

AGRICULTURE AND PUBLIC TRUST COMMITTEE
Council of the County of Maui

MINUTES

November 2, 2021

Online Only via BlueJeans

CONVENE: 1:31 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair
Councilmember Gabe Johnson, Vice-Chair
Councilmember Alice L. Lee, Member (In 1:32 p.m.)
Councilmember Michael J. Molina, Member
Councilmember Tamara Paltin, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member

EXCUSED: VOTING MEMBERS:

Councilmember Kelly Takaya King, Member

STAFF:

Kasie Apo Takayama, Legislative Analyst
Lesley Milner, Budget Committee Analyst
Shelly Espeleta, Supervising Legislative Analyst
James Forrest, Legislative Attorney
David Raatz, OCS Deputy Director
Keoni Shirota, Committee Secretary
Kristeena Locke, Council Services Assistant Clerk

Gina Young, Executive Assistant to Councilmember Shane M. Sinenci
Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Roxanne Morita, Executive Assistant to Councilmember Gabe Johnson
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Sarah Freistat Pajimola, Executive Assistant to Councilmember Keani Rawlins-Fernandez
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Evan Dust, Executive Assistant to Councilmember Tasha Kama

Zhantell Lindo, Council Aide, Moloka'i Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lāna'i Council Office (via telephone conference bridge)
Mavis Oliveira-Medeiros, Council Aide, Hāna Council Office (via telephone conference bridge)
Michele Blair, Council Aide, West Maui Office (via telephone conference bridge)

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ADMIN.: Sandy Baz, Managing Director, Office of the Mayor (Item APT-29)
Jeffrey Pearson, Director of Water Supply, Department of Water Supply
Eva Blumenstein, Water Resources and Planning Manager, Department of Water Supply
Wendy Taomoto, Engineering Program Manager, Department of Water Supply
Stephanie Chen, Deputy Corporation Counsel, Department of the Corporation Counsel
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Andrew Choy, DHHL Planner, Department of Hawaiian Home Lands (Item APT-29)
Dr. Jonathan Likeke Scheuer, Consultant, Department of Hawaiian Home Lands (Item APT-29)
Stewart Matsunaga, Project Manager, Land Development Division, Department of Hawaiian Home Lands (Item APT-29)
Cedric Duarte, Information and Community Relations Officer, Department of Hawaiian Home Lands (Item APT-29)
Barbara Barry (Item APT-57)
Blossom Feiteira (Item APT-29)
Lucienne de Naie, Sierra Club Maui Group (Items APT-29, APT-57)
Terrill James Kaneali'i Williams (Item APT-57)
Ke'eaumoku Kapu (Item APT-57)
Junya Nakoa (Item APT-29)
Kaipo Kekona
Fay McFarlane
Kahala Johnson
Bryan Toda
Jade Chihara
Others - 6

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR SINENCI: . . . *(gavel)* . . . Aloha 'auinalā kākou. Dia dhuit, and welcome to the Agriculture Public Trust Committee meeting of Tuesday, November 2nd, 2021. It is 1:31 p.m. I'm Shane Sinenci, the Chair of the Committee. And before we begin, this online meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. Members, the Governor's most recent emergency proclamation also includes the following mandate. A Board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join Board Members in person at non-public locations where Board Members are physically present, or to identify those locations in the notice required by Section 92-7, HRS, provided that at the meeting each Board Member shall state who, if anyone, is present at the non-public location with the Member. In accordance with the Governor's

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mandate, if you are at a non-public workspace, when your name is called, please identify by name who is present with you in the room, in the vehicle, or at your workspace. For the record, I'm broadcasting from the Hāna Cultural Center with my EA Dawn Lono and District Secretary Mavis Medeiros. So with that, Members, joining us today we have Committee Vice-Chair Gabe Johnson. Aloha 'auinalā.

VICE-CHAIR JOHNSON: Aloha, Chair. Aloha, Members. Dia dhuit to all of you, and I'm in my office by myself on the beautiful Island of Lāna'i.

CHAIR SINENCI: Mahalo, welcome aboard. Next, Councilmember Kelly King is excused. So moving on to Council Chair Alice Lee. Dia dhuit, aloha 'auinalā.

COUNCILMEMBER LEE: Dia dhuit kākou. Nice to see you, Mr. Chair, again, and I am here alone in my office in my home. Thank you.

CHAIR SINENCI: You as well. Thank you for joining us today. Next we have Councilmember Michael Molina. Dia dhuit, aloha 'auinalā.

COUNCILMEMBER MOLINA: Dia dhuit, and aloha 'auinalā to you, Mr. Chairman, and to my colleagues and everyone else joining us for our APT meeting today. For the record, I'm transmitting from my home here in Makawao, and in the next room is my wife. Aloha.

CHAIR SINENCI: Aloha. Thanks for being here. Next we have Councilmember Tamara Paltin. Dia dhuit, aloha 'auinalā.

COUNCILMEMBER PALTIN: Dia dhuit, and aloha 'auinalā. Long time no see you guys. I'm here at the West Maui District Office with my aide Angela, more than six feet apart.

CHAIR SINENCI: Okay, welcome, and welcome Angela as well. Next we have Council Vice-Chair Keani Rawlins-Fernandez. Dia dhuit, aloha 'auinalā.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha 'auinalā, Chair. Mai Moloka'i nui Ahina. I'm at the Moloka'i District Office, and I'm alone on this side of the office. Dia dhuit kākou.

CHAIR SINENCI: All right. Thanks for joining us this afternoon. And Members, as always, our Non-Voting Members are Pro Tem Tasha Kama and Councilmember Sugimura, and they're always welcome to join us should they choose to. Mai ka Administration, we have the Managing Director Sandy Baz; Director of Water Supply Jeff Pearson; our Department of Water Supply Planning Program Manager Ms. Eva Bloomstein [sic]...Blumenstein, excuse me; and from Deputy Corporation Counsel Ms. Stephanie Chen. Dia dhuit. Next, Members, our other resource people today, we have Mr. Andrew Choy from the Department of Hawaiian Home Lands; Dr. Jonathan Likeke Scheuer, also from the Department of Hawaiian Home Lands; and Mr. Stewart Matsunaga from the Department of Hawaiian Home Lands. So welcome, and dia dhuit, aloha 'auinalā. Our Staff conducting the meeting this afternoon is Ms. Kasie Apo Takayama, dia dhuit.

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MS. APO TAKAYAMA: Dia dhuit, Committee Chair and Members.

CHAIR SINENCI: Mahalo. Mr. Keoni Shirota, dia dhuit.

MR. SHIROTA: Dia dhuit, Committee Chair and Members.

CHAIR SINENCI: Thank you. Mr. James Forrest, Legislative Attorney, dia dhuit. Ms. Lesley Milner, Budget Committee Analyst, dia dhuit.

MS. MILNER: Aloha, Chair, and dia dhuit. Members.

CHAIR SINENCI: And Ms. Kristeena Locke, Council Services Assistant Clerk, dia dhuit. Okay, Members, we have two items on the agenda today, APT-57, continuing with the Water Use and Development Plan for Maui; and Apt-29 Exempting Department of Hawaiian Home Lands from the Water Availability Policy. So before we begin, let's begin with public testimony. Oral testimony via phone or teleconference will be accepted. Testifiers wanting to provide video testimony should have joined the online link via the BlueJeans meeting link at bluejeans.com/411641115 as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290 and entering meeting code 411641115, also noted on today's agenda. Written testimony is highly encouraged. Instructions on how to submit testimony can be found at mauicounty.us/testify. Moving on to oral testimony, oral testimony is limited to three minutes per item. If you're still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying please state your name. If you are testifying on behalf of an organization, or if you are a paid lobbyist, please inform the Committee. Please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chat with other testifiers. If you're here to provide testimony, please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you're done testifying you'll be asked to disconnect from the call. However, you're always welcome to continue to view the remainder of the meeting at *Akakū* Channel 53, Facebook Live, or on mauicounty.us. Participants who wish to view the meeting only without providing testimony, please also disconnect at this time and instead view the meeting on *Akakū* Channel 53, Facebook Live, or visit mauicounty.us/agendas. Only Councilmembers, Staff, and designated resource personnel will be connected to the video conference meeting once testimony concludes. A reminder, Committee Members, Administration, and the public to please be patient if we run into any technological issues. Staff has been monitoring people joining today's meeting by phone and by video, and we'll do our best to take each person up in an orderly fashion. If you are connected to the meeting and have not indicated that you do not wish to testify, Staff has added your name to our testifier list and will call on you when it is your turn. With that, is there...Ms. Apo Takayama, can you call up the first testifier?

. . . BEGIN PUBLIC TESTIMONY . . .

MS. APO TAKAYAMA: Yes, Chair. The first testifier is Barbara Barry testifying on APT-57, to be followed by Blossom Feiteira.

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CHAIR SINENCI: Aloha, Ms. Barry. You're...go ahead and unmute yourself.

MS. BARRY: There we go. That's better.

CHAIR SINENCI: Okay. We can hear you, but we cannot see you. Go ahead.

MS. BARRY: Oh, you can't see me either?

CHAIR SINENCI: Oh, we can see you now.

MS. BARRY: Okay, very good. Thank you. I appreciate the opportunity to testify today on APT-57, the Water Use and Development issue that's being discussed here. I'm very curious that the plan has specific language in it that in-depth studies have or will be done on the Ha'ikū streams and the Huelo streams, and that there are plans to...plans made to set streamflow standards before EMI is granted a 30-year lease that will allow them to divert East Maui streams on State lands and the Ha'ikū streams that flow through many lands, or many farms. I have a stream that runs behind me off West Kuiaha that is bone dry. This is the first year in the eight years I've been observing it that there's been no water flowing at all. I have taken photos, and it's very alarming, especially since even during the heavy rains a few weeks ago, there was no water in the gulch or in the stream there at...oh, I'm sorry, the name is escaping me right now. It's the other stream that flows by the secret gardens. The WUDP should state clearly in the chart that Mahi Pono has provided that the needs of small farmers who depend upon the streams in Ha'ikū and East Maui need to be satisfied first. The WUDP assumes that all this was handled when the Water Commission set stream flows for 25 East Maui streams. That long process never looked at the streams of Ha'ikū or the 12 forgotten streams at Huelo. The WUPD...UDP, excuse me, should just not assume that no one else needs water besides them. So I'm worried that the water in these other streams, the one behind my...in the gulch behind my home has...is being diverted, and there's no one monitoring that, and now there's invasives' growing in the stream bed. So I'm very concerned about all of the streams being monitored and stream flow set so we don't run into invasives' and the wildlife that was there depending on that water, you know, doesn't completely perish. So thank you very much.

CHAIR SINENCI: Mahalo, Ms. Barry, for your testimony this afternoon. Members, any questions for the testifier? Seeing none. Again, thank you for your testimony today.

MS. BARRY: Mahalo.

CHAIR SINENCI: Next we have Ms. Feiteira. Ms. Feiteira, will you go ahead and provide your testimony.

MS. FEITEIRA: Aloha, Mr. Chair. Mahalo for the opportunity to speak on Item number APT-29. Thank you for the opportunity to testify in support of the passage of a resolution offered by Councilmember Rawlins-Fernandez. I especially wanted to extend my mahalo to her for making it possible for us to sit before the County Council and talk

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about water issues for Maui County. As you know, Councilmember, access to water has been a primary detriment and...to delaying the development of affordable housing opportunities in Maui County, and so this bill is much welcomed. And so with that I will end with once again, thank you for supporting ADP...APT-29. Mahalo.

CHAIR SINENCI: Mahalo, Ms. Feiteira. Members, any questions for the testifier this afternoon? Okay, seeing none. Again, mahalo, Ms. Feiteira. Okay, next, Ms. Apo Takayama.

MS. APO TAKAYAMA: Thank you, Chair. The next testifier is Bryan Toda, to be followed by Jade Chihara.

CHAIR SINENCI: Aloha, Mr. Toda.

MR. TODA: I apologize, I don't have testimonials. I'm just joining in, so I'll pass and join in on another meeting.

CHAIR SINENCI: Okay, mahalo for joining us this afternoon. Next, Ms. Jade Chihara.

MS. CHIHARA: Sorry, I was just joining in as well. I'm not prepared right now. I'm going to submit written testimony, if that's okay. I apologize. I tried to go on Facebook and find the live for this and follow directions, but it's a little bit hard to when I couldn't find it. So my apologies for not following the rules on here. But I'll submit written testimony.

CHAIR SINENCI: Okay. Thank you. You can go ahead and send it to the APT Committee at mauicounty.us.

MS. CHIHARA: Mahalo.

CHAIR SINENCI: Okay. Ms. Apo Takayama.

MS. APO TAKAYAMA: Next individual indicating they wish to testify is Lucienne de Naie, testifying on APT-29 and 57, to be followed by Terrill James Kaneali'i Williams.

CHAIR SINENCI: Aloha, Ms. de Naie.

MS. DE NAIE: Aloha, Chair Sinenci and Members of the APT Committee. I'd like to begin my testimony. I am representing the Sierra Club Maui Group, and we would like to testify in support of APT-29. This really kind of makes sense. Our water availability bill already exempts 100 percent affordable housing projects from proving a water source because of course, these are the kinds of projects that really should be in the front of the line for having water provided to them as a public trust resource. We all know that housing is a human right, and so the water for Hawaiian Home Lands, which is completely 100 percent affordable housing, should have no barriers placed in terms of having the water it needs. So thank you to Vice-Chair Rawlins-Fernandez and all the Members of this Committee for putting this resolution forward and making it perfectly clear that Hawaiian Home Lands are considered a top tier need for our water resources as they

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are allocated. I would like to move on to the second topic, if I may, of the Water Use and Development Plan, the affectionate WUDP, and we've gone through many versions of this plan. I'm not quite sure what's in and what's out, but I have not seen anything for sure that changes the numbers on what we are planning in our Water Use and Development Plan for the next 20 years for the agricultural needs of Mahi Pono. There is a chart in Chapter 15 of the Addendum, and it's on page 9 of the Addendum, and it lists all the proposed uses...and wow, there's a lot of water planned...53.39 million gallons a day for orchards on 12,000 acres. That's a use of over 5,000 gallons per acre per day. Now, that's what sugar cane used, and I thought we were kind of looking for a blend of crops that can reduce water use from the high levels that sugar cane demanded, which really proved unsustainable. This is not a small amount of acreage, it's 12,800 acres. So as a person who lives in Huelo where many of our streams have no stream flow set--most of our streams have no stream flows set--and the Sierra Club recently petitioned to ask that these 12 forgotten streams have some flows set, but I think that this plan should reflect that a petition has been filed to set flow standards for 12 additional streams in the East Maui lease area, and that that could affect these demand numbers. Because it is a fact that a petition was filed with the Water Commission, I believe the last week of October...or last week of September, I'm sorry...so about a month ago. Also, there is the matter of the streams in Ha'ikū, as the previous testifier said, those never have had any stream flow standards set. And although there's vague statements about, you know, all streams will be studied and this and that, I think people in Ha'ikū would really like to know, since their water is being planned for someone else's future, how they could get a share for their farms. People contact me pretty regularly about their streams being dried, overgrown with cane grass, because the flows have just dried up. . . . *(timer sounds)*. . . We have had rain, but these streams somehow...too much of the water is being taken. So thank you for your consideration in putting this updated information in the Water Use and Development Plan about new stream flow standards for Huelo streams being very likely, and for the need to make it clear about stream flow standards for Ha'ikū streams.

CHAIR SINENCI: Mahalo, Ms. de Naie, for your testimony. Members, any need to clarify Ms. de Naie's testimony this afternoon? Seeing none...oh, we have one question from Member Paltin.

COUNCILMEMBER PALTIN: I just was wondering if we could request Ms. de Naie as a resource for the Ha'ikū area when the item comes up. I'm not super familiar with that dried streams.

CHAIR SINENCI: Members, any objections to requesting Ms. de Naie to be a resource for Item APT-57?

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

COUNCILMEMBER RAWLINS-FERNANDEZ: No objection, but Chair...

CHAIR SINENCI: Okay, Member Rawlins-Fernandez.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Can we...if Ms. de Naie is available, can we extend her the courtesy of having Staff call her when the item does come up so she doesn't need to stay on.

MS. DE NAIE: Oh, thank you. Thank you. Thank you so much. I am working on a few projects today...that would be so nice just to get a text or call to let me know that we were actually going to get to that topic...yes.

CHAIR SINENCI: Okay, will do. Thank you, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR SINENCI: Okay. Thank you, Members. Next we have Mr. Kaneali'i Williams. Mr. Williams.

MR. WILLIAMS: Aloha kākou, can you folks hear me?

CHAIR SINENCI: Yes, we can hear you.

MR. WILLIAMS: Okay, great. My name is Terrill James Kaneali'i Williams. I'm testifying as a kuleana heir of Land Commission Award 3336, Royal Patent 2194, Heir to Nalopi here in Kuiaha, specifically East Kuiaha in Ha'ikū. I'm testifying on the Water Use and Development Plan. I first want to start by saying I support everything that the testifier, I believe her name Barbara Barry, mentioned in her testimony...literally everything. I know I stated this before in past meetings that before the County has to fulfill obligations to the public or any other parties such as, you know, East Maui Irrigation or whatever, Mahi Pono corporate entities, of the rights of us kuleana heirs who have appurtenant rights to the water, that our rights are not infringed upon. This morning I took a walk over to the Pauwela stream, which is two rivers west of Kuiaha, as well as to the Kaupakalua, which is east of Kuiaha. Both of those rivers currently are flowing. There is stream flow, I'm pretty sure there's supposed to be more water. However, that compared to...oh, there we go...my river here, this is Kuiaha, is completely dry. So the peripheries are flowing. The rivers in the middle are not, and so that doesn't quite make sense to me as far as the water management that's been happening. I've been in contact with the ... *(audio interference)* ...and I talked with her in ... *(audio interference)* ...the water in my stream and asked her why there was no water flowing despite the rains that we've been having. And her first communication back to me...the first thing she stated was that there's no diversions at all in this...on this river. At the same time, she sent me a map that had green dots, as well as red dots, and the red dot was on the river. And I questioned her and asked...or brought it to her attention that I was already in contact with Mark Vaught from East Maui Irrigation and Mahi Pono, and that he had disclosed to me that there is at least one diversion that they own up mauka. So it seems like as far as my communications with CWRM already was the information didn't seem to be consistent with what I already...was made available to me. I asked about what those red dots meant, then I was told that it was a diversion. And so in the same email I received from CWRM saying there was no diversions, I was sent a map with indicator showing diversions. At which point then she sent me another map, and

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told me that there are four diversions mauka of my parcel, two of which are owned by East Maui Irrigation. And one of those that is owned by East Maui Irrigation, Mark Vaught has failed to disclose to me this entire summer that I've been here on my kuleana parcel farming as a kalo farmer, as an 'uala farmer, trying to sustain myself, my ohana, and other ohanas [sic] in this area, yet my water has constantly been diverted this entire summer. . . . *(timer sounds)*. . . And with the rains, we haven't been getting anything back. I want to show you real quick what I'm surviving on. This is my buckets of water from catching rain. There's only four...or five full buckets. This is from this entire summer. This is what I have to survive on. My bathing water is about that much . . . *(inaudible)*. . . I am...even though I have the rights to water, I'm the only one being required to conserve water, whereas this entire river is dry. There needs to be sanctions against East Maui Irrigation, as well...and this water . . . *(inaudible)*. . . and there does need to be specific language, and I want to know what is the plan to ensure that this river is going to be flowing, and adequately flowing, and all the Ha'ikū streams are going to be adequately flowing.

CHAIR SINENCI: Okay. Mahalo, Mr. Williams, for your testimony. Which...who did you send the correspondence to again?

MR. WILLIAMS: That was with Rebecca Alakai and...as far as from CWRM? Yeah, that was Rebecca Alakai and I also forwarded to her the email communications from Mark Vaught. I'm not too sure because she did mention the two diversions that...ditches that are owned by East Maui Irrigation up mauka of my parcel. I'm not sure if the County owns the other two. She did not disclose that to me, or who are the parties that own those other two.

CHAIR SINENCI: Okay, mahalo. We have a question for you from Member Paltin.

COUNCILMEMBER PALTIN: Okay. Thank you, Chair. Thank you, Mr. Kaneali'i Williams. I was wondering...so you said you were in communication with Rebecca Alakai from CWRM, and she thought that there was no diversion. And then when you showed her the map from Mr. Vaught with the red dots indicating diversion, what...I didn't catch what her response was...if that's correct what you said, I just was clarifying as well.

MR. WILLIAMS: Yeah, I'll clarify real quick. So when she contacted me back via email, the first email stated that there was no diversions. And she's the one that sent the map that had the indicator with the red dot, which I had to ask afterwards what the dots meant, or the key. And then I had mentioned to her that Mark Vaught had already told me they had an East Maui diversion, but only mentioned one. And then after that email to her, then she responded by telling me that there's actually four diversions up mauka, and two of them are owned by East Maui Irrigation.

COUNCILMEMBER PALTIN: And there was no reason why she originally said there was no diversions, just...

MR. WILLIAMS: I don't know the reasoning.

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COUNCILMEMBER PALTIN: Oh, oh...okay.

MR. WILLIAMS: Yeah, I'm just as confused.

COUNCILMEMBER PALTIN: All right. Thank you.

MR. WILLIAMS: Yeah, mahalo.

CHAIR SINENCI: Mahalo, Member Paltin. Any other questions for our testifier this afternoon? Again mahalo, Kaneali'i, for your participation this afternoon. Ms. Apo Takayama, can you call up the next two testifiers.

MS. APO TAKAYAMA: Thank you, Chair. The next testifier is Ke'eaumoku Kapu, to be followed by Junya Nakoa.

CHAIR SINENCI: Aloha, Mr. Kapu.

MR. KAPU: Hello.

CHAIR SINENCI: Hello, we can hear you.

MR. KAPU: Okay. I'm going to keep my camera off, I think my...this thing is acting up so it's going in and out, but I'll try to do my testimony as quickly as I can.

CHAIR SINENCI: Go ahead. Oh, did we lose Mr. Kapu?

MR. KAPU: ...to the . . . *(inaudible)*. . . water that comes from basically a private water shed. So the reason why I bring that up is I think the County needs to try to figure out some way on how we inclusively can start looking at a water management plan that also includes kuleana. So if you guys didn't ring in on my testimony on what I'm . . . *(inaudible)*. . . bring up pertaining to the kuleana rights to these waters, which is a State responsibility and a County responsibility as well. I think that in this management plan there needs to be some kind of verbiage in there to allow kuleanas *[sic]* due process, and what does that due process look like. So including not just a kuleana, but by way of the Aha Moku Council system by having some dialogue from direct . . . *(inaudible)*. . .

CHAIR SINENCI: Mr. Kapu.

MR. KAPU: -- right also at the same time of those waters that come from these private water sheds. So my issue is the percentage of water that the County has on the West Side is very minimal for us to even consider whether or not we're going to be a part of a process that will definitely look at the benefits pertaining to what the kuleanas *[sic]* are entitled to...lawfully entitled to . . . *(inaudible)*. . . the Hawai'i State Constitution...we cannot forget that. So, you know, I mahalo you for allowing me this time. I will provide testimony...written testimony as well because this is a...very much of a great concern that we kuleana, which is a minority in the State of Hawai'i, has always been, yeah, the last to even be considered on how we'd be a part of the bigger plan. And I hope that the

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County can really . . . *(inaudible)* . . .

CHAIR SINENCI: Mr. Kapu.

MR. KAPU: -- versus what they can charge at a rate increase when it comes to this part of town, Lāhainā town. I don't know about the others, like Kā'anapali moku, but Lāhainā is suffering greatly. And I hope and I wish that the County really looks into...before you start approving any kind of affordable housing, to look and see whether or not these kuleanas [sic] have appurtenant right also because we are being put on the side and permits are being just rubber stamped and leaving us with minimal. So mahalo, mahalo for this opportunity to testify. Thank you.

CHAIR SINENCI: Mahalo, Mr. Kapu, for your testimony this afternoon. Yeah, can you please go ahead and send in your written testimony, some of which your oral testimony was cutting out. We'll refer to your written testimony as well. Mahalo.

MR. KAPU: Okay. Mahalo.

CHAIR SINENCI: Members, any questions for Mr. Kapu this afternoon? Seeing none. Again, thank you for joining us this afternoon. Next, Members we have Mr. Nakoa. Mr. Junya Nakoa, are you on the call?

MR. NAKOA: Howzit.

CHAIR SINENCI: Howzit.

MR. NAKOA: Can you hear me?

CHAIR SINENCI: Yeah, we can hear you.

MR. NAKOA: Yessah. Sorry, I stay in Maine, but yeah, I got notified about this meeting about the...about the water, you know, for go to like Hawaiian Homes and all that stuff. Is this the right time to talk about that? Am I right?

CHAIR SINENCI: Yeah. Go ahead.

MR. NAKOA: Okay. Yeah. Yeah, you guys all know. All you guys on top this Council know that we need the water that goes to the Hawaiian Homes for the Hawaiian people and for all locals in whole, you know, like you know what I mean, you know, locals...Hawaiian at heart and all that stuff. The water is getting diverted to what, to all the million dollar developers on Launiupoko, Kā'anapali. It's also diverted to the hotels where they get swimming pools. You guys should go check the hotels. They water the cement more than they water the grass. So whatever you guys can do to make sure...you know, especially the Hawaiian Home developments that is popping up in Lāhainā, you know, for the development...the development at the...the development at the Honokowai and the Leiali'i...make sure we get water, you know what I mean. You know, make it easier for us Hawai'i for get this thing to go through so the Hawaiian Home guys no one

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excuse for not build this thing for us Hawaiians. Yeah, that's pretty much all I get for do...you guys know already. Like I told you guys, you all bad ass, just do the right thing. Just tell those guys, unblock the water...put the water back in all the water streams...all the streams...all the streams, just put 'em back where supposed to be and take care us guys because...yeah. I came over here to clear my mind, and when I come back, watch out, we going go...we going make trouble. But yeah, thank you guys for the time. Thank you for letting me testify. Thank you for all you guys do. And like I said, you guys all bad ass.

CHAIR SINENCI: Okay. Mahalo, Mr. Nakoa. When you coming home?

MR. NAKOA: I coming...I leaving Maine tomorrow.

CHAIR SINENCI: Oh, okay.

MR. NAKOA: But I going Honolulu hang out with my family over there, then I coming home.

CHAIR SINENCI: Okay. See you soon. Members, any questions for Mr. Nakoa before he boards his plane? Seeing none. Okay, mahalo.

MR. NAKOA: Yeah, you guys have a good one. . . .*(Inaudible)*. . .

CHAIR SINENCI: Okay, Ms. Apo Takayama, were there any other testifiers that wanted to provide testimony this afternoon?

MS. APO TAKAYAMA: Chair, we do have one more individual connected to the call. And we're not sure if he'd like to provide testimony, but it's Cedric Duarte.

CHAIR SINENCI: Mr. Duarte, did you want to provide testimony?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, that's our resource personnel that I believe that'll be Mr. Stewart Matsunaga.

CHAIR SINENCI: Oh, okay. Mahalo for that clarification.

MS. APO TAKAYAMA: Thank you.

CHAIR SINENCI: Is there anyone else wishing to testify this afternoon? Please go ahead and unmute yourselves at this time. Okay, all right. Mahalo to everybody who did join us this afternoon to provide testimony. So Members, seeing that there are no more individuals wishing to testify, without objection, I'll now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

. . . END PUBLIC TESTIMONY . . .

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CHAIR SINENCI: Okay, great. Mahalo. And just as a reminder to those that provided testimony via BlueJeans to tune into *Akakū* Channel 53, Facebook Live or mauicounty.us to view the remainder of today's meeting. Okay, Members with that...Staff, was there a need...I'm getting word from the Staff, can we continue, or did you guys want to take a quick break? Ms. Apo Takayama, is that what you're requesting?

MS. APO TAKAYAMA: Yes, Chair. Can we just take a quick recess?

CHAIR SINENCI: Okay, Members. At the call of the Chair, we're just going to take a really quick break, and then we'll be back at 2:15. Okay, so the APT Committee meeting of November 2nd is in recess until 2:15. Thank you, Members. . . .(gavel). . .

RECESS: 2:08 p.m.

RECONVENE: 2:17 p.m.

CHAIR SINENCI: . . . (gavel) . . . Aloha kākou and welcome back to the APT meeting of Tuesday, November 2nd. It is 1:17. Mahalo, Members, for the quick break. So moving right along. Members, our plans for today...before we begin, I'd like to ask your consideration of taking the items on the agenda out of order for today's meeting.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

CHAIR SINENCI: Okay, mahalo. And in addition to having Director Pearson and Ms. Blumenstein from the Department of Water Supply, who are here as resource personnel for both of the agenda items today, we also have joining us the resource people from the Department of Hawaiian Home Lands.

**ITEM 29: EXEMPTING DEPARTMENT OF HAWAIIAN HOME LANDS
FROM WATER AVAILABILITY POLICY** (CC 21-348)

CHAIR SINENCI: And so really quickly, APT-29 Exempting Department of Hawaiian Home Lands from Water Availability Policy. The Committee is in receipt of County Communication 21-348 from Council Vice-Chair Rawlins-Fernandez, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE EXEMPTING THE DEPARTMENT OF HAWAIIAN HOMELANDS FROM THE WATER AVAILABILITY POLICY." The purpose of the proposed bill is to amend Section 14.12.030, the Maui County Code, exempting Department of Hawaiian Home Lands development from the Water Availability Policy. And so before I acknowledge Council Vice-Chair Rawlins-Fernandez to introduce the proposal, I'd like to first introduce, from the Department of Hawaiian Home Lands, Mr. Andrew Choy, Mr. Jonathan Scheuer, and Mr. Stewart Matsunaga, who have joined us for today's discussion. Again, we also have with us, Members, the Director of Water Supply, Director Pearson and Planning Program Manager Eva Blumenstein in case Members have any questions for the Department on the proposed bill. So with that said, if there are no objections, I'd like to designate Mr. Choy, Dr. Scheuer and

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Mr. Stewart, Director Pearson and Ms. Blumenstein as resource persons under Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

CHAIR SINENCI: Okay, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. May I also request Managing Director Sandy Baz as a resource personnel.

CHAIR SINENCI: Yes. Sorry, I missed Managing Director Baz. We'd like to include him as a resource person under Rule 18(A) of the Rules of the Council if there are no objections.

COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

CHAIR SINENCI: Okay, great. Oh, go ahead, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Permission to share my screen, Chair?

CHAIR SINENCI: Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So the proposal--and hopefully it's the right one--the proposal that you have before you is...okay, good...is an exemption to Title 14. Okay. So it would be a new subsection H, Development by the Department of Hawaiian Home Lands under Section 221 of the Hawaiian Homes Commission Act. So that was the proposal, and I would like to expedite our meeting for you, Chair. I want to also share what was sent from the Department of Water Supply. Okay, and that is H Homestead projects developed by the Department of Hawaiian Home Lands. For the purpose of this section, homestead project means a project or a portion of a multi-purpose project, including residential, agricultural, pastoral, or aquacultural uses, designed and intended for disposition to Native Hawaiians under the Hawaiian Homestead Commission...oh, sorry...Hawaiian Homes Commission Act, including community facilities for homestead areas. Chair, when this legislation was first passed, I think the assumption was that the Department of Hawaiian Home Lands, in the development of homes for Hawaiians under this Congressional Act, would have been exempted under affordable housing. And there have been hiccups in the past, and so instead of implying that they would be included or exempted from this, my proposal explicitly exempts DHHL and DHHL projects from Title 14 from this section. I'd like to invite our DHHL resource personnel to provide their feedback on the original proposal and the proposed amendments at this time, Chair.

CHAIR SINENCI: Okay. Mr. Choy, did you...or who wants to go first?

MR. CHOY: Thank you, Committee Chair Sinenci and Members of the Council. Yes, the Department is supportive of the proposed amendment proposed by the Department of

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Water Supply, that language is agreeable to us. And we'd like to thank Councilmember Rawlins-Fernandez and DWS for working with us on this language.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. May I also extend the invitation to Managing Director Baz for his feedback on the proposed amendment?

MR. BAZ: Thank you, Chair, and thank you, Member Rawlins-Fernandez, and I appreciate the opportunity to talk to you about this today. We...the Mayor and Administration are very supportive of this...we wanted to make sure that it was clear, and so we defined specifically the homesteads that would be qualified for this. In the original proposal, I think we wanted to make sure that as...in difference to the original proposal, we wanted to make sure that was included no matter if there was changes to 221 or we wanted to also make sure that we included 220 and 220.5 projects as well. So I think the amendments make it clear. And also, you know, the discussion of whether or not it's affordable housing...yes, it's definitely affordable housing. It's attainable to our community members especially, you know, those that are...of course are beneficiaries. But the way that the Administration feels about this is that any support to build more housing for native Hawaiians is a large benefit to our community. And because we can get more people into housing that are native Hawaiians, we feel like that helps our affordable housing in general because then there is more inventory of housing for our community. The Hawaiian Home Lands, of course, are not income level affordable, right, they're not restricted to specific incomes, and so that's why there's a hiccup sometimes about whether or not it's an actual affordable housing project. And so just wanted to make sure that the language is clear there, and that we do support this 100 percent.

CHAIR SINENCI: Okay. Mahalo, Director Baz. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I just wanted to quickly point out what is excluded with the amendment. And the Department and the Administration support the amendment, and what it excludes is commercial development. And while I will follow the lead of DHHL's resources, I wanted to state for the record, I guess, my comments on it, that any commercial development or commercial development by DHHL is not for profit. It's to generate revenue in order to get Hawaiians onto the land to carry out its responsibility under the Congressional Act. And so while it's labeled, you know, commercial development, any revenues is to get more people into homes, which is our goal. They are not a for-profit entity. They're the Government. They're a Government Department. And so while I can go along with this, I would...my preference would be to exempt their commercial development as well. Mahalo, Chair.

CHAIR SINENCI: Okay. Before we go to questions, I see questions from the Members, I'd like to call on our OCS Staff just to give us a procedure...procedurally, I know, with the amendment, does this...does the amendment significantly change what was agendized? If Mr. Raatz or Mr. Forrest wanted to provide some comments before I go to Members' questions. I see Mr. Forrest.

MR. FORREST: Thank you, Chair. Yeah, we have no problem with the amendment as far as Sunshine Law is concerned. I would state that I do agree with Member

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Rawlins-Fernandez that this does limit the exception. Currently the exception would include homestead, commercial, and multi-purpose projects, and the amendment has limited it to homestead projects. I do think that projects that are already exempted in this section of the Maui County Code include other non-profits that would be performing some of the duties that Ms. Rawlins-Fernandez mentioned. So I think that it would...it could be consistent with the Code to include commercial projects in this exemption as it originally was drafted.

CHAIR SINENCI: Mahalo, Mr. Forrest. We have a question from Member Lee.

COUNCILMEMBER LEE: Yeah, well, it's for anybody. I'm concerned that the Water Availability Ordinance was really directed to ensure that there's sufficient water for affordable housing and nothing else. So I think this ordinance...proposed ordinance deviates from the original intent of the Water Availability Ordinance. So I believe that commercial should not be included in this exemption. Also, the hiccups I think Managing Director referred to are kind of major hiccups. In other words, those of Hawaiian descent of 50 percent or more who are beyond 140 percent of median income...let's say they are, you know, 200...250 percent of median income, will be exempt. So...you know, so that sort of takes away from the affordability issue. Also, one thing that has concerned me with DHHL projects is the fact that these...in many cases are not first-time homebuyers. In many cases they have two homes, you know, so...but I can deal with those issues. The main one I can't deal with is the commercial exemption. Thank you. That's for anybody who wants to respond.

CHAIR SINENCI: Managing Director Baz, go ahead.

MR. BAZ: Yeah. Thank you, Chair. I'll respond to the affordable housing issue. The commercial...yeah, we agree with. While commercial activities do benefit DHHL in making additional revenue for them to do infrastructure for affordable housing, we feel that if they're developing commercial projects, then that's should be built into a part of the cost of those projects...the water should be built into the cost of those projects. As far as those that are not income qualified for affordable housing, but are beneficiaries that are eligible for DHHL, we have a very similar mindset when it comes to other specialized housing. When we support a senior housing development, the Hale Mahaolu or some, you know, familiar project like that, we support those because that means that there are more housing for people to be in. And so if it may be, you know, for seniors, it's an elderly person that's moving into a senior housing unit, that house then becomes eligible for their kids, or some other either family member, or for sale at a lower price than some of the market houses they're at right now. So in general, that's why we support DHHL and specialized housing is that it does, again, support more additional inventory that people could use as residential units.

COUNCILMEMBER LEE: Unless of course the person has two or more homes, right?

MR. BAZ: Well, from my understanding, DHHL requires you to be a...you have to live in the unit, I'm not sure...they'd have to respond to that.

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MR. CHOY: Chair, if I could respond to that.

CHAIR SINENCI: Oh, is that...okay, go ahead, Mr. Choy.

MR. CHOY: Yes, that is correct. A DHHL lessee must occupy the unit. If they do own another home, they must sell the unit. So it does provide, through the sale, another opportunity for a housing unit to be occupied by people.

COUNCILMEMBER LEE: Okay, so the applicant for the unit has no limitation on assets.

MR. CHOY: They must occupy the unit if they move into a DHHL property.

COUNCILMEMBER LEE: But in terms of assets, you know, even if they sell the other home and, you know, they have a lot of assets, there's no limitation on the assets a person can have.

MR. CHOY: There is no limitation on the beneficiaries' wealth or the income that they make. The Hawaiian Homes Commission Act, as you know, allows the Department to reconnect our beneficiaries to the land. We're the only developer that can guarantee that someone will occupy the house that has a direct tie to Hawai'i. We can guarantee that no one will...without any tie to Hawai'i will be occupying the unit.

COUNCILMEMBER LEE: Thank you.

CHAIR SINENCI: Okay. Mahalo, Chair Lee. Members, any other questions for our panel today, or our County employees? Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chairman. Can I get comments from Corp. Counsel on the proposed bill?

CHAIR SINENCI: Okay, do we have Ms. Chen on the line?

MS. CHEN: Yes, I'm here, and I believe Jen Oana is also on the call. So we're both here to answer questions.

COUNCILMEMBER MOLINA: Okay, yeah. Thank you, Ms. Chen. Just any...any concerns from the legal perspective on your end with the bill...just curious. Any thoughts?

MS. CHEN: Thanks, Member Molina. So the current draft, as I understand it, is limiting the . . .*(inaudible)*. . . that's providing the exemption for homesteading projects. I don't see any issues there. I think the Committee, you know, appropriately grasps the difference between that, and then including the exemption for commercial projects or multi-purpose projects. And I do think that's a policy decision. Jen is, you know, better versed in this, but as I understand it, CWRM still has to allocate the water. Section 221 of the Hawaiian Homes Commission Act provides for protection...or guarantees a high priority for DHHL to exercise rights to Government-owned water. But as I understand it, the County does not own the water, nor do we hold licenses for the water. So I believe,

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you know, it makes sense to include this exception so it's one less hoop for DHHL to jump through. But ultimately, we're not the ones who would allocate that water. Jen, did I adequately state that, or you want to tie that up for me?

CHAIR SINENCI: Ms. Oana.

MS. OANA: That's correct. I think the Department and Management proposed this amendment alternative because there were questions whether DHHL projects would fall under 221 because it is limited to water licenses water, so it's Government-owned water. So the Department and Management's proposal ensures that this is for DHHL homestead projects. We wanted to make it clear that it was for homestead projects. If you see the other exemptions already contained in the Code, it clearly says what kinds of projects are exempted from the Show Me the Water Bill, and so we wanted to make, you know, this section H as clear as the other exemptions.

COUNCILMEMBER MOLINA: Okay. Thank you very much for your responses. Thank you, Mr. Chairman.

CHAIR SINENCI: Okay. Mahalo, Mr. Molina. Any other questions for our panelists? Okay, we have Director Baz. Go ahead.

MR. BAZ: Thank you, Chair. I just wanted to make two things clear as well. One is, the language does include community facilities in homestead areas. So like in Waiohuli, any...most of the newer subdivisions, they have a community center that would be a part of that. And we appreciate the Department's development of that in the homestead area, so we do include that type of development within the homestead area as well, specifically in the language. The other thing to make clear is that we work with the Department...when it comes to agricultural use, we work with the Department to make sure that, you know, to the best extent possible, they're using agricultural water, agricultural water rates, versus the potable water to develop agricultural use. So we will continue to work with them on that piece of it.

CHAIR SINENCI: Okay. Mahalo, Director Baz. And then did Dr. Scheuer wanted to also add some comments?

MR. SCHEUER: Thank you very much. Scheuer, rhymes with lawyer, or sounds like shoyu. So aloha everyone. I think I just wanted to add into this discussion that sometimes people don't recall that acceptance of the compact...of a compact with the United States to uphold and fulfill the Hawaiian Homes Commission Act was a condition of statehood. So the only reason we get to be a State and that our counties get to be counties within the State of Hawai'i is that we sort of promised to uphold and fulfill that act, and that's enshrined into the Hawai'i State Constitution. So this bill is just actually a very tangible step on the County level, even though most of the time people think of State obligations to fulfill the Hawaiian Homes Commission Act. As in the Constitution of Hawai'i, the counties aren't just administrative subdivisions of the State. So that kuleana falls to the counties, and this is a really meaningful and tangible way for Maui County to help fulfill its obligations to uphold and fulfill the act and its ordinance. Thank you very

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much.

CHAIR SINENCI: Mahalo, Dr. Scheuer. Are there questions...oh, we have a question from Chair Lee. Go ahead.

COUNCILMEMBER LEE: So Dr. Scheuer, does that include commercial developments by DHHL?

MR. SCHEUER: You know, that's a really interesting question. And honestly, I hear both of the arguments on this. I have thought about the relationship between DHHL's water needs and commercial developments within the public trust doctrine rather than within County ordinance. So it's clear under the public trust doctrine as it's adopted in Hawai'i originating from Kingdom law, as well as from U.S. law, that the reservations and actual uses of lands by DHHL are public trust purposes. And the State Water Code did actually specifically limit DHHL water protections under Section 221 of the Hawaiian Homes Commission Act, which is why when we originally worked with Councilmember Rawlins-Fernandez, when she consulted with us about that language, why we referenced that.

COUNCILMEMBER LEE: However, you're asking for an exemption from the County Code...the Water Availability Ordinance.

MR. SCHEUER: Yes.

COUNCILMEMBER LEE: And so we would...that's why we're trying to make a decision based on the intent of and the implementation of that particular ordinance --

MR. SCHEUER: I understand, and I was actually...

COUNCILMEMBER LEE: -- not as its connected to something else.

MR. SCHEUER: Just as an aside, I work for the Office of Hawaiian Affairs and testified on the passage of the original Water Availability Ordinance. And my recollection, such as it is, was that it was actually...it was concerned about the availability of affordable housing. There was an understanding that DHHL would be exempted, but it was more concerned with the...whether there was just sheer water availability, hence the title of the ordinance. Mahalo.

COUNCILMEMBER LEE: Thank you.

CHAIR SINENCI: Mahalo, Dr. Scheuer. Okay, Members any other questions for our panelists? If not, Members, I call on Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. If all the Members have asked their questions, what I would like to do if...with your permission, Chair, is I would like to make the main motion to adopt the bill as it was posted. And then I...to amend the language to include the language that was proposed by the Department of Water Supply.

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And then I would like to make an amendment both after that...if that...assuming that passes, I'd like to thirdly make an amendment to include commercial development, and that way everyone has an opportunity to decide on these policy decisions separately.

CHAIR SINENCI: Okay. Sure thing, Member Rawlins-Fernandez. Will you include non-substantive revisions and the filing of County Communication 21-348 as well?

COUNCILMEMBER RAWLINS-FERNANDEZ: Absolutely...348. Okay.

CHAIR SINENCI: 348, yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. I move to recommend passage on first reading a bill entitled "A BILL FOR AN ORDINANCE EXEMPTION THE DEPARTMENT OF HAWAIIAN HOME LANDS FROM THE WATER AVAILABILITY POLICY" and filing of County Communication...ah, I forgot already.

CHAIR SINENCI: 21-348.

COUNCILMEMBER RAWLINS-FERNANDEZ: 21-348, mahalo, including any non-substantive revisions.

CHAIR SINENCI: Okay, it's been moved by Member Rawlins-Fernandez, and seconded by Member Johnson. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I move to amend the motion to the following language: "H Homestead projects developed by the Department of Hawaiian Home Lands. For the purpose...for the purposes of this section, homestead projects means a project or that portion of a multi-purpose project, including residential, agricultural, pastoral, or aquacultural uses, designed and intended for disposition to native Hawaiians under the Hawaiian Homes Commission Act, including community facilities for homestead areas.

CHAIR SINENCI: Okay, it's been moved to amend the main motion by Member Rawlins-Fernandez and seconded by Member Paltin. Discussion, Members, on the amendment.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, real quick.

CHAIR SINENCI: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. It was just brought to my attention that the bill was...title was also amended by the Department of Water Supply, so I'd like to include that in this motion, if you...if my seconder would agree, and I'll read it. A bill for an ordinance amending Section 14.12.030, Maui County Code exempting homestead projects developed by the Department of Hawaiian Home Lands from the water availability policy. And Section 1 reads, "Section 1, the purpose of this ordinance is to exempt homestead projects developed by the Department of Hawaiian

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Home Lands from the Water Availability Policy.” If...yeah, okay.

CHAIR SINENCI: Okay. So it's been also moved to include the new title change as well. So we'll call for the vote for the...oh, we have discussion. Member Lee.

COUNCILMEMBER LEE: Yeah, discussion. Yeah. Thank you, Mr. Chair. I'm going to be voting no on this because I believe this is not the correct vehicle to use for the purposes that DHHL has. I think they should have a separate ordinance, which is not tied to the water availability policy, which primarily is affordable housing. And they are already exempt under affordable housing. So they are wanting to add all these other things, so I believe that that should be a separate ordinance, so I'll be voting no on the motion.

CHAIR SINENCI: Mahalo, Chair Lee. Members, any other discussion. Okay, seeing none, Chair will call for the vote. All those in favor of the main motion...well, the amendment to the main motion, please raise your hand and say “aye.” Four “ayes.” All those against the amendment, raise your hand and say “no.” Okay, we have four “ayes” and two “noes.”

VOTE: AYES: Chair Sinenci, Vice-Chair Johnson, and Councilmembers Paltin, and Rawlins-Fernandez.

NOES: Councilmembers Lee, and Molina.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kelly Takaya King.

MOTION CARRIED.

ACTION: Approve amendment to main motion

CHAIR SINENCI: Okay, the amendment passes. Okay, now, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I move to amend “H” to include commercial development.

CHAIR SINENCI: Okay, it's been moved to amend the...to include commercial development, and seconded by Member Johnson. Discussion, Members. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So the section already provides for an exception for commercial projects done by non-profits, so “G”, public or quasi-public development projects as defined in Section 19.04.040 as it relates to subdivisions

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are within the service area of the Central or West Maui water systems, and so that is a policy decision. The definition in 220.5G, Commercial Project...oh sorry, I said development...means a project or portion...or that portion of the multi-purpose project, including single family or multi-family residential agricultural, pastoral, aquacultural, industrial business, hotel and resort, or other commercial uses designed and intended to generate revenue as authorized by this Act. And so that's Section 220.5G of the Hawaiian Homes Commission Act. And as I stated earlier, that the revenues generated by DHHL are generated for the purpose of putting...fulfilling the act which Prince Kuhio advocated for on our behalf in 1920 to rehabilitate Hawaiians, to stop the further displacement of the native people of this place. As Dr. Scheuer explained, as counties we're subdivisions of the State and obligated by this law as well. And it's a tragedy that the State refuses to provide adequate sums to DHHL in order for them to fulfill its obligation on behalf of the State itself. So that is the purpose for this motion. Mahalo, Chair.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. Ms. Chen, did you want to comment?

MS. CHEN: Thanks, Chair. So my question is...I don't know...now that the motion has already been...the motion to amend the original bill has already been made and passed...what the process would be here, but multi-purpose projects means a combination of a commercial project and a homestead project, so I guess just adding...including the homestead project and commercial project, I think we would also be remiss if we didn't just add in that other bit. And then I'm wondering if it makes more sense just to say development of Hawaiian Home Lands as defined under the Hawaiian Homes Commission Act. Is there anything you're specifically trying to not include here in this exemption that's under the jurisdiction of DHHL?

COUNCILMEMBER RAWLINS-FERNANDEZ: No.

MS. CHEN: So...okay. So there's been a motion made and no second yet on this second amendment, correct?

CHAIR SINENCI: There has...there's been a second.

COUNCILMEMBER RAWLINS-FERNANDEZ: Member Johnson.

MS. CHEN: Oh, there's already a second. Okay. That's why you're in discussion.

CHAIR SINENCI: To add commercial.

MS. CHEN: Okay. So maybe this can...if, you know, this amendment, and the vote is taken, and then we could go from there and see if there's something that makes more sense. I just don't know that it makes sense to just include those two specific provisions...if multi-purpose is necessarily included in those, so...

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Chen. I understand your concern, and I guess my intention was to give the Members the opportunity to make that policy

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decision by separating all the decisions. So if I'm hearing what you're saying correctly, if there is a majority vote for this motion, perhaps I can move for a reconsideration of the earlier amendment, and we keep the original motion as it was?

CHAIR SINENCI: Yeah, mahalo. Members, any other discussion before we call for the vote on the amendment to include commercial activities. Okay, the Chair will now call on the vote on the amendment to include commercial activities. All in favor, please raise your hand and say "aye." Okay, we have four "ayes." All in opposition, please raise your hand and say "no." Okay, that's two "noes," so the amendment passes, four to two.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I guess so we're on the main motion as amended with the commercial development as defined by Section

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205...220.5G. I guess I would need to consult with Ms. Chen at this point about her...the concerns she shared earlier on how to address.

MS. CHEN: Okay, so now we're at...so the main motion as amended just adds in the...adds in commercial activity. So the proposed language to be all inclusive, which is multi-purpose projects, as I understand it, are necessarily allowed as commercial, and homestead projects are both allowed because multi-purpose includes both of those, right. So I think it would just be cleaner to say development of Hawaiian Home Lands as defined under the Hawaiian Homes Commission Act, that is encompassing the same idea, but it's completely different language. So, you know, it's one sentence as opposed to multiple. I'm not sure what the best way to go about doing that is. Would an amendment to substitute that language work?

CHAIR SINENCI: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. An amendment to substitute the...can I not just make an amendment to amend the language? Does it have to be a substitution?

MS. CHEN: No, I think that that's fine, as long as OCS Staff is fine with that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR SINENCI: Mr. Forrest, do you want to...

COUNCILMEMBER RAWLINS-FERNANDEZ: I see it's also close to our afternoon break time, Chair, if we want to, you know, take our quick afternoon break, and then I can huddle with Ms. Chen and Mr. Forrest, and then we can have the amendment ready when we reconvene.

CHAIR SINENCI: Okay, sounds good. Yeah, we're almost to our...so with that, yeah, we'll go ahead, Members, and take our ten-minute break at this time, and we'll reconvene at 3:10. So the APT Committee of Tuesday, November 2nd, is in recess until 3:10. ... *(gavel)* ...

RECESS: 2:58 p.m.

RECONVENE: 3:10 p.m.

CHAIR SINENCI: ... *(gavel)* ... -- come to order. It is 3:10 p.m. We are on Item 9, I believe, and so we'll refer to Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I move to amend the language to read: "H. Development by the Department of Hawaiian Home Lands under Sections 220 and 221 of the Hawaiian Homes Commission Act."

CHAIR SINENCI: Okay, it's been moved to amend by Member Rawlins-Fernandez and

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seconded by Member Johnson. Okay, discussion, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I've just been notified...if I could call on Ms. Chen to get her input on that amendment.

CHAIR SINENCI: Okay. Ms. Chen, go ahead.

MS. CHEN: Thanks, Chair. Thanks, Member Rawlins-Fernandez. So I actually wouldn't include reference to Sections 220 or 221, I would just do a broader application of the provision to all lands under DHHL control. I think...and you could get comment from the Department if you'd like, but I think that the implementation of this exemption with reference to those sections could be problematic. So I would just recommend deleting them to make it more broad.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Ms. Chen. If my seconder is open to that amendment, I'll...I'm happy to remove references of Sections 220 and 221.

VICE-CHAIR JOHNSON: Hi, Chair. I'm open.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Johnson. Mahalo, Chair.

CHAIR SINENCI: Okay. Any other discussion by the Members? The language is to...as Ms. Chen had stated to include that in the chat.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes. I can add it into the chat.

CHAIR SINENCI: Just for clarification for Staff.

COUNCILMEMBER RAWLINS-FERNANDEZ: Um-hum. Okay, there it is. So again it'll read, "Development by the Department of Hawaiian Home Lands under the Hawaiian Homes Commission Act."

CHAIR SINENCI: Okay, mahalo. Yeah, it seems more simpler. Okay. Any other discussion? Seeing none. Okay, Members, as...I'll call for the vote for the new amendment. All in favor, please raise your hand and say "aye." We have five "ayes." In opposition, please raise your hand and say "no." Okay, and five "ayes," one opposition, Member Lee.

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VOTE: **AYES:** **Chair Sinenci,** **Vice-Chair** **Johnson,** **and**
 Councilmembers **Molina,** **Paltin,** **and**
 Rawlins-Fernandez.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR SINENCI: Staff, any other...okay. Anything else before we move on to our next item APT-57 Water Use and Development for Maui? Did I forget anything, Staff?

ITEM 57: WATER USE AND DEVELOPMENT PLAN FOR MAUI (CC 19-162)

CHAIR SINENCI: Okay. All right, Members, moving on to the next item. The Committee is in receipt of County Communication 19-162, from the Director of Water Supply transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE ADOPTING AN UPDATE TO THE WATER USE AND DEVELOPMENT PLAN FOR THE ISLAND OF MAUI." Attached to the proposed bill is a document entitled, "Maui Island Water Use and Development Plan DRAFT, MARCH 2019. The purpose of the proposed bill is to adopt the attached document as an update to the Maui County Water Use and Development Plan, in accordance with Sections 14.02.020 and 14.02.040 of the Maui County Code. So Members, we're almost finished with the review and update of the Water Use and Development Plan, and we wanted to do a few revisits. And in preparation of completing the document and preparing for its review by the Commission on Water Resource Management, we did a final review with the Department of Water Supply...and thank you, Members, for the additional Staff time to do this. We have both Director Pearson and Ms. Blumenstein today to revisit some of the Department's concerns. So with that, the Staff...oh, we have a question from Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Mr. Chairman. More for you, Chair. Assuming this...you know, if this bill moves forward, what are your next steps? Will this...I guess it will need to be submitted to the State, and anything else as far as the next steps upon the completion of this Water Use Development Plan. Any additional reviews . . .(inaudible). . . by the agencies?

CHAIR SINENCI: Yeah. Mahalo, Member Molina. We would have to pass it out of Committee next Committee meeting, and then it will go to the Council for two readings prior to our deadline. Did you...

COUNCILMEMBER MOLINA: So we're not taking action today then.

CHAIR SINENCI: We're just...no, we're just doing revisits as proposed by the Department of Water Supply.

COUNCILMEMBER MOLINA: Okay. All right, thank you. And Mr. Chair, when you deem it appropriate, I have some questions for the Department as well. Thank you.

CHAIR SINENCI: Okay. Yeah. Thank you, Member Molina. Okay, with that, Staff, can we go ahead and...I'll refer to Ms. Blumenstein at this time. I know she had some...she'll bring up some of the items she wanted to revisit--I believe, Staff, 13...Table 13-1, Strategy number 12. Members, some of the...we have already inputted some of those changes,

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so the Department wanted to revisit some of the strategies. Chair Lee.

COUNCILMEMBER LEE: Yeah, could you share screen, if possible?

CHAIR SINENCI: Okay, Ms. Milner, could you go ahead and share screen and if it's...oh, okay. Right, okay. And so this one is Table 13-1, number 12, Stream Restoration, Municipal and Agricultural Water Return to Stream as much as is practical. And these are...so the pink is highlighted for revisits, and I'll refer to Ms. Blumenstein to go ahead and the...share the Department's concerns. Ms. Blumenstein.

MS. BLUMENSTEIN: Thank you, Chair. Thank you, Chair. Can you hear me okay?

CHAIR SINENCI: Yes, we can hear you.

MS. BLUMENSTEIN: Okay. Yeah, I just want to bring this one up...these were some of those preliminary strategies that were brought in from the Appendix 10 that we had as our final selected strategies in Table 13-1. And I didn't know that the Appendix 10, number 12, the language there of decreased municipal use of stream is not really consistent with number 13 below, increasing use of surface water for municipal affordable housing used during wet season, et cetera, expand treatment facilities. So we have some specific strategies in the original Table 13-1 that addressed priorities between competing water needs, restorational...stream restoration. So this is probably a good time to sort of request for your guidance here of which one...or how you want to sort of resolve the inconsistency between the two strategies that were brought in from Appendix 10, so that we can include them in the final selection.

CHAIR SINENCI: Okay, thank you, Ms. Blumenstein. Ms. Milner, is that the entire...is that filling the page...oh, okay. If we can somehow...okay, yeah, if we can see the entire thing...stream restoration. Okay. So I know that you saw some conflicts, Ms. Blumenstein, in the adopted, so...

MS. BLUMENSTEIN: Yeah, and it's...yeah. So I mean there are multiple strategies in this part two which is...Chapter 12 is all the island wide strategies, right, and then there...in that chapter, each strategy is preceded by the description of the issue, general plan policies, sort of the justification for each strategy, and then they're summarized in Table 13-1. So there are multiple strategies in there that address what allocation priorities and appropriate resource for different type of use is. And if you want I can go over those...some of the critical ones, but they include things like support stream restoration and increased use of kalo lands, but it does prioritize municipal use over large ag. It does not say decrease municipal use for stream restoration. So I just want to bring that to your attention because right now, they are conflicting with each other.

CHAIR SINENCI: Okay, I see. And just for the record, Ms. Blumenstein, the Commission on Water Resource Management, they are wanting to seek policies that are just clear policies that provide direction to the Department?

MS. BLUMENSTEIN: Yes. I mean, they...what CWRM is looking for in the plan...I mean for

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one thing, they have reviewed the draft...each draft chapter up until we submitted to Council, and they have provided guidance to us along the way. And they want to make sure that we get to live with the plan that has...well, you know, credible community participation, but also that all the recommended actions, that they represent the needs of the broader community, that the plan is realistic and actionable, yeah. So can the County implement the plan. So we want to be clear about what our priorities are.

CHAIR SINENCI: Okay.

MS. BLUMENSTEIN: And of course I asked the . . . *(inaudible)*. . .

CHAIR SINENCI: Okay. So Members...thank you, Ms. Blumenstein. So in this...in Strategy number 12, Members, we both have stream restoration, municipal and agricultural water return to stream as much as practical. We also added to increase the use of surface water for municipal affordable housing needs during the wet season when all public trust uses are satisfied, including kuleana and traditional and cultural users. And just as a reference, Members, agriculture...we have policies right now that speak to using water for municipal needs and prioritizing affordable housing and policies that speak to the importance of agriculture. Agriculture is a more broad category, though there are different types of uses across this spectrum. Starting at the closest to public trust, we have kuleana users, as some of the testifiers are saying they're growing kalo and growing food for those that live on the land, like Mr. Kaneali'i. And then moving towards the middle, we have more commercial, local farmers growing sustainable crops. And then towards the end of the spectrum, we have large quantities of water resources that could be used for other uses. So as I said, this is a broad agricultural spectrum, and a tool for evaluation purposes. So at this time, seeing if how...I wanted to propose to the Committee, where would our priorities lie, I guess that's what the Department is asking. Do we want to prioritize, as we had said, public trust users first? Or in this case, we're saying stream restoration, but stream restoration would take away from municipal and agriculture water use as well. Is there any...Chair Lee.

COUNCILMEMBER LEE: Yeah, domestic use has to rank very high because stream water is used to supply over 30,000 people Upcountry. So I don't think, you know, we should have a policy where we decrease that water on people who rely on it every day.

CHAIR SINENCI: Okay. Eva, is...are there already in the plan selected strategies that apply to Chair Lee's comments about municipal usage?

MS. BLUMENSTEIN: Yes, there are. And I mean, I want to also remind you, these are sort of all should be considered in the context of what they are for, public trust purposes, right. They want us to equally protect it under the law, that is maintenance and water in its natural state, and it's domestic water use for the general public, specifically drinking water, as exercised native Hawaiian traditional customary rights, and restoration water for Hawaiian home lands. So agricultural irrigation is not a recognized public trust purpose, but the plan obviously allocates water for ag irrigation because we have Maui Island Plan General Plan Policies that support reliable affordable water supply for ag, and we also need to consider other principals that have been established by the court.

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So we kind of have to weigh non-public trust uses of stream water...and ground water, for that matter, to promote the best economic and social interests of everyone. So in that context, I mean, there is certain...there are several strategies that talks about these. And if you look at some of the regional plans, such as Chapter 15 for Upcountry, whether it's not sufficient surface water under drought conditions, then the large commercial ag ends up short with the recommendations favoring or prioritizing municipal/domestic needs for Upcountry. And there's...like I said, there's multiple strategies that address this and we have probably reviewed them all, but I can review them again if you want.

CHAIR SINENCI: Okay. And I was just reminded that we do have Ms. de Naie on as well as a resource if anybody had any questions for her. Staff, can we contact Ms. de Naie, or if she is still on, should we have any questions for Ms. de Naie. Okay. So Ms. de Naie, did you have any comments?

MS. DE NAIE: I just think it's fair to say, when you talk about Upcountry water users, that all of the accounts in Ha'ikū use well water for the most part, and so not all of the 30,000-some customers do rely only on surface waters. And the County kind of has some conflicting tug of war...you know, I think partly they'd like to have more of Upcountry use well water, which is a little more reliable, and wean away from surface water. But there's not a clear directive in the Water Use and Development Plan. And I think many of us who live in the region wish there was, and we kind of knew what our water future was.

CHAIR SINENCI: Okay. Chair Lee, did you have a question?

COUNCILMEMBER LEE: No, I don't have any questions for Ms. de Naie, I have another question for Eva.

CHAIR SINENCI: Okay. Go ahead.

COUNCILMEMBER LEE: Okay. So Eva, where it says there, increased use of surface water for municipal affordable housing needs during wet season. I mean, once you allocate water for affordable housing, it can't only be during the wet season. So do you have a strategy for that too?

MS. BLUMENSTEIN: Yes, and this applies specifically to Upcountry, but to some extent for West Maui as well. So what Ms. de Naie was saying, like yes, the Department and the...in the water's drought time, are really trying to transition away somewhat from reliance on surface water because, as you know, we're vulnerable in droughts and whatnot, and we need to develop additional groundwater for that backup or reliable supply. But in wet season, when we don't have extended long droughts, that is still the most affordable available source there is. So whether it's sufficient surface water for...and IFS has been satisfied, we want to be able to utilize that for Upcountry instead of pumping at, you know, additional \$1.50 a thousand gallons energy use to upper Kula. So it's sort of a combination that the portfolio is a combination of surface water and reliable groundwater development.

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COUNCILMEMBER LEE: Okay, so what that one means is you increase the use of surface water during the wet season, and you rely on pumps that don't exist yet, groundwater for the rest of the year.

MS. BLUMENSTEIN: . . .*(inaudible)*. . .

COUNCILMEMBER LEE: That means the Department is planning to drill several wells Upcountry?

MS. BLUMENSTEIN: We need...yeah, groundwater development for Upcountry and Central...for all districts, in fact.

COUNCILMEMBER LEE: Okay. No, I just found it a little odd that you would increase water for housing when there is no real backup of groundwater. So that's why I didn't understand that particular statement. But if it makes sense to you...

MS. BLUMENSTEIN: No, no. This...the number 13 was one of the preliminary strategies that came in from Appendix 10. This was not one of the final strategies. So there is a statement there of affordable housing needs that was added in. But the general concept of a diversified portfolio that has...that relies on surface water when it's available and can...has contingency with groundwater when needed, that is one of the final strategies.

COUNCILMEMBER LEE: Okay. Can you tell us then, specifically, what you wanted changed or clarified with what was already down there...down listed there? What specifically...

MS. BLUMENSTEIN: Yeah, between the strategy 12 and 13 that came in from Appendix 10, I just wanted to point out that the statement there to decrease municipal use of streams is not consistent with...I can't see the bottom now here...the increased use of surface water for municipal...so the original strategy of what the Department had proposed was when there is a need to decrease surface water in droughts, that's coming out of ag, large scale ag, and not municipal/domestic use.

COUNCILMEMBER LEE: I see, I see. Okay, thank you. Now I understand what you meant.

CHAIR SINENCI: So Ms. Blumenstein, you're okay with Item number 13, increased use of water for municipal affordable housing needs, as Chair Lee had asked. It's under number 12, decreased municipal and agricultural use of streams that the Department had some issues with?

MS. BLUMENSTEIN: Correct.

CHAIR SINENCI: Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Blumenstein. A couple of questions, I guess. Would it be more okay for Ms. Blumenstein if we write decrease municipal and agricultural use of stream during drought and low flow times? And then also, would it be practical to state or restate the law that kuleana users and the

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appurtenant rights...because I mean, even though it's in the State Constitution and like that, as Mr. Kaneali'i Williams showed, that it's not playing out like that in real life. So would those two changes be acceptable?

CHAIR SINENCI: Ms. Blumenstein.

MS. BLUMENSTEIN: Yeah, my recommendation would be to take out the word municipal under...if you're adding in Item 12, or substituting that with what we had. So we just say decrease agricultural use of streams to support what that strategy is, stream restoration. So it should say stream restoration, agricultural water return to stream as much as practical, decrease agricultural use of streams...take out municipal. Or change the existing strategies in Table 1, that that's prioritized municipal domestic needs over ag.

COUNCILMEMBER PALTIN: Okay. You don't want to specify during low flow times or during drought, that's not necessary?

MS. BLUMENSTEIN: Well, because there is a strategy in there to invest in reservoir storage, and when there are agreements in place to expand water treatment facilities to support additional use of municipal water in wet season, but it's not a strategy to do that for ag.

COUNCILMEMBER PALTIN: Reclaimed water for municipal use, but not ag, is what you're saying?

MS. BLUMENSTEIN: No, no. I said investing in reservoir storage and expansion of the water treatment facilities such as Kamole Weir once there is a long-term agreement in place that that water is available for municipal needs. So when there are long-term drought conditions, we already know that it's not going to be sufficient for full build out of Mahi Pono's diversified ag plan. So the table that shows the summarized demand and supply for Mahi Pono Table--I don't know which table it is now--in Chapter 15, shows that there's a shortage of surface water during droughts. So that supply to meet the diversified ag would have to come out some other alternative resources, whether there is brackish water or recycled water or something.

COUNCILMEMBER PALTIN: Okay. So you would be okay with us just taking out municipal, and just saying decrease agricultural use.

MS. BLUMENSTEIN: That would be consistent with the other existing strategy then.

COUNCILMEMBER PALTIN: Would that...

MS. BLUMENSTEIN: I would...I mean, I would need...because this is sort of already reflected in the existing strategies, I don't know what this adds. There is a policy in there to encourage CWRM to establish IFS for all diversified...of all diverted streams. There is some strategy to support stream restoration, and would not take that from municipal use. So adding the number 12 is still kind of a duplicate.

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COUNCILMEMBER PALTIN: Oh, so it sounds like you want to just strike number 12.

MS. BLUMENSTEIN: Yeah, I would do that.

COUNCILMEMBER LEE: Yeah.

COUNCILMEMBER PALTIN: Okay, but we're still saying that kuleana users and appurtenant rights take precedence...it's the first.

MS. BLUMENSTEIN: Yeah. I mean, the plan has multiple...it's not a specific strategy, but it does state in multiple places what the function of purposes are, and that they're equally protected under the law. It talks about the other principles established by the courts, so I think that's pretty well covered.

COUNCILMEMBER PALTIN: Okay. Thank you.

COUNCILMEMBER LEE: Mr. Chair?

CHAIR SINENCI: Chair Lee.

COUNCILMEMBER LEE: Yeah, so I was wondering, perhaps the person who proposed this language could explain why we would need that. Because it seems like Eva is saying we don't need that language.

CHAIR SINENCI: Right. And Chair, this was from Appendix 10, which was the...from some of our Aha Moku community groups --

COUNCILMEMBER LEE: Oh, I see.

CHAIR SINENCI: -- that had proposed this. But...so Eva, is...the Department is proposing that we delete the entire 12, Ms. Blumenstein?

MS. BLUMENSTEIN: Yeah, I think it's...I mean, again, these are sort of, you know, variations of all the preliminary options that were looked at, and then there were final strategies that made it into Table 13. So between stream restoration and, you know, what we just talked about, prioritizing municipal over ag, that's already covered in Table 13, and it's also reflected in the regional plans where it applies. So to me, it's a duplicate.

CHAIR SINENCI: Ms. Blumenstein is saying that we address stream restoration in other areas of the strategy. So it just would be kind of conflicting, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

CHAIR SINENCI: Okay. Sorry, I can't see everybody with the share screen. Go ahead and unmute.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, I'll just ask my question, Chair.

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CHAIR SINENCI: Oh, yeah. Go ahead, Member Rawlins-Fernandez. Sorry, I can't see you.

COUNCILMEMBER RAWLINS-FERNANDEZ: No, no, it's okay. I just wanted to get clarification. I heard Eva just say that one of the priorities was to...or one of the strategies was to prioritize municipal use over agricultural use, and I just wanted clarification for municipal. Does that mean domestic only, or are you...in that context, is it domestic and non-domestic use under municipal use?

MS. BLUMENSTEIN: Yeah, municipal would be the...because we don't have a dual system, right, that...so it doesn't exclude certain customer classes under Department's system. So it's...for Upcountry, it would be customers that include agricultural users, schools, churches, commercial, and municipal, or services that are not served by Department system that would be domestic would be just private domestic wells...like household use.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo for that clarification. I understand what you explained, I just was...when you went over the...you know, the five trust purposes, and one is domestic use and the other...oh, shoot. Never mind, I lost my train of thought. Okay. Mahalo, Chair.

MS. BLUMENSTEIN: I think I know what you're...but yeah, the domestic use...domestic water use to the general public is particularly drinking water. But the way it's proposed in the plan, it doesn't exclude other customer classes under municipal. So for example, the water was allocated by the Commission from Nā Wai 'Ehā, was for, you know, single family and multi-family, schools, hospitals, et cetera, it didn't remove particular customer classes, so we haven't defined it differently in the plan.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Blumenstein. Mahalo, Chair.

CHAIR SINENCI: Thank you, Member Rawlins-Fernandez. And there's a question at chat. Ms. Blumenstein, do the numbers in the charts also reflect this strategy?

MS. BLUMENSTEIN: Yeah. I mean, so like I said, there are multiple strategies, right, that talk about priorities of different water uses, protecting public trust uses, et cetera. So an example would be for Upcountry where...I think it's the last table, second to the last table in Chapter 15, that breaks down potable and non-potable surface water through year 2035 and assuming, you know, with IFS adopted, and assuming full build out or the desired build out for Mahi Pono, under drought conditions, where is that shortage, like how does the plan allocate that shortage. It doesn't come out of municipal/domestic use, it does propose to invest in surface water expansion for Upcountry customers. And that those water needs for large scale ag will have to be met by other alternatives resources, whether that's brackish water or expansion of recycled water from Kahului, et cetera. So yes.

CHAIR SINENCI: Any other questions for Mr. Blumenstein on Appendix 10, strategy number 12? Member Rawlins-Fernandez.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, so I think the...my understanding of this proposal, decrease municipal and agricultural use of streams, was proposed, and there are similar intention strategies in other places worded differently, such as restoration of streams. But I guess because, you know, tangible progress has not been seen by those that live in the area, would we be able to, you know, maybe use...like keep this in, but propose language to make it more like measurable so that it helps to empower the residents and the advocates that propose this language. I guess that's for Ms. Blumenstein.

CHAIR SINENCI: Yeah, and it sounds like Ms. Blumenstein, at the second part of number 12, she was okay with...to get rid of municipal, so to decrease agricultural use of streams. But you're pertaining to the top section of number 12. Ms. Blumenstein.

MS. BLUMENSTEIN: Yeah, in terms of, you know, refining...again, the Table 13 summarizes the island wide strategy, so those are sort of broad policy statements, sort of like this is overall how the Council and the County sees the priorities between water uses under different conditions...droughts, or where there is competing needs or ag versus municipal, et cetera. Then in the aquifer sectors, the region plans that aren't region specific issues, and there may be recommendations for certain streams...and we talked about this earlier too. I mean, are there specific streams in area...we've heard a lot of testifiers from Ha'ikū and Huelo that those specific streams should be named for the plan to recommend to CWRM to prioritize these diverted streams for IFS adoption versus others. Maybe we did include that for the West Side, for example, those were specific streams that were recommended in the plan. And of course, that has sort of already materialized by now. So I think that's in the regional plans if there is specific demand or specific streams that...you know, to focus on.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Ms. Blumenstein. Mahalo, Chair.

CHAIR SINENCI: Chair Lee?

COUNCILMEMBER LEE: Can we just take out the word municipal? Because maybe the people who are proposing that language didn't realize it pertained to hospitals and schools. I mean, that's not water you can play with, you know.

CHAIR SINENCI: I'm open to removing municipal as well, Chair Lee, if the other Members are consensus to that.

COUNCILMEMBER LEE: Consensus.

CHAIR SINENCI: To remove municipal in both sentences.

COUNCILMEMBER LEE: Yes.

CHAIR SINENCI: Ms. Blumenstein, the Department?

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MS. BLUMENSTEIN: That sounds good.

CHAIR SINENCI: Okay. Members, consensus on removing municipal. I don't see everybody so...okay. All right. I don't see...

COUNCILMEMBERS: Consensus.

CHAIR SINENCI: Okay, great. Thank you. Okay, moving right along. It looks like the Department also had strategies for number 46. So we'll refer to Ms. Blumenstein for the Department's concerns with strategies number 46 and subsequent strategies. Okay, we didn't have any...

MS. BLUMENSTEIN: I'm not sure that was something I had brought up.

CHAIR SINENCI: Oh, okay. So it looks like it was the purple strategy number 17...was it this one, Ms. Blumenstein?

MS. BLUMENSTEIN: Oh, yeah, required studies. So I think we had discussed this earlier. I recommended that it's the...any word being in the plan, because the plan is guidance document, should really be to support and not require. This is something that is desirable, of course, for hydrologic studies or any kind of assessment should be done before well development, but we have tried to avoid the word require consistent with community plans and the use of this plan as a guidance document.

CHAIR SINENCI: Okay, favorable language for the Department? Recommendation?

MS. BLUMENSTEIN: Yeah. You know, if it's just a support or consider or, you know, just making sure this is the...the intention is that there's something that should be done without having the shell language in there.

CHAIR SINENCI: Okay. Chair Lee.

COUNCILMEMBER LEE: I was going to say consider studies which show adequate capacity, et cetera.

CHAIR SINENCI: Okay, are you open to the word consider and changing out the word require and assess?

MS. BLUMENSTEIN: Yes, I am.

CHAIR SINENCI: Okay. Okay, Members, consensus on changing the language require to consider? Okay, consensus.

COUNCILMEMBERS: Consensus.

CHAIR SINENCI: Okay, great. Mahalo, Staff, as they do the...okay. Okay, next, moving right along. Was that...did we have other issues from the Department? I guess those are all

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the purple...yeah, if those were highlighted in purple, then we can revisit those.

MS. BLUMENSTEIN: I believe that was it.

CHAIR SINENCI: That was it? All right. Well, we did have one more that we wanted to revisit, and it was the energy strategies...strategies number 13...excuse me, 33 to 35. And Members, for energy under conservation and energy...conservation and energy, item...strategies numbers 33, 34 and 35, and this was one of the items that we discussed at the Wier (*phonetic*) Conference, and that both Member Molina and I attended. And some of the California Commissioners did bring up the idea about pursuing PV and solar for some of their pumpage. And we understand, and maybe Ms. Blumenstein can speak to, you know, how much the Department is spending thousands of dollars monthly on our cost to pump water. So we did want to make sure...or address maybe PV and some as part of this 30-year plan within the conservation and energy section of the strategies. Ms. Blumenstein, you want to speak to that?

MS. BLUMENSTEIN: I see my Director is here to speak to it, so I'll follow up . . . (*inaudible*). . .

MR. PEARSON: Chair.

CHAIR SINENCI: Aloha, Director Pearson. Go ahead.

MR. PEARSON: Aloha, yeah. We are literally pursuing PV right now at the Waihe'e well site. As you may have heard me say before, the difficulty with PV is we need a large land area, and usually the well sites are smaller land areas that require a lot of energy, and the Waihe'e situation where we're discussing a track right now. In that area there's a neighbor that is willing to lease the land to provide the PV panels on that location, so we're pursuing that pretty actively right now. That's the only one. There's another possibility...same idea, would either purchase or lease the neighboring land up in Wailuku. I think I brought you guys to the Wailuku well site...Wailuku Well One...just kind of within the subdivision of Kehalani. If you remember, there's kind of a passive park right behind the well site, so I've spoken preliminary with the management of Dowling that manages Kehalani, and they indicated that purchase of that property might be a possibility to put PV in that area. So we're pursuing PV connected at least get that far. I'd like to also discuss what we're doing to also limit our costs with MECO. Of course, our costs are very high, but we work on a few different projects with MECO where it's called demand response. And if the demand is high for MECO for whatever reason, heat or whatever, we have an agreement with them that they can remotely shut down some of our well pumps for short periods of time. Of course, the idea is that it won't affect our distribution system, but it can give a little bit of relief to the electric side. Right now, we are doing ten booster pumps in South Maui where we have this agreement. We're doing 12 wells and four booster pumps in Central Maui. We're doing this demand response for four booster pumps at the Kula Ag Park, and one well in West Maui. So that does decrease our costs, but it does not, you know, provide an alternate energy production. But that's what we're doing at the present time.

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CHAIR SINENCI: Okay. Director Pearson is there a need to include PV in the document under conservation and energy, items 33, 34, or 35?

MR. PEARSON: I think yes. I think, you know, with the blessing of Eva that the discussion should be there because, you know, we're pursuing it and its...always should be an option, and it should be at least in the document somewhere.

CHAIR SINENCI: Okay, great. Ms. Blumenstein.

MS. BLUMENSTEIN: Yeah, the existing strategies that they have out there, 33 through 35, does include...the last one is increase alternative energy generation and use, which does include PV or other options recommended...there's wind and other things. So I just want to emphasize that that strategy does not apply only to the Water Department, but to all water purveyors to also monitor and...you know, as these technologies become more readily available and battery storage are an issue that cost effective alternative energy generation is for all water purveyors, not just the Department.

CHAIR SINENCI: Okay. Thank you. Members, are you guys okay with keeping the language as is, and as the Department responses about addressing PV and future infrastructure for PV and wind, is also included in number 5, alternative energy generation and...or did you want stronger language in there? Any comments? Okay, if not, we can go ahead and leave...I'll leave that energy generation and usage. Okay. I did have a request...Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. May I request going back to the last amendment we made from require to consider.

CHAIR SINENCI: Okay...17 through 31, yeah. Thank you, Ms. Milner.

COUNCILMEMBER RAWLINS-FERNANDEZ: And I'd like the Committee to consider support instead, and I wanted to call on Ms. de Naie to speak to these proposals.

CHAIR SINENCI: Okay, Ms. de Naie, are you...

MS. DE NAIE: I am...I am here in the cyber world. Mahalo. Mahalo, Ms. Rawlins-Fernandez, and mahalo, Committee. I just think that when you're looking at trying to give a clear direction, consider is a very wobbly word. It doesn't really give you any direction. It's just as oh, I'll think of this among a lot of other things, whereas support says, look, let's try and head in this direction. It doesn't bind your hands, but it has a very, very different implication. And, you know, I was just doing a quick look through the WUDP document. And of course, while the word require may not be used in different policies, because I'm sure it was very carefully culled out, it is used to describe some of our obligations under law. And of course, we are required, in order to uphold the Constitution, to really uphold kuleana and traditional and customary rights. We are required to take certain actions...like on page 148, the WUDP says some implementation measures or projects may require a future makai analysis prior to being carried out. So I mean, we are looking at things in this plan that are going to have requirements, so I think that the word

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support is far more a better fit if you're looking to assure the public that you actually mean something. And I just want to say that folks in Nā Wai 'Ehā are having to enforce their own instream flow standards--citizens with jobs and families--and the County is not there by their side. So there's very little public confidence that these words are going to mean anything. And why use watered-down words? We should use words that at least the public can put to and it says well, it says you're going to support this, let's see how you can do that. So that would be my input. I hear what's happening on the ground, you know. You folks are busy in doing other important things, but citizens are not getting what they were promised on paper, and they're having to put their own time in and countless hours, or just see their kalo dry up like the poor folks on Waikapu stream.

CHAIR SINENCI: Mahalo, Ms. de Naie, for those comments.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. de Naie. Mahalo, Chair. So I don't know if you want to ask for consensus on amending consider to support?

CHAIR SINENCI: Members, consensus to change consider to support?

VICE-CHAIR JOHNSON: I would support that.

CHAIR SINENCI: Okay, consensus?

COUNCILMEMBERS: Consensus.

CHAIR SINENCI: Okay. Mahalo, Ms. Rawlins-Fernandez. Thank you. Is there anything else from the Department, Ms. Blumenstein?

MS. BLUMENSTEIN: I just want to point out that on the original...because again this was one of those that came from Appendix 10, so the recommended strategy number 36 in Table 13-1 is to support collaborative hydrological studies to inform impact from climate change and future well development on groundwater health, that's the way it was worded. So it's a bit duplicative again. No, I don't believe the Department had other...and again, I kept repeating myself like a broken record, but some of these strategies were those preliminary options, and that we looked at everything between, you know, the moon and the sun, and all of them were vetted by the broader community, and to some extent by Aha Moku. So now some of those are brought sort of back into like what we had, like the final selections, we end up with this duplicate language.

CHAIR SINENCI: Mahalo, Ms. Blumenstein. Okay. With that, Members...oh, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair. If I could just ask the Department just a basically pretty much general question...I guess either Director Pearson or Ms. Blumenstein. So to be assured, from the Department's perspective, you don't foresee any problems with transitioning to this plan and any obligations to start fulfilling requirements. And also, the issue of establishing admin rules, assuming the Council approves this, how soon would that be. Any thoughts on admin rules for this Water

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Use and Development Plan?

MS. BLUMENSTEIN: Well, I can...just in general terms, some of these strategies that were drafted, you know, from 2017, 2018 have already been self-fulfilled because there were things that just needed to be done. You know, there's nothing...it's not rocket science, there's things that were...programs that the Department was already working on in terms of conservation, now we have the conservation bill in the works that we now hope to present to you folks in the near future. There were changes to the Show Me the Water Bill...we had the admin rules passed, you know, since this draft plan was presented to you folks. So yes. I mean, I hope in the end, you know, when you're all happy with the plan, that this is going to be very actionable, it's not going to be things that we just going to be set up for failure. I mean, that's what we want, like we want an actionable plan and with reasonable budget so we can actually do these things, and that it'll be useful for us too to bring to CWRM and say this is what the community wants, and this represents Maui island as a whole, and this is what your priorities should be for us. I'm not sure that the hiccups, and I'm going try to do like an implementation matrix similar to what we do with the Planning Department just for the community plans and sort of track the short- to long-term actions, and should have a...you know, a lead agency to take the initiative and develop the projects...and some of these projects are very long term, obviously. Some of them will be code changes, and a lot of things in between there. That's the general answer.

COUNCILMEMBER MOLINA: All right. Thank you. Sort of a long road ahead, yeah, but thank you. Thank you for your responses. Thank you, Mr. Chairman.

CHAIR SINENCI: Okay, mahalo, Member Molina. And just to remind Members, we're at bare quorum, but we did address the majority of the Department's concerns. Were there anything else to...any other questions for the Department? Okay. And Members, it looks like we do have a November 16th APT meeting planned. We're hoping if we haven't addressed all of our revisits prior to that or by then, then we can work to move the WUDP, Water Use Development Plan, out of Committee and to full Council for approval. Staff, was there anything else that we missed, or do we need to consider at this time?

MS. MILNER: Chair, there's nothing else that I see. Thank you.

CHAIR SINENCI: Okay. And just to...for everybody who has come on to the meeting this afternoon, mahalo for your mana'o nui. And again, when we talk about kuleana rights, kuleana rights are our highest use, and that always comes first. They're supposed to be considered by CWRM when instream flow standards are set. We also have policies that establish these rights, and we added strategies directing the Department of Water Supply to advocate for these uses whenever testifying at the State level and at all other venues. So we did address some of those, and so again, I just wanted to mahalo for all those testifiers that came on to provide testimony this afternoon. With that, if there are no other questions, I wanted to thank the Department, Ms. Blumenstein and Director Pearson. And Members, if there are no objections, the Chair...we're early. We were anticipating more discussion, but we wanted to make sure that we had enough time. If there are no objections, the Chair would like to defer this item.

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COUNCILMEMBERS VOICED NO OBJECTIONS (excused: KK).

ACTION: DEFER pending further discussion.

CHAIR SINENCI: Okay, awesome. And with that, Members, that brings us to the end of our agenda. Mahalo to the...to our County personnel and Department personnel. As a reminder, we have PSLU Committee meeting tomorrow at 9:00 a.m., so we'll give you guys some extra time to prepare for tomorrow's meeting. And with that, Members, the November 2nd Agricultural and Public Trust Committee meeting is now adjourned. . . . (gavel) . . .

ADJOURN: 4:09 p.m.

APPROVED:



SHANE M. SINENCI, Chair
Agriculture and Public Trust Committee

apt:min:211102:ta

Transcribed by: Terianne Arreola

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 42 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 8th day of December 2021, in Kahului, Hawai'i.

A handwritten signature in black ink, appearing to read 'Terianne Arreola', is written over a horizontal line.

Terianne Arreola