

AGRICULTURE AND PUBLIC TRUST COMMITTEE

Council of the County of Maui

MINUTES

January 4, 2022

Online Only via BlueJeans

CONVENE: 1:36 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair
Councilmember Gabe Johnson, Vice-Chair (In 01:55 p.m.)
Councilmember Kelly Takaya King, Member
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member
Councilmember Tamara Paltin, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member

STAFF:

Kasie Apo Takayama, Legislative Analyst
Alison Stewart, Legislative Analyst
Paige Greco, Legislative Analyst
James Forrest, Legislative Attorney
David Raatz, Deputy Director
Keoni Shirota, Committee Secretary
Kristeena Locke, Council Services Assistant Clerk

Gina Young, Executive Assistant to Councilmember Shane M. Sinenci
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
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)

ADMIN.:

Stephanie Chen, Deputy Corporation Counsel, Department of the Corporation Counsel

Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

Eva Blumenstein, Planning Program Manager, Department of Water Supply

Jeffery Pearson, Director, Department of Water Supply

Jordan Hart, Deputy Director, Department of Planning

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

OTHERS: Lucienne de Naie, Sierra Club Maui Group (Items APT-16, APT-57)
Faith Chase (Items APT-16, APT-57)
Albert Perez, Maui Tomorrow (Item APT-16)
Keeaumoku Kapu (Items APT-16, APT-57)

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

CHAIR SINENCI: ...*(gavel)*... Welcome to the Agriculture and Public Trust Committee meeting of Tuesday, January 4, 2022. It is 1:39 p.m. I'm Shane Sinenci, the Chair of the Committee. Before we begin, this online meeting is being conducted in accordance with the Governor's most recent Emergency Proclamation on Sunshine Law in-person meetings, which was suspended...which had suspended the use of in-person testimony and viewing locations due to the recent COVID-19 surge. The Governor's most recent Emergency Proclamation suspended the requirement for in-person testimony through February 28 of 2022. Members, in accordance with the Governor's mandate, may I also ask 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, vehicle, or workspace. For myself, I am here alone at the hale. I did get a call from Vice-Chair Johnson that he will be running late. With us today we have Councilmember Kelly Takaya King, as-salamu alaikum.

COUNCILMEMBER KING: As-salamu alaikum, aloha everyone. I was going to call you and tell you I was running late because it takes me five minutes to get the bathroom and then back, you know, from this District Office. But luckily you guys were a little delayed. And I am in my District Office, separate from Ellen and my Staff, who is in the lobby area.

CHAIR SINENCI: Yes, we did get your message from Staff.

COUNCILMEMBER KING: Oh, okay.

CHAIR SINENCI: Yeah. Next we have Councilmember...Chair Alice Lee, as-salamu alaikum.

COUNCILMEMBER LEE: As-salamu alaikum, actually [ah-lie-kum], [ah-lie-kum]. And I am home alone in my office at home with my little dog, and looking forward to your meeting, Mr. Chair.

CHAIR SINENCI: Thank you, Chair. Mahalo for being here. Next we have Councilmember Mika Molina. Aloha 'auinalā and as-salamu alaikum.

COUNCILMEMBER MOLINA: Aloha 'auinalā, Mr. Chair, and as-salamu alaikum. Thank you for the little delayed start. I know we had a very long and exciting GREAT Committee meeting, and I've requested...I wanted to let you know that I would be a little bit late. So thank you, I was able to get some sustenance to reenergize myself for an exciting and very verbose APT meeting that I'm looking forward to today. And for the record, I am transmitting from home, and my wife is in the other room, 50 feet away from me. Thank

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

you very much, Mr. Chair. Aloha.

CHAIR SINENCI: Mahalo, Councilmember Molina. Yeah, it beats us going after today's afternoon meeting, right? So thank you for that. Next, we have Councilmember Paltin. Aloha 'auinalā, as-salamu alaikum.

COUNCILMEMBER PALTIN: As-salaam [sic] and aloha 'auinalā. I'm broadcasting live and direct from the West Maui District Office here in sunny Lāhainā. And I have with me my aide Angela, who's like probably 12 feet away right now.

CHAIR SINENCI: Okay. Mahalo, welcome everybody. Next we have Councilmember Rawlins-Fernandez. Aloha 'auinalā and as-salamu alaikum.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha 'auinalā, Chair, as-salamu alaikum. I am at the Moloka'i District Office alone here. Mahalo, Chair.

CHAIR SINENCI: Okay. Mahalo for joining us today. And I don't see Vice-Chair Johnson, but we'll introduce him as he comes onboard. From the Administration joining us today...oh, just to mention, we have Non-Voting Members, Presiding Officer Pro-Tempore Tasha Kama, Councilmember Yuki Lei Sugimura, they're always welcome to join us if they so choose to. Mai ka Administration, we have Ms. Eva Blumenstein from the Planning Program Manager, as-salamu alaikum.

MS. BLUMENSTEIN: As-salamu alaikum, Chair.

CHAIR SINENCI: Thanks for joining us today. Also, from the Corporation Counsel we have Deputy Stephanie Chen, as-salamu alaikum.

MS. CHEN: Good afternoon, Members. Happy New Year.

CHAIR SINENCI: Happy New Year. And I did see Department of Water Supply Director, if he's on, Pearson. Thanks for joining us this afternoon. Okay. For our Staff conducting the meeting today, I won't ask them to respond. They might be maybe finishing up some last-minute lunch. But we have Kasie Apo Takayama, Legislative Analyst; Mr. Keoni Shirota, our Committee Secretary; Mr. James Forrest, our Legislative Attorney; Ms. Alison Stewart, our Legislative Analyst; Ms. Paige Greco, Legislative Analyst; and Ms. Kristeena Locke, our Council Services Assistant Clerk. Welcome, everyone. So Members, for today we have two items agendized today. APT-57, a familiar one, the Water Use and Development Plan for Maui; and APT-16, the Wellhead Protection Overlay District. And we do have a couple testifiers, so 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 meeting link via the BlueJeans meeting link at <https://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 also be found at mauicounty.us/testify. Moving on to oral testimony,

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

oral testimony is limited to three minutes per item. If you are 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 are 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 are done testifying, you will be asked to disconnect from the call. However, you are welcome to continue to view the remainder of the meeting on *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 personnel will be connected to the video conference meeting once testimony concludes. Just a reminder that...to Committee Members, Administration, and the public to please be patient with us 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. So if you're 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. Okay. And I apologize for my hoarseness. I've kind of coming off of the New Years. Okay. So Staff, can you go ahead and call the first testifier please?

. . . BEGIN PUBLIC TESTIMONY . . .

MS. GRECO: Chair, our first testifier today is Lucienne de Naie, to be followed by Faith Chase.

MS. DE NAIE: Aloha.

CHAIR SINENCI: Aloha, Ms. de Naie. Happy New Year.

MS. DE NAIE: Happy New Year to everybody. Sorry I'm a little sweaty. I just had a farm day today because it wasn't raining. My name is Lucienne de Naie. I'd like to testify on both agenda items on behalf of the Sierra Club Maui Group. I'd like to start first with Item 16, the Wellhead Protection ordinance that you folks will be getting an update on today. The Sierra Club has sat in workshops and offered testimony at various institutions, at the Planning Commission, at the Water Board, at the Council itself. It seems like 20 years; Eva can probably correct me if I'm wrong, maybe it's only 18. But it's been a long time in coming to try to create some sort of a wellhead protection ordinance. It was my understanding...I heard a great presentation at one of the water conferences, maybe eight or nine years back, and this was a consultant that did a study for the County. And to my understanding, that Hawai'i is the only state where there's not one county in the state that has a wellhead protection program. Every other state has at least one county or one municipal area that has this best practices. And of course, I think we would be the first county to adopt one, perhaps someone else has gotten in ahead of us in the last number of years since I heard that presentation. But it's really an important thing to do. This is a very, shall we say, watered down ordinance. It does not have

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

anything to do with private wells, it's only, you know, the public drinking water wells, and it kind of grandfathers in all existing uses. But we should start with something. So I urge you to have a careful consideration of what the Department is putting forward and support the strongest proposal that can possibly legally move forward. Because it's very expensive to drill these wells, and very expensive to maintain them. And then after all of this work and effort and care, and they all have holding tanks as well, to have unforeseen circumstances compromise the water quality is just not good economics. So I will move on to Item number two, which is APT-57, the Water Use and Development Plan. So mahalo to everybody for their long dedication to this, for the Water Department Staff, for the Council Services Staff, for the Councilmembers, Committee Members, and Councilmembers who've sat through many long discussions. And I would just like to point out that as citizens, what we heard citizens requesting was sort of an easy-to-understand summary of what happened, and that was issued on the 29th of this month. I don't want to sound unappreciative, but six days to kind of figure something out over a holiday weekend is a little jammed for the general public, and it's...you know, it was a strain for me, and most people aren't even as dedicated as I am. But I will say this about what was presented in this summary; on the update of the Table 14-41, which has to do with Wailuku strategies, I noticed that we still have...on Strategy 5, when we're talking about the cost of water from East Maui wells, we still have a figure from 2013. I don't know about you, but does anything that you know about still cost the same now or in the next couple of years as it did in 2013? There's an asterisk there that says oh, well, this doesn't account for inflation. But it's supposed to be accounting for capital costs, and I just don't think we'd have the same capital costs that were reflected back when the study was provided to the County in 2013, and that's what the County says in their document, in the WUDP draft. We see that number used several other times throughout the tables. I also want to bring to your attention in Table 15-39, again and again, the public just asks that we could have a more realistic view of the Upcountry meter list. So we have language here that supposedly added, and this language...I hate to tell you, but my memory serves that it already was in the Water Use and Development Plan. It was buried in one of those chapters. So this is nothing new. What we really need to know is how many meters we have in each category, and what our strategy is to serve them. And we have a plan that's been worked on what, six years? It's like why couldn't we know that information? There's new information on the County website . . . *(timer sounds)*. . . I'm sorry. Okay. Well, I guess that's the end. I had a few more, but it takes a while to explain these things.

CHAIR SINENCI: Mahalo, Ms. de Naie. And I believe we did share within the WUDP the link to the updated list of the Upcountry Water Meter List. That was part of us including that into the WUDP. Members, do we have any clarifying questions for the testifier? Member Rawlins-Fernandez, and then Member Paltin.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha Ms. de Naie. You said that you had a few more items. And since you're one of the few members in the community that make the time to go through these really long documents and look at all the amendments that are made and have consulted with us throughout this process, I would like to hear them if the Chair would indulge us...if it's appropriate, Chair. Mahalo, Chair. Ms. de Naie, the last items that you didn't have time to cover?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. DE NAIE: Thank you very much, Councilmember Rawlins-Fernandez. Well, I would like to restate the Upcountry Water Meter List. It's not just the correct number, which is, I believe, 1,500 meters, not 1,800, and so the water demand should be adjusted to reflect that. Because those other 300 meters are already served. They should already be under the already served, not future needs. So hopefully that's understandable to Staff. And then the types of meters, my own personal research indicates that some of the larger projects that were requesting meters either have or are now currently drilling their own wells. So those should just be subtracted. And data is out there. If I can find data on it, I think your Staff could find data on it, and we should just have realistic figures. Do we need seven million gallons more of East Maui water, or do we need five million gallons more, or six million gallons more? It's just...those are the kinds of things that I would like to see. And the last item I'd like to mention is on the Hāna...I want to thank for all the stuff that has been put in in Table 16-41 for Ko'olau, where we are really seeking to know more about our streams through more stream gauges, through ownership analysis and engineering analysis of the EMI system. These are vital, vital things that we should be doing. But in the Hāna aquifer section, that's Table 17-38, there's a statement there that complies with the Hāna Community Plan. And it says assure that the Hāna aquifer sector area kuleana, cultural, domestic, and agricultural needs are met prior to allowing water to leave the region. Now, of course, the Ha'ikū-Pā'ia Community Plan has exactly the same base statement in it, and we would love to have a similar statement like that in the Ko'olau aquifer because it would comply with our community plan that covers that Ha'ikū portion of the Ko'olau aquifer, which is the most used portion right now of that aquifer. That aquifer goes out all the way to Nahiku. But of course, most of the population in that area is in the Huelo area, so...and the Ha'ikū area. So those two parts of...are covered under the Ha'ikū-Pā'ia Community Plan. It was established that the Community Plan District goes and...out to Kailua, it covers Huelo and Ha'ikū, and it would be very nice to have something that reflects that statement added to this table...to the table in the Ko'olau sector, that's Table 16-41. Just put exactly the same statement that's at the end of the Hāna sector because it's exactly the same language in the two community plans. And to not do it just really looks funny and feels funny. So mahalo for your consideration.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. de Naie. Mahalo, Chair. Chair, you're muted.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. My clarifying question would be on APT...the first one, I think, 16. When you were mentioning passing the most protective, is that like disregard the Planning Commission's suggestion to eliminate B and...Zone B and C and I guess...I mean, how did you feel about their suggestions? Is that not protective enough about allowing exemptions from development and use restrictions for land users who can prove that they are safe? Is that not what you wanted?

MS. DE NAIE: Well, in general, because this wellhead protection zone is going to mostly apply to new wells...you know, it will apply to some of our existing wells, a few of our existing

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

wells, if they have development proposed above them. Like it might apply to wells in Ha'ikū because it's a completely unsewered area that would be surrounding the wells. But the idea that someone can prove...it's a wonderful concept, but how many hearings have you guys sat through where a person who wants to make some money to do a development just says there's no problems, there's no problems, there's no problems; but later on, there's problems. It's like their studies are not always as robust or as complete as maybe an independent review would be. I would trust the County to do an independent review and know which areas they though posed a risk. The consultant that they hired, he gave a very sensible presentation. This was before this Council, you know, term's time. But...you can speak to Ms. Blumenstein about it, but I think he did his homework and he tried to be fair and look at all the different possible outcomes. But I think the Planning Commission was swayed by...large landowners came to the Planning Commission when I testified there, and this was a few years back, and just said, if this passes, Maui Land and Pine will never sell another acre to the County for a well. And, you know, so and so will never sell another acre to the County for a well. So the County has no land to drill their own wells. They mostly have to arrange either with the State or with another large landowner to drill a well. And so those are pretty sobering statements to have made. That's why it's really important, I think, that the State and the County partner and get the rest of the Wailuku agriculture lands because, you know, it would give the County choices if they ever needed those choices. So that's how I look at it. It's like I'm sure that the Planning Commission was trying to present a balanced view of what they heard. But you know, many places...like Washington State. I heard Mr. Perez testify he worked for Washington State, they regulate wellhead protection for private wells and public wells, and nobody's suing them, you know. It's just that we're taking baby steps here. So I would go with the strongest recommendations your Department puts forward and support them.

COUNCILMEMBER PALTIN: And by Department, you mean Water Department, not Planning Department?

MS. DE NAIE: Water Department...yeah, the Water Department.

COUNCILMEMBER PALTIN: Okay. Just double checking. Okay, thanks.

CHAIR SINENCI: Mahalo, Member Paltin. And the Chair would like to recognize Vice-Chair Johnson. Aloha 'auinalā.

VICE-CHAIR JOHNSON: Good afternoon, Members. As-salamu alaikum. I am alone in my office.

CHAIR SINENCI: Thanks for joining us. Any other questions for Ms. de Naie, Members? And always, grateful to have Ms. de Naie on, as always. So mahalo for your testimony today.

MS. DE NAIE: Mahalo.

CHAIR SINENCI: Okay. Staff, could you call the next testifier please?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES
Council of the County of Maui

January 04, 2022

MS. GRECO: Our next testifier is Faith Chase, to be followed by Albert Perez.

CHAIR SINENCI: Aloha, Ms. Chase.

MS. CHASE: Aloha, hau'oli makahiki hou. I need...I didn't have time to read the second item, but I would like to try to testify on it if someone could help clarify. Is this overlay wellhead measure, was this something that Alikea Atay had tried to put forward years ago, or is this a new piece of work? Can I ask that question?

CHAIR SINENCI: We're just...thank you, Ms. Chase. We're having a presentation today by the Department. So I'm not quite sure if former Councilmember Atay was part of this one.

MS. CHASE: Okay. I'm definitely...

CHAIR SINENCI: Member Paltin said yes.

MS. CHASE: Oh, okay, great. Oh, so... . . .*(inaudible)*. . . Thank you so much. And I'm absolutely in favor of this, and it was unfortunate that it didn't get traction during our Councilmember Atay's term. I'm very, very much in support, and I'm looking forward to the presentation. As far as the Water Use and Development Plan, are you making any...sorry to ask another question, are you making a legislative decision today, or is there a possibility that this is being deferred again? Is it still going to be on the agenda, or are you voting today?

CHAIR SINENCI: We're hoping to move it out of Committee today to meet our deadline of February 4th.

MS. CHASE: Okay. I have two changes that I had spoken to before in previous testimony. One of them has changed slightly. The Ko'olau aquifer sector, when in your strategies, your Table 16-41...and I know the last meeting when I testified, you were leery to make any changes, substantive changes at this point. But when I went back and I had time--because it's a doozy of a document--when I went back to have time to review it, that Table 16-41 did not include the East Maui Water Council. While it does include Aha Moku and DLNR, the East Maui Water Council was a grass roots initiative where 65 families with five generations or more were gathered to talk about the water. It's kind of...it's kind of...it hasn't had as much traction as expected because COVID interrupted everything, this COVID alarm, and I would just strongly suggest, or just be aware if you're not in the position...because I appreciate your work, Chair, you've muscled through the...I mean, you know, you've done such a great job. So, you know, I'm not...I'm going to choose my times to flex. And this may not be one, but you need to include...if you're going to include DLNR as an agency that you're going to be working with on the Ko'olau aquifer, you should definitely include Occupied Forces of Hawai'i since that is the representation of that original East Maui Water Council. And I will send written testimony on my suggestions. And if you don't want to include it in the language here, just do the due diligence and make sure that they're part of the conversation moving forward. And I will also CC Eva Blumenstein. And then moving forward to the Kahikinui Table 18-25, I remembered you reiterated it, but it never was

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

included, that Kahikinui Hawaiian Homestead Association was going to be listed in that agency of partnerships. So, you know, I appreciate the work and what we need to do to move forward, but those are two...those are two...those are two sticky pieces that I will probably be bothered about later. But I just needed to tell you that. Thank you.

CHAIR SINENCI: Okay. Mahalo, Ms. Chase, for your testimony. Members, any questions for the testifier this afternoon? Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. My question is regarding Ms. Chase's question. Did you ask if we were planning to vote on the Wellhead Protection Overlay District, APT-16, or the Water Use and Development Plan for Maui, APT-57?

MS. CHASE: I was actually asking about the WUDP. But I am interested in both, what...if you were going to do either or both.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay. All right. I misunderstood. Okay. So for the Wellhead Protection, APT-16, no legislative action is listed on the agenda. But for the WUDP, there is legislative...

MS. CHASE: Thank you. I saw the message in the chat. Thank you so much.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Chase. Mahalo, Member...Chair.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez, for your clarification. Members, any other questions for Ms. Chase? And just to let you know, Ms. Chase, you're correct, we're following other avenues as far as the Department or creating an entity with the Hawaiian Homes as far as a Water Board. So we can share with that...share that with you at a later time.

MS. CHASE: May I make one comment about that?

CHAIR SINENCI: Go ahead.

MS. CHASE: The Board of Water Supply meeting a week and a half ago--was it two weeks ago--the last water...Board of Water Supply was riveting.

CHAIR SINENCI: Yes.

MS. CHASE: I know you made a presentation there. But, you know, I go to...I...sometimes I'm the only testifier at the Board of Water Supply meetings. And there was 44 in attendance, and there was over 20 homesteaders. And I don't think...no offense to the people who work at DHHL, Toni Eaton is doing...you know, she's got this double duty, kind of double agent work. But there is a lot of unforeseen needs on the Hawaiian Homelands front when it comes to water, and I just wanted to forewarn you. Thank you.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

CHAIR SINENCI: Okay. Mahalo for that, Ms. Chase. Okay. I believe our next testifier is Mr. Perez.

MR. PEREZ: Aloha, Chair Sinenci, Committee Members. Can you hear me?

CHAIR SINENCI: Yes, we can hear you.

MR. PEREZ: Albert Perez, I'm with Maui Tomorrow, and we support amending Title 19 to create Wellhead Protection Overlay Districts. When I left Maui and moved to Washington State, I had a chance to experience Wellhead Protection Zones personally. First, as president of my Homeowners Association, I found out that the job should've been called Water System Manager because that was my main job. In the mid-1990s, we received a notice from the State Department of Health that we needed to delineate the Wellhead Protection Zones for our private well. I thought this would be a hassle, but when I found out that we didn't have any contaminant sources within our wellhead protection area, I was relieved to know we didn't have to worry about our water. The second experience I had was when I delineated Wellhead Protection Zones for every existing public and private well in the state. These zones were then adopted by the Washington State Department of Health, and people's drinking water has been safer ever since 1997. So it's long past time for Maui County to protect our citizens in the same way. This proposed bill is a minimal step that would help to protect the health of County residents who rely on water from these wells. It would not apply to private wells. Sorry. Clean water is not fully appreciated until you don't have it, as the people of Flint, Michigan, Red Hill, or even upper Kula will attest. We have...we should've done this and more a long time ago. I do need to point out that the bill as currently drafted would still allow the permitting of petroleum storage and other potentially harmful uses as close as 50 feet to a well. These dangerous uses should be removed in order to strengthen the bill and prevent harm. Once an aquifer is contaminated, it's difficult or impossible to clean it up. Mahalo.

CHAIR SINENCI: *(Audio interference)* Mr. Perez. Members, any questions for the testifier this afternoon? Seeing none. Thank you for your testimony. Happy New Year.

MR. PEREZ: Happy New Year.

CHAIR SINENCI: Okay. Next, I believe we have Mr. Kapu. Is there Ke'eaumoku Kapu? Is he our next testifier? Staff, do you see Mr. Kapu?

MR. KAPU: Yeah, hi.

CHAIR SINENCI: We can hear you.

MR. KAPU: Yeah, mahalo. I didn't sign up to testify. I was just kind of listening in to all the different recommendations. But mahalo for considering me. My position here is I am the CO for Aha Moku, and I hope that once this thing moves out into Committee, we can give our final recommendations then. Just...right now it's still gathering feedback from the different Mokus [sic]. So mahalo for this opportunity for me to testify, even

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES
Council of the County of Maui

January 04, 2022

though if I wasn't prepared. Mahalo, thank you.

CHAIR SINENCI: Mahalo, Mr. Kapu, for joining us this afternoon. Aloha.

MR. KAPU: Aloha.

CHAIR SINENCI: Staff, any other testifiers wishing to participate this afternoon?

MS. GRECO: Chair, we don't have any other testifiers signed up at this time.

CHAIR SINENCI: Okay. Is there anyone else wishing to testify? Go ahead and unmute yourself. Okay. Members, seeing that there are no more individuals wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR SINENCI: Okay. Any objections to accepting any written testimony into the record?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR SINENCI: Okay. Thank you. And just as a reminder, those that provided testimony via BlueJeans audio or video to tune into *Akakū* Channel 53, Facebook Live, or mauicounty.us to view the remainder of today's meeting.

. . . END PUBLIC TESTIMONY . . .

ITEM 57: WATER USE AND DEVELOPMENT PLAN FOR MAUI
(CC 19-162, CR 20-128, MISC.)

CHAIR SINENCI: Okay. Members, moving right along, our first item APT-57, the Water Use and Development Plan for Maui. The Committee is in receipt of the following: County Communication 19-162 from the Director of Water Supply, relating to a proposed bill adopting an update to the County of Maui's Water Use and Development Plan. The Water, Infrastructure, and Transportation Committee Report 20-128, relating to a revised proposed bill adopting an update to the Maui County Water Use and Development Plan, in accordance with the County Water Code and the State Water Code. Miscellaneous Communication dated October 12, 2020, from the County Clerk, referring the matter relating to the Water Use and Development Plan for the Island of Maui. A Correspondence dated November 24, 2021, from the Department of the Corporation Counsel, transmitting a revised proposed bill entitled, "A BILL FOR AN ORDINANCE ADOPTING AN UPDATE TO THE WATER USE AND DEVELOPMENT PLAN FOR THE ISLAND OF MAUI." Correspondence dated December 29, 2021, from the Committee Chair, transmitting a summary of revisions made to the draft Maui Island Water Use and Development Plan. The Committee may consider whether to recommend passage of the revised proposed bill on first reading, with or without revisions. The

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

Committee may also consider whether to recommend the filing of County Communication 19-162, Committee Report 20-128, and Miscellaneous Communication, and other related actions. With that, Members, as requested, we did defer this item to allow the public time to review the Committee's changes to the plan, and posted a summary of these revisions. Subsequently, we also extended the Council's deadline to adopt the draft plan until February 4th, 2022. With that said, this is our final Committee meeting on the plan in order for us to meet that new deadline. For the public and the Members' references, our final version of the plan is number 96 in Granicus, and the summary of our changes are number 97 in Granicus. Previously we also posted a track changes version of the plan under number 95 in Granicus. And part of the summary of revisions...of the intro reads, the Agriculture and Public Trust Committee has placed a draft Maui Island Water Use and Development Plan on its agenda 14 times since the beginning of this year...or last year. During that time, the Committee worked closely with various community leaders and groups, members of the Administration, and representatives from relevant State agencies to produce a draft plan which evenly addresses existing concerns and anticipated needs for the future regarding water. And so this is what is before you today for consideration...for your consideration today, Members. Okay. Chair Lee?

COUNCILMEMBER LEE: Before we vote, can we have final comments from either Eva or Jeff, Water Department?

CHAIR SINENCI: Okay. Director Pearson (*audio interference*) designate the Director or Ms. Eva (*audio interference*).

MS. BLUMENSTEIN: Yeah. Chair, thank you for (*audio interference*). Yeah, I really appreciate the (*audio interference*) this body and so many community members and board members put into this plan. I hear some continued concerns about, you know, the data is outdated, do we have the most current demand projects and whatnot, and the answer is no, we're never going to have perfect data because we did...you know, the public process was a three-year period of time that was really needed, and we're going on year three in County Council. So we really don't want to defer until we have all the answers to all the questions. I want to emphasize though that we...this is not the status quo document that we're going to put on the shelf. We continuously work with Planning Department and with CWRM, other agencies, to update our own supply and demand predictions obviously for source development and et cetera. So a lot of the implementing actions that you see summarized in those tables are already ongoing. So with that, I think, you know, it's as good as it can get, and there's so many situations still going to be unresolved today, and there'll be something else tomorrow. Thank you for letting me have some final comments on this.

CHAIR SINENCI: Mahalo, Ms. Blumenstein. Chair Lee...Director Pearson, did you want to go ahead and add some comments?

MR. PEARSON: Yeah. Thank you, Chair Shane Sinenci and Chair Lee for your comment. Yeah, as Eva said, this has been a long, drawn-out process. But the fact that it's a long process with the Council and community means that you see value to it and you've put

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

a lot of work and effort into getting the document to a place where you can forward it to the full Council for review and approval. So that shows right there that...you know, actions speak louder than words, and your actions show that you put a lot of effort into this document, and you see the value of this document. So that's appreciated by the Department of Water Supply. It's not always the case, and we all know that. So thank you much for that. And I agree that it's never going to be perfect and we can always work to improve it; but as a living document, I think we can continue to improve the document as we move forward. I feel comfortable that it's going to be a document that CWRM is going to look to favorably. They've looked at it in the past, and were happy with the direction that we were going. I was at CWRM when we reviewed and had Eva as a testifier at times. So I think it's a good document. We appreciate the fact that it's going to get out of your Committee. Thank you.

CHAIR SINENCI: Thank you, Director Pearson. And our Staff did want to thank you for taking us on those field trips to visit the Wailuku reclamation...I mean, the water plant, and also taking us to see some of the intakes at Wailuku. So mahalo for your going beyond and above your work duties to include us. Thank you. Okay. Members, we did want to go ahead and again reiterate the input from the Aha Moku Councils. We had additional information...we did add additional information to the Ka Pa'akai analysis section, added a new section to the document under introduction and technical approach entitled historical and cultural context of the regulatory system. And so we also wanted to thank all of the Aha Moku District Councils that had added their mana'o and took the time out to meet with our Staff and to share some of their...address some of the Appendix 10 items, and see what we could get consensus on within Part 1 and Part 2 of the Water Use Development Plan. Okay. Members, any other comments? Member King.

COUNCILMEMBER KING: I almost had to use my you're muted on myself. I had a question...I had a question for...I think it's for maybe Eva. Something that one of my Staff members flagged that seemed to be possibly a mistake in 15.1.2 Plans, Goals, Objective, and Policies. I thought that the central ASEA included Kihei...the Kihei-Makena area, but it says that that area contains areas...that central ASEA contains areas that fall under three different community plans. And so Kahului, Wailuku; Makawao, Pukalani, and Kula; and Pā'ia Ha'ikū. But it doesn't mention the Kihei-Makena Community Plan. So was that...is there a reason that that wasn't included?

MS. BLUMENSTEIN: Chair, if I may? Yeah, so Chapter 14 is the Wailuku aquifer sector. And because most of the water resources in that aquifer sector serves South Maui, we addressed this, the Department central water system as a whole, in Chapter 14. So that includes everything from Waihe'e out to Kū'au and Kihei-Makena.

COUNCILMEMBER KING: Oh, so that's not...that's not considered part of the central ASEA?

MS. BLUMENSTEIN: Although it's physically located in the central ASEA, we've decided it makes more sense to talk about strategies and demand and supply for the central system as a whole that spans, you know, Wailuku aquifer sector into the central aquifer sector.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

COUNCILMEMBER KING: Okay. So it's separated out then.

MS. BLUMENSTEIN: Yeah. But we did take into consideration the growth...the population growth rates from the Kihei-Makena Community Plan and the Wailuku-Kahului Community Plan for growth on the central system.

COUNCILMEMBER KING: Okay. Okay. Thank you. I just had that one, that's the only issue I had. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member King. Members, any other questions for the Department or comments of the summaries that were posted? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Just following up on Ms. de Naie's request in her testimony regarding the language from the Community Plan. She asked about the Hāna table where it says assure that the Hāna aquifer sector area kuleana, cultural, domestic, and agricultural needs are met prior to allowing water to leave the region. Is there a reason that it wasn't included in the Ko'olau region, and is that something that we should consider adding...since it's in their Community Plan as well?

CHAIR SINENCI: I know that we didn't get consensus on a couple of those. But that was one of them that we didn't get consensus in putting that in. But you mentioned that it is also in their community plan. Eva, did you have any comments on that?

MS. BLUMENSTEIN: Yeah, sure, I mean, I think this was debated in a couple of meetings, and we...it is recognized in the plan that there are...I mean, actually all the different plan of the existing policies for each individual community plan. And one of them for Pā'ia-Ha'ikū is just what Ms. de Naie mentioned. And in the context, we also say, okay, there's different tradeoffs between both where community plans are not consistent with each other, saying that we don't want water resources from this area to serve that area and vice versa, and then there's compromises of what water resource should serve planned growth area. So we recognize that there is a policy in the existing Ha'ikū...Pā'ia-Ha'ikū Community Plan, and that the trade off to propose continue exploring water in Ha'ikū aquifer, which is in the Ko'olau sector, is kind of explained in that context. So I believe the last few meetings this was brought up again. I mean, Ha'ikū is sort of still one of the primary strategies to provide groundwater for growth in Central Maui, and relieve some of the pressure of Iao aquifer. So recognizing that that strategy is kind of like a tradeoff and a compromise between different Community Plan objectives.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. Okay. Members, any other comments? Should we go ahead and call for the question?

MS. APO TAKAYAMA: Chair?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

COUNCILMEMBER MOLINA: Recommendation?

COUNCILMEMBER RAWLINS-FERNANDEZ: A motion.

CHAIR SINENCI: Oh, the motion. Did somebody...did I hear somebody come on?

MS. APO TAKAYAMA: Yeah. Sorry, Chair, this is Staff. I was just wanting to clarify; we don't have a motion on the floor yet. So I think the Members were asking for your recommendation. Thank you.

CHAIR SINENCI: Oh, okay. Before I get to that, Member...Vice-Chair Johnson, did you have some comments?

VICE-CHAIR JOHNSON: Oh, I was going to get to that. But I fully support this, and that I just want to add to all of the hard work that this Committee, as well as everybody, and all of the testifiers, a lot of work has been put into this. Fourteen times is a lot to go through after all of the previous stuff that had been gone through. So shout out to it, full support, and I'm ready for the action.

CHAIR SINENCI: Okay. Mahalo, Member Johnson. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Chair. You know, I want to echo the sentiments of my colleague, Mr. Johnson. Thank you for your efforts. You certainly did yeoman's work with this voluminous document. And also to the Department, Ms. Blumenstein, Director Pearson. Of course, Lucienne and all of our individuals with cultural expertise with regards to water because this is certainly a very, very large undertaking, and I thank you for all of your efforts. I think I can parallel your work with that of my colleague, Member Paltin, for the West Maui Community plan too. I'm sure you've had a few sleepless nights as well in having this document put together, and you've been so gracious in accepting input from all angles on this very important matter, and you've been very patient. So no one can say that you're not inclusive of all ideas and opinions on this. So I just want to thank you, Mr. Chairman, and I will support your recommendation. Thank you, Mr. Chairman.

CHAIR SINENCI: Mahalo, Member Molina, for those comments. We'll go to Member Rawlins-Fernandez, and then Member King.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I will make the motion for you. I move to recommend passage on first reading, the Water Use and Development Plan for Maui.

COUNCILMEMBER KING: Second.

CHAIR SINENCI: Okay. It's...did you want to include any nonsubstantive revisions and filing of County Communication 19-162, Committee Report 20-128, and the Miscellaneous Communication as well?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

COUNCILMEMBER RAWLINS-FERNANDEZ: That would be fabulous, Chair. Mahalo.

CHAIR SINENCI: Okay. It's been moved by Member Rawlins-Fernandez and seconded by Member King. Okay. Discussion?

COUNCILMEMBER KING: I'll defer to Member Rawlins-Fernandez since she made the motion.

CHAIR SINENCI: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair, and I'll echo the sentiments of my colleagues, Member Johnson and Member Molina. Mahalo for your tireless work on the Water Use and Development Plan. I know it hasn't been easy, and it's...yes, all the painstaking details that you worked on, and with all the community members, to ensure that as many of our community's voices were included, as well as balancing that with the comments of the Department and Board of Water Supply. I would like to move to amend the main motion to include the language that we stated earlier to amend APT...sorry, to...yeah, Table 16-41 Ko'olau aquifer sector, to include the language of the community plan; to assure that the Ko'olau aquifer sector area kuleana, cultural, domestic, and agricultural needs are met prior to allowing water to leave the region. That's my motion to amend, Chair.

CHAIR SINENCI: Okay. Members, it's been moved to amend by Member Rawlins-Fernandez to include in Table 16-39 of the...oh, excuse me...16-41 of the Ko'olau strategies to include: assure that Ko'olau aquifer sector area kuleana, cultural, and domestic, and agriculture needs are met prior to allowing water to leave the region. Is there a second to that amendment? It's been seconded by Member Johnson. Discussion? Chair Lee.

COUNCILMEMBER LEE: Who made that proposal? I heard you, but where did...where was...what's the genesis of that proposal?

COUNCILMEMBER RAWLINS-FERNANDEZ: Ms. de Naie included that in her testimony.

COUNCILMEMBER LEE: Who did? Who did?

COUNCILMEMBER RAWLINS-FERNANDEZ: A little bit ago, Ms. Lucienne de Naie informed us that was language that's in the community plan.

COUNCILMEMBER LEE: Can we hear comments from Eva, please?

CHAIR SINENCI: Okay. Ms. Blumenstein?

MS. BLUMENSTEIN: You sure you want to hear it?

COUNCILMEMBER LEE: I do. I really do.

MS. BLUMENSTEIN: Yeah. I mean, this is sort of like...I think I have...sound like a broken

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

record, but we're still...we wouldn't try to explore Ha'ikū groundwater if there were a lot of good affordable options. And believe me, we've really looked high and low between recycled water, conservation, distributing water within Īao and Waihe'e aquifer, Waikapu aquifer, desal of brackish water in Kihei. But ultimately, the Water User Development Plan will need to be consistent with the Land Use Plans. And there is planned growth in areas that do not have regional resources available to serve those needs, the Maui Island Plan, and the existing Community Plans. So if we take...so again, this is sort of like this compromise again between the South Maui Community Plan that has higher population growth rates than Ha'ikū, and we are saying that the strategy to transport some of the water from water rich watersheds to dry areas is either...you know, if we take that out, we have to replace it with something else. We can't just take out Ha'ikū aquifer saying...we have to meet the needs there first. But also, the strategies for the central aquifer sector, which includes the Upcountry system for Ha'ikū...which includes Ha'ikū, there isn't two strategies, it's not sort of mutually exclusive. The strategies to explore groundwater from Ha'ikū aquifer as an option includes meeting growth within Ko'olau aquifer sector. So that's the Upcountry Meter List and the existing users in Ha'ikū, including those that are waiting for meters for the Upcountry...from the Upcountry system. So it's not, you know, one or the other, it's both. And without going into all the details of the Upcountry, you know, there's sort of provide reliable source, provide affordable sources as well.

COUNCILMEMBER LEE: Chair?

CHAIR SINENCI: Chair Lee, go ahead.

COUNCILMEMBER LEE: Yeah, and this is where I have the problem with the proposal is because we are running out of water in Central Maui, which supplies South Maui. We all know that. So...and that's number one. So we have to go to sources that have...regions that have water because water is a public trust not for only a region, but for the entire Maui Island. So I'm very concerned that this is another way to create a huge stumbling block for other people to be able to pursue their dreams of housing and other things in their lives. So I am totally against this. You know, water is for everybody, it's not just for one particular region. We already have problems with Upcountry, and then we'll...and we will have problems in South Maui if we support this proposal. Thank you.

CHAIR SINENCI: Member King, go ahead.

COUNCILMEMBER KING: Thank you, Chair. You know, I agree with Chair Lee. And I know this came up, and we did discuss it in Committee. We just reviewed, I don't know, something like 15 or something projects, affordable housing projects, yesterday. The lion's share of those are in South Maui, and we need to put...we need to bring water in from somewhere for these affordable housing projects. There is...I don't think a single one of the projects was in Ha'ikū for affordable housing. So are we going to continue to develop and put all the affordable housing in South Maui and then say you can't have any of the water? And then, you know, the other thing that worries me is what's the timeline on that? You know, how long...how far out are you going to go to say you need

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

it first in Ha'ikū until when? Until the next ten years before you can send it over to the affordable housing projects in Kihei? That could be a huge stumbling block for the...and these are projects that are the 80 percent and under. There's a lot of those projects that are going into South Maui. So I agree that water is a public trust and it shouldn't be...none of the resources that are meant for the entire County should be chopped up and held just for those regions. You know, if that was the case, then South Maui would have...South and West Maui would have all the money because that's where all the property tax comes from. But, you know, we have to look at these resources countywide, and that was a discussion I think we had in Committee. So, you know, I'm not supportive of that because I think it's also going to conflict with other community plans. So I think we heard that from Ms. Blumenstein earlier, you know, if we got a community plan that says in South Maui, we want this much affordable housing, and yet we can't get the water, then which one of those community plans do you prioritize? And there's going to be...there's going to be...do we prioritize affordable housing, do we prioritize the, you know, what water needs? I would rather see us prioritize types of water needs, like water needs for affordable housing, water needs for agriculture, than to try to put it into certain regions. I won't support this amendment. Thank you.

CHAIR SINENCI: Okay. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So I guess as like the legislative body, we have to be aware of all these conflicts in our laws to prevent all these conflicts from happening. Because it sounds like we have conflicts already existing in the Code because our community plans are ordinances. And so we're making a decision to prioritize right now one community plan ordinance over another. And it's...you know, it's unfortunate that when we think about, or when we're talking about us running out of water that it's the affordable housing projects that wouldn't get the water when the Grand Wailea uses 500,000 gallons a day. And, you know, just so people understand it, you know, a standard house, a single-family home, uses about 5 to 15,000 gallons a month, and we're talking about the Grand Wailea that uses 500,000 gallons a day. So yet we're just going to keep sending all of that water to South Maui? And it's not for the affordable housing projects, it's for these egregious users. So that's something to consider and not just, you know, like think that it's...make the affordable housing projects the ones that suffer or the...what we put up as the reason that we can't ensure that another district has the water it needs. All right, I'm done. Mahalo, Chair.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. Vice-Chair Johnson, and then Member Molina.

VICE-CHAIR JOHNSON: Thank you, Chair. I have a clarifying question for Ms. Blumenstein. In...when Chair Lee asked her to clarify on this amendment, it...was...did you say the answer is both, as in like yes, of course, Ha'ikū needs water, but also South Maui needs water. So how do you juggle both, you know what I'm saying? Like that's really the crux of it all.

MS. BLUMENSTEIN: Yeah. What I'm saying is...and this is really important debate that I think we have to have it, or you need to have again. So there isn't a priority of Central

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

South Maui over Ha'ikū or Upcountry. We're looking, of course, to offset what we can from existing potable demand between non-potable uses, non-potable supply as recycled water, conservation. But even with that, growth within Ha'ikū, Upcountry, and Central Maui, there's not one priority over the other. If we can develop reliable groundwater from Ha'ikū well within sustainable yield, not even within 50 percent of sustainable yield, compared to Īao, where we're currently tapping about 90 percent, that could supply reliable source for Ha'ikū, Upcountry, and Central Maui. The strategy in Chapter 15 for the Upcountry List, which includes Ha'ikū that's served by the Upcountry system, includes options to develop well water storage, to take better advantage of surface water in wet season, but not having these ongoing droughts through summertime and extended droughts where we are relying...we rely on surface water because we're much more vulnerable to droughts and decreased rainfall, right? So without getting into all the details of that, it's sort of...it's not prioritizing sending Ha'ikū water to South Maui over Ha'ikū, it's both. There's a very small fraction of Ha'ikū aquifer that is pumped right now. So...I mean, of course there are concerns about what are long-term impacts of increasing pumpage. But that's sort of a very long process now to look at the hydrology of the existing wells. We have a USGS model currently ongoing to review what are the potential impacts of climate change and change on groundwater recharge. We want to make sure that this is long-term sustainable strategies. And I really believe it is, or I wouldn't be this persistent about it.

VICE-CHAIR JOHNSON: Okay. So in your stance that this, if we were to do this, it would affect the new growth, like the new buildings that we're speaking of, right? The new affordable housing, the new whatever, the growth, right?

MS. BLUMENSTEIN: We need to have...I mean, with conservation still has, you know, a ways to go. We have a conservation bill proposed that we hope to, you know, present to this body here, along with different measures really just offset some of the potable uses, the uses...or rather the non-potable use or the use of potable water. There's, you know, a way to do, but it can only go so far. We can defer, delay some source development; but we still need new source to serve housing, period.

VICE-CHAIR JOHNSON: So if you're given new source in Ha'ikū, you still can...you're not running out of water in Ha'ikū obviously, right? That's not what I'm hearing. It's just why...I mean, why is the priority of Ha'ikū being backed away from? Like we don't want to prioritize the water in Ha'ikū for Ha'ikū. Why do you back away from that? That's where I'm...my question...if there is plenty of water.

MS. BLUMENSTEIN: Yeah, of course. But recognize there's many concerns about it. Once you start developing an aquifer that you don't have a lot of good current data about, you don't have hydrological studies, you don't know what the impact is going to be on the existing wells there, streams, et cetera. So I'm saying, I mean, all of that is being looked at and really taken into account before there's, you know, some new wells. There's a consent decree with, you know, constraints of what can be done, and how it must be done. So it's a ten-year process from now. So it's not...this is nothing that's going to occur tomorrow.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

VICE-CHAIR JOHNSON: Yeah.

MS. BLUMENSTEIN: But a new reliable source would have to come from somewhere if the WUDP can't serve or, you know, be consistent with the Land Use Plans. These are Land Use Plans and policies, and none of that...we didn't change any of that in the WUDP, right? It's really just saying this is the appropriate resource to serve that type of use.

VICE-CHAIR JOHNSON: Okay. All right. I follow you. Thank you, Ms. Blumenstein. Thank you, Chair. I have no further questions.

CHAIR SINENCI: . . .*(inaudible)*. . . Vice-Chair Johnson. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Boy, this is a real tough one. I mean, get good arguments on both sides of this. If I could ask Ms. Blumenstein...so just to set the record straight, right, these projects that we've already approved in South Maui, none of them are in danger of not getting water at this point, right?

MS. BLUMENSTEIN: I can't really say yes or no. I mean, there are projects that are...if they have...are approved and they have gone through Water Department building permits or subdivision approval, then that should be fine. So if you mean the entitled projects that have the approval already, subdivision or building permit approval from the Water Department, then that should be fine.

COUNCILMEMBER MOLINA: Okay, yeah. Because I'm sort of really caught in a dilemma here because I respect their native and cultural concerns about the stream restoration and...while at the same time, we certainly need water to supplement other areas. But...I know the point was made about only affordable housing, but what about the big hotels that using all of this water too. And I can understand residents' frustration in the north shore area about water being taken for those purposes, and then you compound the fact that people cannot afford a house and then, you know, now these waters are being used for not only housing, but also for hotels. So I can understand why there's some discomfort in the area. And, you know, we need to specifically prioritize how we're going to use this water and what for because as a resident out there myself...out here, I would have concerns like okay, now all of this water is being taken out of this district but, you know, is it to supplement...what is it going to be primarily used for? Who's going to get all of this water at the district's expense? So it's...unfortunately, water is such a political bomb here. But, you know, this Council has to take a stand on something on this issue with regards to the Water Use and Development Plan. So for me, although I have some reluctance, I'll support the amendment on behalf of the citizens that's in the district. Because I can understand the concerns. And then, of course, you have...you compound the fact with the people waiting on the Upcountry Meter List for years for water, and then when they see water being taken out of their district to supplement another district, so there is that frustration out there and questioning of the Department's motives, or County Government's motives, as to what's going on here, you know. So anyway, I'll just leave it at that. But I think everybody's...I appreciate everybody's opinions on this. Thank you, Chairman.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

CHAIR SINENCI: Ms. Blumenstein, you want to respond?

MS. BLUMENSTEIN: Yeah, I just want to reiterate again, I mean, it's really important that...you know, the importance of adding a policy, which really means that you're changing a strategy of using the groundwaters from stream to aquifer sector...if we take that out, it would kind of have to be replaced with something, right? Because there's still demand and supply, and there's all these, you know, consistency with the Land Use Plans. So I understand, you know, supporting the community's concern, but it has to be offset with another strategy to meet the demand or it's sort of...the whole analyses and the strategies that are backing up demand is transformed. So I can understand that part.

CHAIR SINENCI: Okay. Thank you. Chair Lee.

COUNCILMEMBER LEE: Yeah. Eva, I think sometimes you know so much that it's hard for you to simplify the information that we need. For example, I think people...you know, the Members should understand where the water is and how much water is in each region. Central Maui doesn't have that much more water. We have supplied Wailuku, Kahului, Waikapu, Mā'alaea, Kihei, Wailea, Makena, okay? We're running out of water from Central Maui. And on top of that, Central Maui also provides water in parts of Pā'ia, okay? Pā'ia-Ha'ikū doesn't give us water in Wailuku that I know of. What I wanted to get out of you, Eva, is to let everybody know how much water is available in...groundwater in Ha'ikū East Maui. We're talking 3 to 400 million gallons a day, am I not correct? Just say yes or no.

MS. BLUMENSTEIN: Yes-ish.

COUNCILMEMBER LEE: Yeah. Okay. But...okay. Even if it's 299 gallons a day, the Iāo aquifer, the sustainable yield is only 21 million. I'm trying to show you folks how much water is available in East Maui. How can you leave all that water in East Maui and not give it to South Maui where all...most...a lot of the housing is going? I mean, I don't...I can't understand how you folks don't see that. We have only so much water on Maui, and most of it is underground in Ha'ikū East Maui. That's where it is. We're not even talking about surface water. And you know what? Who wants surface water anyway, it's so unreliable? Give me groundwater any day. And you know what? We voted on this already. Why are we doing it again? I mean, we had a long, long discussion on this. And now, at the eleventh hour, it's coming up again. And I...honestly, if...this is wrong. This is not fair. This is not fair. I don't care if I represent Wailuku, I represent all of Maui County, and so do you. And we got to be thinking of all of our people, not just one sector. So, you know, I really would beg you to rethink voting in favor of this amendment because honestly, it's totally unfair, and it's going to cut the future off to a lot of our people who want homes, and won't be able to get it because they won't have access to water. Thank you, Mr. Chair.

CHAIR SINENCI: Mahalo, Chair Lee. Before I go to our second round, Member Paltin, did you have any on the first round of discussion?

COUNCILMEMBER PALTIN: No. Thank you.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

CHAIR SINENCI: Okay. So we'll go to...thank you. We'll go to Member Johnson, and then Member Rawlins-Fernandez.

VICE-CHAIR JOHNSON: Thank you, Chair. I...you know, I seconded the motion for discussion, the amendment for discussion. I appreciate that. It's...we're having a good discussion. But what Chair Lee said to me, that really hit me. And I'm malleable. I appreciate that. I appreciate what you said, Chair Lee. So I won't be supporting the amendment, so...thank you.

CHAIR SINENCI: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. As I said in my opening remarks on the motion, affordable housing projects...water for the affordable housing projects is a red herring. I explained how much water goes to one resort, \$500,000...500,000 gallons per day--per day--and no one...and it was just...that point was just totally disregarded. So if affordable housing projects is truly the reason why Members would vote against the motion, then I would add to the motion exempting affordable housing projects to my original amendment so that it would read, *(audio interference)* aquifer sector area *(audio interference)* kuleana, cultural, domestic, and agricultural needs are met prior to allowing water to leave the region except for affordable housing projects.

CHAIR SINENCI: Okay. Was that an amendment to your amendment, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. Member Johnson was my seconder, but I don't know if he's going to support that.

CHAIR SINENCI: It looks like Member Paltin is...

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, Member Paltin is my seconder?

CHAIR SINENCI: Yeah, for that amendment.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure,

CHAIR SINENCI: Discussion, Members. Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you. I appreciate Member Rawlins-Fernandez making this amendment hopefully a little bit more palatable, to have it just...in the event the Department wants to take water out of the district to go to South Maui, it'd be used exclusively only for affordable housing. If I may ask a question of Ms. Blumenstein or Director Pearson. Drilling for additional well source in Kihei or South Maui in general, how much is there? Do you folks have a general number or amount of water that South Maui could provide on their own?

MS. BLUMENSTEIN: Well, we do. I mean, the data on available yield from each aquifer comes

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

from the Commission on Water Resources Management and depends. It's kind of the range of yield, and they set that very conservatively at the very low end of the range. So Kama'ole aquifer that's underlying Kihei, you know, has a...not a very low yield, but the quality of that water is...tend to be more brackish. So there are a lot of brackish irrigation wells in that area, but very few potable wells. But the other, you know, issue that I really want to consider is not...that is the available yield today and a lot of uncertainties because we may not know exactly how much is used because not every well owner reports how much they use. We have projections about changes of that yield, or the quality of the yield, primarily due to climate change. We have projections from USGS on how groundwater recharge will change, you know, mid- to end-century, and it's looking really bad for South Maui. There is a decrease in groundwater recharge of over 70 percent, with the opposite projections for the wet areas. So I mean, that's another concern to me to continue relying on Iao and Waihe'e aquifer that has been real workhorses for Central and South Maui. I don't know if that is responsible to continue to do that, you know, over the planning period and beyond. So I think that's another...I mean, that's another way, in my view, we kind of need to diversify supply, not being too stuck on, you know, relying on regional resources. Because even if it's just for affordable housing, continuing to rely...we would still have to rely on Iao and Waihe'e to a great extent, and I think that's sort of just one tool in that portfolio to really diversify supply between conservation, recycled water, and distribute it between multiple aquifers.

COUNCILMEMBER MOLINA: Okay. All right. Thank you very much for your responses, Ms. Blumenstein. Thank you, Chair.

CHAIR SINENCI: Member King, and then Member Paltin.

COUNCILMEMBER KING: Thank you, Chair. So I did hear you, Member Rawlins-Fernandez. I think I wasn't heard, but I did say that I don't like this idea of regional protection of resources because I think every region shares its resources. But if we wanted to go in and prioritize the use of water for affordable housing and for agriculture, you know, I have no problem with limiting the water to hotels. But the hotels are already there. The new growth that's coming in is affordable housing, and we still don't have enough even with what's on the books yesterday, and we heard some of those projects may not even go through. So that's my...my thought is that...I mean, my feeling is that we shouldn't be looking at the resources...we're not...we're not nine different districts being managed, nine...separately as nine different regions. We're an entire County, and we share...and especially something that's a public trust, we share those resources across the entire County. We don't say okay, you know, you...only the people in Kihei get to use the beaches, and then if there's enough space, we'll let other people come in. We don't say, you know, only the people that live in West and South Maui get to use those property taxes first. They're spread out...in fact, when I first came on this Council, the Budget Chair used to tell me, I don't know why you don't fight for more for South Maui because that's where all the taxes come from. But that's not...that's not what we're doing here. We're looking out for the entire County, and we're looking at resources and needs of the entire County. And that's why the lion's share comes from these two resort areas, but goes...you know, we spend hundreds of millions of dollars on infrastructure in other areas that...like even Hāna, the bridges in Hāna are hundreds of millions of dollars. But

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

that's what we're supposed to be doing. We're supposed to be looking out for our entire island as a unit, not as...you know, not protecting the resources that are in one region over another. So, you know, that...it's not fair to say that I don't care, that I'm using affordable housing. The hotels are there, and I've been fighting as hard as anybody to keep new hotels from being built on this island. In fact, I was the one that brought up the moratorium first. So that's not...that's not what this is about, protecting water for our hotels. I do think we need to conserve, but I think we...if we're going to get the lion's share in South Maui of growth, which is happening with...I mean, we're getting affordable housing project after affordable housing project. You know, those aren't going into Ha'ikū, those aren't going into some of these other areas, into East Maui. So we also have to deal with the traffic, and the density, and the overcrowded schools. But to say well, you know, we're going to...we're going to keep this one resource for this one area when we're hearing how much water there actually is in that aquifer is...it could be really damaging to other regions of the island. So, you know, I just...I have to say if we want to make a policy later on, and maybe this is the Committee that wants to do it, to prioritize where the water should be going, for what purposes the water should be used for, let's do that as a separate policy. But regionalizing these resources, it's going to be really hurtful. I agree with Ms. Blumenstein, it's going to be hurtful to some of the other regions as we go through the next 10 or 20 years, and as we see what happens with climate change, and storm destruction, and sea level rise. So we have to think big picture here, and we have to think beyond just each individual region. That's my position. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member King. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Before we vote on this amendment, motion, maybe we should get some clarity on the amendment. Is it affordable 120 and below? And what about...is it 100 percent affordable, or what about 201Hs where it's 50 percent plus 1? I just...I just wanted some clarity on that. Like what AMI ranges are we inferring and that stuff. Is workforce housing excluded?

CHAIR SINENCI: Member Rawlins-Fernandez, did you have a preference for the...as the movant, to exempt affordable housing? Was there any categories addressed, AMI categories?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair, and mahalo, Member Paltin, for the question to clarify. So I haven't seen the language itself from the Community Plan. I was going off of Ms. de Naie's testimony that stated that a statement like that which is in the Hāna table is also in the Community Plan for Ha'ikū area. Adding in the amendment to exempt affordable housing I'm not sure is included in the language of the Community Plan. So I think it's kind of going outside the scope of what is written in the Community Plan. The purpose of me doing that is because that's what the Councilmembers were all saying was the issue. So I tried to address the Councilmembers' concerns by amending it. So I don't have the details of what AMI and what types of mechanisms for affordable/workforce housing should be allowed under this exemption. If we were going to work harder on restricting the amount of water so that it's not so egregiously abused, where we're saying sorry, kuleana landholders,

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

you're not going to get any stream water because the Grand Wailea needs 500,000 gallons a day, so too bad. Sorry, farmers in that area, you can't have any water because the resorts in South Maui need to abuse it. So if that's the situation that we're talking about now, and we're not planning for the restriction that we're also discussing, then I can count. I saw that Member Molina supports the motion, so that's two of us, and it looks like we don't have a majority. So I don't know if we want to continue going down this road, or if we want to just say we don't have the votes and...

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. Member Paltin, did you have any comments, or did that answer your question?

COUNCILMEMBER PALTIN: I don't think my question got answered. But is that a withdrawal of the amendment, or are we calling for the question right now? I would recommend 120 percent and below and affordable housing projects with at least 50 percent.

CHAIR SINENCI: Member Rawlins-Fernandez, would you consider that as a friendly amendment?

COUNCILMEMBER RAWLINS-FERNANDEZ: I would accept that as a friendly amendment.

CHAIR SINENCI: Okay. Member Molina, and then Chair Lee.

COUNCILMEMBER MOLINA: Yeah, you know what, Mr. Chairman? I believe Chair Lee had her hand up before me, so I'll yield to the Chair --

CHAIR SINENCI: Okay.

COUNCILMEMBER MOLINA: -- and you can come back to me.

CHAIR SINENCI: Yeah, Chair Lee...you're muted.

COUNCILMEMBER LEE: I'd like to remind you where the water is. The Iao aquifer is...which is one of the main sources of water for Wailuku, Central Maui, and South Maui is designated, yeah. I'm sure you folks understand what designated means. And then the Lāhainā aquifer is being considered for designation. You already heard Eva say that South Maui has very little fresh water, most of their water is brackish. And by the way, the water I'm talking about is not stream water...again, I said before, we're talking about groundwater in the aquifer's water. So we're not taking away waters that go to kalo farms, et cetera. We're talking about water that has to be drilled for. So it's important that everybody, before you make a decision like this, understand how much water we have, where we have it, and what have we all claimed to be a priority--affordable housing--how are we going to accommodate for the affordable housing with water? And as...again, most of the water is in East Maui, but it has to be drilled and transferred to Central or South. But there is more than enough water for everybody. There is no need to hoard water in any particular region. Water is for everybody. So if you could just keep that in mind, I would appreciate it. Thank you.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

CHAIR SINENCI: Okay. Thank you, Chair. Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. If I could get additional clarification from Member Paltin. So would your proposal exclude workforce housing, or is this...I know we're trying to establish the median levels for affordable housing guidelines. So...just so I can get a full understanding. Because I know Member Paltin's proposal is rather just broad affordable housing in general, but now you're going to make a specific...I guess, where this water goes to as far as based on affordable housing median income. So I kind of just wanted that clarification. So can you help me understand what you want us to consider?

COUNCILMEMBER PALTIN: Me?

COUNCILMEMBER MOLINA: Yeah.

COUNCILMEMBER PALTIN: Oh, you're getting us confused because we look so much alike. I think --

COUNCILMEMBER MOLINA: You look better than me.

COUNCILMEMBER PALTIN: -- I think 120 to 140, I believe they call that the gap, is that? And so 120 and below includes workforce housing, I believe, or...shucks. Member Johnson, do you know if workforce housing is 120 and below? And 120 to 140 is gap?

VICE-CHAIR JOHNSON: You know, we went over it, and I thought gap was different. But I don't want to say it right because I'm not 100 percent sure.

COUNCILMEMBER LEE: Gap is 160.

COUNCILMEMBER MOLINA: Okay.

COUNCILMEMBER PALTIN: Oh, okay. Then I'll change my thing to 140 and below. I meant to include workforce housing.

COUNCILMEMBER MOLINA: Okay. Okay. Thank you. And...but you know, if I'm correct, gap folks in the gap group, these are people like firemen, policemen, you know, people who don't have enough, or don't qualify...they make too much because they don't qualify for affordable housing, but yet they make too little to purchase market housing, yeah. So anyway, I'm still kind of hung up. I wish we could include the gap group in this as well too, because these are the folks that provide some essential services to the County who certainly, like many others, need housing. But anyway, I'll just leave it at that. Thank you.

CHAIR SINENCI: Mahalo, Member Molina. I would want to go to Director Pearson if he is still on.

MR. PEARSON: Oh yeah, I'm on. I'd like to remind Member Keani Rawlins-Fernandez that in

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

Moloka'i, the Kaunakakai Town is supplied by a well that comes from a different aquifer, so that's one quick fact. If this amendment passes, I don't feel comfortable bringing forth...and if it passes this Committee, and if it passes Council, I don't feel comfortable bringing it forth to the Water Commission because it's going to be an incomplete Water Use and Development Plan. We're going to have this amendment that takes out the strategy without replacing the strategy. And it's not going to meet the requirements of the Water Use and Development Plan that's set forth by the State Water Commission. I appreciate the passion from Member Lee. I, of course, agree with that passion. I also can reiterate what Eva said. I do not know as much as Eva, so I speak in a little simpler terms, but there is enough water to go around. And we're not just looking at Central Maui when we're looking at some of this source water that comes out of the Ha'ikū area. Ha'ikū is also looked at...Ha'ikū will be met, and the sustainable yield will still be protected, and the water will be available for all uses, and there will be no...well, we'll have additional studies, of course, so I won't say it clearly, but there'll be...lately, there'll be no damage to the aquifer by providing some water to Central Maui to meet the growth. I do see the issues with Member Fernandez about the egregious and the high use of the hotels, and we're working on that. Conservation might not solve the problem. We've been working with developers in South Maui and with the Department of Environmental Management. There is a...well, I think it's viable, maybe expensive, but to replace a lot of their water use with R-1. That's going to be a long trip to go from the treatment plant all the way to Wailea, but I think it's a reality that can be done. It's a long-term fix, but I see it as almost no other choice. So I'll stop there. I saw Members' hand up. But it's...it would be very difficult to bring this Water Use and Development Plan to CWRM with this amendment in place. Thank you, Chair.

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

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo for the opportunity to give comments after I was called out by name and used as an example, my island was used as an example. And Director Pearson, if you will recall that we do try our best to make sure that everyone in that district, DHHL lessees included, have their water needs met in that area before water is given to Kaunakakai, West Moloka'i. So there's the County water, but there's also private system that takes water from the Kualapu'u aquifer and takes it to West Moloka'i, where it's like South Maui, it's dry, there is no water, there's only brackish. And the community fights very hard to make sure that in the areas where the water is being taken from that we don't have kuleana landholders asking desperately to...for us to help them. We don't have that on Moloka'i. So that's a really big difference, if we'd like to bring up Moloka'i as an example. Mahalo, Chair.

CHAIR SINENCI: Yeah, mahalo, Member Rawlins-Fernandez. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. If I could ask Director Pearson, the issue of water storage, let's take, for example, East Maui. Now, does...my understanding is there's a lot of water runs off. Where is the Department at, at trying to provide adequate storage for all this water that's...you know, runs off? Because I think that could alleviate a lot of our water needs. And I can agree, and certainly everyone, that there is a lot of water in East Maui, and that's where a lot of water comes from. But a lot of water is

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

wasted, or runs off into the ocean, or there's leaky transmission lines. I mean, how far along are we at addressing that problem? Because if we can get a handle on that, I think we can, you know, solve a lot of our water issues for our other districts. Your thoughts, Mr. Director?

MR. PEARSON: Thank you, Member Molina. Well, of course, when you say storage, and you say water runs off, we're talking surface water. Surface water, there's a...you know, there's surface water treatment plants that are located Upcountry, mauka. So if we're looking at the...you know, like the specific Ha'ikū area, we don't have a surface water treatment plant there. As far as trying to answer your question a little more specifically, as the long-term lease moves forward for the East Maui system, we've had preliminary designs for storage at the Kamole Treatment Plant. Of course, that's the, you know, Wailoa ditch that provides water to that treatment plant. And then we would...we could...we're looking at design storage at that area, so that would provide for more reliability at the Kamole Treatment Plant. But, you know, the discussion here today is, as Chair Lee spoke earlier, it's a groundwater issue and it's sustainable yield issue for the Ha'ikū aquifer, which I think it was revised...now it is 24 million gallons a day revised from...revised down to...from 27 million gallons a day. And as I tried to say, and as Eva spoke earlier, there's water available for the needs and the growth in the Ha'ikū area, and there's water that could be available if it was brought towards the Central Maui system for the needs and the growth in the Central Maui system. That's...that's what point we're trying to get...that's what the strategy discusses.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Director. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member Molina. Member Paltin.

COUNCILMEMBER PALTIN: Oh, I just...I just wanted to kind of correct the record. My husband fishes a lot, and the water coming down and going into the ocean isn't wasted because we need that intermixing in the muliwai for the fishes to spawn, and so we can eat fish because it's part of the ridge to reef and water...it's kind of necessary. But an area where the waste could be stopped is that whole transmission system because that's a waste. But just pointing it out, I know a lot of times on social media people feel that water going into the ocean is a waste. But it's kind of necessary if you like to eat fish, and for the whole entire ocean. So just pointing it out for the record.

CHAIR SINENCI: Mahalo, Member Paltin. And I just had a clarifying question for Director Pearson. You mentioned about CWRM not accepting the plan, should we make these changes. Can you expound on that?

MR. PEARSON: Well, maybe Eva could expound in more detail. But there's specific requirements with the State Water Plan on how the Water Development Plan should be fashioned. And of course, Eva has followed those to a T, and maybe to a greater extent. But if we have strategies and discussion on long-term solutions or long-term directions for source water source in certain areas, and then we take that strategy and just remove it, now, as Eva said, you have to replace it with something. So if you pull that strategy out with this amendment, now you have a big puka in the plan. And the puka will be

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

obviously noted by the CWRM, and they will look at the...I'm assuming...I'm not...I can't put words in their mouth because they haven't reviewed this and it hasn't gone there yet, but they would likely see this Water Use and Development Plan as incomplete. And that's my opinion right now. So in lieu of doing that, the Department of Water Supply would not move forward and send this Water Use and Development Plan to CWRM if this amendment was passed.

CHAIR SINENCI: Thank you, Director Pearson. Okay, Members, any other discussion points before we call for the question on this amendment? Any discussion? Okay. So the motion to amend to include in 16-41, assure that the Ko'olau aquifer sector area kuleana, cultural, domestic, and agriculture needs are met prior to allowing water to leave the region, except for affordable housing projects that are 140 percent and below, and for affordable housing projects that are...I believe 50 percent was the language, Member Paltin? Okay. By a show of hands, all in favor of the amendment, please raise your hands and say aye. Okay. We have three ayes. All in favor of...all opposed to the amendment, please raise your hand in opposition. Okay. That's three ayes and four noes. So the amendment fails.

VOTE: AYES: Councilmembers Molina, Paltin, and Rawlins-Fernandez.

NOES: Chair Sinenci, Vice-Chair Johnson, and Councilmembers King, and Lee.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION FAILED.

CHAIR SINENCI: Okay. Now to the main motion to pass the Water Use Development Plan out of Committee --

COUNCILMEMBER KING: Chair?

CHAIR SINENCI: -- to full Council.

COUNCILMEMBER KING: Point of Order.

CHAIR SINENCI: Go ahead.

COUNCILMEMBER KING: There was a...there was an amendment to the amendment, is that what we just voted on, and then you're back to the main amendment?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

CHAIR SINENCI: That was a friendly amendment to the amendment.

COUNCILMEMBER KING: Oh, that was a friendly? Oh, okay. So we're back to the main motion now? Okay. Thank you. Sorry about that.

CHAIR SINENCI: Okay. Okay. So back to the main motion, to adopt the Water Use and Development Plan and send it to the full Council. All in favor...oh, Member Paltin.

COUNCILMEMBER PALTIN: Just thinking of what Member King said, the first amendment was to restrict the water, and then the amendment to that amendment was for affordable housing, and then the friendly amendment to the affordable housing was adding the ranges and the amount. So we might be on the amendment about not affordable housing? Is that what you meant, Member King?

COUNCILMEMBER KING: Yeah, that's what I meant. I thought that...I thought that Member Rawlins-Fernandez made an amendment, and then she made an amendment to her amendment. That's what I thought we were doing.

COUNCILMEMBER PALTIN: And then I friendly amended her amendment to her amendment.

COUNCILMEMBER KING: Yeah, so I thought we just voted on that amendment, the amendment to the amendment, and then we're back to the amendment before we go back to the original motion.

CHAIR SINENCI: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I amended my own amendment. So I didn't oppose myself, I supported my own amendment to my motion to amend.

COUNCILMEMBER PALTIN: So you friendly amended your amendment, and I friendly amended your amendment. So it was all one amendment.

COUNCILMEMBER RAWLINS-FERNANDEZ: I sure did.

COUNCILMEMBER PALTIN: Okay. Got it, got it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

CHAIR SINENCI: Okay. So we are back...

COUNCILMEMBER KING: . . .*(inaudible)*. . .

CHAIR SINENCI: So we are back to the main motion.

COUNCILMEMBER MOLINA: No amendment on the floor, right? Yeah.

CHAIR SINENCI: No amendments, yeah. All in favor of the main motion, say aye, raise your

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

hand.

COUNCILMEMBER KING: Member Rawlins-Fernandez is frozen.

CHAIR SINENCI: Okay. That's seven ayes --

COUNCILMEMBER RAWLINS-FERNANDEZ: Aye.

COUNCILMEMBER KING: Okay. We just heard her.

CHAIR SINENCI: -- and zero noes.

ITEM 57: WATER USE AND DEVELOPMENT PLAN FOR MAUI
(CC 19-162, CR 20-128, MISC)

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending FIRST READING of revised proposed bill, and FILING of communications.

COUNCILMEMBERS: Thank you, Members. And we, I definitely appreciate the discussion. And so the WUDP Plan will move to full Council. Thank you. Mahalo for all your work. Okay, Members, sorry we went over. You guys are okay for a ten-minute break?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR SINENCI: Will...the APT Committee of Tuesday, January 4, 2022, is now in recess until 3:40. . . .(gavel). . .

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES
Council of the County of Maui

January 04, 2022

RECESS: 03:27 p.m.

RECONVENE: 03:39 p.m.

CHAIR SINENCI: . . .*(gavel)*. . . Will the APT Committee meeting of Tuesday, January 4, 2022, please come back to order?

ITEM 16: WELLHEAD PROTECTION OVERLAY DISTRICT (CC 15-50)

CHAIR SINENCI: Members, we have our second item, APT-16 Wellhead Protection Overlay District. The Committee is in receipt of the following: County Communication 15-50, from the Director of Water Supply, transmitting a draft bill to protect the County's municipal wells from contamination and avoid costly treatment through the restriction of high risk uses in the capture zones of Department of Water Supply drinking water wells. Also correspondence dated January 4th, 2019, from the Acting Planning Director, providing comments from the Maui, Moloka'i, and Lāna'i Planning Commissions on the proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH A WELLHEAD PROTECTION OVERLAY DISTRICT," transmitted via Resolution 18-149. And so Members, as...we wanted to revisit this and get an update from the Department of Water Supply. As you know, there's been a lot of news about the O'ahu Red Hill aquifer system, and so this was also brought up. And we're also bringing up a resolution for you to consider on Friday's Council meeting. So we have with us, Members, today, as resource people, Ms. Blumenstein, Planning Program Manager in the Department of Water Supply; and we may have representation from the Department of Planning to provide us with a presentation and answer any questions related to wellhead protection. So if there's no objections, I'd like to designate them as resource persons under Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR SINENCI: Okay, great. Thank you. Okay. Ms. Blumenstein.

MS. BLUMENSTEIN: Thank you, Chair. Yeah, it's been a few years since we've dusted off this bill. So thank you for bringing that up. I have a PowerPoint, it's about 25 minutes. I think it's kind of important to go through the concept of the bill, if that's okay. Can I share my screen?

CHAIR SINENCI: Yes, go ahead.

MS. BLUMENSTEIN: Can you see it okay? Okay. So yeah, this goes back quite a few years, and it's been a collaborative effort between University of Hawai'i Department of Geology and Geophysics, Department of Health, the UH Water Resources Research Center, Water Department, and the Planning Department, and then the Advisory Committee or beyond too. And what it is, is, of course, to protect the County's potable wells from contamination and prevents the need for treatment. Common sources of contamination are chemical leaks, spills, industrial processes, pesticide, fertilizer applications, and

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

many other land use...common land use activities. And the bill only applies to what are delineated as wellhead protection areas. And what that is, is the surface and subsurface areas that surround the well, and potable wells specifically, to which contaminants can leech the well within a certain time frame. So typically, groundwater flow with the gradient towards the ocean, right? And as you start pumping a well, it will impact the flow and draw water and any contaminants towards the well. So the wellhead protection area can be defined as just a simple fixed radius, or it can be an entire recharge area. And in our case here, the wellhead protection area is delineated using groundwater flow simulation models and particle tracking. So why we initiated this whole project? Of course, we rely on groundwater for most of our potable supply. We know that our aquifers are vulnerable. There are leading hydrologists in the State that ranked the base aquifers where the Department wells are as vulnerable, and that's further proven by detection of various chemicals in potable and non-potable wells throughout the island. The map there is Department of Health's groundwater contamination map as of...actually, I did that one, at least it's from last...no, not last year's, from 2020. The 18 wells that show several of the contaminants are associated with practices that are no longer...like pineapple cultivation or sugar cane, but they're kind of legacy pesticides that remain in groundwater for a very long time. But the other sources say that with more current urban ag use that start to show up in monitoring wells on O'ahu where the detection occurs sooner than in public wells. So about 42 different organic compounds found in public water supply wells on O'ahu. We had the DOH Safety Water Branch Chief testify to this body back in 2018 and our Board that, you know, there are definitely regulations in place to address groundwater protection, but there are gaps that still could put our drinking water wells at risk. There is definitely support in multiple community plans and the Maui Island Plan to implement this program, and it's in the WUDP. So we're...here we are implementing one of action items already. Okay. So one optional course is to not do this, and I think one of...someone mentioned here that we're sort of like the guinea pig in the State. There are well protection programs in all the other United States but Hawai'i. And I know that Honolulu and the other utilities are kind of waiting to see how this one goes. So doing nothing mean that drinking water would probably come at a higher cost over time. Cost of contamination is, of course, increasing need to treat water, monitor, remediate, finding alternative water supplies, and having to shut down a well due to contamination. That's a lengthy process, that's not like a short-term fix. Treatment cost also, of course, runs in the millions of dollars annually. It's an ongoing process. We have some GAC or granular activated carbon treatment for some of our wells. And the type of treatment varies depending on the contaminant and the influent concentration flow rate and such. And also, if you have combinations of different type of contaminants, that get more complex and costly as well. So I'm showing this prevention is always cheaper and more reliable in the long term. So there are well protection programs, and sort of the overall framework is that the U.S. EPA, through the Safe Drinking Water Act, mandates State Department of Health's to develop a well protection program and conduct a source water assessment. So our Department of Health, they developed a source water assessment, that's kind of the framework for developing protection measures. The State's role is to assist communities or, you know, water purveyors to manage potentially contaminating activities on a local level. So Department of Health, they enforce, they issue drinking water standards, you know, what are acceptable levels of contaminants in the wells,

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

and they make sure that we follow those or, if there are violations, you know, they enforce that. But that's kind of after the fact, right? That's not proactive. So this ordinance put measures in place, and it's a combination of things, but the wellhead protection bill was developed, of course, with technical assistance from EPA and Department of Health, and in collaboration with the Planning Department and the Community Advisory Committee going back quite a few years. So this source water assessment is really...that's the framework, that's the scientific basis for the proposed restrictions in the bill, yeah. So Wellhead Protection Zones are the areas then that contribute water to the well within a set time frame. They were modeled by the hydrologist through the safe...in the source water assessment using U.S. Geological Survey modeling codes called MODFLOW and MODPATH. It's a three-dimensional numerical well water model and a particle tracking program. So the map shows the blue Zone B, two-year time of travel capture zones, and in red Zone C, ten-year time of travel zones. And Zone B is the area where it would take a water particle two years or less to reach the well. And that's based on...and that's kind of what we call the microbial protection zone, so that's based on microbe survival times in groundwater and soils. And then Zone C represents a ten-year time of travel that addressed more chemical contaminants that are more persistent and remain in groundwater for a longer time. And there's a fixed 50-foot radius setback Zone A, that's really just to address protection from direct contamination like vandalism, or access spills, or something like that. Okay. So these were all delineated for...they were delineated for all privately-owned systems as well, or potable wells. But again, the bill as designed applies to the Department of Water Supply's potable wells only. Okay. So the purpose, of course, is to protect wells through a combination of restricting the type of land uses that represent a really high risk, the really not compatible groundwater protection, and those are activities that have been shown to contaminate aquifers because of the nature of activities or the contaminants associated with them. And there are other uses that can be compatible if you have some mitigating measures in place like best management practices. So that's the way the bill is structured; outright prohibit really high risk uses, permit uses with best management practices where that can be done. So the...SMA zoning or most zoning bills, it addresses new uses only, meaning that existing activities are grandfathered in. Uses that can be permitted will be permitted through an Administrative permit with the BMPs. It's meant to really just supplement any existing regulations in place, whether those are Federal, State, or County, and it's modeled upon an EPA overlay zoning standard. The list on the right there are all the uses that the bill proposes as outright prohibited. Those that are shown in red would require that the underlying zoning is heavy industrial. So I point that out because our...the potable wells on Maui, we're really fortunate, they're mostly in rural agricultural areas that are not overlying industrial areas. There's really no zoning parcels within our capture zones that are zoned heavy industrial, right? There's light industrials and others. So those in red are sort of...that would be out. But the list...this is the list, the only ones that would be outright prohibited. Okay. So how this works, the structure of an overlay district is...the property on the right there, the zoning map, has some industrial zoning and some residential zoning, and the capture zone, the well, spans a portion of both. So say that there's a plastic production facility that would be normally permitted by industrial zoning, but the overlay district does not allow that. So that supersedes the underlying zoning, right? So you can't put that regardless of what the underlying zoning

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

is. The left map is the actual well protection area for Po'okela well. The underlying zoning is ag. So under Title 19, landfills are a permitted operation on ag land, but not in the wellhead protection area. So that would supersede the underlying agriculture zoning, right? Agricultural supply storage, that's sort a...not a high risk, but a medium risk activity that would be permitted, but with best management practices in place. Okay. So this is Central Maui where most of our wells, or at least the density of wells are, and where most of the concern about impact of this bill would be. So most of the wells here are in the Iao Waihe'e aquifer, it says three of them in Kahului aquifer as well. The gradient is flat compared to the other areas, so the capture zones look a little different. So what the potential impact of the zoning bill is...I mean, the concern has been is, would this impact housing development? And because the only restriction here is residential development in unsewered areas, meaning that's not really central area at all for three lots or more. There are design guidelines, but there's nothing that prohibit or prevent housing development in this bill, right? So it's really just addressing upgrade of septic system where there's a concern for microbial contamination nitrates from cesspools and septic system. I also want to point out that within this, which is kind of like the...maybe the highest impact area of this bill, there's less than 1 percent of the underlying land that's zoned light industrials, and those are the ones that I listed on the prohibited use risks. So relatively minor impact, even for commercial industrial uses. Okay. So we went through dozens of...more than dozens of community meetings and board meetings and also in Council back when, and some of the concerns that we heard and addressed were okay, this...the model, the delineation of the model, is this acceptable, is it peer reviewed? I mean, if there may be legal challenges like with this holdout. And we had hydrogeologists testify to this, these are USGS modeling codes. It's among the most widely reviewed codes available, and there are...specifically been applied to develop wellhead protection programs elsewhere. And EPA contracted an independent review in addition when the source water assessment was done. So we feel very comfortable that the science behind it is sound. Real concern about impact on property values if there are restricted uses now, based on case studies, and we even called around the country and interviewed folks that have implemented these kind of programs and did not find that there were a negative impact on businesses or in terms of restricting uses, more contrary. It's all...you know, we all rely on the same groundwater source, so it's a good thing to invest in and protecting it. Concerns about legal challenges or takings, these kind of programs such as that has been implemented nationwide. Because the delineation of the capture zones is science based, it's not arbitrary, meaning, you know, it's not like a quarter mile radius around the well. There's actually a scientific basis for what type of contaminants we're concerned about. Legal counsel done a thorough review of the provisions, so I don't feel that that's much of a concern. Costs to the community customers for doing this; we did develop the...not just this bill, but the whole wellhead protection program, which includes public outreach, other nonregulatory measures, solely through grant funds, Federal and State grant funds. And if the bill passes as designed now, and I really want to emphasize that that is for the municipal wells only, not private wells, then our calculations...you know, we feel that that could be handled, it could be administered in-house, meaning by existing staff. It would be a very different situation if you're looking at all privately-owned public water systems. So just keep that in mind. Several concern from Board, Councilmembers, and the public, is there justifiable need, do we have contamination on

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

Maui, is this kind of draconian for because we don't have a real risk of contamination? We had the State Director of Health testify that it's...as I mentioned, there are definitely gaps in regulations. This bill really just addressed those gaps. There's no trying to, you know, duplicate what's already there. Most examples of contamination in the State is on O'ahu, the Kunia pesticide spill, Superfund site, that contamination cleanup went in the tens of millions of dollars. You have all heard by...about Red Hill now, but not when I presented this ten years ago, it was, what is Red Hill...Sand Island, another fuel spill. So I really feel that there's...you know, there's valid justification to move forward with this. So part of the strategy is regulatory measures, and then best management practices. And we did use probably three-quarter million dollars or so in grant funds to address some of those potentially contaminating activities and retrofit and upgrade those that were of concern and in the capture zone. So some of these are...on the picture, you see the above ground storage tanks, one of the basic BMPs is just to have a secondary containment, really just a berm and sufficient impermeable surface so that you don't have leaks into soil and into groundwater. So we spent some grant funds upgrading those. But that is also something, you know, that it may not be necessary to prohibit storage of fertilizer or pesticide, et cetera, as long as you really have those BMPs and containment in place. And there's definitely benefits for the business owner, you know, farmer or whatnot as well. And this bill is part of kind of a comprehensive package. There is the overlay zoning, which is Title 19 Zoning Code because that's really the only tool to prohibit, to restrict land uses, right? And this is why we're collaborating with Planning Department on this. This is not normally something that what a utilities does. But because this...you know, the special structure and the EPA, and Department of Health incentives, this is kind of how it came about, couple that with best management practices, both for the businesses that are regulated and general public education. We've done that for years, and as I mentioned, you know, just outreach and incentives to address the high risk uses in capture zones is already underway. And then finally, for new wells, as new wells are sited, we do have a Department policy already how to look at potential contaminating activities and siting new wells away from those. You know, you don't put a new well makai of an industrial park, right? Okay. And that's the URL on the bottom for the Department Source Protection Program. There are 12 maps that go with the ordinance. The maps, the background, a lot of just the work that went into this bill is on that subsite. Okay. I think I did that faster than 25 minutes. That's the main scope.

CHAIR SINENCI: Thank you, Ms. Blumenstein. Was there...or did we have comments from the Planning Department or the Planning Commission when this went to the Planning Commission?

MS. BLUMENSTEIN: Yes. We presented the bill to Lāna'i, Moloka'i, and the Maui Planning Commissions, and feedback was varied. I mean, you probably saw in your package, there were a couple of concerns from the Maui Planning Commission. One of them actually I would like to address. The second point that the Maui Planning Commission made, eliminate Zones B and C because they may unduly restrict development, and the questions about the County's enforcement capabilities. I would just really say that, I mean, if just to leave Zone A in, which is that 50-foot fixed radius, is not worth going through the bill to do that. Because that 50-foot zone radius, that's already that little

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

area that's within the...you know, fenced, security cameras, heavily monitored immediate area around the wells. So really, nothing else takes place there. Zone B is specifically designed to protect from microbial contamination, right, nitrates and things like that. So I really just think...it doesn't really make sense to go through the effort with a bill if we would leave out Zone B and C. That's my comment to that one.

CHAIR SINENCI: Okay. Mahalo, Ms. Blumenstein. Questions, we're opening it up for questions. I see a question from Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Blumenstein. I had two main questions. The first one has to do with I think I remember hearing something, I'm not sure if it was the Ha'ikū something about DBCP contamination back in the day, maybe from the pineapple or something. Are we no longer worried about that because DBCP has been outlawed? Or what about other types of agricultural toxic stuff?

MS. BLUMENSTEIN: Yeah, yeah. No, good question. Well, you know, so the DBCP is Dibromo chloropropane, that was one of the fumigants that we used on pineapple. And we still...it's a very persistent, like a 40-year half-life, and it's still in our aquifers. So we have wells that have that contamination since the '80s, and we have GAC treatment technology to treat...to make the water safe. But it costs a lot of money. And so that's more...

COUNCILMEMBER PALTIN: Do you mean granulated activated charcoal or something?

MS. BLUMENSTEIN: Yeah, yeah, granulated activated carbon, exactly. That's the technology for DBCP. So, I mean, those are one of those legacy pesticides that if it's already there, we're going to have to deal with it almost forever. So that comes into play more in siting new wells. Like we don't want to site a new well today smack in a pineapple field, you know, because we're probably going to have DBCP and other things.

COUNCILMEMBER PALTIN: Well, the reason I asked was I didn't see pesticide use not an allowable activity within like the 50-foot zone or Zone A, or Zone B, or C. I didn't see that pesticide use was a restricted activity. That was the reason I was asking.

MS. BLUMENSTEIN: Within the 50-foot Zone A? Oh, yeah. So the 50-foot Zone A, that prohibits any uses except just maintaining, repairing any kind of facilities that's just related to the well itself. So pretty much just Department Staff.

COUNCILMEMBER PALTIN: Oh, okay. Got it, got it.

MS. BLUMENSTEIN: Everything else would be restricted, yeah. And then what I said, that's kind of an area that's already fenced in. There's really nothing else taking place there right now, so...yeah.

COUNCILMEMBER PALTIN: Okay. And that's the main area we would be concerned with is Zone A, not such a big concern for Zone B and C?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. BLUMENSTEIN: No, what I'm saying is...it's the opposite, I feel. The Zone A, the fenced area, is sort of already taken care of. I mean, it would be really hard to contaminate that area because there's security cameras, and fence, and Staff. If the bill would just address that, I think it'd kind of be a futile effort to go through this whole exercise because it's really the larger area, the Zone B and Zone C where there is potential for future contamination if you allow, you know, other type of urban industrial uses to locate in those capture zones.

COUNCILMEMBER PALTIN: Or agriculture because...

MS. BLUMENSTEIN: Yeah, and agriculture is addressed in the bill not as an outright prohibited use, but with best management practices. So integrated pest managements is sort of the solution there, yeah.

COUNCILMEMBER PALTIN: Okay.

MS. BLUMENSTEIN: And other things like pesticide storage, secondary containment for pesticide storage.

COUNCILMEMBER PALTIN: Okay. Great, great. And then my second line of questioning was, is the main reason that we're only pursuing this bill for municipal water well source is the cost of inspection and enforcement? Because I heard Member Lee say water is a public trust, and so we wouldn't want to contaminate anybody's water, even if it's private. And I think maybe the Lāna'i Planning Commission wanted it for private sources as well. So I just was wondering possibly your main reasons for only suggesting municipal wellhead protection as opposed to...

MS. BLUMENSTEIN: Well, yeah. And again, so the context of this...it sounds strange now, but, I mean, there was so much resistance to this bill when, you know, I took this up...it's almost 20 years ago. It was very different, and it was a hard sell to...just to do some pretty basic preventive measures. And the bill is designed really with...to rely on existing Staff, the processes we have in place, and we see that it's feasible to do it the way it's designed. We know we can handle that with existing Staff. And filling vacancies or getting more money for this is...you know, that's not that easy. So that's kind of my opinion on it. It would be difficult to expand it to private systems today without completely redesigning it. It may be worthwhile to test it out. Because this is something we haven't really done before, right? We don't have an overlay district where we are collaborating with Department of Planning and...you know, there's a lot of things that we have to sort out. It could apply to private systems, but it would take a whole lot more Staff. And yeah, I just wouldn't start off with that today.

COUNCILMEMBER PALTIN: And the Staff would be for monitoring and enforcement?

MS. BLUMENSTEIN: Yeah, permitting...yeah including inspections, consulting, you know, all these BMPs rely on consulting with the...with State agencies, et cetera, and so...yeah.

COUNCILMEMBER PALTIN: Okay. I'm ready for the motion. Thank you very much. Thank

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

you, Chair.

CHAIR SINENCI: Mahalo, Member Paltin. I see Chair Lee, and then Member Molina. You're muted, Chair.

COUNCILMEMBER LEE: How many private wells do we have on the Island of Maui?

MS. BLUMENSTEIN: I don't know on top of my head, but I'm going to...if we talk potable wells, I'm going to say 100 total, maybe 60 private, potable ones.

COUNCILMEMBER LEE: 60 private, yeah. How many in Ha'ikū?

MS. BLUMENSTEIN: We have one in Ha'ikū aquifer, and potable...municipal, and this is...okay, again, not just...

COUNCILMEMBER LEE: No, no, no, I'm not talking...I'm not talking municipal, I'm talking private. I know there's a whole bunch of private ones in Ha'ikū.

MS. BLUMENSTEIN: Yeah, small domestic.

COUNCILMEMBER LEE: Yeah.

MS. BLUMENSTEIN: But again, this bill doesn't, doesn't apply to small domestic household wells. It's for public water systems only. So serving --

COUNCILMEMBER LEE: Okay.

MS. BLUMENSTEIN: -- 15 service connections for 25 people or more. So I think this...

COUNCILMEMBER LEE: Okay. My concern...my concern with that though, even though it's not addressed, I mean, affecting private wells, the fact is in Ha'ikū, there's multiple little wells affecting the aquifer. So all these little straws are concentrated kind of in the same places. Okay, now getting back to your municipal wells, are we going to be affecting a lot of existing businesses as...you know, as you expand the zones and so forth?

MS. BLUMENSTEIN: In my opinion, I think this is very benign or even lame, I mean, if you compare it to other utilities elsewhere in the nation. It is...it's really just kind of like the very basics. And we looked because of the concern about potential impacts taken on businesses.

COUNCILMEMBER LEE: And then do we have to buy...do we have to buy all those properties?

MS. BLUMENSTEIN: No, we're buying nothing.

COUNCILMEMBER LEE: Oh, we're just taking.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. BLUMENSTEIN: We're just taking...well, that's kind of like the combination of, you know, just restrict the land use as a really high risk. Pretty much anything that can be permitted with BMPs should be permitted. And again, we kind of went beyond and retrofitted...

COUNCILMEMBER LEE: You mentioned...you mentioned a lot of these areas will be fenced.

MS. BLUMENSTEIN: No, no.

COUNCILMEMBER LEE: So are we got to just...no?

MS. BLUMENSTEIN: No, only the 50-foot radius, the median area around each well, the Department already has fenced. That's kind of like the immediate protection area. So nothing else will be fenced.

COUNCILMEMBER LEE: Okay. And then...and does it take into consideration all these feral deer running around?

MS. BLUMENSTEIN: Not really.

COUNCILMEMBER LEE: Not really.

MS. BLUMENSTEIN: That's more of a surface water quality issue in terms of water quality in streams less than groundwater. So for...so microbial concerns for groundwater is more cesspools, septic tanks, nitrates. Not so much feral animal, yeah.

COUNCILMEMBER LEE: Okay. Thank you. Thank you, Chair.

CHAIR SINENCI: Okay. I think I saw Member Molina, and then Member King.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Chairman. Is the Planning Director on the line? I wanted to get...ask a couple of questions.

CHAIR SINENCI: Staff, is the Planning Director or the Deputy Director...

MS. APO TAKAYAMA: Chair, we'll contact them. Thank you.

CHAIR SINENCI: Okay. We're --

COUNCILMEMBER MOLINA: Okay. Thank you, Chair. I just have a quick question for Ms. Blumenstein from the Department. One of my questions was, I guess, answered...one that was asked by Member Paltin with regards to enforcement. So you're satisfied with the level of enforcement as mentioned in the bill, it sounds like. And another thing that I was going to ask about is the--collect my thoughts here--so are there any statistics, or data, or other components that you feel might be needed to be updated since the bill was drafted? Anything else you can see at this point, Ms. Blumenstein?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. BLUMENSTEIN: Thank you, good question. No, not in terms of the data that justify or, you know, the case studies that we looked at in terms of designing the bill. But I do think...this was last reviewed in 2018, and it refers to...well, it refers to regulated substances that are the drinking water standards. And because it just refers to the Code, the Code could have changed, but it doesn't matter because we don't have a list in the bill. But there's another list of regulated substances there called pesticides of concern that I think we would need to review with Department of Ag, Pesticide Branch, to make sure that it's...how it changed since 2018.

COUNCILMEMBER MOLINA: Okay. Thank you very much for your responses. So Chair, yeah, when the Deputy Director comes online, I'd like to ask a couple of questions. Thank you.

CHAIR SINENCI: All right. Will do, Member Molina. Member King.

COUNCILMEMBER KING: Thank you, Chair. I guess this is for Eva. Hi, Eva, again. So thanks for bringing this bill back because I remember talking about it in my first term and we (*audio interference*) but my question, when I was looking at some of the uses and the chemical contamination, I'm assuming includes fuel storage...because we're all hearing about fuel storage right now, you know what can happen with that. But in those...you showed those...the 55-gallon drums inside a second containment. Do they also have to get...would those...would that kind of storage require an NPDES permit?

MS. BLUMENSTEIN: So storage, not necessarily storage. Some, depending on the material. Because hazardous material, depending of the use, some of them, yeah, require NPDES permit. But some of those...and again, I mean, their goal is really here not to duplicate anything that's already in place. So the...our primary concern for above-ground storage of fuel or any other regulated substances is just to contain it and not have it leech into the soil and into the groundwater. So it's okay that it's there, but it needs to have an adequate secondary containment as a BMP, so...

COUNCILMEMBER KING: Okay. And isn't that something that's required anyway, I mean, or --

MS. BLUMENSTEIN: No.

COUNCILMEMBER KING: -- it would just be required if we had this wellhead protection?

MS. BLUMENSTEIN: Right. No, unfortunately, it's not.

COUNCILMEMBER KING: Because I know, you know, when I...you know, looking at the gas stations and fuel stations, they have to have NPDES permits to have their tanks, especially if they have anything above ground, and they have to have containment. So that's why...that's what made me think about that when I saw the pictures of the storage. But is that a quantity issue like...you know, you showed two 55-gallon drums, so that wouldn't need like a permit like NPDES?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. BLUMENSTEIN: Right, yeah. So it could be, you know, through...again, you know, depending what the use is, there's...most of these, if it's a chemical storage, will require some kind of a Federal permit and whatnot. But they --

COUNCILMEMBER KING: Okay.

MS. BLUMENSTEIN: -- the objective of that Federal regulation may not be groundwater protection, it could be runoff or, you know, something else. So we really just try to find the pukas, if there are any, to protect drinking water specifically. There may be all kinds of regulations in place to prevent runoff but, you know, that's not what the objective here is.

COUNCILMEMBER KING: Well, I...what...you know, it brings to mind that whole issue with the Lāhainā injection wells because that was the big issue was, you know, that the County has to get an NPDES permit, and it's to protect the ocean, the...you know, the water that we're injecting into the ocean, and have a plan for stopping that. So if that...you know, just kind of related that whole issue to me and the...what I've always heard before was the complaints from the County's side was oh, they don't want to get that permit, it's too hard to get that permit. But, you know, my experience, it's really not that hard. And then when we talk to people like Robin Knox, it doesn't seem like that egregious. But...and so that's why I was wondering if they have to do it for that kind of storage around a wellhead too, if they have those kinds of permits that are required. I mean, they have so many...

MS. BLUMENSTEIN: So no, no. Not specifically because it's close to a drinking water well. But, you know, say that there's a new gas station proposed in a capture zone. Yes, it would probably require a secondary containment for other reasons because of the volume of fuel they store. But it's not specifically to protect the well down gradient of it, so...

COUNCILMEMBER KING: What is it protecting? Is it protecting against like explosions, or is...that kind of damage, you know, some kind of...

MS. BLUMENSTEIN: Typically runoff, yeah.

COUNCILMEMBER KING: Runoff.

MS. BLUMENSTEIN: A lot of the existing regulation and for SMA permits and whatnot is addressing runoff --

COUNCILMEMBER KING: Oh, okay.

MS. BLUMENSTEIN: -- coastal zone protection.

COUNCILMEMBER KING: So eventually that it would find its way into the ocean or something?

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

MS. BLUMENSTEIN: Among other concerns, yeah.

COUNCILMEMBER KING: Okay. Okay. Thank you. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member King. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, Ms. Blumenstein, for your presentation. Oh, sorry. In the bill, or in our Code, is wellhead defined anywhere? Because it's not defined in the bill itself.

MS. BLUMENSTEIN: It's not currently defined in Title 19. I think we...we just defined...the ordinance establishes zoning overlay district to be known as a Wellhead Protection Overlay District, WPOD. You're asking if wellhead is defined? No, I don't think it is. We just defined the Wellhead Protection Overlay District, which includes the zoning district consisting of the surface and subsurface areas surrounding a water well or well field, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for your response to that question, Ms. Blumenstein. The second question is regarding the definition of overlay district. Is that defined anywhere in our Code, and should it be defined in the bill?

MS. BLUMENSTEIN: Overlay district...it's just under the same definition, yeah, Wellhead Protection Overlay District, just the zoning district consisting of the surface subsurface areas. So overlay district is not defined, per se, but as part of the Wellhead Protection Overlay District.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Blumenstein. I see Ms. Chen, Chair. Is it okay if I ask Ms. Chen for any comments?

CHAIR SINENCI: Go ahead, Ms. Chen.

MS. CHEN: Oh, thanks. So it actually is the overlay district, the overlay district is defined in Title 2. I can pull up the exact citation for you in just a moment.

COUNCILMEMBER RAWLINS-FERNANDEZ: While you're pulling that up, would that apply to this bill appropriately? Because if it does, then I'm just...that's all my question is.

MS. CHEN: I think so. We're looking at it in another context separately from this bill. So that's how...that's why I'm aware of it already being defined in the Code. And I think it would apply. But I also think it's within the Committee's prerogative to specifically reference it or restate it, you know, if the Committee thinks it advisable to do so. But I think it would apply.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. What section is that again? You said Section 2?

MS. CHEN: Yeah, it's in Title 2. I just need to get the exact...

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. We can come back to that, or you can put it in the chat.

MS. CHEN: And I can put it in the...I'll put it in the chat for you, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Okay. And then I just have two more questions, Chair.

CHAIR SINENCI: Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Ms. Blumenstein, so your recommendation is that any potentially harmful or high-risk practices and activities that are in Zone B and C be allowed to continue?

MS. BLUMENSTEIN: So...

COUNCILMEMBER RAWLINS-FERNANDEZ: Is there a reason that we're...or would you be able to explain a bit more why your recommendation is that?

MS. BLUMENSTEIN: Yeah. At the time when the draft bill was reviewed by Planning Department and legal counsel, most bills for...to amend Title 19 would grandfather in existing uses. So that was the recommendation, to follow that. I'm not really...I'd probably refer to Ms. Chen if that has changed, you know, in the last few years. But that was just the rationale, to follow the practice of grandfathering in existing uses when there's Zoning Code changes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So I guess the question would be for Corporation Counsel. Ms. Chen, would it not be appropriate to set a time limit to require that harmful or high-risk practices and activities be phased out instead of just allowing them to indefinitely continue?

MS. CHEN: Well, you know, I reviewed the bill as it's drafted right now and, you know, that language is in line with our recommendations based on traditional law principles. So I'd have to look into that more specifically on the phasing out. But of course, there's been a recurring discussion with other (*audio interference*) consideration. I'd have to look into that more specifically. Thanks for the question.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Chen. I don't know if, Ms. Blumenstein, you have, or if anyone has, information on what kind of harmful and high-risk practices and activities are...would be allowed to continue. And if you don't have that answer right now...

MS. BLUMENSTEIN: Yeah, no, that's fine. I mean, we did...not on top of my head, but we did do a thorough inventory of all existing and even historic uses in capture zones to kind of gauge what would be the impact on those businesses, both from potential challenges, you know, takings; cost is something we need to address up front to retrofit, you know,

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

so some of those above-ground storage fuel tanks have actually been equipped with secondary containment that they were already there. So just on top of my head, I mean, we're so fortunate on Maui we do not have giant industrial parks in our capture zones, right? I mean, they're more ag rural areas. So we try to address the few ones that are there up front before regulations are in place. But we can certainly update you with, you know, what we had, the inventory we did at the time that breaks down each individual potential contaminating activity by Zone B and C.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Blumenstein. And then my last question is regarding, you know, not including private wellheads at this time. You said that it would require more Staff than you have currently. Do you have an idea of how much Staff you would need in order to have the capacity to do that work?

MS. BLUMENSTEIN: Well, we...because there was concern at the time to not extend this further, it will...you know, we looked at what would it take for us to manage this in house considering wellhead protection...administering wellhead protection permits, inspections, and whatnot. So we, you know, estimated a number of permits that we would see based on zoning in each capture zone and whatnot. So we haven't looked at the extent looking at all the privately owned public water system and what that would entail. But we did gauge, you know, that we would have barely the capacity to cover our own municipal wells to start off. So it's not that it's not a priority, it was really just the how feasible it would be to administer and enforce the bill, maybe as kind of a start to see if this will work out. Because we never really done anything like this, like an overlay district that's with an administrative permit by the Water Department. It's just a new animal for us.

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

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. And Member Molina, I believe that Staff has notified me that they weren't able to reach the Planning Department, although we did request their presence today...at today's meeting.

COUNCILMEMBER MOLINA: Okay. Yeah, no problem, Chair. These questions can wait, and I know it's getting late, and pretty soon time to wrap up. So at some other point maybe we can send a request maybe through...under your signature, to respond to a couple other questions that I had. Anyway, but thank you for trying. So I'll hold off any more questions. So I'm ready for your recommendation. Thank you.

CHAIR SINENCI: Yeah, and thank you, Member Molina. So Members, the most current bill that was...that was sent to the Planning Commission and that we're discussing today was attached to Resolution 18-149. And so that said, we don't have the bill pending in our Committee, and posted the item for no legislative action today. And so we're hoping to...we just wanted to receive an update from the Department, and then maybe work on some...some revisions, and bring this back to the Committee at a later meeting date if that's okay with you.

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES

Council of the County of Maui

January 04, 2022

ITEM 16: WELLHEAD PROTECTION OVERLAY DISTRICT (CC 15-50)

COUNCILMEMBERS VOICED NO OBJECTIONS

ACTION: DEFER pending further discussion.

CHAIR SINENCI: Okay. With that, Members, that brings us to the end of our calendar today. Staff, is there anything else that we missed before we adjourn the meeting?

MS. APO TAKAYAMA: Chair, there's nothing further before the Committee. Thank you.

CHAIR SINENCI: Okay. Yeah, I've got some angry animals over here. With that, the APT Committee meeting of Tuesday, January 4, 2022, is now adjourned. . . .(gavel). . .

ADJOURN: 4:30 p.m.

APPROVED:



SHANE M. SINENCI, Chair
Agriculture and Public Trust Committee

apt:min:mt

Transcribed by: Marie Tesoro

AGRICULTURE AND PUBLIC TRUST COMMITTEE MINUTES
Council of the County of Maui

January 04, 2022

CERTIFICATION

I, Marie Tesoro, hereby certify that pages 1 through 47 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 1st day of February 2022, in Wailuku, Hawai'i

A handwritten signature in dark ink, appearing to read "Marie Tesoro", written over a horizontal line.

Marie Tesoro