

# WATER RESOURCES COMMITTEE

Council of the County of Maui

## MINUTES

September 17, 2014

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:06 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Donald G. Couch, Jr.  
Councilmember Stacy Crivello

**EXCUSED:** VOTING MEMBERS:

Councilmember Mike White, Vice-Chair  
Councilmember Don S. Guzman

**STAFF:** Kimberley Willenbrink, Legislative Analyst  
Raynette Yap, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** Paul J. Meyer, Deputy Director, Department of Water Supply  
Helene Kau, Assistant Waterworks Fiscal Officer  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

**PRESS:** *Akaku Maui County Community Television, Inc.*

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CHAIR VICTORINO: ...*(gavel)*... Good morning. The Water Resources Committee meeting for September 17, 2014 will come to order. I am the Chair Mike Victorino, and I'd like to welcome everyone here this morning. Let me introduce the members of the Committee that are present. Excused today will be the Vice-Chair Mike White, but here is our lovely young lady from the Upcountry area, our Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. Also from South Maui the good looking gentleman, Mr. Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

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CHAIR VICTORINO: Good morning. And the pretty young lady from Molokai, Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR VICTORINO: Good morning. Excused at this time is Robert Carroll, the Vice-Chair of the Council and also Don Guzman. Representing the Administration this morning is the Deputy Director of Water Supply, Mr. Paul Meyer. And also here from the Corporation Counsel, Deputy Corporation Counsel Richelle Thompson...Thomas...Thomson. I said Thomson, Thomson. And also here from the Department is Helene Kau from the Department of Water Supply. Thank you for being here. Our invaluable Staff, our Committee Staff Kim Willenbrink, our Legislative Analyst.

MS. WILLENBRINK: Good morning.

CHAIR VICTORINO: Good morning. And Raynette Yap, our Committee Secretary.

MS. YAP: Good morning.

CHAIR VICTORINO: And without them nothing gets done so thank you, ladies, for being here. Are we connected to the...I don't think we connected, yeah? Okay, now we are. At this time I'd like to check in with our District Offices starting with Hana. Dawn Lono, are you there?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR VICTORINO: Good morning, Dawn. Thank you. And from our Lanai Office, Denise Fernandez. Denise, are you there?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR VICTORINO: Good morning. And from our Molokai Office Ms. Ella Alcon. Ella, are you there?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR VICTORINO: Good morning, ladies, and thank you for being there. Today we just have one...oh, before we start that I will ask everyone to please turn off their cell phones or put it on silent or other methods. I'd like to have no interruptions if we can. Decorum will be followed in the Council Chambers. Today, we only have one item, and that one item is WR-21, Waiver of Minimum Gross Income Requirement for Agricultural Water Rates, okay. Let me see. I don't see anyone here ready...willing to testify in the Chamber. Do we have anyone that wants to testify, Raynette?

MS. YAP: No, Chair.

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CHAIR VICTORINO: None. Let me check with the District Offices if I may. Dawn, is there anyone in Hana that would like to testify?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR VICTORINO: Mahalo. Denise, anyone want to testify in the Lanai Office?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR VICTORINO: Mahalo. And, Ella, is there anyone wanting to testify in the Molokai Office?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR VICTORINO: With that in mind and seeing no one in the Chamber, with no objections, I will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Okay, got it. I think they're hanging up anyhow so I put it on mute.

**ITEM WR-21: WAIVER OF MINIMUM GROSS INCOME REQUIREMENT FOR AGRICULTURAL WATER RATES (CC 14-217)**

CHAIR VICTORINO: Okay, as I stated earlier we just have one item today, WR-21. If you all remember at the last meeting we had a pretty lengthy discussion and I was asked by the Committee to work on some what I call suggestions and maybe expanding the waiver for income and as well as agricultural consumers so that they can have a longer period of time especially when they're bringing in or raising specialty crops or specialty flowers. So with that in mind we did meet with the Director and he's not here today, Mr. Taylor, and some suggestions were put together. But I want to qualify today by saying two things. First of all we will be done at 10:45 and no later than 10:45. I have a doctor's appointment with my cardiologist this morning and I cannot miss it. And we have bare quorum, so if you need to have any needs, personal needs to be met please raise your hand and let me know so then I can take a quick recess. And so I'm hopeful that we will be able to accomplish and get this completed today. If not, then this item will move forward to our very next meeting and have it completed at our next meeting. That's my hope, you know, and let's see how this works out. At this time would you pass out the revised, please, if you would do that for the Members. And let the record show the presence of our Vice-Chair of the Council, Mr. Robert Carroll. Good morning, mister...

COUNCILMEMBER CARROLL: Good morning, Chair.

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CHAIR VICTORINO: Good morning, Mr. Carroll. Well now we don't have just bare quorum anymore. Thank you. And I'll give everybody a couple of minutes to take a look at it. Mr. Meyer, you...oh, you got a copy, right? Yeah.

MS. WILLENBRINK: Do you have your copy, Chair?

CHAIR VICTORINO: Yeah, I do have my copy. Thank you. And also I made sure that you all got the Chapter 14.10 Water Rates and Fees and the various sections accompanying it. From Pages 1 to 3 you have a copy. It should be in your binder so that you have that available also for reference. Okay. Let me start by saying that we took a look at a number of issues and again Mr. Taylor and I felt that we're trying to expand and make this as equitable as possible for those farmers, especially who grow different types of crops like coffee and others that take more than a year or two to mature and be ready for harvest. And I think, you know, this was one part of it, the other part was the fact that in many areas people have downtime for their fields. Certain fields are put to rest for a year, sometimes maybe longer so that they can rejuvenate the soil and be prepared for the next planting. So with all that in mind we wanted to make sure that the Department had a clear understanding of what the intent of this bill was, is to make sure that whenever a crop is harvestable is the timeframe that we were looking at, and that's what this whole bill was all about. This section of the bill, I should...I apologize, this section of the bill. And so at this point, Mr. Meyer, do you have any questions? I hope Mr. Taylor did have a chance to review this with you, but if not, then if you do have any statement or questions?

MR. MEYER: I did speak with the Director yesterday at length about this. This is substantially different than what we discussed because it's a mandatory granting of waiver which is not contemplated, at least according to what the Director told me. And secondly, it doesn't mention some of the other requirements, for example 51 percent of the land area actively being cultivated that were conditions for the granting of a waiver.

CHAIR VICTORINO: Uh-huh, okay. Okay. In fact if you, Mr. Meyer, if you look on the first section about...and Section A, about halfway down we remove "may request" and, you know, we put "shall be granted a waiver of income upon request for the year from the Director". So and "if approved the Director and the same consumer shall be granted such waivers of the income requirement upon request for up to two consecutive". In other words they've put the Director back in there, right? You see that?

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR VICTORINO: Yes?

COUNCILMEMBER COUCH: The way...and maybe we can have Corp. Counsel look at this. The way it seems to me is that they, the, there is no discretion at the Director. The Director will, if it's requested the Director will, must grant it, and I believe they're looking for just a little bit of discretion.

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CHAIR VICTORINO: Okay, I'll ask Corporation Counsel to interpret, please.

MS. THOMSON: Thank you, Chair. Yes, that's the way that I would read it also is that at least that first year would be mandatory on consumer request as drafted.

CHAIR VICTORINO: Okay.

MS. THOMSON: And it's possible I think actually the second part of it, the last part of Section A "if approved by the Director the same consumer shall be granted further waivers of the income requirement upon request for up to two more consecutive years." It's ambiguous as to whether the Director does or doesn't have discretion as to those further waivers. And I think if you want to make the initial year mandatory, a mandatory waiver that you'd need to clarify that that only applies to the initial year and not to any other years.

CHAIR VICTORINO: Okay, alright. Okay, I understand what you're trying...so in other words what you would be suggesting is "shall be granted" should be changed. In B, in Section B "shall" be changed to "may". Is that what you're referring to?

MS. THOMSON: Right, that the...if the intent is to make the initial waiver nondiscretionary by the Director, you know, you could leave that first "shall be granted" in, and then the last sentence you may want to...if you want the Director to have discretion as to further income waivers then you might want to leave in the "may request" and "may be granted" so that the Director has discretion.

CHAIR VICTORINO: Okay. Okay, we could make that change under Part B. That, I could make that change under Part B. Okay, questions for the Department? Anything else, Mr. Meyer, before I turn it over to the Members?

MR. MEYER: Yes. Generally, as the Director and I discussed yesterday and I had thought he discussed with you, we would strongly prefer clear and objective criteria. As you know, almost half of the water we deliver Upcountry at a cost of over \$5 per 1,000 gallons is delivered under ag rates which are \$1 per 1,000 gallons, so that means the rest of the citizens of Maui are supporting these. It's certainly a valuable issue and something the Department strongly supports, but we would like to make sure that to the extent we can that we have clear criteria so there's no ambiguity. This is such a valuable thing to have ag water rates that we would like to make sure that we have clear criteria from the Council in applying these so that disputes and issues, arguments and appeals are not forthcoming. And it is a, it's a difficult area and in, especially in terms of the waivers. They're really, we would appreciate clear guidelines for the conditions under which a waiver can be granted because it's, it gets awfully foggy sometimes.

CHAIR VICTORINO: Okay. Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, I'd like to make a request. You know we're looking at the proposed changes and there are people that are watching this, I know,

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who are very concerned that cannot be here. I would request that we read the whole thing and incorporate --

CHAIR VICTORINO: Ms. Willenbrink.

COUNCILMEMBER BAISA: --the changes as we go, please.

CHAIR VICTORINO: Yeah. Ms. Willenbrink, will you read the entire, this portion, please.

MS. WILLENBRINK: Yes, Chair. Do you want me to include the "may be granted" . . . *(inaudible)* . . .

CHAIR VICTORINO: No, no, just read it as it is right now and then we...any incorporated changes then we'll, you know, I don't want to read it, that, yeah, the way it is presented I should say, yes.

MS. WILLENBRINK: Thank you, Chair. Agricultural consumers who are actively engaged in 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 stock or service did not produce for that given year, shall be granted a waiver of the income requirement, upon request, for that year from the Director. If approved by the Director, the same consumer shall be granted further waivers of the income requirement, upon request, for up to two more consecutive years. And we've added a B. Agricultural consumers who are actively engaged in crop production 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 did not harvest for that given year, shall be granted a waiver of the income requirement, upon request, for that year. If approved by the Director, the same consumer shall be granted further waivers of the income requirement, upon request, as follows: No. 1. Up to two more consecutive years for agricultural consumers whose crops are harvestable annually or biennially. No. 2. Up to five more consecutive years for agricultural consumers whose crops are harvestable only from more than two years up to five years. And No. 3. Up to nine more consecutive years for agricultural consumers engaged in crop production whose crops are only harvestable from more than five years.

CHAIR VICTORINO: Thank you. And that's how it was presented. I, you know, no changes were made, and we'll be discussing the changes. So questions off of this?

COUNCILMEMBER BAISA: So now let's start with A --

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: --and let's read it with the changes that we are talking about, the "mays".

MS. WILLENBRINK: Okay. Agricultural consumers who are actively engaged in 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

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their stock or service did not produce for that given year, shall be granted a waiver of the income requirement, upon request, for that year from the Director. If approved by the Director, the same consumer may be granted further waivers of the income requirement, upon request, for up to two more consecutive years.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: That's A.

COUNCILMEMBER BAISA: Following up, Mr. Chair.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: Okay. As I understand this, this is specific to people that are engaged in livestock raising, dairy farming, or aquaculture but they don't meet the income standard. Okay. This part underneath where we talk about extending it two more years, five more years, nine more years, does not apply to A?

MS. WILLENBRINK: That is correct.

COUNCILMEMBER BAISA: Okay. Let me tell you, I received a testimony and unfortunately I can't find it and it's not in our binders, but the gist of it was a livestock farmer who decides that he's going to start raising cattle for, you know, for sale. So now he has to find a piece of land and he has to fence it and he has to bring in, you know, the water troughs and whatever it is he needs to do. Then he needs to get stock and he needs to breed that stock, and he has to wait until they give birth. And then he has to grow them to a certain point and grow them a little bit more, so this whole process might take about six or seven years. Would they have this kind of leeway or not?

CHAIR VICTORINO: Under the way, the way it's set up, one, two, and three would give, especially three would give them that leeway.

MS. WILLENBRINK: Chair?

COUNCILMEMBER BAISA: No.

MS. WILLENBRINK: One, two, and three apply to crops.

COUNCILMEMBER BAISA: Not the way I read it.

MS. WILLENBRINK: Crop production.

CHAIR VICTORINO: Oh, it doesn't apply to A?

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MS. WILLENBRINK: No. What we did was we pulled “crop production” out of A and placed it into B because it was about harvestable crops was the concern at the last meeting, and left A as is.

CHAIR VICTORINO: So two years.

MS. WILLENBRINK: So if you wanted livestock in there you would need to pull it out also and put it into the B section.

CHAIR VICTORINO: Yeah, ‘cause that was from William Jacintho. Yeah.

COUNCILMEMBER BAISA: Correct.

CHAIR VICTORINO: I remember getting the same one.

COUNCILMEMBER BAISA: And so I don’t want...

CHAIR VICTORINO: I got the same one from him.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: Yeah, so I have it here. And he’s concerned, yeah, exactly --

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: --what we were talking about, he’s very concerned that it takes longer to get, you know, because you’ve got to do all these initial steps just to get started. And so that was one of his concerns for the livestock industry. And I had assumed that this all went together. So why cannot, why can’t we add this, one, two, and three to A? Is there a problem? Especially when we’re saying “may”.

MS. WILLENBRINK: We can. We can keep it all together if you would like one, two, and three to apply to livestock raising, dairy farming, or aquaculture also.

CHAIR VICTORINO: Well I think so. I did not realize, I thought A and B was connectable to one, two, and three, so I apologize for that misunderstanding.

COUNCILMEMBER BAISA: That was my concern, Chair, when I read it, I wanted us to really understand because I don’t want to hurt the cattle farmers.

CHAIR VICTORINO: Oh no, exactly, and I agree wholeheartedly.

COUNCILMEMBER BAISA: And it could also be sheep, it could be goats, I mean it could be anything, we have a lot of those Upcountry.

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CHAIR VICTORINO: Well we get goats right over here, I get sheep --

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: --right up in this area right here, so yes, I understand completely. So, Mr. Meyer, you know, I'm going to ask you, you know, we, you know, again I apologize. I thought all A and B connected with one, two, and three, but I am told differently. With those concerns if we were to add...and again we're changing the word from "shall" to "may" so now mister or the Director, whoever he or she may be has that discretion, but it will also make sure that livestock, especially livestock dairy...all of these do take an extended waiting...extensive period of time to get started. So do you see that as a problem for those industries, Mr. Meyer?

MR. MEYER: It does appear that you're putting the Department in the position of trying to evaluate the pre-productive period for the crop that anyone may want to grow, and while we have a number of people who've been involved in agriculture for many years, that's a very difficult position to put the water utility in to determine what is a pre-productive period, what is an appropriate casualty event, what is an appropriate disease condition that may prevent a crop from being harvested when there can be many, many other reasons. And it's a very difficult kind of position, especially when you make it mandatory and the Director does not have discretion. So it, there is a concern there. As expressed we would like as best we can to have a very objective criteria, and we also would like to try to do our best to make sure that the Water Department is run efficiently and the people of Maui are best served. And we would hate to see water be used inappropriately.

CHAIR VICTORINO: Well I understand what you're saying, and I'll recognize you in one moment, Ms. Baisa. But, you know, again, you're saying first of all give the Director some discretion then you come back and say be clear and concise in what you want the Director to rule on or to be able to decide on. And so you tell me take "shall" out, put "may" in, okay, that's giving you discretion. Then on the same token you're saying that, you know, this may not be...you want more clear definition on what agriculture or what would qualify. I guess that's what you're asking me. And so I'm getting a little confused because I was at a meeting last night with farmers and they are just barely surviving. Livestock is barely surviving. And, you know, I understand it costs more to produce water than we charge them, but then they provide an invaluable service. If we don't have food and we talk about sustainability and we talk about all these issues and then in the same token we say it costs us more to produce water for these farmers than they pay, well obviously something has to give here, and I'm trying to say at this point I want to help these farmers. Yeah, I understand about gentlemen farmers and gentlemen estates and all that, okay, that's not what we're talking about. We're talking true agricultural commercial, and we're hoping to get something that will mean something to these farmers, something that will be for livestock, for agricultural production, food production, and fauna. Because you can't leave that out, that is an integral part of agricultural system. Anyhow, I've said enough. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. I agree very much with you. And I understand the Department's position. Of course they would much prefer that we said okay, only

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if you're growing this you're entitled to an exemption, only if you're growing that or whatever. But I think unfortunately we can give guidelines but some discretion is always going to be required. It's like, you know, we say you have to make us an inspection, you have to go to the farm and tell us yes or no. So unfortunately unless we have somebody else who has that responsibility and we've been hearing interesting things in the community like we heard last night, and they said well maybe we need a department of ag in the County, at least one person or more, you know, a department that goes and looks into these kinds of things. But I want to be sure that if we're going to give breaks that we give breaks to the right kinds of things. You know for me food production is where the big breaks should really come because we need to eat, and yes, we want to give all agriculture, you know, a break because we want all the things that ag produces. We want nice trees and we want nice plants and we want all those things, but if we're going to give priority or we're going to do guidelines I want to make sure that we don't exclude people that are growing food. Because without food we're all in trouble, guys. The sustainability thing just went down the road. So I think, Mr. Chair, that either we bring this all together because to separate it now doesn't work for me, because, you know, we need to take care of these people that are in A as well they could easily be served in B. Also, I want to make sure that, you know, we don't hurt the food producers. If we're going to give subsidy and we're going to be concerned about all the money we spend, I want to put that money on food, because we need to eat first and then we can aesthetically enjoy all the rest of it. But we gotta eat. Thank you.

CHAIR VICTORINO: So and to put it under the food category, eat. Would coffee be considered?

COUNCILMEMBER BAISA: Yes. Well...

CHAIR VICTORINO: Okay, no, I'm asking that question now, you put the food --

COUNCILMEMBER BAISA: Correct.

CHAIR VICTORINO: --part. Is Coffee a staple or is coffee like fauna and others? Okay, now there's...and then we can go on with others. So I'm trying to find that happy medium where you say food and I agree with you; however --

COUNCILMEMBER BAISA: What is food?

CHAIR VICTORINO: --where does food stop?

COUNCILMEMBER BAISA: What is food? Maybe we need a definition.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Well, you know, for people like me who get up in the morning and want to smell the coffee, I think it's essential. I think it really depends on, you know, your individual things, but...

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CHAIR VICTORINO: And I apologize for getting...

COUNCILMEMBER BAISA: No, it's true, it sounds like we need some definitions here. This is not as simple as it sounds. It never is.

CHAIR VICTORINO: Yeah, okay. Thank you. And I'm glad because I wanted the public to see that when we're talking food there is beyond just what I call staple food...

COUNCILMEMBER BAISA: What about chocolate?

CHAIR VICTORINO: There you go.

COUNCILMEMBER BAISA: I like that, that's food.

CHAIR VICTORINO: There you go. There you go. Department, Helene, do you have something you want to say?

MS. KAU: Yes, sir.

CHAIR VICTORINO: Okay.

MS. KAU: I think if I get back to Ms. Baisa's request, you could combine both --

CHAIR VICTORINO: Yes.

MS. KAU: --and if we get back to what Deputy Director had mentioned in his opening comments, 51 percent is fairly easy to discern from an inspector standpoint. If I can see that more than half your yard is tilled, there is something planted, half your yard, half of your usable area, 51 percent, little more than half is dedicated to some agricultural purpose, you're trying to grow something, then it's fairly clear and it's objective to us. And on top of that as Deputy Director said, you could also apply an income requirement as it exists now. Fifty one percent of the usable land dedicated to ag or \$1,000 in income which is fairly minimal.

COUNCILMEMBER BAISA: That would be "or".

MS. KAU: Or. But that way if your crop, you have a bad year, I can still see that 51 percent of your land is dedicated to that purpose, you're trying, but it's visible. I can't tell if your crop is two-year crop, five-year crop, et cetera, but I can see that you're trying, I can see, you know, and I...we believe that that would be fairly equitable and fairly easy to administer.

CHAIR VICTORINO: Okay, okay. You know I know that's been bantered about, you know, about that 51 percent. You know I don't particularly like 51 percent because I want 51 percent of the usable. You know usable, the word "usable" has to be in there, and then we gotta define usable.

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COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Okay. Because Maliko Gulch, Sydney Smith guys, they use the cliffs to grow coffee, but there's other crops you could never grow on a cliff so what do you do then? Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And yeah, I agree with you on the 51 percent, that's a very difficult, another fine line to talk...to walk. But what, you know, Ms. Baisa brought up something that we did hear last night about a whole department of ag which that's --

CHAIR VICTORINO: That's another issue...

COUNCILMEMBER COUCH: --takes a long time.

CHAIR VICTORINO: Yeah, yeah. We...

COUNCILMEMBER COUCH: However, can't we work with them, have them work...we do have an Ag Coordinator from the OED who is an agricultural specialist, somehow work that, add another position possibly there. Have them work with another department. Because they're right...

CHAIR VICTORINO: That's not our call, that would be the Administration's call.

COUNCILMEMBER COUCH: Well but we could, we can write it into a law saying they'll work with somebody that is an agricultural expert, because they're not agricultural experts --

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER COUCH: --at all and I agree with them. And 51 percent of usable, what if, you know, some crop rotation kind of thing where they let the field go fallow for a couple of years to rest the field, does that count as, you know, and that's over 51 percent but the other field is working fine. You know those kind of things --

CHAIR VICTORINO: Yeah, no...

COUNCILMEMBER COUCH: --somebody who's an ag expert can say yes, they're doing ag, give them the ag rates. Some...and no they're not, you know. And I understand the 51 percent is more for the 2-acre lot kind of things. What if you got these 1,000-acre lots that you're not gonna use 100 percent of them all the time.

CHAIR VICTORINO: Not even...yeah --

COUNCILMEMBER COUCH: Yeah.

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CHAIR VICTORINO: --not even 51 percent.

COUNCILMEMBER COUCH: So that's why I'm...

CHAIR VICTORINO: Yes, Ms. Helene.

MS. KAU: Thank you, Chair and Mr. Couch. Could be 51 percent or \$1,000 in income. "Or", not "and", "or".

COUNCILMEMBER COUCH: What about a Schedule F? If they file a Schedule F with the IRS that's basically a farming schedule whether they make money or lose money. Has anybody discussed that whole thing? And if somebody's going to lie to the IRS, you know, if you're concerned about a lie...

CHAIR VICTORINO: It's in the ordinance already.

COUNCILMEMBER COUCH: Huh?

CHAIR VICTORINO: It's in the ordinance. If you read No. 2, "a copy of the consumer's filed IRS Profit and Loss Farming statement Schedule F". No. 2 under B.

COUNCILMEMBER COUCH: Okay, so why can't we just use that? Why do we have to have \$1,000? I mean there, you know.

CHAIR VICTORINO: Oh...

COUNCILMEMBER COUCH: Why do we have to have a dollar amount? If they're filing a Schedule F that means that they're declaring that their farming with the Federal government and you know if you mess with the IRS they're going to come after you anyway. I think that's a declaration that says hey, we're doing, we're attempting to do farming.

CHAIR VICTORINO: Well I think we went through this, Ms. Baisa and I for a couple of years and they came to the conclusion...and actually the \$1,000 was actually the national average from the farm...

COUNCILMEMBER BAISA: USDA.

CHAIR VICTORINO: USDA. That came from the USDA. We did take the Federal standards and matched it with us. So we tried to incorporate everything that the USDA and the IRS and all the other Federal agencies did so that we would not be challenged in court saying that we exceeded or didn't follow the guidelines. So it's all part of this already. What we were trying to do is again for extenuating crops that grow or take time to grow, when we had put originally in we had said two years, two-year extension. Okay. Thinking that oh, that would be enough, but we have others like coffee and other crops that take more than two years and this is what this was to

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address. So I'm willing to put in another line if that's what you would like and put down \$1,000 in income or 51 percent of the usable acreage or usable part of the property. But I still like to have the timelines to give people an opportunity. That's my concern. If something is taking longer, and I agree with you, Mr. Couch, maybe that's something that we gotta ask the Administration to look at, a department of agriculture within the County. I mean we are like you heard last night --

COUNCILMEMBER COUCH: Uh-huh.

CHAIR VICTORINO: --we produce a lot of food --

COUNCILMEMBER COUCH: Uh-huh.

CHAIR VICTORINO: --and a lot of crops right here in Maui County.

COUNCILMEMBER BAISA: And it's our heritage.

CHAIR VICTORINO: Yeah, and it's our heritage and all these et ceteras, but more importantly I just want to make sure that we're trying to help those who need and require the help. Okay. And that's my intent here. And all the others are just pieces of putting it together.

COUNCILMEMBER COUCH: Uh-huh.

CHAIR VICTORINO: I think when we did this one and this revision we covered pretty much everything. We did not cover anything of extenuating timeframes for harvestable crops. I didn't go that far into it. You know maybe I didn't think about it and I apologize. So what we're asking, Mr. Meyer, you know, basically I have no problem with the 51 percent, again, or the \$1,000. I have no problem with that. But I still, I think having these guidelines and putting them all together, A and B with one, two, and three, not separating 'em, really then covers and gives you the Department the discretion. Or if we were to have an agricultural department and have an ag specialist going around and say yeah, this crop takes seven years to be harvestable so you don't have to decide that, Mr. Meyer or Mr. Taylor. You see what I'm trying to get to? 'Cause it's there. What do you say to that, Mr. Meyer?

MR. MEYER: I think we support the objective criteria, the \$1,000 minimum annual income. And we also would support 51 percent of the, as a minimum of the cultivatable area and as tests for exemption. Most farmers if they're real farmers seem to have a need to generate income every year, so the \$1,000 is only \$85 a month, it's really not much. But and our feeling is if the 51 percent, that's an objective criteria and the \$1,000, either one of those tests would be objective, easy to administer, and that for a...if the Director doesn't have any discretion on the waiver that these tests would be appropriate.

CHAIR VICTORINO: Okay. Any other questions? Mr. Couch.

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COUNCILMEMBER COUCH: Yeah. He just mentioned if the Director doesn't have any discretion. If the Director does have discretion do you still want those criteria in there?

CHAIR VICTORINO: Mr. Meyer.

MR. MEYER: Yes, our feeling, anything that's objective in terms of determining who gets the benefit of ag rates is a great idea.

CHAIR VICTORINO: Okay.

MR. MEYER: And the Water Board I guess felt very strongly that \$1,000 was substantially too low, that the number ought to be \$5,000, but it's really the Council's call.

CHAIR VICTORINO: Okay. You had...Corporation Counsel, you had something to say?

MS. THOMSON: Thank you. Just a couple of comments. I agree with the Deputy Director's recommendations on criteria so that applying the ordinance is uniform.

CHAIR VICTORINO: Uh-huh.

MS. THOMSON: One of the things that I think may be helpful is defining "commercial food production" so that it's clear. I believe you're looking at food for human consumption and then commercial, if that's being defined as being a minimum of \$1,000 annual income per year. So those are, you know, some of the things that you're...that it sounds like we're getting to. With the two sections to me right now read...Section A being applicable more to hardship cases --

CHAIR VICTORINO: Uh-huh.

MS. THOMSON: --and then Section B to preproduction. So I think maybe collapsing them. I recommend looking at it a little bit more closely so that if you do want to keep hardship and preproduction separate and have different criteria that the Director would apply to those applications for a waiver.

CHAIR VICTORINO: Uh-huh.

MS. THOMSON: It might be something to consider.

CHAIR VICTORINO: Okay.

MS. THOMSON: Thank you.

CHAIR VICTORINO: Okay, with that in mind I'm going to ask to defer this so that I can work with the Director and finish up and collapse and bring back what I've heard today, and hopefully at the next meeting not a long dissertation but just like we got it and put this together. But again, the

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intent here is to make sure that farming, livestock, and any other production...and again, you know, maybe fauna and all that is, you know, off to the wayside but what about Alii Gardens and stuff. You know they got a combination of both, and so I don't want to leave anything out but at the same time giving preference to food production. Okay, I'm not arguing that. And much of those farmers up there basically felt the same way. So I think we're really close. I need to just put these...what is the old saying, cross the Ts and dot the Is, put this together and bring it at our next meeting. If that's okay with everyone, I would like to move to defer this, with no objection, to defer this until our next meeting.

COUNCIL MEMBERS: No objections.

COUNCILMEMBER COUCH: No objections, however...

CHAIR VICTORINO: Okay. Yes, however, what?

COUNCILMEMBER COUCH: Just a thought, on the non-food production issue --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER COUCH: --we do have a large industry in the flowers of course and the lei making and stuff.

CHAIR VICTORINO: Understood, yeah

COUNCILMEMBER COUCH: So we have to consider that.

CHAIR VICTORINO: I don't want to exclude them. Yeah.

COUNCILMEMBER BAISA: No.

COUNCILMEMBER COUCH: Okay.

COUNCILMEMBER BAISA: No.

CHAIR VICTORINO: Yeah. And I think we all agree, we want to give preference or some priority to food production but we don't want to leave the others out, because they've been an integral part of our community for many, many years, decades, centuries if you want to go that. So it's finding this happy medium. Yes, Ms. Baisa.

COUNCILMEMBER BAISA: I'm sure that like I said people are watching and I'm sure we'll get comments about, you know, these issues, and I'm really glad that we have some clear suggestions. And I like the 51 percent idea. I'm sure we're going to get feedback on that because people will have their, you know, explanation of the 51 percent. Also, when Ms. Kau

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was going, you know, explaining, she kept using the word “yard”. You know 51 percent of the yard. We better be careful that we --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: --decide 51 percent of what. And, you know, I know we're just talking, we're thinking out loud and we can't be perfect when we're doing that, but when we draft law we better make sure we define 51 percent of what. Also, in regards to the food thing, you know, I feel very strongly that we need to support food, but I also understand that, you know, there's these other crops that contribute much to our economy, and so we have to take care of everybody. But I like your suggestion, Chair, I think we should take it back and try and meld this together. I like Corp. Counsel's idea, maybe into one ordinance. And then we really need to look at the two, five, and nine, 'cause I know that's the next question gonna come up is why two, five, and nine? Why not three, six, and ten? Or you know what I mean? Everybody's going to have an idea, so we might want to have some rationale as to why the suggestion is the two, five, and nine. So just for the Committee and yourself as you prepare another draft. I think we better take a look at that, too.

CHAIR VICTORINO: Again, that came from some of the farmers and people, coffee growers, you know, these numbers then I just didn't pull them out of the sky.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: They were numbers given to me by people who are actually in the industry and saying certain crops take this time. So, you know, some will take six or seven years so then I wanted to give up to nine, and same thing, some take three years or maybe four, okay, I give you up to five. So there was some rationale, and I'll put down the rationale and who...

COUNCILMEMBER BAISA: Like when you look at William Jacintho's idea.

CHAIR VICTORINO: Yes, yes, and that's another one that, you know, that...

COUNCILMEMBER BAISA: Looking at at least six.

CHAIR VICTORINO: Yeah, yeah, yeah.

COUNCILMEMBER BAISA: So, you know, I think we want to, you know, let's look at the numbers a little more closely.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Thank you. Okay, with no objections, then...no objections in deferral?

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COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (MV, GB, RC, DC, SC).

**ACTION: DEFER pending further discussion.**

CHAIR VICTORINO: Okay, okay ...*(inaudible)*... heard that, but. So the meeting of the Water Resources Committee, September 17, 2014 is now adjourned. . . .*(gavel)*. . .

**ADJOURN:** 9:48 a.m.

APPROVED:



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MICHAEL P. VICTORINO, Chair  
Water Resources Committee

wr:min:140917:ds

Transcribed by: Daniel Schoenbeck

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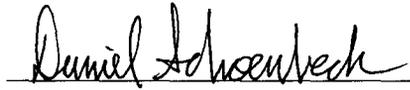
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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that 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 24<sup>th</sup> day of September, 2014, in Kula, Hawaii



Daniel Schoenbeck