Monday, February 29, 2016 5:54 PM
To: WR Committee
Subject: Show me the water

I read with distress that the "Show me the water" bill that was just past January 6, 2016 is trying to be amended. With upcountry in a drought and truly a planet that is warming, I think that it is irresponsible to the citizens of Maui County to allow developers to be able to build homes, condos or commercial properties without there being sufficient water. Water is a finite resource and as such, the homes that are sharing the current water will have their capacity diminished if developments are built and no restrictions put on availability of water. I think it is also important to note that PSI be at least 40 pounds at the water meter. This could truly be affected if there were too many homes using a small amount of water.

I appreciate your defeating this proposal and voting 'NO' on the amendment that councilman Victorino is attempting to bring forth and get passed.

Sent from my iPhone with Aloha,

P. Denise La Costa RB#17578
(808) 280-2132. CALL OR TEXT
Principal Broker-Owner
La Costa Realty Hawai'i, LLC
Accredited Buyers
Representative (ABR)
Short Sale Resource (SRS)
pdenise@lacostarealtyhawaii.com
2013 President Realtors Assn of Maui
2015-2016 Hawai'i State Chair RPAC

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WR Committee

From: Mark Nigh <menigh@gmail.com>
Sent: Tuesday, March 01, 2016 10:02 AM
To: WR Committee
Subject: Show me the Water Law discussion

Dear Water Resource Committee members:

As residents of West Maui, we would like to voice our opposition to any changes to the Show Me the Water Law that weaken its ability to make developers prove that there is sufficient water, not only for new construction, but for current residents reliant on that same water supply.

It does not do anyone any good to add housing if there is not sufficient infrastructure to accommodate the additional people, and water is one of those vital infrastructure items. The same argument can be used for any of the infrastructure needs and we rely on the government to oversee and ensure that development is done in a viable and controlled way so as to ensure the sustainability of Maui.

Thank you for your time.

Mark and Judy Nigh
228 Paia Pohaku Place
Lahaina, HI 96761

WR Committee

From: Claes Nordenskiöld <claes@atlarge.se>
Sent: Monday, February 29, 2016 10:31 PM
To: WR Committee
Subject: Show Me the Water

Dear Committee,

I am shocked to learn that there is an attempt within the committee to weaken the Show Me the Water Law by exempting certain kinds of subdivisions, i.e. in essence and effect all future subdivisions in Central and West Maui.

Furthermore, it is extremely disheartening that this comes less than two months after a previous attempt effectively was shut down.

In short, the law as it stands protects the people and the land by correctly laying the full burden of proof on the developers to unequivocally show and prove that the water supply in a specific area is sufficient before any of the necessary approvals to move forward may be issued. This is the least the committee should demand from potential developers now as well as in the future.

I strongly oppose the proposed exemptions.

Sincerely,
Claes Nordenskiöld

202 Paia Pohaku Place
Lahaina, HI 96761

To: Maui County County Council
From: Victor C. Pellegrino
Re: WR-19—Water Availability
Date: 3-2-3016 (9:00 AM)

Good morning chair and council members. My name is Victor Pellegrino. Mahalo for allowing me this opportunity to testify regarding WR-19.

I am more than just familiar with public trust water resources. Our ohana has, for 11 years, sought to restore water to Na Wai Eha—even bringing our case to the Hawaii Supreme Court.

Maui residents know that water is a precious resource. It is also a finite resource. It needs to be protected by people because water cannot speak for itself. There were many purposes in the Na Wai Eha case for restoring water to our major streams. One of them, was to grow food for our ohana—particularly kalo. Specifically for us, there was just a trickle of water in the Waikapu Stream. So, simply, we were prevented from growing a sustainable crop of kalo for our family and community for ten years.

So this background information about water is also important when we consider housing development on Maui.

I oppose this proposal on the floor today and ask you vote no. Why resurrect Show Me the Water today, which, if approved, will only allow for uncontrolled development and the freedom to exploit public trust water?

Water is a precious resource. Proof of long term water availability and sustainability must continue to be the responsibility of any developer before pursuing housing projects and permits for development. Also, the current agreement already allows for an exemption for development projects with 100% affordable housing units so that the construction of affordable housing would not be slowed down. Thus, the current Show Me the Water aims and purposes work well.

The amendment being proposed today conveniently removes the 100% clause as well as provides an exemption to any residential development that has “entered into a residential workforce housing agreement with the County of Maui pursuant to the Residential Workforce Housing Policy.” Transcribed, this means that all residential developments would be exempt from the Show Me the Water. Therefore, if one reads between the lines, this two line tricky-word amendment is clearly a devious governmental way to repeal Show Me the Water—another cogent reason to defeat this amendment.

Thus, should you vote to approve this amendment, Show Me the Water would no longer have any affect on developers. As a result, the door will be wide open for their uncontrolled development and freedom to exploit public trust water sources. In a few words, you will opening a Pandora Box!

Why change what already works for development on Maui? Let this bill stand as it was and for what it was intended. Vote no!

WR Committee

From: Kaloa Robinson <kaloa@stanfordcarr.com>
Sent: Tuesday, March 01, 2016 4:12 PM
To: WR Committee
Subject: Stanford Carr Testimony in support of WR-19 (Water Availability Policy)
Attachments: Stanford Carr Testimony in support of WR-19 (Water Availability Policy).pdf

Aloha,

Please see attached testimony in support of WR-19. 16 Copies will be provided in council chambers.

Mahalo,

Kaloa Robinson
Project Manager
Stanford Carr Development, LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813
T: (808) 547-2247
F: (808) 537-1801
E: kaloa@stanfordcarr.com

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STANFORD CARR DEVELOPMENT
1100 ALAKEA STREET, SUITE 2700
HONOLULU, HI 96813

Aloha Chair, members of the council.

My name is Kaloa Robinson, Project Manager and speaking on behalf of Stanford Carr Development, **testifying in support of this proposed bill, WR-19.**

Affordable housing is most efficiently achieved through the mix of affordable & market units. **By implementing reasonable ratios of affordable and market housing as a condition of exemption from the Water Availability Policy, The Council would effect more affordable housing, not less.** As it stands, the difficulty in developing 100% affordable housing projects makes most development unfeasible. Furthermore, the tandem riding of market along with affordable provides an additional opportunity for those already in the lower rung of home ownership, yet aspire to climb the housing ladder, to vacate their current lower price point dwelling for another to use, occupy, and own.

The urgency to solve the affordable housing issue is pressing as the 1,400 unit per year deficit on Maui increases. Amending the policy as Council Member Victorino proposed, with the exception of one suggestion, would help meet the housing crisis we face.

Today, developers have two avenues for creating affordable projects: Maui County Code 2.96 for Residential Workforce Housing & HRS 201-H which allows the governing agency to grant exemptions to developers from certain codes on a case by case basis. Both require agreements with the County. Since there are a number of near shovel ready projects entitled under 201-H that could deliver affordable and market units in 1-2 years, including our own, Kahoma Village, **I suggest and urge you to consider including an exemption in the proposed bill to include 201-H projects.**

Mahalo for allowing us the opportunity to share in this vital community need,

Kaloa Robinson
Project Manager, Stanford Carr Development.

WR Committee

From: Wayne Tanaka <waynet@oha.org>
Sent: Tuesday, March 01, 2016 5:12 PM
To: WR Committee; Gladys Baisa; Michael Victorino; Robert Carroll; Elle Cochran; Don Couch; Stacy S. Crivello; Mike White; Donald S. Guzman; Riki Hokama
Cc: Anuheia Patoc
Subject: OHA Testimony on WR-19, Water Resource Committee 030216 Meeting Agenda
Attachments: OHA Testimony on Maui County Water Policy WR-19 030216 FINAL.pdf

Aloha mai e Chair Baisa, Vice Chair Victorino, and Members of the Water Resource Committee,

Please find attached the administrative testimony of the Office of Hawaiian Affairs regarding Item WR-19 on the Committee agenda for March 2, 2016.

Mahalo nui,

Wayne Tanaka
Public Policy Advocate
Office of Hawaiian Affairs
(808)594-1945
waynet@oha.org



Testimony of Kamanaʻopono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

Maui County Council
Water Resources Committee
WR-19
WATER AVAILABILITY POLICY

March 2, 2016

9:00 a.m.

Council Chamber

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on Agenda Item WR-19, which offers a “conceptual framework” for a new Maui County Water Availability Policy (Water Policy), and further proposes an additional bill for an ordinance to amend the existing Water Policy.

Currently, the Water Policy requires most subdivision proposals to show verification of a “long-time, reliable supply of water” as a requirement for county approval. Such verification is subject to county Department of Water Supply review and comment, which must specifically consider updated hydrologic information as well as potential impacts to public trust purposes, including Native Hawaiian traditional and customary practices and water reservations by the Department of Hawaiian Home Lands, among others. Exempted subdivision proposals include those composed wholly of affordable housing, or of workforce housing units by a qualified housing provider. OHA offers the following comments for consideration on the proposed changes to the Water Policy:

The Proposed Conceptual Framework Eliminates a Valuable Planning Mechanism for Sustainable Development and the Fulfillment of Maui County’s Public Trust Duties

The “conceptual framework” for a new Water Policy would recast the Water Policy as one relating to infrastructure capacity, rather than impacts to water resources i.e. aquifers and streams. **OHA notes that this would significantly alter the function and value of the current Water Policy, and urges the Committee to consider retaining the role of the existing Water Policy in helping the county uphold its constitutional public trust duties.**

As recently reaffirmed by the Hawai‘i Supreme Court, both state and county agencies have independent and affirmative duties to uphold the public trust in water, which protects certain public trust purposes in the allocation of our islands’ water resources. Such purposes include domestic uses, ecological functions, water reservations

for the Department of Hawaiian Home Lands, and Native Hawaiian traditional and customary practices; private commercial gain is not a protected purpose under the public trust.ⁱ The procedural and substantive framework of the current Water Policy, which ensures the consideration of potential impacts to the aforementioned public trust purposes in most subdivision approvals, may therefore be of particular value to the county in upholding its affirmative public trust duties – particularly in non-designated water management areas, where the Commission on Water Resources Management (CWRM) lacks direct regulatory oversight over the allocation of water.ⁱⁱ Notably, in areas designated as water management areas, the Water Policy may also assist the county in justifying its own water use requests to CWRM, as consistent with the public trust.ⁱⁱⁱ

By removing public trust considerations from the Water Policy, the proposed conceptual framework would eliminate an important and beneficial planning mechanism that facilitates sustainable development, consistent with the constitutional public trust duties of both the county and the state. Further, OHA notes that the framework's articulation that "aquifer health or stream issues . . . are specifically dealt with by the Commission on Water Resources Management ('CWRM') through existing, simultaneous processes[.]" fails to recognize the county's independent duties to uphold the public trust in water, which are particularly heightened in areas where CWRM lacks direct regulatory oversight. Accordingly, OHA urges the Committee to consider retaining the current function and value of the Water Policy, to ensure a comprehensive review of all water-related considerations, including those regarding the public trust, for future development projects.^{iv}

The Bill for an Ordinance Relating to the Water Availability Policy Creates an "Exception that Swallows the Rule" Otherwise Ensuring Sustainable Development on Maui Island

The bill for an ordinance relating to the Water Policy would exempt any development with a county workforce housing agreement from the Policy's planning mechanisms. Combined with the existing Water Policy exemptions for public or quasi-public development projects, such an amendment would essentially eliminate the Water Policy's planning benefits for all future developments in central and west Maui.^v The bill would therefore create an exception that swallows the rule otherwise ensuring sustainable and careful development on Maui Island.

OHA notes that the bill ostensibly seeks to alleviate procedural hurdles in the development of affordable and workforce housing on Maui. However, OHA notes that, in addition to already-existing affordable and workforce housing preferences within the current Water Policy itself, there are also other existing statutory mechanisms that grant broad procedural exemptions for developments with a substantial affordable housing component. For example, developers who work with the Hawai'i Housing Finance and Development Corporation (HHFDC) may receive exemptions to "all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the

construction of dwelling units thereon.”^{vi} Current HHFDC practices grant such exemptions for projects meeting modest affordable housing criteria of having more than 50% of their housing units priced between 80% and 125% of the area median income. **OHA urges the Committee to consider these existing alternative preferences for affordable and workforce housing, before recommending any substantial amendments to the Water Policy as proposed in the subject bill.**

Mahalo for the opportunity to testify on this matter.

ⁱ HAW. CONST. ART. XI Secs. 1, 7; Kaua‘i Springs v. Planning Commission, 133 Hawai‘i 141 (2014); In re Waiāhole, 94 Hawai‘i 97 (2001).

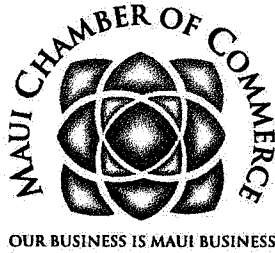
ⁱⁱ See MAUI COUNTY CODE (MCC) § 14.12.050.

ⁱⁱⁱ HAWAII‘I REVISED STATUTES (HRS) §§ 174C-48, 49; In re Kukui, 116 Hawai‘i 481 (2007).

^{iv} Similarly, the Committee may also wish to consider retaining the Water Policy’s existing express consideration of water quality impacts, which not only facilitates prudent and practical planning, but may also help to ensure that subdivision approvals do not lead to inadvertent conflicts with the federal Clean Water Act. MCC § 14.12.050.

^v See MCC § 2.96.030 et. seq. (requiring workforce housing agreements for all development building permits and subdivision approvals, subject to very limited exceptions); MCC § 14.12.030.

^{vi} HRS § 201H-41.



Testimony for the
Water Resources Committee on
March 2, 2016 at 9am

**Support for Repealing or Significantly Amending the Water Availability Policy
Known As The "Show Me the Water" Law**

Dear Chair Baisa, Vice Chair Victorino &
Members of the Water Resources Committee,

Aloha and thank you for revisiting the "Show Me the Water" Law. Thank you for continuing to take this measure up as it demonstrates to the public that the Council will revise its policy when an effort has not worked and this one has not only not worked, it has long been touted as a bill that issue that held back the development of affordable housing.

We have long had concerns over this bill and found that many of the potential negative impacts we shared when the bill was being reviewed and passed over 8 years ago have materialized. A number of Hawaii's top economists continue to tout this bill and the Residential Workforce Housing bill as two bills that hampered affordable housing and economic development during a time when our community needed these efforts most. It has led to an extreme housing shortage that we must contend with. Therefore, we support repealing or significantly amending this bill.

We appreciate the ongoing discussion to try and find some middle and support Councilmember Victorino's measure to amend the water availability policy to exempt subdivisions within the Central or West Maui water systems that have entered into a residential workforce housing agreement with the County. This is a good start.

Ultimately, the key to solving Maui County's water challenges is new source development, which we feel the County should be primarily responsible for. We believe the County should plan and prepare for permitted growth within Maui County and ensure an adequate water supply when needed. As part of this effort, we support the County providing incentives to encourage private sector participation in new source development. Further, we support efforts that encourage water conservation and wise water use, however, emphasis should be placed establishing new source as our island is well blessed with water.

Therefore, we ask for support on Councilmember Victorino's amendment.

Sincerely,

Pamela Tumpap
President

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MAR 2 2016

RECEIVED AT WR MEETING ON _____

(Kailea Moikeha)

WR Committee

From: Susan Varsames <susan@holisticlc.com>
Sent: Tuesday, March 01, 2016 8:37 PM
To: WR Committee
Subject: Water needs to be available, clean and pure

I oppose the proposed bill to amend the water availability policy.
It's not OK to just keep building with no planning for a healthy future.

Susan Varsames

Lahaina resident

WR Committee

From: John Voorhis <john4maui@gmail.com>
Sent: Tuesday, March 01, 2016 7:58 PM
To: WR Committee
Subject: Show Me the Water Law

To Council Members:

As Maui becomes more and more developed, it is vital that there are sufficient resources for all to share. Water is our most important and basic resource and should be available to all at a affordable cost.

Good development should always include the review of this resource. It may put a burden on new development plans, but this is our future.

Please continue to have developers proof that our precious resources are sufficient now and in the future.

--

Have a great day!

Mahalo,

John Voorhis
808.344.2777

Mailing:
910 Honoapi'ilani Hwy
Suite #7-241
Lahaina, HI 96761