

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**M I N U T E S**

**Council Chamber**

**July 10, 2018**

**CONVENE:** 9:04 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Alika Atay, Chair  
Councilmember Elle Cochran, Vice-Chair (in at 10:56 a.m.)  
Councilmember Robert Carroll  
Councilmember Stacy Crivello  
Councilmember Kelly T. King  
Councilmember Yuki Lei K. Sugimura

**EXCUSED:** Councilmember Mike White

**STAFF:** James Krueger, Legislative Analyst  
Stacey Vinoray, 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.:** Wendy Taomoto, Engineering Program Manager, Department of Water Supply  
Joseph Alueta, Deputy Planning Director, Department of Planning  
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel  
Robert C. De Robles, Planner VI, Department of Water Supply  
Alexander F. de Roode, Planner IV, Department of Water Supply  
David Raatz, Administrative Planning Officer, Department of Planning

**OTHERS:** Carol Reimann  
Joy Balinbin  
Albert Perez  
Plus (2) other people in the gallery

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

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CHAIR ATAY: . . . (*gavel*) . . . Good morning, everyone. It's four minutes after the hour of 9 o'clock, today, Tuesday, July 10<sup>th</sup>, commencing the Water Resources Committee meeting. I'd like to ask that this Chambers come to order, ask that everyone with any cell phones to silence their cell phones. This meeting is, was a continuation of a scheduled meeting that was scheduled on Wednesday, on the 4<sup>th</sup> of July, and with that, we altered our backup meeting to today. Moving forward in this meeting, we need to introduce the Members, starting with myself, Alika Atay, as Chairman. Vice-Chair Elle Cochran is in transit and so, for the moment, she's excused. I wanna welcome this morning, Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR ATAY: We have Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR ATAY: Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning.

CHAIR ATAY: And we have Kelly King.

COUNCILMEMBER KING: Good morning, Chair.

CHAIR ATAY: Excused at this time is also Mr. Mike White. We are also recognizing non-voting Members on the Committee that also sits here, should they choose, is Don Guzman and Riki Hokama. This morning I wanna recognize those in attendance representing the Administration, with Wendy Taomoto, Engineering Planning Manager for the Department of Water Supply.

MS. TAOMOTO: Good morning, Chair.

CHAIR ATAY: And we also have representatives from the Water Supply, with Alex de Roode. We also have Mr. Robert De Robles from the Water Supply. Representing Planning, we have the Deputy Planning Director from the Department of Planning and that's Joe Alueta.

MR. ALUETA: Good morning, Chair.

CHAIR ATAY: Good morning. Who else we have here, we have a representative from Corporation Counsel, Jennifer Oana.

MS. OANA: Good morning, Chair.

CHAIR ATAY: And I also wanna recognize Committee Staff, Stacey Vinoray; James Krueger; out in Hana, Dawn Lono; Lanai, Denise Fernandez; and on Molokai, Ella Alcon. I also wanna recognize my office legislative and policy advisors, Trinette Furtado and Brian

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Bardellini. Members, we have one item on today's agenda and the agenda is WR-18, Wellhead Protection Overlay Districts.

### **. . . BEGIN PUBLIC TESTIMONY . . .**

CHAIR ATAY: And with that, we will open up this meeting with an opportunity to give the public a chance to do public testimony. So, if there's any testifiers? No testifiers in the Chambers. I wanna reach out to our satellite offices. Out in Hana, any testifiers?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR ATAY: Thank you. Out in Lanai Office, any testifiers?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR ATAY: Thank you. Reaching out to Molokai, any testifiers?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR ATAY: I'll request that should there be any testifiers showing up on our satellite offices, please text our Committee Staff on floor and, during the testimony section, should anyone show up, we'll try to see if we can accommodate them. However, right now, no others, last call in the Chambers? None. So with that, there's no remaining testifiers, seeing that there is no one else wishing to testify, if there are no objections, I will close public testimony.

COUNCILMEMBERS: No objections.

### **. . . END OF PUBLIC TESTIMONY . . .**

#### **WR-18 (CC 15-50 WELLHEAD PROTECTION OVERLAY DISTRICT)**

CHAIR ATAY: Gonna address agenda item, WR-18, Wellhead Protection Overlay District. This hasn't, has been an item that's been sitting on the master agenda for the Water Resources Committee for some well over six years and this is an item that deals with legislation that came from the Feds, the EPA, to the State, and putting it in the hands of County via Planning and Zoning for some 22 years, since the last amendment was made. We've discussed this matter at our last Committee meeting and, at that meeting, we identified several issues that should be addressed before this bill is referred, or this resolution to make a bill, is referred to the Planning Commission for their review and comment, as required by Charter. For example, since the original bill was drafted, Chapter 19.94, Maui County Code, has been enacted relating to the West Maui Project District 3, Kaanapali to North Beach mauka. Additionally, the

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Department of Water Supply notified us that the County has constructed additional wellheads, so the Wellhead Protection Overlay District zone maps referenced in the bill had to be updated. The Department of Water Supply has since updated this bill and the new bill now establishes a new chapter, 19.61, Wellhead Protection Overlay District. Updated maps are also attached, labeled as Appendix C. I would like to use today's meeting to go through the bill itself and revise the bill, as the Committee deems necessary. And as a reminder, the purposes of the proposed bill are: one, to protect the public's health, welfare and safety by minimizing the risks of contamination of our water aquifers; two, to preserve and protect existing and potential drinking water resources; three, to implement land use policies consistent with the Maui County General Plan and community plans; and four, restrict and prohibit land uses that are incompatible with groundwater protection. As a further reminder, may I ask Members to refer to the electronic presentation in your Granicus files that we received from the Water Supply, Department of Water Supply, dated January 24, 2018 relating to wellhead protection through zoning in Maui County. I believe this provides a good visual of what we are trying to accomplish.

COUNCILMEMBER KING: Chair?

CHAIR ATAY: Yes?

COUNCILMEMBER KING: Excuse me, I don't see that correspondence in here, anything for January 24.

CHAIR ATAY: Staff?

COUNCILMEMBER KING: There's a testimony from somebody. There's a correspondence to the Board of --

MR. KRUEGER: Chair?

COUNCILMEMBER KING: --Water Supply on the 25<sup>th</sup>.

MR. KRUEGER: Chair?

CHAIR ATAY: Yes?

MR. KRUEGER: The correspondence that we're referencing is dated 1-22-2018 from the Director of Water Supply. The presentation within the correspondence is dated January 24<sup>th</sup>. Thank you.

COUNCILMEMBER KING: Oh, okay, I got it now.

CHAIR ATAY: Well, thank you for the correction. With that, from the Department of Water Supply, we have Wendy Taomoto and Alex de Roode to assist with any questions we may have. Ms. Taomoto, do you have any opening comments or remarks?

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MS. TAOMOTO: Good morning, Chair. Alex de Roode will give the opening comments. Thank you.

MR. DE ROODE: Good morning, Chair.

CHAIR ATAY: Good morning.

MR. DE ROODE: Good morning, Councilmembers. I'm here today to answer any questions you may have, to the best of my ability, regarding County Communication 15-50, WR-18, proposed bill establishing a Wellhead Protection Overlay District, WPOD, for the County of Maui. As Chair Atay mentioned, we transmitted a revised draft ordinance for your action on 6-29-2018. This revised draft included the following changes. We updated zoning maps, added as Appendix C, and those maps reflect the following changes. Wells that have come online since the initial zoning maps were produced for the draft ordinance. Those include Kanoa II, Wailuku I, Wailuku II and Wakiu C wells. The removal of Wailuku Shaft 33 and Waiehu Heights II. And the new maps also reflect current pumping rates for the Iao Aquifer well fields, which includes the four replacement wells for Shaft 33 and those are Iao Tank site, Waikapu Tank site, Wailuku I and II wells. In addition to that, the new or updated draft dated 6/27/2018 also changed the chapter number from 19.94 to 19.61, as 19.94 is already taken, as mentioned. And in order to come up with the updated maps, the MODFLOW model, which is the USGS model used to model the capture zones, was also rerun to reflect updated pumping rates and their impact on what's known as the time-of-travel zones within the Wellhead Protection Overlay District. So, I'm here to answer any questions you may have. My colleague, Robert De Robles, also with Water Resources and Planning Division, is here to also field any questions you may have. Thank you.

CHAIR ATAY: Thank you for being here. Before we open the floor up with questions, I do want to turn to, because the bill proposes to amend Title 19 of the Maui County Code, so also present today is Deputy Planning Director, Mr. Alueta. Do you have any comments to add?

MR. ALUETA: No comments. Thank you, Mr. Chair. We have no comments at this time. We're available to answer any questions on it. Also, David Raatz, our Administrative Planning Officer is also here, he's sitting in the audience, and is available if anything. He will be the one that will actually take it through the Planning Commissions once it's passed out of your Committee.

CHAIR ATAY: Okay.

MR. ALUETA: Thank you.

CHAIR ATAY: Thank you. So with that, Members, hearing from, and present, that both departments are here, Members, the floor is now open for discussion. Ms. King?

COUNCILMEMBER KING: Thank you, Chair, and thanks for bringing this forward. So, I just wanted to clarify that we currently have no legislation for wellhead protection. So, this is a brand, everything in here is brand new. So, that's why it's not, it doesn't look like

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it's in Ramseyered format because everything is, it's a new chapter that we're inserting. And then I had a question for Mr. de Roode. You mentioned the two different versions, the 6-27, 6-29. Which one are we actually looking at as far as the bill? You said something was inserted in 6-27, the 6-27 version, just the number I think. But the final version should be, we should be looking at is the June 29<sup>th</sup>? No?

MR. DE ROODE: Yes. So the draft itself, the document itself, is dated 6-27. I believe the transmission was made in, on 6-29.

COUNCILMEMBER KING: Okay. So, both, basically, they're both the same thing then?

MR. DE ROODE: They are.

COUNCILMEMBER KING: Okay. I just wanna make sure there wasn't a difference. So, yeah, I guess the intent, Chair, is to go through the bill --

CHAIR ATAY: Yes.

COUNCILMEMBER KING: --the actual bill and then propose a resolution to transmit this --

CHAIR ATAY: Yes.

COUNCILMEMBER KING: --this proposed bill? Okay, thank you.

CHAIR ATAY: That's the intent --

COUNCILMEMBER KING: Okay.

CHAIR ATAY: --Member King. The intention is that currently, right now, there is no standing ordinance on that. And, you know, it was on my master agenda and I realized, like, it's been six years that it's been sitting in our master agenda. And, you know, reviewing it and researching that, I think now is the time to protect our water resources. If anything, as stewards of this land, I think it starts and must begin with our County municipality wells that we --

COUNCILMEMBER KING: Okay.

CHAIR ATAY: --should be responsible for.

COUNCILMEMBER KING: Okay. I agree with that and I just think it would be helpful if we can maybe have the Department of Water Supply kinda walk us through this since this came from them and hit the salient points so that we know that, you know, if we're gonna look at this for possible amendments, it would be good to have the presenters or the, you know, whoever made this bill up, go through it with us.

CHAIR ATAY: Department?

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MR. DE ROODE: So, sure, we'd be happy to take you through the bill or the draft bill. Let me know what level of detail would, you know, be most useful. The purpose and intent, Chair Atay mentioned to recognize the importance of groundwater and safe drinking water supply for the community and ensure that our wellheads are protected in that regard. So, Chair Atay already went through the purpose and intent. Would you like to revisit those? Okay. The definitions here that are used in this bill are all developed using existing references, so they either refer to definitions established as a part of Title 19 or other County Code or they are pulled from other resources, such as the U.S. Environmental Protection Agency or the Department of Health. So, this list of definitions helps to clarify the terminology used throughout the ordinance, draft ordinance.

CHAIR ATAY: Mr. de Roode?

MR. DE ROODE: Yes?

CHAIR ATAY: As you were referring to the definitions, my question that I have now is, for example, here, one of the first items of definition was, confined animal feeding operation. To the Department's knowledge, the locations of the County wells, are there any of these, like confined animal feeding operations adjacent to or within the boundaries of any of our County wells or further on down, like a dump site or a landfill? Are any of these kinds of structures or entities located within our well sites?

MR. DE ROODE: So, to my personal knowledge, I can't attest as to whether each one of these activities may or may not be currently within the Wellhead Protection Overlay District or zones.

CHAIR ATAY: Yeah, yeah.

MR. DE ROODE: However, based on Title 19, any existing uses would be grandfathered in, so if they were permitted previously, they would be grandfathered in. So this is only, would only apply to new uses --

CHAIR ATAY: Future.

MR. DE ROODE: --once the ordinance is adopted or passed.

CHAIR ATAY: Okay.

MR. DE ROODE: But they are, for the most part, the type of land use there is either Agricultural or Conservation. Okay, let's see here, so we're, at this point, on Page 3 here at Applicability. So, this ordinance shall apply to wellhead protection overlay district zones as defined herein for the DWS wells. So just to reaffirm this point is that this applies only to DWS wells and not private wells. DWS doesn't have jurisdiction over those. We're really focusing in on our DWS wells. Nonconforming uses as defined in section 19.04.040 are subject to the provisions of section 19.500.110 of this code. So moving on to Page 4. So the actual wellhead protection overlay district zones and maps, this section kind of gives you a overview of the methodology that was used

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to establish those overlay district zones. So the WPOD zones are delineated by the University of Hawaii, Department of Geology and Geophysics utilizing a fixed distance for Zone A nearest to the well. So, that zone, that initial Zone A, is a 50-foot radius around the wells, which is the most sensitive of the zones. That area is typically fenced off and only accessible by permitted personnel for operations and maintenance and upgrades. So time-of-travel distance criteria for Zones B and C use the U.S. Geological Survey three-dimensional numerical groundwater model MODFLOW. And, in addition to that, it's followed by a particle tracking program called MODPATH. These are two of the most sophisticated and recognized modeling approaches for modeling water flow through aquifers. And so this was used to determine how long it would take for potential contaminants to reach the wells.

COUNCILMEMBER SUGIMURA: Can I have a question?

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: Chair, if I could, with that explanation? Thank you very much. So you're basically saying that this is currently at the County well sites?

MR. DE ROODE: Correct, yes, just at the County well sites.

COUNCILMEMBER SUGIMURA: And to determine, I guess, safety and health and clean water, you're meeting, then, requirements for Federal or State requirements that you have this already installed?

MR. DE ROODE: Correct. So, there are regulations and many of them are not enforced because of lack of staffing or resources at the Federal level or at the State level. So this does provide a framework for regulating at the County level, the established regulations under EPA and DOH for our County wells.

COUNCILMEMBER SUGIMURA: Okay, so you're meeting those standards? Thank you.

COUNCILMEMBER KING: Chair?

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Thank you. So, these are actually just zones that you're kind of demarking on a map but is there, for Zone B, is there any, when you get to the wellhead, the physical wellhead, is there any demarcation for Zone B in, you know, physical demarcation when you're out there or is it just on this overlay map?

MR. DE ROODE: Yeah, it's not physically delineated, the entire zone is not physically delineated. We have implemented signage in various sensitive areas of our wellhead areas that fall within these zones but the entire circumference of the zones is not delineated, other --

COUNCILMEMBER KING: Okay.



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MR. DE ROODE: --than in maps. And so since this is really referring to new uses, or either changes of existing land uses or, for example, a new building permit that would go in into these zones, we would be able to identify whether they fall within or outside of these zones, A, B, or C.

COUNCILMEMBER KING: Okay, so we're assuming that everything that's there right now is acceptable within these different zones?

MR. DE ROODE: Well, that's not in, within the scope of this --

COUNCILMEMBER KING: Okay.

MR. DE ROODE: --ordinance.

COUNCILMEMBER KING: Okay.

MR. DE ROODE: This is really for new uses and within Title 19, we have a grandfather clause, 19.07.070, which has legal uses and structures existing prior to the enactment of the ordinance codified in this chapter and it goes on describing that any existing uses are grandfathered in. So, there are additional efforts outside of this ordinance as part of an overall wellhead protection program where we actively reach out to potentially contaminating activities or landowners that may have potentially contaminating activities on their property and we have, in the past, for example, had State Department of Health funds to assist in educating and providing technical assistance. There are also financial resources available through NRCS and other entities that can help existing uses kind of come up to best management practices.

COUNCILMEMBER KING: Okay, thank you for that.

MR. DE ROODE: Okay, so moving through this, we have, Zone A is 50-foot radius around the wells. Zone B is primarily focused on microbial contamination. And Zone C is primarily focused on chemical contamination. And Zone B is two-year time-of-travel, Zone C is ten-year time-of-travel. So, Zone C would be considered, of the zones within this ordinance, the least sensitive area, furthest away from the well.

COUNCILMEMBER SUGIMURA: Chair? Can I ...

CHAIR ATAY: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: What does time-of-travel mean in this definition, ten-year, two-year time-of-travel? So, what is time-of-travel to?

MR. DE ROODE: Yeah, it's basically, the MODFLOW model is modeling how long would it take for a contaminant to reach the wellhead and it's based on both soil type and hydrology within the aquifer, including elevation. So, you can imagine a steeper elevation, that particles would travel faster, and so that's modeled in. And so that's what they're saying, the ten-year, it would take ten years within that zone for a contaminant to potentially reach the wellhead.

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COUNCILMEMBER SUGIMURA: Okay, thank you.

MR. DE ROODE: And the movement of water, so it's also looking at how it attaches to water, particles might attach to water. Okay, so we're on Regulations for Zone A. You can think of these as, as we go through these zones, we have uses that are outright prohibited in certain zones, we have uses that are permitted, outright permitted, and then there are uses that are permitted but due to their sensitive nature being a potentially contaminating activity, that they would only be permitted with a permit granted and that's what this, in part, what this ordinance allows us to review any potentially contaminating activities, recommend BMPs, best management practices, to the applicant and ensure those are implemented before the permit is issued. So, in Zone A, that's the most critical zone, permitted uses are really just necessary, public utilities, facilities, including construction, maintenance, repair. It's really just the DWS or other approved staff going, personnel going in there to maintain and operate the wells. In Zone B, this is again, it's focused primarily on microbial contamination. We have, the permitted uses are all uses permitted in the underlying zoning districts, unless required to obtain a wellhead protection permit pursuant to subsection B below, or if it's prohibited in subsection C. So in B you see some of the potentially contaminating activities that would require a permit and require review by staff to assess what best management practices should be implemented to minimize, if not eliminate, the risk of contamination.

CHAIR ATAY: Excuse me, staff. So, should a permit come in, who reviews, you know, like over here it says, car washes, cement or concrete plants, gas stations, you know, these are, what department will review this and make sure that this activity is not allowed in this vicinity near our wellhead waters?

MR. DE ROODE: So, the activity may or may not be allowed, depending on --

CHAIR ATAY: Yeah.

MR. DE ROODE: --whether BMPs are implemented, but initially this would go through a standard either building permit or special use permit --

CHAIR ATAY: Okay.

MR. DE ROODE: --or conditional use permit type of process and would likely go through the Planning Department --

CHAIR ATAY: Okay.

MR. DE ROODE: --at which point the Planning Department could flag the proposed, or could flag the application because it's located within, they would determine it's located within the zone, right, whether Zone B or C, and then it would get forwarded to Water Resources and Planning Division --

CHAIR ATAY: Okay.

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MR. DE ROODE: --for review. And so we have expertise in-house on best management practices for these types of activities and, as needed, we would also confer with potentially Department of Agriculture or Department of Health for additional input or review. Then if the permit was granted, it would then go back to Planning and move through the regular permitting process. If the permit is not granted, then the application, and the applicant was not willing or able to implement the BMPs, then that permit would likely be denied.

COUNCILMEMBER KING: Can I just make a...Chair?

CHAIR ATAY: Member King?

COUNCILMEMBER KING: I just want to make a suggestion on number four, that that word gas station be, maybe think about changing that to petroleum fueling stations because now that we have, you know, the fueling stations, we have not just biofuels but we have electric fueling stations, refueling stations. So, because certain biofuels...well, biodiesel is 100 percent biodegradable but this one would, could be construed to exclude diesel stations as well so you wanna, I think you wanna specify that petroleum is what we don't want contaminating the water.

MR. DE ROODE: Thank you for that. In this type of use, one of the likely BMPs would be secondary containment so that any storm water overflow would not go beyond the perimeter of the use, of the station, and ...

COUNCILMEMBER KING: I just wanna, I just point it out because that's not, secondary containment is not required with biodiesel but it would be required if there is a blend. So, you, if you just put that word, petroleum, in there then that makes it clear that if there's any blend with petroleum, whatever fuel it is, whether it's ethanol or, you know, the renewable propane or anything like that, then you would need that secondary, you would need that BMP.

MR. DE ROODE: Okay, thank you. So, are there any questions on the list of, other than the gas stations, on this list in permit required section for Zone B? Okay. So, Zone C, prohibited uses, these are outright prohibited in Zone B. This first one, new cesspools, is somewhat obsolete now as no new cesspools are allowed per State law. So, that could be an amendment to, or modification would be to potentially take that off the list.

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I was going to ask that question regarding the maps and the impact of the existing maps regarding the cesspool, septic tank. And I think that requirement is not 'till, what, 2050, the State requirement, although new development, you need to have septic tanks, but I wonder what the impact is 'cause it still is not a resolved issue in State Legislature. And how does that affect us or this?

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MR. DE ROODE: Yeah, as far as this ordinance is concerned, it's only for new uses. So, a new building permit that would go in and require, and it's unsewered, in an unsewered area, it would require a septic tank to be installed, they would not be able to install a cesspool. So, for existing cesspools, this would not affect existing cesspools.

COUNCILMEMBER SUGIMURA: That's right, new. Thank you.

MR. DE ROODE: Okay, so that...any questions on the prohibited uses in Zone B? Okay. Regulations for Zone C, so now we're in the ten-year time-of-travel zone. This would be the least sensitive of the zones and it's primarily concerned with chemical contamination. So, permitted uses are all uses permitted in the underlying zoning districts, unless required to obtain a wellhead protection permit pursuant to subsection B or prohibited in subsection C below. Again, you see the kind of high-risk activities. And I'm making a note here about the gas stations as well, since it's similarly referenced as in Zone B, does that...so petroleum. And then in Section C here, we have outright prohibited uses. So, if these were being proposed as a new use in Zone C, they would be outright prohibited and the application would be denied. Any questions on the uses requiring a permit or prohibited uses for Zone C?

CHAIR ATAY: Okay.

MR. DE ROODE: Okay. So, moving on, wellhead protection permits. The application shall be submitted to the director of Water Supply and shall include information about the applicant and the proposed use, including basic information like name and address, verification of property ownership, TMK of the project site, plot plan, description of the proposed use and, in this case, any regulated substances that would be included in Appendix A and B. And so Appendix A and B of this draft ordinance provide you with--Appendix A is regulated substances and Appendix B provides you with U.S. EPA list of high leachability chemicals that are pesticides of national concern. So, that information, if there are any regulated substances or pesticides of concern, we would want descriptions of quantities proposed to be used, how they would be handled, how they would be stored, and that would allow the Department of Water Supply to review that and assess what type of best management practices should be implemented there, and if the applicant is describing that they're already implementing those BMPs or intend to implement those BMPs, there may be a verification process, which could include requesting photos of the implemented BMPs or potentially a site visit from staff to verify and assist with technical assistance.

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Chair? Thank you. Thanks for explaining those appendices. So, I don't see, we have a, you know, we have a new law that was just signed, it doesn't go into effect for a few years but banning Oxybenzone and Octinoxate and not sure what other chemicals were on that list, but do those need to be added here under Appendix A?

MR. DE ROODE: If they're not there currently. And I don't see them.

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COUNCILMEMBER KING: I don't see them either. So maybe, since that bill was just recently signed, maybe we need to go back in and add those even if you're going to qualify with whatever date, but I think it would be good to get them on the list.

MR. DE ROODE: So, Oxybenzone was one and the other was?

COUNCILMEMBER KING: Oxybenzone and Octinoxate were the two that were associated with sunscreens that harm the reef and I think we have to pull up that bill because I'm not sure if there were other chemicals that were actually listed within that bill but there might be.

MR. DE ROODE: Okay, yeah, thank you for that. These regulated substances, as well as the pesticides of national concern, are regularly updated as new science comes out and they actually stay, before they get on the list, in Appendix B, of high leachability chemicals of concern, they're on kind of a watch list for many years with scientific review. And so part of the process would likely include an update to these appendices as, you know --

COUNCILMEMBER KING: Okay.

MR. DE ROODE: --new concerns ...

COUNCILMEMBER KING: Yeah, I just don't think it's gonna be, since we're the first state to regulate those two Statewide, I don't think it's gonna be on any EPA list or, you know, any kind of federal list, so I think we just need to be aware of what, of our State being in the forefront of that particular legislation.

MR. DE ROODE: Sure. And then, you know, tying that back to the actual activities, we would want to determine what activities might be using those types of chemicals. So, it may be they, you know, if it was a sunscreen warehouse or something in that zone.

COUNCILMEMBER KING: Well, there, yeah, it's used in a lot of food products and cosmetics products and, you know, what-have-you.

MR. DE ROODE: Okay, thank you.

CHAIR ATAY: Thank you.

MR. DE ROODE: Okay. Okay. So, we're on Page 7 here on B, permit processing. Upon receipt of a complete application, the director of Water Supply shall approve or deny the application pursuant to the requirements of this chapter, and may impose conditions upon the proposed use to ensure that the purpose and intent of this chapter are met. If a complete application does not meet the requirements of this chapter, it shall be denied. Understanding that this is, you know, a new process and that there is a fair amount of education and technical assistance that needs to occur, we foresee having, you know, multiple communications with the applicant. It wouldn't just be an outright deny, it would be, how can we help you actually achieve these and

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implement these BMPs. Okay. Initial permits shall be valid for a period of up to five years. Subsequent permit renewals and permit amendments may be granted by the director of Water Supply for a longer duration. In reviewing applications for renewals, the director of Water Supply shall require evidence of compliance with applicable BMPs and any other permit conditions. And, again, the Department reserves the right to inspect at reasonable times, upon presentation of appropriate credentials, in order to issue initial permits and for renewals. Any questions on that Section B?

COUNCILMEMBER SUGIMURA: Alex? Chair?

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, since this is a new ordinance that the Department is proposing, I would assume, since it's so important, that there are probably State or Federal regulations that are now governing this so that this wouldn't have to be an urgent matter taken care of 22 years ago when the Federal government put this into effect. So what is existing? If I could ask that question, or do you wanna just go through this whole bill and take that up later? But I'm just, what is existing Federal and State legislation? And I wanna hear from the Department if you think it's necessary to also do this on top of what is from State and Federal? So, Chair, up to you. I'm just curious if that's ...

CHAIR ATAY: Member Sugimura, my understanding is that currently these laws are not already existing in Federal or State law. The Federal agency, EPA, specifically gave the wellhead protection responsibilities to the State of Hawaii, to the states. The State of Hawaii specifically gave that responsibility to the counties. And so this law is not a duplicate and so we are currently, we, as a County, currently follow the required Safe Water Drinking Act, but this zoning overlay includes or, but this zoning overlay includes wellhead protection and that's beyond the Safe Water Drinking Act. And so it varies from state to state and we are trying to make it so that the responsibility that the State has put on us, the County, as stewards, and I've asked the Department, you know, like we gotta be stewards of our wells, our municipal wells. Staff?

MR. DE ROODE: Yeah, that's correct, Chair. There are existing regulations and they provide guidance, if you will, for the ground level, the County level, the municipal level, to implement and enforce. We have the U.S. EPA Safe Drinking Water Act, the State Department of Health has rules relating to public water systems pursuant to Hawaii Administrative Rules, Title 11, Chapter 20, which is DOH Clean Drinking Water Branch, and those fall under, the items in Appendix A are under that regulation, but when it comes to actual implementation and on-the-ground regulation, there are no resources at the Federal and State level to do that so this, that's where this comes in to kind of fill that gap.

COUNCILMEMBER SUGIMURA: So, Chair, if I could ask a question?

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, in your opinion, then, that this is necessary?

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MR. DE ROODE: Yes, in our opinion, it is necessary to protect the quality of our drinking water.

COUNCILMEMBER SUGIMURA: So, all this time, I guess since eternity then, if an applicant comes and applies for a project, which is where these maps come in, and I'm kinda looking at the ones that are Kokomo, Piiholo, Awalau, Maui, which is map number eight [sic]. So if applicants come in for some kind of use within this area and if it's within these, this overlay, what will happen is then you'll go through and look to see if it's a B or C category and then give it best management practices recommendations before you would issue that permit? But up till now then, there is nothing, people could just do whatever they wanted with no restrictions, I guess?

MS. OANA: Not with regard to the wellhead. They have, they're restricted pursuant to what the zoning is, what they can currently do under their zoning, but nothing to do with wellhead protection.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR ATAY: Staff, continue.

MR. DE ROODE: Okay. So we are on Page 7 here, Revocation and Appeal. Any wellhead protection permit may be revoked at any time and/or may not be renewed by the director of Water Supply if the permit terms and conditions have been violated or if the requirements of this chapter have not been met. Appeals of permit denials, revocations, non-renewals or alleging errors shall be heard and determined by the Board of Variances and Appeals pursuant to Chapter 19.520 of this code. Any questions on that? No? So, then, moving into, the BMP section here on the second half of Page 7. These are identified BMPs that our staff has collected from sources such as the EPA, U.S. Department of Agriculture and also in consultation with the State Department of Agriculture and other agencies. I would point to that, at, as it currently stands, the agricultural plots, or lots of less than 50 acres, would not be subject to these rules and I actually don't see that in this version, but that's something that has come up in the public process in the past. And I think that's something that the, this Committee should determine, whether, does that make sense for agricultural lots less than 50 acres, which here in this, on the island of Maui, are very, you know, most farms are less than 50 acres, there are very few that are 50 acres or more, whether that makes sense to have that size of lot exempt from this or not. And, again, I don't see that in this version of the ordinance but I just wanted to bring it to your attention, that it's something that has come up.

COUNCILMEMBER SUGIMURA: So you're...Chair?

CHAIR ATAY: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Chair, if you could? So, Mr. de Roode, can you repeat that again? You're saying that ...

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MR. DE ROODE: That for agricultural uses in item C, on Page 7, under 19.61.090, Best Management Practice, item C, it says, the irrigation of crops shall follow Integrated Pest Management in accordance with U.S.D.A. Natural Resources Conservation Service Technical Guide dated 1989, as may be amended. Some of the earlier conversations focused on, that irrigated crops of less than 50 acres would not be subject to that. And I believe as this, as it stands now, that that's not identified in this ordinance. But, again, the sensitivity of the area and the fact that most farms, irrigated crops here, are less than 50 acres is something that's worth consideration.

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Thank you, Chair. You know, that, maybe that would be something that you could discuss at the Commission that we're referring this to but I do want relay some of my experience. When I went down to Guam with the EPA as an invited presenter to the Pacific Island Environment Conference, they were having a massive issue in Guam with Leptospirosis and it was from many, many small farms, pig farms, that I'm sure were all under 50 acres but, you know, their proximity to the river, was contaminating the river and people were washing their clothes and, you know, bathing in the river, and so there was an epidemic of Leptospirosis. So, I'm not sure, you know, I mean, I think you want to explore the possibilities of what could happen with many, many small farms not being subjected to these same rules. When we were down there, I think they had, the EPA had gone down there and shut down a third of those pig farms but they were not able to get them all shut down, so it had lessened. But something like that, because it's coming from the EPA, might better inform, you know, if you're looking at different sizes of tracts, I would just caution to not jump ahead with trying to make it a little too easy and then we end up with something like that in our community.

CHAIR ATAY: Thank you for that, Member.

MS. TAOMOTO: Chair?

CHAIR ATAY: Yes, Ms. Taomoto?

MS. TAOMOTO: In reference to the 50 acres, it is in item seven under Zone B. Regulations for Zone B on Page --

CHAIR ATAY: Page?

MS. TAOMOTO: --5, at the top, there is a reference to the 50 acres. I believe ...

MR. DE ROODE: Correct.

CHAIR ATAY: I see.

MR. DE ROODE: On page, top of Page 5.

CHAIR ATAY: Number seven.



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MS. TAOMOTO: Yeah, and the reference of 50 acres is not included on Page 7 under Best Management Practices, but it's somehow included in --

CHAIR ATAY: In B.

MS. TAOMOTO: --B. Thank you.

CHAIR ATAY: Thank you for that.

COUNCILMEMBER KING: So, but that's basically, in that section it's included in, it's just talking about what would require a permit. So, you're saying that there would be no permit required if you're under 50 acres? So, that's what that's saying. But, you know, I mean, to me, best management practices are best management practices so there's no harm in saying that those are best management practices for whatever size agricultural farm, you know, you have. Whether it's required by permit or not is already stated in that previous section but, you know, we may find down the line that those, we may want to encourage those best practices on any size of farm.

CHAIR ATAY: Ms. Taomoto?

MS. TAOMOTO: And I wanna make sure the Members understand that it is not included, the reference to irrigated crops in Zone C. So it's only in the, you know, Zone B, which is closer to the wellhead area, I mean, the well itself, and when you get to Zone C, that line item seven is not in the list as permitted, permit required.

COUNCILMEMBER KING: Okay, so it should be under C if it's in B? B is more restrictive, is that what you're saying?

MS. TAOMOTO: B is the area closer to the well itself and Zone C is the farther outlying areas. But that's something that, you know, for this discussion today. Thank you.

COUNCILMEMBER KING: Okay.

CHAIR ATAY: Mr. de Roode?

MR. DE ROODE: Yeah, if I can add to that. The, number seven in Zone B here on the top of Page 5 is specific to the use of soil fumigants or pesticides --

CHAIR ATAY: Right.

MR. DE ROODE: --rated by the EPA as --

CHAIR ATAY: Right.

MR. DE ROODE: --having high leachability. Whereas, in, on Page 7, just in general, under Best Management Practices, this is referring to following integrated pest management, so using least toxic pesticides and the least amount, you know, being very careful not

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to use more than needed. So, it's saying that this best management practice would be, would apply to both Zones B and C. Whether you...and how I'm reading this, whatever size you are, you would need to implement integrated pest management, or IPM, whereas the prior one, with the 50-acre reference, is for soil fumigants. So ,that's something worth --

COUNCILMEMBER KING: Okay.

MR. DE ROODE: --considering.

COUNCILMEMBER KING: I think ...

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Chair, thank you. I think we also have to be aware that, you know, there are, you know, like my company has leased areas of 115 acres and, you know, I wouldn't want to see, you know, them start being divided up into 49 acres just to meet that kind of a regulation. Because I think, especially for best management practices, best management practices are best management practices regardless of size, and so I think we wouldn't want to create a loophole that allows, you know, farms to start subdividing their own leases and calling them different names, having them managed as just under whatever limit we set. So, I would be comfortable with just leaving that, the best management practices specifically for all, you know, all farming operations.

CHAIR ATAY: Ms. Taomoto?

MS. TAOMOTO: So, based on what you said, and to clarify what Alex said, you can, best management practices will only be required when a permit is required. If you look at Zone C, irrigated crops is not a permit-required trigger. So, if you want to include it for any irrigated crops and remove the greater than 50 acres, it has to be included also and listed in Zone C, after dry cleaners. So the way it reads now, the best management practices is not applicable if you're in Zone C. You can't, we cannot, the Department, require a applicant, where a permit is not required, as written. So, I, based on the Members, we would need to, if they agree with Member King, we would have to add irrigated crops to the list in Zone C as a permit-required action and we also need to understand if the greater than 50 acres needs to be removed and your intent, your wish is to have BMPs regardless of the acreage. Thank you.

COUNCILMEMBER KING: So, Chair, I am fine with it either way at this point, you know, how we're going to transmit this to the Commission and I think if this is a point that may change, that we need to get some input from our agricultural community on this as well. So, I mean, I'm speaking from my own personal experience and from some broader environmental experience but we haven't had any testimony today and we have--oh, we don't have him here anymore--I thought we had some people from agricultural community, but I think that's going to be, probably a little bit of a larger debate or, you know, we need some more input on that at some point.

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CHAIR ATAY: I'd like to ask Corp. Counsel, what's your, you know, whether we should be considering and addressing this issue now or just--I'd like to just leave it as is and just move this forward and fine-tune it as we go forward, you know.

MS. OANA: Yeah, we can fine-tune it later and --

COUNCILMEMBER KING: Yeah.

MS. OANA: --wait for the comments by the Commissioners.

CHAIR ATAY: Okay.

MS. OANA: So, it's up to the --

COUNCILMEMBER KING: Yeah.

MS. OANA: --this Committee, whether you wanna make revisions now so they --

CHAIR ATAY: Okay.

MS. OANA: --can see it in front of them or just send a letter with --

CHAIR ATAY: Yeah.

MS. OANA: --comments with this bill, as drafted.

CHAIR ATAY: Okay, thank you.

COUNCILMEMBER KING: Chair?

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Chair, I'm good with leaving it as it is and, you know, letting the, 'cause it's gonna, there's gonna be some changing, changes, I'm assuming anyway at Commission. But I think it's just very good for us to be aware of what the issues are so that when it comes back to us, we don't miss anything, you know, there aren't any unintended consequences from just passing it on and not knowing what's in it. And that way the review, when it comes back, we'll understand what they changed and why and we can decide then if we wanna keep the revisions or not. So, I appreciate the conversation and the explanations of these different --

CHAIR ATAY: Okay.

COUNCILMEMBER KING: --pieces of this bill.

CHAIR ATAY: I see Mr. Alueta ...

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MR. ALUETA: Thank you, Mr. Chair. Again, we always encourage you to try to have as best of a bill before going to the Commission, rather than hoping that they're going to ferret out all the other issues, they're going to look for different things. In looking at the bill overall, pretty well, it's been, gone back and forth between the Planning Department and the Water Department for several years now. And so I think it's very fine-tuned but a significant change like whether or not you're going to require a permit for farming on less than 50 acres that use some type of pesticides would be something you should probably ferret out here at this Committee before sending it out, or at least give the Commission guidelines on what you're gonna, where you're going, 'cause that would be a significant change to the bill. As well as, the only other comments, I mean, if I may, just some other general comments. We want to make it clear and we'll try to work with adding some non-substantial language, but just to make it clear that the uses listed that require a permit, the bottom line is they all have to be allowed, either by right or by some other permit, within the underlying zoning before this ever comes into play. So, we don't want to have people confused that, oh, I'm in this area, I can do a dry cleaner in the middle of the Agricultural District if I get a permit from the Water Department. That's not the case. If you're not zoned Commercial to do a dry cleaner, you can't do it, or in that aspect. And, again, we're, the Department, obviously, is overall, we are supportive of having a wellhead protection bill, we just want to make sure we can administer it along with, primarily with the Water Department, as far as the permit processing goes. But that would be, I consider that a significant change, whether you're dropping the threshold with regards to farming because that, many of these wellhead protection areas deal with agricultural lands and so that would be a significant change as far as I'm concerned. Thank you.

COUNCILMEMBER KING: So...

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Thank you. So, you know, I agree with you, it would be a significant change but the reason why I'm hesitant to make that change now, as a voting member of this Committee, is we haven't had any input from the agricultural community, so that's a concern. We've, you know, we've passed a couple of fees in our Budget Session with unintended consequences because the public didn't understand they were on there and what they meant and so I think now we're going, we're back tracking. One of them was the fees for classes in Parks and when we do that without the public's input, because they don't understand the bill that's before us, and we get these unintended consequences, then we get a big uproar about, now what does this mean, now there's an egregious, you know, raise in fees for us. So, that's my only hesitation in this, the agricultural piece of this, is that we haven't had any input and a lot of times it's because they don't, you know, they're not, people who are involved in farming are not necessarily watching all the committees, they're watching the agricultural committee and nothing's come through there. And so this is going to affect, I don't how many, how many folks you think it might affect that are within that Zone B, that are, or Zone C, that are less than 50 acres but, you know, what Mr. de Roode just mentioned, that most of the small farmers here on Maui are less than 50 acres. So maybe it would be good to look at and see how many are within the Zone B and within the Zone C. Obviously, the ones that are there right now are not

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affected because this is for new uses but, you know, if we are looking at the new agricultural lands that are now available being leased out to small farmers, it's probably going to be, if small farmers are going to lease that out, it's, you know, that's not going to be thousands of acres, it may be less than 50. So, I don't know, you know, it's hard to say right now what the impact would be, but as far as best management practices, I think it's always good for best management to know what pesticides are being sprayed within Zone B and C.

CHAIR ATAY: Thank you.

COUNCILMEMBER KING: Oh, can I ask one more question, Chair?

CHAIR ATAY: Yes.

COUNCILMEMBER KING: So, the other, the one question I had was, this entire section here, is this part of the recommendations that came out of the audit of Chapter 19? Was this addressed at all? You know, we recently had a third-party audit. So because it's not in there, there wasn't any recommendation to put anything in there, I mean, we're not going to add this on and then go through Chapter 19 and have it be in, you know, in direct opposition to any of the recommendations in there.

CHAIR ATAY: Mr. Alueta?

MR. ALUETA: No, I do not believe this is, because this is a new bill so it wasn't in the audit of Title 19 since it wasn't in there. I'm, would imagine if the contract goes forward with, if we do select a vender to do the Title 19 audit, they'll have to look at some of these new bills that have come through and figure out how they're going to fit within the new scope of the revisions to Title 19.

COUNCILMEMBER KING: Okay.

MR. ALUETA: So that would, I mean, it would just have to, they'll just have to figure out how to make it work within that thing. Again, this is, it's kind of a standalone, separate, because it's an overlay to our normal Euclidian zoning, so it just is going to be regulated at the land use side.

COUNCILMEMBER KING: Okay, I just wanted to make that clear because I know, you know, 'cause we're adding sections to Chapter 19 as we are looking for somebody to consult with to do revisions of Chapter 19. So, just want to make sure that as we do these, these are folded into that, you know, the understanding of what Chapter 19 is and what, if we do this, this is a pretty bold statement that we're finally getting around to protecting our wellheads and putting this in ordinance and that we don't really want, we don't want it upturned after it, if we do vote it into ordinance --

CHAIR ATAY: And --

COUNCILMEMBER KING: --or overturned.

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CHAIR ATAY: --thank you for sharing that, Member King, because I'd like to back up a few minutes ago when Member Sugimura was questioning if we're duplicating ordinances from Feds and State and, you know, this was just handed to me straight from the Environmental Protection Agency site, the roles and source of water protection. And the EPA provides and encourages information and partnerships of source water protection planning in regards to the Safe Drinking Water Act, as well as the Clean Water Act. However, state and local government and water utilities play a critical role in protecting source water. They are well positioned to help tailor protective actions for their unique local situations. This comes off of the EPA site that says local governments can develop zoning requirements to ensure that businesses using hazardous materials are not located near our water supplies. Localities can also protect source water areas by implementing land use controls, such as acquisition or conservation easements. Backing up in regards to the discussion about smaller than 50-acre farms. For me, most definitely, Zone A and Zone B, we cannot be doing soil fumigants within just outside of the 50-foot perimeter of the fence line of our wells. However, you know, right now, today, I don't know, the discussion of this being implemented with Zone C, you know, a further distance away. For me, it's more protecting our County wellhead locations. I don't know if the wording, Corp. Counsel, in there, says it so that it's in the B, Zone B, that definitely no practices of soil fumigants if there's any farms around our wells within 50-foot radius, we need to definitely see, say that that is prohibited.

COUNCILMEMBER KING: So, Chair?

CHAIR ATAY: I'm giving --

COUNCILMEMBER KING: Oh.

CHAIR ATAY: --Corp. Counsel a chance to ...

MS. OANA: So, for Zone A, it's 50-foot perimeter distance from the wellhead and that, I'm pretty sure is just the well --

CHAIR ATAY: Right.

MS. OANA: --area --

CHAIR ATAY: Right.

MS. OANA: --where DWS is kind of solely in control of that area, so we don't have to, I don't believe we have to worry about Zone A 'cause that's --

CHAIR ATAY: Okay.

MS. OANA: --kind of us only.

CHAIR ATAY: And Zone B?

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MS. OANA: And so your question was, for Zone B, do we have prohibitions for ...

CHAIR ATAY: If there's any agricultural or any activity where there's soil fumigants will be used in that Zone B area.

MR. DE ROODE: Yeah, Chair, if I may, I can speak to that here. In Zone B, that is where the permit required, item number seven specifically states that it is for, it only applies to irrigated crops using soil fumigants on greater than 50 acres. So that Zone B, if you're less than 50 acres, you would not be required to, this ordinance would not apply to you in Zone B. Now Zone B isn't a specific radius in terms of, like Zone A is, where it's 50 feet, it's based on the hydrology and the modeling for that aquifer, so it will vary from wellhead to wellhead, from well site to well site. But, yeah, at this point in Zone B, which is a, you know, sensitive area, if you're under 50 acres, you, it appears you would be able to use soil fumigants.

CHAIR ATAY: Now, let me ask a basic question. Knowing if that is allowed, is that pono, aloha aina kind of practice that we're--if we're trying to be good stewards and we're trying to protect our water, should we not have legislation to protect? Because it's so close, I believe we should have that placed in there. Member King?

COUNCILMEMBER KING: So, Chair, on Page 5 at the top, if we take out that paren, less than 50 acres, and that would apply to all of Zone B needing a permit if they're using soil fumigants. Maybe that's the more prudent way to do this, is just take that out now and if there's a huge concern, it will come up within our agricultural community but that basically says what you just said, that Zone B is a sensitive enough area that we shouldn't be using soil fumigants, but if you are going to, you're going to need a permit and then that's when the Department can try to enforce the best practices, the best management practices. So, it would just be taking out that one section.

CHAIR ATAY: Staff, got it? Okay.

COUNCILMEMBER KING: If that's amenable to the Department, we can do that and send it on without that less than 50 acre statement.

MR. DE ROODE: Yeah, I would like to add that, as Member King just stated, you would be allowed to use soil fumigants if you're following best management practices and a permit would be issued, you know, verifying that you are implementing best management practices in that use. I'd also like to share with the Committee that this draft was developed in consultation with, through a public process. So, there were 12 meetings held, I believe, there were nine meetings on Maui and three on Molokai that were held. And the only reason Lanai didn't have meetings is we don't have DWS wells on Lanai. And this was a point that did come up during that public process. I don't know if you want to call it a concession but basically that was a point of discussion during the public process. I wasn't present for that so I can't give you any more detail. Our division head, Eva Blumenstein could speak to that better.

CHAIR ATAY: Okay. Okay, thank you for sharing that. Okay, Members, any other questions? Okay...yes, Ms. Taomoto?

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MS. TAOMOTO: My other concern when I reviewed this with Water Resources Division staff is on subdivisions, number 16 on Zone B. Subdivisions in itself, I don't look at it as a use where a BMP, where you look at the BMP requirements is practicable to implement at the subdivision level. If you look at the BMP for a subdivision trigger of three or more residential lots, at that, at the subdivision level, you'd wanna require installation of aerobic treatment or alternative treatments achieving equal or higher level of wastewater treatment. Normally that action is at the building permit stage level, not the subdivision because the developers, the way subdivision work is the developers sell lots to, you know, interested buyers and, at that time, the buyer then incurs the cost and specifics of the treatment system. I'm worried that putting the word "subdivision" and then putting a requirement at the subdivision level, a pre-condition of sale, adds a burden to the affordable housing situation where it's already, like previously mentioned, cesspools is not allowed in any case anyway. So, if they subdivide in an unsewered area, they probably have to go septic anyway and now, currently, that's regulated through Department of Health, through a building permit process. So, I just feel like it will incur unintended consequences at the subdivision level where they're just trying to subdivide the lots to sell to individuals, right, which then take it, hire an architect, draft up their plans, make contact with providers of septic designs, get that cost at the building permit level. Because like Alex said, cesspools is already, is kind of a redundant language to the fact that it's not allowed and they gotta go with this. So, I just concerned because of our affordable housing crisis that we're adding cost at the subdivision level and that's coming as, more as an engineering program manager than as the current acting Deputy. Thank you.

CHAIR ATAY: Okay.

COUNCILMEMBER SUGIMURA: So, Chair?

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, based upon what Ms. Taomoto said, you're asking, you're suggesting to delete number 16?

MS. TAOMOTO: I'm, I guess I'm asking if you guys understand that, or agree what the intent is, is that, I believe the intent is or the concern is, when you have three or more dwelling units that there's a potential for a more commercial type of, if you have more than three dwelling units on a parcel, you're more looking at like a commercialized kind of a setup versus a personal use. So, if you guys look at it more like a commercial activity might occur on the site 'cause you have three or more dwelling units? That's why I think that the word "subdivision" take away from the intent, takes away from the intent, and if that is your guys' concern between the staff or the previous meetings and this Council, then my suggestion would be to change it to reflect the building permit stage, which would be properties proposing permitting for three or more dwelling units and regardless of whether it's in residential or residential mixed use, and then perhaps add another item 17 saying, projects that propose



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residential mixed use because then you have the residential plus the commercial component. Joe has something to add.

CHAIR ATAY: Mr. Alueta?

MR. ALUETA: I know I'm going to get in trouble but I think, I guess I would say that I think it has to be at the subdivision level, not at the building permit level based on what you're putting down as your design guidelines 'cause I believe the intention is here is regarding site design, so that would come at the subdivision development. Your design guidelines would be location as far away from the wellhead, so that would be how the lots are laid out, as well as location of storm water retention basins, again located as far away from the thing. So, again, for lots three or more, that's all in the subdivision design, not so much at the individual house level, if I'm understanding what the intention is from --

CHAIR ATAY: Right.

MR. ALUETA: --based on Page 8, 19.61.100, which design guidelines for subdivisions that create three or more, 'cause I believe that's, once the subdivision of three or more is triggered for Zone B then these, then Section 100 comes into play. Is that correct? Because then a permit is required, and then you would require these types of design best management practices for the subdivision to come into play as a requirement of that permit.

CHAIR ATAY: Mr. de Roode?

MR. DE ROODE: Yeah. So, there, I think there is concern both at, or need for being careful both at the subdivision level and at the building permit level when you're actually proposing how many units would go on a specific lot. We do have here a mention of density, if you look on the bottom of Page 7, under Best Management Practices, item D, we mention subdivisions that create three or more residential or residential mixed use developable lots in unsewered areas resulting in septic systems that serve more than one residential unit per acre. So, that's referring to the density there on a specific lot, but with regards to the subdivision, as mentioned, the design guidelines, depending on how specific the applicant has to get during the subdivision process and I'm not familiar enough with how, you know, could you just subdivide and say I'm gonna have three empty lots and not say what you're planning to do with it. But you have the underlying zoning, you know what you're allowed do but you're not saying what you're going to do. But here in the design guidelines, we do have guidelines with regards to where the storm water infiltration basin would be located, if you're going to be putting in parks and schools, that you should be implementing IPM or integrated pest management. So if there's that level of detail in the subdivision application, then I think it would warrant a review for BMPs.

MS. TAOMOTO: Chair?

CHAIR ATAY: Ms. Taomoto?

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MS. TAOMOTO: The problem is that we're not talking about all these other things like storm water-related, we're talking about septic systems. So, the septic systems aren't necessarily installed on the residential side, or I've not seen them with the subdivision application. That's the problem. We're not talking about the other design guidelines that Joe mentioned, we're, I'm saying that there's a disconnect because the design guidelines don't address septic because I don't think that's where it makes sense to install the individual septic systems at that subdivision level. We typically see it installed when the homes are, each owner decides on their lot that they purchased, where their house is gonna be situated, where perhaps, or ohana is gonna be situated, and then situate the combined septic or individual septic, you know, to meet best that lot. Not the current grading but perhaps even like you see subdivisions where they buy it with a certain grade and then they change the grade levels. And so all those things has to be considered and if, and I just saying it doesn't happen at the subdivision level for septic systems. Yeah, I understand for storm water and infiltration basins, there's a massive shared infrastructure with, by all the subdivision lots but specifically when we're talking about septic, it's usually one per individual lot, yeah, we don't combine the use across lots typically. You know, Multi-Family, they could but not, you don't see it for Residential.

CHAIR ATAY: Okay. Mr. de Roode?

MR. DE ROODE: Yeah, specifically here in, for Zone B and C, in permit required section, we don't specify that septic is the primary focus. It could be part of it if that subdivision has information regarding the septic systems but, in general, it's to review what is being proposed for that subdivision. Only when we get into the BMP section on Page 7, then we specifically refer to one of the BMPs being subdivisions that create three or more residential units and that's where that unit per acre and we talk about unsewered areas. But even in sewerred areas, if the subdivisions are in Zones B or C, there would be cause for review of some of these other design guidelines that we see on Page 8.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, since we have the great minds of the departments here, can you please come up with a recommendation to us so that you can say, okay, this is what you think would work with, you know, Mr. Alueta and, you know, Ms. Taomoto's comments and all of yours or Corp. Counsel. Whatever it could be, just so that you can say, okay, this is what will work based upon, you know, what our Maui County Code and what is with State and County and, you know, everybody, we need to be concerned in terms of subdivisions.

CHAIR ATAY: Thank you for that, Ms. Sugimura. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, on Page 7 at the bottom, under Best Management Practices, the way I read this, it says, subdivisions that create three or more residential or residential mixed use developable lots in unsewered areas

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resulting in septic systems that serve more than one residential unit per acre shall install aerobic treatment units. So, does that mean that in addition to the septic system that you put in to serve, say a house and a cottage on a half-acre, that you also have to install an aerobic treatment unit if you're within this zone? Is that how that reads? So, it's like an additional, even if you have enough septic to serve the two units, you have to put in an additional aerobic treatment in?

MR. DE ROODE: Yeah, my understanding is, yes, it would be either installing an aerobic treatment unit or an alternative treatment and the intent being that you don't have an aerobic activity that would cause more concern for contamination from the septic system in that sensitive zone. So, there would be this, I think, added component. I know that in septic systems you have, you know, leach fields and you have some level of aerobic treatment but this, it sounds like, is taking it to a higher level of treatment.

COUNCILMEMBER KING: Okay. And what is the Planning Department ...

MR. ALUETA: That's an, already a requirement of the Department of Health, is it not, for your building permit?

COUNCILMEMBER KING: To have additional aerobic treatment on top of --

MR. ALUETA: Yeah.

COUNCILMEMBER KING: --septic?

MR. ALUETA: Yes. If you're within a thousand feet, anyone within a thousand feet of a wellhead, whether private or public well, you're required to have a aerobic system.

COUNCILMEMBER KING: Aerobic system?

MR. ALUETA: Yes.

COUNCILMEMBER KING: Okay.

MR. ALUETA: And it's not, and it's at the building permit level, I mean, because I have one. I'm well within your wellhead protection and --

COUNCILMEMBER KING: Okay.

MR. ALUETA: --when, every house in that subdivision, we were all required to put that same system in. So, at the building permit level --

COUNCILMEMBER KING: Okay.

MR. ALUETA: --and it's regulated by the Department of Health.

COUNCILMEMBER KING: Okay, so that's just restating what's already there then, that particular section?

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MR. ALUETA: Correct. I believe that this moves it, because it goes within the Zone B. What's good about stating that, right, it will expand the area because Zone B is based on science, I hope, and not arbitrary 1,000 feet, which is what I believe the current methodology being used. So, I mean, this is obviously, it would expand the area and it would get caught at, it would have to get caught at the building permit phase.

COUNCILMEMBER KING: Okay. Well, it says, the rider at the top says, the following standards shall apply to uses in Zones B and C, so it would apply throughout Zone C as well, according to this Best Management Practices?

CHAIR ATAY: B and C.

COUNCILMEMBER KING: Look on Page 7, under ...

MR. ALUETA: I'm sorry, I'm just trying to mentally go through how it's gonna get caught or if it's only for subdivisions three or more and not individuals, if you're only concerned with three or more, but anything within a thousand right now is caught at the building permit level for one lot. So, on this one, it's only going to be if you do a three or more lots outside.

COUNCILMEMBER KING: Okay.

MR. ALUETA: Okay, that's ...

COUNCILMEMBER KING: No, I just wanted, I didn't know that that was a current requirement so, you know.

MR. ALUETA: Again, within --

COUNCILMEMBER KING: Yeah.

MR. ALUETA: --DOH regulates it and then, but this would be for more than three lots, three or more lots outside.

CHAIR ATAY: Okay, so going back to Member Sugimura's question to Department of Water, as she was saying, I know that there has been a series of meetings and you guys have all met, all the departments have met to come up with this proposed. In that previous discussion of your recommendation, Ms. Taomoto, was to delete it, you know, adjust it?

MS. TAOMOTO: What I feel is if you put it in the subdivision level, I don't know, when the developer develops the septic system with the aerobic treatment as required, as we will require it in Zone B, there is sometimes a 10, 20-year lag, 50-year lag, you know, between when they subdivide the lot and the actual septic system would go in. And that's why I'm saying I think it would be more effective and implementable by the County if, like Joe said, currently, with the DOH regulation, which is almost identical, but what, just a 1,000-foot buffer, we require it at the building permit. When we get

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the building permit, with that language, building permit for, blah, blah, blah, it would then trigger, instead of 1,000 foot, it would then kick it to DOH to enforce at, within Zone B, so at the building permit level. If we just leave it in the subdivision, it doesn't get installed in the subdivision level, that's my concern. So, if you just change it to building permit, then it would get regulated under the current DOH, you know, in conjunction with the current DOH regulation at the time the dwelling is constructed or the project is developed versus just subdivision of land with lines on a paper, which may be some minor, you know, site infrastructure. It could, you could do it too, you could also do redundant and leave the subdivision and then add a building permit line, building permit, construction of dwelling, three or more dwellings on a property, so that it would get caught twice. It would get flagged at the subdivision level, and we could put in a flag, and then when the building permit comes in, because you have another line that says, construction of a dwelling, three or more dwellings on a property, then it would get caught again at the building permit level. If that's, if it's a real concern, we could do redundant. You know, if you understand, when we subdivide out lots from a parent child, we can flag it at that level so that there's a red alert on that subdivision lot when the child parcels get created, that there is a requirement that this lot, parent lot, created more than three lots, and therefore, something, something. So, I just, I, you know, I think your intent is, is it the number of lots or the total number of dwellings that a property creates through a subdivision process?

CHAIR ATAY: Okay, Ms. Taomoto, thank you for that sharing and I think this segues to a perfect time for us to take our mid-morning break, which will allow the three departments, Planning, Water and input from Corp. Counsel, to work out what we were just previously discussing. So, we'll take a short break. We'll return at 45 minutes after the hour. We're now in recess . . . *(gavel)* . . .

**RECESS: 10:35 a.m.**

**RECONVENE: 10:56 a.m.**

CHAIR ATAY: . . . *(gavel)* . . . Okay, it's four minutes before the hour of 11:00, this July 10<sup>th</sup> Water Resources Committee meeting is now being reconvened. Thank you, Members, for reconvening and allowing us to continue with quorum. Thank you for the mid-morning break. I think it's given the staff and departments a chance to come up with some proper wording, should there be any additions onto this proposed resolution, so. Department, who's gonna come up with this? Corp. Counsel? Thank you.

MS. OANA: Chair, the departments discussed, in addition to the proposed ordinance, with regards to, we were talking about the regulations for Zone B and C. That section B, we're talking about number 16, subdivisions that create three or more residential or residential mixed use developable lots, and the departments are fine with leaving that as is but adding a number 17, which would, and also adding a number 12 to the part about Zone C, under permit required, and it would be, new construction of three or more dwelling units, including residential mixed use on a lot. So, that would take care of finding it at the building permit stage as well. Also, we were discussing, because

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16 and 11 use the term subdivision, if we could define subdivision in the definition section, which would be, subdivision shall mean, a subdivision as defined in both Title 14, Article I, which is the Water Code, and Title 18 of this code, and that's the subdivision code.

CHAIR ATAY: Okay. Thank you for that. Staff, did you pick up those changes or recommendations? Department of Water Supply, do you want to continue where we were discussing prior to our break?

MR. DE ROODE: Yes, Chair, we can continue. I believe we left off on the bottom of Page 7, in Best Management Practices, and so we could move on to Page 8. Unless there's a desire to go through each of these items, I can read through them, or if there are any questions on items E, F and G on Page 8.

CHAIR ATAY: No.

MR. DE ROODE: I think the next one, the highlight would be item H.

CHAIR ATAY: Members, any questions?

COUNCILMEMBER KING: I don't have any questions.

CHAIR ATAY: Okay, thank you. Go ahead.

MR. DE ROODE: Okay. So, item H, regarding construction activities, shall be in accordance with Chapter 20.08 of this code and these standards. And so the additional standards are having a designated person on site during operating hours to be responsible for supervising the use, storage, and handling of hazardous materials--and we have a definition of what we refer to as hazardous materials--and who shall take appropriate mitigating actions necessary in the event of fire or spill. Hazardous materials being left on site is item number two. When the site is unsupervised, must be inaccessible to the public, locked storage sheds, locked fencing, locked fuel tanks, et cetera. And number three, construction vehicles and stationary equipment that are found to be leaking fuel, hydraulic fluid, and/or other hazardous materials shall be removed from the site and from any wellhead protection zone. The vehicle or equipment may be repaired in place providing the leakage is completely contained. And lastly, in this section on new construction, or on construction activities, hazardous materials should not be allowed to enter the storm water systems. So this provides this added layer of safety regarding construction.

CHAIR ATAY: Okay.

MR. DE ROODE: Our design guidelines, the next section here, are specific to subdivisions and this is beyond just the, as we had been speaking about the septic, the scope of septic systems. Also looking at how the proposed development is sited and keeping the uses as far away from the wellhead as feasible, having the storm water infiltration basins being located outside the Wellhead Protection Overlay District, where feasible. So, if there's part of the subdivision that may fall outside of the zone, placing that

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there. Active parks and schools should implement Integrated Pest Management, or IPM. If development or use is proposed on property which is partially within a Wellhead Protection Overlay District, the proposed development or use should be located to the maximum extent feasible on the portion of the property outside of the WPOD. Any questions on that design guidelines? Okay.

CHAIR ATAY: Excuse me. Before we go one, I just realized, I do want to have duly noted that at the return of our continuation of our meeting, Member Elle Cochran joined us.

VICE-CHAIR COCHRAN: Thank you very much, Chair. Thank you.

CHAIR ATAY: Okay.

MR. DE ROODE: The next section here on Liability. Nothing in this ordinance shall be construed to imply that the County of Maui has accepted any of an owner or developer's liability if a permitted facility or use contaminates groundwater in any aquifer. So, just because we provided best management practices and approved a permit does not construe that County has liability, other than, you know, for the developer. And coming to the, towards the end here, on Interpretation of District Boundaries. If parts of a parcel lie within one or more of the delineated zones of the WPOD, the parts shall be governed by the restrictions applicable to the zone in which the part of the property is located, meaning if a property was on the boundary of Zone B and C, the area in Zone B would fall under the rules of Zone B. The areas in Zone C would fall under the rules of Zone C. Where the boundary between two WPOD zones passes through a facility, the entire facility shall be considered to be in the more restrictive zone. So, if we have a storage facility, for example, or a light industrial manufacturing facility, that entire facility would be subject to the stricter rules. Where the facility, or a portion thereof, is overlapped by delineated zones of the WPODs of different wells or well fields, the stricter zone shall apply. And so you'll see in some of the maps we have different zones for the various wells and that's just saying if it was in an overlapping area where perhaps it'd be in Zone B for one well and part of the property would be in Zone C for the other well, the Zone B restrictions would apply. Enforcement, any violation of this chapter shall be enforced pursuant to chapter 19.530 of this code, and through revocation of or non-renewal as prescribed herein. Under our Administrative Rules, the Planning director and the director of Water Supply may adopt administrative rules regarding the administration of this chapter, pursuant to Chapter 91, Hawaii Revised Statutes. And last but not least, Severability. Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof. A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any permit previously issued there under. So, again, we're available to answer any additional questions you may have. We have the Appendices A and B and then the updated maps are Appendix C.

CHAIR ATAY: Thank you, Mr. de Roode. I think I had a question from Ms. Sugimura in regards to some of the appendix.

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COUNCILMEMBER SUGIMURA: Yeah, if I could? Thank you, Chair. So if I could, if you could look at your map number six, which is Kokomo, Piiholo, Awalau map on Maui, and I was just wondering what this map, can you describe this map, what the red lines are and . . . *(inaudible)* . . . I'm not sure? Because you have delineated the sections A, B, and C and then there's this red lines on it.

MR. DE ROODE: Okay. I believe, with my colleagues here, conferring with my colleagues, that the red, although not all the roads, it looks like it follows road lines. We don't have that in the legend, so our best guess at this point is that the red indicates major roads. We can confirm that but that appears to be the case. Beyond that, based on the legend we have, the well sites and the 50-foot radius in Zone A, two-year time-of-travel zone for Zone B, and ten-year for Zone C in the dotted lines. And I do have a, if you'd like to know, I could tell you what wells, the name of some of the wells that fall within that Zones B and C. So if you're looking at the map, starting from the top left of the map, we have Hamakuapoko I Well and Hamakuapoko II Well, which is directly below that. Over to the right, just to the east of Maliko Gulch, we have Haiku Well. And then moving to the next zone delineation, just to the east of this first one that I mentioned, we have Kaupakalua Well. And then the lower zoned area is Pookela Well.

COUNCILMEMBER SUGIMURA: Where do you show Zone A, Chair? 'Cause B and C are pretty ...

COUNCILMEMBER KING: It's the dot.

CHAIR ATAY: The dot.

COUNCILMEMBER SUGIMURA: Where is the dot?

MR. DE ROODE: The black dots that you see, those are not only where the wells are located, but also the 50-foot radius around the wells.

COUNCILMEMBER SUGIMURA: Oh, I see it. Okay.

CHAIR ATAY: So, Mr. de Roode, if we were to look at the map and you have the dotted line map, which is the Zone C, meaning a ten-year flow, the dotted lines. And if you were to hold the page mauka to makai, which you would have to kind of flip it, yeah, so anything mauka that's in that dotted line, you're saying that through gravity, the water flow, the chemical flow will be headed towards the well and that's the areas of your concern?

MR. DE ROODE: That's correct, yes.

CHAIR ATAY: So how do we implement this out in the community then? As I see, there's some heavy residential areas located within these zones, so.

MR. DE ROODE: Yeah, I mean in terms of how we implement it in the community, again, this ordinance is just looking at new uses so any of those existing developments, if



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they're not changing a use or going for a building permit, there would not be, under this ordinance, any action taken by the Department. Outside of this ordinance, part of the larger wellhead protection program, which this is just one strategy or tool within that program, there is outreach to the community in terms of educating on best management practices, again, technical assistance and also trying to connect the community with financial resources, as well as technical, with entities such as Natural Resource Conservation Service. And occasionally we are able to get funding from DOH to help with some of that, some specific projects to address potentially contaminating activities and we do prioritize areas within these zones in terms of what projects areas to target.

CHAIR ATAY: Thank you for that 'cause I'm looking at this map and I'm thinking, more important that we protect this source of water because where these dots are are where the wells located and these wells are what provides drinkable water to all of these subdivisions that's surrounding and adjacent to it. I mean, if I look at this map right here, it is more important that this legislation should be set in place. Member King?

COUNCILMEMBER KING: Thank you, Chair. I just have a question on map number two, the top zoned area, I don't see a well in there, I don't see a dot. Map number two, east of Lahaina Town. North-east.

MR. DE ROODE: We have two, we have three, well, actually four wells in that section.

COUNCILMEMBER KING: I don't see one in the top section. I see the other three. Are we missing a dot?

MR. DE ROODE: We have a different map. Okay. Yeah, so it looks like there is an error there, a missing well on that upper zone and that is Wahikuli Well I, should be indicated in that upper zone. So, thank you for catching that. I'm not sure what recommendation is for us to, you know, how to resubmit that or update it.

CHAIR ATAY: You wanna follow up with the other names? I see the one in the middle, there's two dots, two wells.

MR. DE ROODE: Yes, so the one in the middle, we have Kanaha Well I and Kanaha Well II and then in the lower zone, it's kind of hard to see, there are actually two there. We have Waipuka Well II and Waipuka Well I but they're so close to one another, it's hard to tell that they're not just one.

COUNCILMEMBER SUGIMURA: Chair?

COUNCILMEMBER KING: And then the top one is, which one is that?

MR. DE ROODE: Wahikuli Well I.

COUNCILMEMBER KING: Okay and there's only one in the top section that's missing?

MR. DE ROODE: Correct.

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COUNCILMEMBER KING: Okay.

MR. DE ROODE: Yeah.

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. So, I wonder, this is, these are really great information. So, on each of the maps, can you designate the well names connected to the correct dot? I don't know how you would do that but ...

CHAIR ATAY: Yeah.

MR. DE ROODE: We have that information available.

COUNCILMEMBER SUGIMURA: Okay, thank you.

MR. DE ROODE: So if the ...

COUNCILMEMBER SUGIMURA: Could you amend this and add that? Thank you.

MR. DE ROODE: We could do that, sure.

VICE-CHAIR COCHRAN: Chair?

CHAIR ATAY: Member Cochran?

VICE-CHAIR COCHRAN: Thank you. Chair, you, last full Council, you referred one of those reports--you know how we get --

CHAIR ATAY: Right.

VICE-CHAIR COCHRAN: --monthly ground --

CHAIR ATAY: Yeah.

VICE-CHAIR COCHRAN: --source reports, well, CWRM reports and what have you. I think in those reports, it lists well by well name and, you know, the draw, the sustainable yield, all that stuff, so that could correspond with these maps too and be helpful to breakdown, you know, where, now you can kind put the --

CHAIR ATAY: Right.

VICE-CHAIR COCHRAN: --name to a dot on a map kind of thing and know a little bit more background behind it.

CHAIR ATAY: Thank you for that reminder 'cause that was what I saw when I saw the report is, oh, wow, this is great, this gives us the names of all the wells and what the amount

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of pumpage that's going on and some wells have, you know, certain chemicals introduced in it. So, I think that data, that information, can also be updated and added to this so that the bodies can further understand it.

VICE-CHAIR COCHRAN: Yeah, thank you. So, is there a certain area that is more not for public knowledge or viewing in reference to wells and things and their locations specifically and stuff? I know, maybe that was just during the 9/11 time when we were not releasing, you know, specifics about reservoirs, a lot of source. Is that still, is there something there with protection of information?

CHAIR ATAY: Corp. Counsel, if you wanna answer that?

MS. OANA: You know, I'm still concerned with that and your discussion about putting the names on these maps. A little concerned me when you stated that and I understand that people can grab information from one website and grab from information here and then just correlate them together. I kinda, I'm uncomfortable naming them in something like this. If you need that information, we can get it, you know, but I'm uncomfortable with that. I'm also uncomfortable with adding too much information off of CWRM, like sustainable yield, things to be put on this because this is really just delineating where Zone A, B and C are in terms of this ordinance only. So, I would leave this as is, add that dot showing this well, but I prefer to leave it as is and if anybody wants information, they can go do their research and find it out on their own.

CHAIR ATAY: Duly noted, for, I understand for security concerns.

VICE-CHAIR COCHRAN: Okay, yeah, no, thank you, Ms. Oana, for sharing that. That was, so, yeah, I understand but I thought for informational purposes, there are other, as you state, reports that can be looked at and in our, we can, on our own accord, relay it to this but yeah. No, thank you for those comments.

MS. OANA: A little too easy for someone --

VICE-CHAIR COCHRAN: Yes.

MS. OANA: --who wants to do damage.

VICE-CHAIR COCHRAN: Okay, thank you.

CHAIR ATAY: Member Sugimura, did you have any other maps that you had questions on or any other Members have questions? Okay. Ms. Taomoto?

MS. TAOMOTO: I was trying to, I was a little bit confused and I think the reason why there might be, the map that was transmitted shows that empty top bubble. We don't have a Wahikuli well and so I think that the ...

UNIDENTIFIED SPEAKER: It dried up.

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MS. TAOMOTO: And that's why I was, and I just confirmed with Operations. We don't have a Wahikuli well so I think the map was revised, which is why the staff's maps don't show that upper and I think that might've been corrected because it might've been noted as a private well and this legislation is for only Department of Water Supply. So, I believe what happened is we, the staff, might have the correct map and what was transmitted, I believe, is the map showing a Wahikuli well that is privately owned, so we need to get you ...

UNIDENTIFIED SPEAKER: It doesn't show a well.

MS. TAOMOTO: Yeah, so we need to get you the map because we don't have a...the Department of Water.

CHAIR ATAY: Yeah, I think that's ...

MS. TAOMOTO: That's what I think happened.

CHAIR ATAY: Yeah, I think it's a State entity.

MS. TAOMOTO: Yeah.

CHAIR ATAY: Yeah.

MS. TAOMOTO: Thank you. So, we need to get a corrected Map 2 to you to not have that third bubble at the very top. Thank you.

COUNCILMEMBER KING: Okay.

CHAIR ATAY: Okay. I wanna say thank you to Mr. de Roode, in particular, for having the opportunity or giving us this opportunity to go from this draft resolution ordinance to a, from the front page all the way to the back. I know that there were suggested changes. Ms. Oana, do I need to have motions for those amendments to be made or just make the changes and the next meeting we'll ...

MS. OANA: Are you planning to pass, try to pass this out today or are you gonna come back for another meeting to go over ...

CHAIR ATAY: I think my intention right now, as I heard earlier discussion of hearing and giving opportunities from the agriculture community, would probably make the recommended substantive changes, corrections on the maps and the additions that we had discussed come all together. Allowing the agencies or the departments to, you know, bring this, I agree with Mr. Alueta, for us to vet this out here and put everything down that we can get and if we move this forward so that we can turn it over to Planning Commission but I'd want us to do the work here and the product that we bring out of this Committee is all fully vetted and done and just push it forward to the Commission for them to come back with us, so.

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MS. OANA: And would you want for me to work with Mr. Krueger on revising this a bit per our discussion today?

CHAIR ATAY: Right.

MS. OANA: And then Water can get you the new map --

CHAIR ATAY: Right.

MS. OANA: --and we can meet again?

CHAIR ATAY: The map and, what was the other? I don't know if you'd need to check Ms. King's recommendation that we did some County ordinances pertaining to Oxybenzone and ...

COUNCILMEMBER KING: Actually, it's just...Chair, it's a State.

CHAIR ATAY: Yeah.

COUNCILMEMBER KING: We tried to do it at the County, the State --

CHAIR ATAY: Yeah, so if --

COUNCILMEMBER KING: --superseded us.

CHAIR ATAY: --we can incorporate that in the proper appendix as listed items, I think was Appendix B or A, all those changes be incorporated so that we have a complete package. And I think her recommendation of changing gas stations to petroleum. Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, if we're done with this, I was looking at the Board of Water Supply letter that was sent to us on March 20, 2018 and it says from the Board, the Board supports wellhead protection though we do not have concerns with how the ordinance will be implemented. We are especially concerned about the cost of permitting and best management practices for landowners. And I wonder if the Department has a statement they would like to make regarding that. Therefore we welcome the Council's Water Resources Committee and the Maui County Council to further pursue this matter. But that wasn't the most latest letter that came to us. So, I wonder if you might have ...

CHAIR ATAY: Mr. de Roode, or Ms. Taomoto, senior representative from the Water or any staff member?

MR. DE ROODE: Okay. Yeah, I'm familiar with the March 20<sup>th</sup> letter. In terms of concerns about the cost of permitting and best management practices for landowners, specifically, we have a variety of resources available, some of which I've mentioned previously, both technical and also, in some cases, financial, to help assist landowners with understanding the BMPs and then implementing the BMPs. That's not to say

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that we'll have funding for every landowner to implement every BMP but there are resources available to assist. We don't think that the burden will be unreasonable. It's really is a best practice so if you're proposing a new use, it seems reasonable to be requiring that you implement that use using best management practices. In terms of the permitting cost, I don't know that we have yet determined the actual cost of the permit to the landowner but it will be relatively nominal and I don't foresee it being a high cost, just in terms of the permit application cost or permitting fees.

COUNCILMEMBER SUGIMURA: Oh, interesting. So, what you're saying then, this is going to be in the, would have to be proposed in the next Budget year for a fee then? This is not something that we're ready to tackle even that discussion?

MR. DE ROODE: Yeah, in terms of the actual fee structure, that's something that I think we're going to be working through administratively just to determine what that would be but it hasn't been proposed yet, a specific cost hasn't, not been proposed yet.

CHAIR ATAY: You have further follow-up questions, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: I guess we'll wait to hear from the Department then as we go through our next Budget. More to come, huh?

CHAIR ATAY: Okay.

COUNCILMEMBER KING: Chair?

CHAIR ATAY: Member King?

COUNCILMEMBER KING: Maybe just to clarify. Would this be a fee, this permit, they would be applying to the Water Department, Department of Water Supply versus the Planning Department?

MR. DE ROODE: Yeah, the, so whatever initial permit they're pursuing would be, let's say it's through the Planning Department for a special use permit or a building permit through DSA, they would pay that fee, and then if it was determined that a permit was required for their use based on this ordinance, there would be a separate fee for that separate application, which would come directly to the Department of Water Supply.

COUNCILMEMBER KING: Okay. And that would help you with enforcement and overseeing this overlay?

MR. DE ROODE: Correct. We do believe we have the existing resources in place to staff the effort but that's, I think that's for further conversation to determine specific fees that might be required.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER SUGIMURA: So, Chair?

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COUNCILMEMBER KING: Chair, the...I'm sorry. So, the only other thought I wanted to say before, because I have to leave in a few minutes, but on the resolution, that we might want to include the, because we've had Planning Department pretty heavily involved, to transmit copies to the Director of the Department of Planning as well. And then I had just an issue with why we're transmitting this to the Deputy Director of Water Supply when we still have a Director of Water Supply, so it's just a legal issue.

CHAIR ATAY: Thank you. I think...Member Sugimura, you had your question?

COUNCILMEMBER SUGIMURA: Did they want to --

CHAIR ATAY: You yield?

COUNCILMEMBER SUGIMURA: --answer that question, I don't know.

CHAIR ATAY: Okay, Ms. Taomoto?

COUNCILMEMBER SUGIMURA: Mine's something separate.

MS. TAOMOTO: Real quick, just on the permitting. If there's gonna be a intent by the Department to implement permit fees, I would probably suggest that we look at all the permits that we administrate because we don't charge any permit fees at this time, including, you know, for subdivisions, building permits, other permits. So, we probably should take a look at the overall impact of all the permits we administrate and see which ones would be appropriate to begin implementation of a permit fee structure for overall department fees before we just, you know, start with one and then add on another one --

COUNCILMEMBER KING: Okay.

MS. TAOMOTO: --and look at the overall impact. Thank you.

COUNCILMEMBER KING: Okay. So, Chair, just a follow-up. So you're, we're, basically what you're saying is there doesn't necessarily have to be a fee associated with the permit, just need the permit to do the action?

MS. TAOMOTO: Correct.

COUNCILMEMBER KING: Okay.

MS. TAOMOTO: We don't have fees for, like building permits at this time. And that's something I can discuss with Chair Atay if that's another agenda item you wanna initiate. Thank you.

COUNCILMEMBER KING: Okay.

CHAIR ATAY: Thank you for that.

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COUNCILMEMBER KING: Thank you.

CHAIR ATAY: Staff, can you note that topic? You had something?

COUNCILMEMBER KING: No, I just wanted to throw the thought out there about, 'cause I know it's gonna come back with the resolution, and I think it would be a good idea to add the director of Planning Department and then just, I don't know where we're at with having a director of the Department of Water Supply but --

CHAIR ATAY: Okay.

COUNCILMEMBER KING: --maybe that's an issue that Corp. Counsel could look at, at the point.

CHAIR ATAY: Then I think Ms. Sugimura, you had something?

COUNCILMEMBER SUGIMURA: So, I think in all our cross discussions, my fee question got answered by Ms. Taomoto in the discussion about this resolution. I don't know about a resolution being proposed by this Committee but I think Ms. Taomoto then answered that you're going to look at the total fee schedule for the Water Department to take up, probably with Budget and Finance, right, not necessarily this Committee but ...

MS. TAOMOTO: What I, when I referred to Chair, I think we can look at all the different permits we administrate and come up with maybe a palatable, what we feel, to the community, possibly run it through Water Resources before it gets thrown into our 2020 Budget as a proposed to the Mayor.

COUNCILMEMBER SUGIMURA: Okay.

MS. TAOMOTO: We could do it that way or we could take it straight through the Budget process and have the discussion through the Budget and Finance but I'll discuss that with Chair Atay. Thank you.

CHAIR ATAY: Thank you.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR ATAY: Okay, any other questions from the Members? Okay. We've come this far today. I wanna thank all the Members here, especially thank the various departments for your guys' participation and helping us move this legislation forward. With that, the Chair will be requesting, as we've requested, a revised proposed resolution incorporating the revisions to this bill attached as an exhibit, to incorporate the revisions approved and recommended by Committee members today. Upon receipt of these revised proposed resolution, the Chair will bring the item back before this Committee for consideration. I think both getting input from Planning and Water Department, making the corrected changes of the map locations, such as the appendices on the list of chemicals also be corrected and added in there, as well as the various suggested changes in definitions and terminologies be done. And I hope



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recommending and suggesting and thanking Corp. Counsel to assist our Council Services staff to have this back. With that, if there are no objections, the Chair will be deferring this item.


**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused MW)

**ACTION: DEFER pending further discussion.**

CHAIR ATAY: And I want to thank everyone for today's meeting. This meeting is adjourned . . . (*gavel*) . . .

**ADJOURN: 11:33 a.m.**

APPROVED BY:



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ALIKA ATAY, Chair  
Water Resources Committee

wr:min:180710:alp

Transcribed by: Annette L. Perkett

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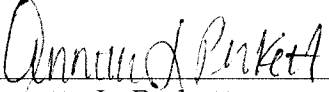
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CERTIFICATE

I, Annette L. Perkett, 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 31<sup>st</sup> day of July, 2018, in Haiku, Hawaii.

  
Annette L. Perkett