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

Chair and Members:

Your Water Resources Committee, having met on June 1, 2010, June 15, 2010, and June 29, 2010, makes reference to the following:

1. County Communication No. 05-46, from former Councilmember Michelle Anderson, relating to the rules and governing policies of the Department of Water Supply (Department); and

2. Committee Report No. 10-43, from your Water Resources Committee, recommending that a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING SECTION 14.01.040, MAUI COUNTY CODE, TO ADD A DEFINITION FOR AGRICULTURAL CONSUMER” be passed on first reading and be ordered to print. The purpose of the proposed bill is to add a definition for “agricultural consumer” to Article 1, Title 14 (County Water Code).

Your Committee notes that at the Council meeting of March 19, 2010, the Council recommitted Committee Report No. 10-43.

After considering the testimonies from concerned farmers and other individuals, your Committee determined that further consideration must be given to the $10,000 minimum gross annual income requirement, farm operations that do not meet the minimum gross annual income requirement, nonprofit organizations that grow and donate food and have no minimum gross annual income, and long-term farming operations that may not realize an income for many years.

Your Committee recommended that the proposed bill be revised to: (1) reduce the gross annual income requirement from $10,000 to $1,000; (2) define a “community garden” to mean a parcel that has a minimum lot size of 22,000 square feet, which is actively cultivated and engaged in crop production collectively by a group of at least 15 participants; and allow a parcel owner, lessee, or licensee of a community garden to qualify to receive agricultural water rates; (3) allow nonprofit organizations whose annual
agricultural charitable donations are at least $1,000 to qualify to receive agricultural water rates; (4) require that specific documentation be attached when a consumer submits an agricultural water rates application to the Department; and (5) add a waiver provision for consumers who do not meet the income requirement for a given year, because they have new agricultural operations that do not produce annually, or because their operations have been compromised due to events or acts of force majeure (extraordinary acts of nature or persons beyond the consumers’ control).

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of Committee Report No. 10-43. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Kaho‘olahala, Mateo, Medeiros, and Molina voted “aye”.

Your Committee is in receipt of a revised proposed bill, entitled “A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS”, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s recommended revisions.

Your Water Resources Committee RECOMMENDS the following:

1. That Bill No. (2010), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS” be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That Committee Report No. 10-43 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.

MICHAEL P. VICTORINO, Chair
ORDINANCE NO. ____________

BILL NO. ____________ (2010)

A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 14.01.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Agricultural consumer" means a consumer that actively engages in crop production, livestock raising, dairy farming, or aquaculture for commercial production, and whose minimum gross annual income from such activities is $1,000.

"Community garden" means a parcel of land with a minimum lot size of 22,000 square feet, which is actively cultivated and engaged in crop production collectively by a group of no less than 15 people."

SECTION 2. Section 14.10.010, Maui County Code, is amended by amending subsection B to read as follows:

"B. Agricultural consumers may qualify for agricultural water rates. Each consumer requesting an agricultural rate for water service shall submit an annual written application [and supply an authorization for the department to obtain a copy of the state's excise tax form G-45 or the federal internal revenue service's schedule F or other federal internal revenue forms showing the consumer's farm income. Existing lands with agricultural rate shall continue with that agricultural rate until the farm income use does not qualify for the agricultural rate.] to the department attaching the following documentation, if applicable, regarding their product or service:
1. A copy of the consumer's filed State of Hawaii, Department of Taxation, General Excise, Use Tax Return, Form G-45, for the period preceding the date of application;

2. A copy of the consumer's filed Internal Revenue Service, Profit or Loss From Farming Schedule F; and

3. A description of the commercial agricultural operation that includes:
   a. The type of commercial operation;
   b. The anticipated monthly water usage;
   c. The age of the crop or stock, if applicable;
   d. A five-year timeline of projected annual gross income; and
   e. A site plan demarcating the commercial agricultural operation, landscaping, grassy areas, dwellings and other structures, and irrigation system.

SECTION 3. Chapter 14.10, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"14.10.015 Waiver. A. Consumers who are actively engaged in crop production, livestock raising, dairy farming, or aquaculture for commercial food production, but do not meet the minimum gross annual income requirement to qualify as an agricultural consumer for a given year, because their crop, stock or service did not harvest or produce for that given year, may request a waiver of the income requirement for that year from the director. If approved by the director, the same consumer may request further waivers of the income requirement for up to two more consecutive years.

B. Agricultural consumers who receive agricultural water rates but do not meet the minimum gross annual income requirement due to events or acts of force majeure may request a waiver of the income requirement for a period of one year from the director.
C. A nonprofit organization may qualify for agricultural water rates for a given year by submitting an annual written application to the director, with a copy of a filed Internal Revenue Service, Exempt Organization Business Income Tax Return, Form 990-T, showing the organization's annual agricultural charitable donations to be at least $1,000.

D. The parcel owner or the owner's lessee or licensee of a community garden may qualify for agricultural water rates by submitting an annual written application to the director, with the following information and documentation:
   1. The type or types of agricultural operations; and
   2. A site plan demarcating the agricultural operations of each person."

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui