

WATER RESOURCES COMMITTEE
Council of the County of Maui

M I N U T E S

Council Chamber

August 1, 2018

CONVENE: 9:05 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Alika Atay, Chair
Councilmember Elle Cochran, Vice-Chair (in at 9:06 a.m.)
Councilmember Robert Carroll
Councilmember Stacy Crivello
Councilmember Yuki Lei K. Sugimura (out at 11:00 a.m.)

NON-VOTING MEMBERS

Councilmember Riki Hokama (in at 9:23 a.m.)

EXCUSED: Councilmember Kelly T. King
Councilmember Mike White

STAFF: James Krueger, Legislative Analyst
Carla Nakata, Legislative Attorney
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)

Brian Bardellini, Executive Assistant to Councilmember Atay

ADMIN.: Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

Shane Agawa, Deputy Director, Department of Water Supply

Wendy Taomoto, Engineering Program Manager, Department of Water Supply

Alex de Roode, Planner VI, Department of Water Supply

David Raatz, Administrative Planning Officer, Department of Planning

OTHERS: Matthew Messerschmidt

Zandra Amaral Crouse

Albert Perez, Executive Director, Maui Tomorrow

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PRESS: *Akaku Maui Community Television, Inc.*

CHAIR ATAY: . . . *(gavel)* . . . Good morning, everyone. Time now, it's five minutes after the hour of nine o'clock, Wednesday, August 1st. This is the Water Resources Committee meeting. I'd like to ask that this meeting come to order and ask for decorum to be maintained first off by silencing all cell phones or any noise-making device. Moving forward, I want to introduce myself as Chairman of this Committee, Alika Atay. And moving forward, we also want to welcome our Vice-Chair, Member Elle Cochran.

VICE-CHAIR COCHRAN: Aloha, Chair.

CHAIR ATAY: Good morning. We have Robert Carroll.

COUNCILMEMBER CARROLL: Aloha.

CHAIR ATAY: Aloha and good morning. We have Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

CHAIR ATAY: Good morning. We also have Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning.

CHAIR ATAY: Excused this morning is Mike White and Kelly King. This morning, also in attendance from the Administration we have Deputy Director of the Water Supply, Shane Agawa.

MR. AGAWA: Good morning, Chair. Good morning, Councilmembers.

CHAIR ATAY: We also have Wendy Taomoto, Engineering Program Manager for the Department of Water Supply.

MS. TAOMOTO: Good morning, Chair and Members.

CHAIR ATAY: Good morning. Also recognizing another member from the Department of Water Supply, a Planner, Alex de Roode.

MR. DE ROODE: Good morning, Chair, and good morning, Members.

CHAIR ATAY: And also in attendance joining us we have David Raatz, the Administrative Planning Officer.

MR. RAATZ: Good morning.

CHAIR ATAY: Representing Corporation Counsel we have Jennifer Oana.

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MS. OANA: Good morning, Chair.

CHAIR ATAY: Good morning. Staff, we have Stacey Vinoray, James Krueger, out in Hana Dawn Lono, on Lanai Denise Fernandez, Molokai Ella Alcon, and I also want to recognize and say thank you to my Legislative and policy staff, Trinette Furtado and Brian Bardellini. Members, we have one item on today's agenda and that's WR-18, Wellhead Protection Overlay Districts [sic]. I would like to begin by taking public testimony. Staff, do we have any testifiers?

MR. KRUEGER: Yes, Chair. We have two testifiers signed up in the Chambers this morning. First up to testify is Matthew Messerschmidt testifying on agenda item WR-18, to be followed by Zandra Amaral Crouse.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. MESSERSCHMIDT: Good morning.

CHAIR ATAY: Good morning.

MR. MESSERSCHMIDT: How this ties to wellhead protection overlay, WR-18, if...I'm not very good at public speaking. For the past three years I've always heard you asking for staff in engineering. I'm here to say if you're looking for an engineer, I'm putting myself out there and saying I'm willing to work and I want to work for the community that I live in. And I'd like the opportunity to go forward with that. Thank you.

CHAIR ATAY: Thank you for expressing that. I think we do have a process with visiting the Personnel Department and that'll initiate your processing.

MR. MESSERSCHMIDT: I've done that a few times.

CHAIR ATAY: Okay. Alright, thank you.

MR. MESSERSCHMIDT: Thank you.

VICE-CHAIR COCHRAN: Chair?

CHAIR ATAY: Yeah, Member...

VICE-CHAIR COCHRAN: Chair?

CHAIR ATAY: Members, any questions? Yes.

VICE-CHAIR COCHRAN: Yeah, thank you. Thank you, sir. What was your name again?

MR. MESSERSCHMIDT: Matthew Messerschmidt.

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VICE-CHAIR COCHRAN: Thank you, Mr. Messerschmidt. And so are you, you have a background...do you know...think...what the wellhead protection program is about? And do you have...

MR. MESSERSCHMIDT: I understand, I've had course work in hydrology and hydraulics, I do have a degree in civil engineering, so yes.

VICE-CHAIR COCHRAN: Okay. Thank you. I was just wondering if you had read any information, the details of what this item is today.

MR. MESSERSCHMIDT: The only thing that I've read on today is what I was just given because I --

VICE-CHAIR COCHRAN: Okay.

MR. MESSERSCHMIDT: --wasn't informed of anything else about it.

VICE-CHAIR COCHRAN: Okay. Alright.

MR. MESSERSCHMIDT: So...

VICE-CHAIR COCHRAN: Thank you.

CHAIR ATAY: Thank you for being here.

MR. MESSERSCHMIDT: Alright, thank you.

CHAIR ATAY: Staff?

MR. KRUEGER: Chair, the next person up to testify is Zandra Amaral Crouse testifying on agenda item WR-18, to be followed by Albert Perez.

MS. CROUSE: Aloha and good morning, Committee Chair Atay and Committee Members. My name is Zandra Amaral Crouse testifying on agenda item WR-18. I am in favor of amending Title 19 of Maui County Code to establish a wellhead protection overlay district. The goal of the wellhead protection program is to identify, manage, and protect the land areas that contribute groundwater to drinking water wells. When our drinking water is pumped into the water system from groundwater wells, the water within the aquifer is drawn towards the well. The size and shape of these aquifers, areas supplying our wells depends on the uniqueness and the characteristics of any given aquifer as well as on the pump. Using information from groundwater models and local hydrogeological data, the boundaries of the groundwater recharge areas can be accurately identified. According to Madison Water Utility who utilizes the system, says typically they identify the 5, 50, and 100-year capture zone boundaries contributing to a well's supply. Identifying these zones allow preventative measures to be established that prohibit or restrict future land uses that have the potential to contaminate groundwater. Also, investigations to identify existing or historic land use

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and potential contamination sources are documented. So, groundwater monitoring and management needs can be established. In conclusion, I feel it's important for us to be proactive in implementing policies and practices which ensures uncontaminated water sources...resources for us now and generations to come. And I thank our Director of Water Supply for this proposal. And I thank you, Committee Chair Atay and Committee Members, for bringing this...that they're bringing this to the floor for public testimony. Mahalo.

CHAIR ATAY: Thank you. Members, any questions for clarifications? Thank you, Ms. Crouse.

MR. KRUEGER: Chair, the last person signed up to testify is Albert Perez testifying on WR-18.

MR. PEREZ: Good morning, Chair Atay and Members of the Committee. Albert Perez, Maui Tomorrow Foundation. I just submitted my written testimony to you. Maui Tomorrow Foundation supports this resolution to send a proposed bill to the planning commissions. That's my understanding of how it works. And I'd like to note this would only apply to County wells. I want to share the experience that I had when I moved from here to Washington State, and I...first thing I had was when I was elected president of my homeowner's association and I found out that this...although it sounded really fancy, the title really meant water system manager. So, at that time the EPA had just adopted, I think they're called source water protection guidelines and so we received a notice from the State Department of Health telling us that we needed to delineate the time of travel zones for our private well. So, at first I thought this would be a hassle but as I went through the process and found that we didn't have any contaminant sources within our ten-year time of travel zone, I realized that it gave me a sense of relief to know that we didn't have to worry about our water. So, that was a relief to all of the homeowners there. The second experience I had with wellhead protection was when I was a GIS analyst for the State of Washington and I was tasked with generating all of the wellhead protection zones for several thousand public and private wells in the state, both group A and group B, using the location of each well and a formula that was based on the pumping rate in gallons per minute. This data set was then adopted by the State Department of Health, and people's drinking water has been safer ever since. I want to mention, it's not in my testimony but the other part of the wellhead protection delineation task that they gave me as the president of the water...of the homeowner's association was not only did we have to delineate these time of travel zones but we were responsible for checking to see if there were any contaminant sources. And if there were, we were supposed to let them know that we had a well and that we were...that they were in our time of travel zone. So, it kind of completed the circle of information, and then hopefully if they had a spill, they would let us know. So, 20 years later, it's long past time for Maui County to protect our citizens in the same way. This bill is a minimal step to help protect the health of our residents. We rely on water from these wells. Clean water is a valuable resource, we don't fully appreciate it until it's contaminated like the people in Flint, Michigan will tell you. And we should have done this and more a long time ago so I ask you to pass on this proposed resolution as soon as possible. Thank you.

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CHAIR ATAY: Thank you for your testimony. Members, any questions for clarification?
Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, nice seeing you, good morning. I
wanted to ask you then, the...you were president of the homeowner's association --

MR. PEREZ: Correct.

COUNCILMEMBER SUGIMURA: --here on Maui?

MR. PEREZ: No, this was in Washington State.

COUNCILMEMBER SUGIMURA: All in Washington --

MR. PEREZ: Right.

COUNCILMEMBER SUGIMURA: --so not here at all.

MR. PEREZ: Right.

COUNCILMEMBER SUGIMURA: Okay. 'Cause I was going to ask you about that. So, on
Maui then you don't have any connection the way that you did in Washington State?

MR. PEREZ: No.

COUNCILMEMBER SUGIMURA: Okay.

MR. PEREZ: No. But --

COUNCILMEMBER SUGIMURA: Just curious.

MR. PEREZ: --I'm just sharing my experience there and what it means to have a wellhead
protection zone and the relief that it gave us as homeowners.

COUNCILMEMBER SUGIMURA: So, as homeowners then --

MR. PEREZ: Yes.

COUNCILMEMBER SUGIMURA: --in another state, not in Hawaii, and you're protected by
Federal and state statutes. Who did you report your information to once you --

MR. PEREZ: We reported to the State --

COUNCILMEMBER SUGIMURA: --did your test?

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MR. PEREZ: --Department of Health so they didn't...like I noticed in the testimony from the State, they said it's best for the counties to do it because we have separate aquifers. But the result is that we haven't had any wellhead protection zones delineated for 20 years now. So, what they do over there in that state and in some other states is they have the state do it and they administer it directly with the wellhead, the public and private wellhead owners. They also do aquifer recharge area zones and they do sole-source aquifers, so they're really careful about protecting all of the sources of their groundwater. So, thank you.

COUNCILMEMBER SUGIMURA: Thank you for sharing your experience.

MR. PEREZ: Okay.

VICE-CHAIR COCHRAN: Chair? Sorry. Mister...sorry, Mr. Perez.

CHAIR ATAY: You got questions from Member Cochran.

VICE-CHAIR COCHRAN: Yeah, thank you. And the...so you said this is a good minimal step. Have you had a chance or could you find some time to look into it and share a little bit more perhaps from your past experience in Washington State and how it, you know, we could make it I guess more stringent or more protective measures I guess if it's just at a minimal kind of level at this point in your eyes when you vetted through the changes?

MR. PEREZ: I would be happy to do that. I would urge you to go ahead at this level and get at least the minimal protection for our County wells. I don't know, if you start for going for every well in the State, it could take a long time to get any protection, so I would urge you to move forward with this resolution at this time.

VICE-CHAIR COCHRAN: Okay. Thank you very much.

MR. PEREZ: Thank you.

CHAIR ATAY: Thank you. Staff?

MR. KRUEGER: Mr. Chair, there's no one else in the Chambers signed up to testify.

CHAIR ATAY: Okay, so no one else in the Chambers. I want to turn to the outlying districts. I want to reach out to the Hana Office. Do we have anyone out there wishing to testify? Is it on? Hana? No? Okay. Moving on to Lanai Office, Denise Fernandez, do you have anyone wishing to testify?

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

CHAIR ATAY: Thank you. Molokai, Ella Alcon, do you have anyone wishing to testify?

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

CHAIR ATAY: Thank you. Staff, if there's no others in the Chambers, any...no other remaining testifiers, seeing that there is no one else wishing to testify, if there are no objections, I will close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR ATAY: Thank you.

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

CHAIR ATAY: Members, our agenda item for today is WR-18, Wellhead Protection Overlay District. This description of this that's in front of the Committee is that we received County Communication 15-50, from the Director of Water Supply, transmitting a proposed bill to protect the County's municipal wells from contamination and avoiding costly treatment through the restriction of high-risk uses in the various capture zones of Department of Water Supply drinking water wells; correspondence dated February 23 of 2015, from the Department of Corporation Counsel, transmitting a proposed resolution to refer to the planning commissions a proposed bill to protect the County's municipal wells from contamination and avoid costly treatment through the restriction of high-risk uses in the capture zones of Department of Water Supply drinking water wells. We also have correspondence dated July 25, 2018, from the Department of the Corporation Counsel, transmitting a further revised proposed resolution entitled Referring to the Maui, Molokai, and Lanai Planning Commissions a Proposed Bill Amending Title 19, Maui County Code, Relating to Wellhead Protection. And the purpose of the further revised proposed resolution is to refer to the Planning Commissions a proposed bill entitled A Bill for an Ordinance Amending Title 19, Maui County Code, to Establish a Wellhead Protection Overlay District. The purpose of the proposed bill is to protect the County's municipal wells from contamination and avoid costly treatment through the restriction of high-risk uses in the capture zones of Department of Water Supply drinking water wells. Before we go on, I want to recognize in attendance we have Member Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR ATAY: We last discussed this matter at our meeting on July 10, 2018, with the assistance of the Department of Water Supply and Department of Planning and the Department of Corporation Counsel. We went through the entirety of the proposed bill, and the Committee suggested several revisions to this bill. For example, instead of gas stations the bill would require petroleum or mixed biofuel fueling stations to have a permit to operate within Zone B of the Wellhead Protection Overlay District.

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Also, in working with the Department of Water Supply and Corporation Counsel, we made other revisions to this bill for consistency with the Maui County Code, most notably the appendices which have been removed as attachments because the Code is not designed to incorporate them. Appendix A which is contained...which contains a list of regulated substances has been removed entirely. The definition of "regulated substance" now references the United States Environmental Protection Agency National Primary Drinking Water Regulations and the Rules Relating to Public Water Systems pursuant to the Hawaii Administrative Rules Title 11, Chapter 20 for the regulated substances the bill addresses. The list of pesticides rated by the United States EPA as having high leachability potential which used to be referenced as Appendix B in the Wellhead Protection Overlay District Maps which used to be referenced as Appendix C are now being referenced in the bill as being on file with the Office of the County Clerk. They are still included with the bill for your reference. Members, as a reminder, the purpose of this proposed bill are to protect the public's health, welfare, and safety by minimizing the risk of contamination of our aquifers, to preserve and protect existing and potential drinking water sources, to implement land use policies consistent with the Maui County General Plan and community plans, and to restrict or prohibit land uses that are incompatible with groundwater protection. This morning from the Department of Water Supply we have members of the Water Supply and I want to turn it over to Administration, Deputy Director Shane Agawa for some comments as well as to Alex de Roode for any additional comments.

MR. AGAWA: Thank you, Chair Atay. First of all, I'd like to express Director Baisa's apologies for not being able to attend the meeting today. I thank Chair Atay and the Councilmembers for allowing me to represent the Department on her behalf. I will now turn the mic over to Alex de Roode who's TA'ing for our Water Resources and Planning Program Manager.

MR. DE ROODE: Thank you. Thank you, Chair and Councilmembers. Chair, you did a very good job of highlighting some of the main updates and changes since our last review of this draft ordinance. We're here to answer any additional questions you may have. If it's, please the Chair and the Members we can go through once again and highlight the additional changes that were made, so happy to do that if it's deemed worthwhile. Otherwise, any specific questions you may have we're happy to address. Thank you.

CHAIR ATAY: Thank you, Mr. de Roode. And while with, we're with the Department of Water Supply, I would like to offer Ms. Taomoto any opportunities for comments.

MS. TAOMOTO: Thank you, Chair. At this time I have no additional comments. Thank you.

CHAIR ATAY: Okay, thank you. Because this bill proposes to amend Title 19 of the Maui County Code, also present today we have a representative from the Planning Department and I want to offer the opportunity to Mr. Raatz who's the Administrative Planning Officer in Planning for any comments.

MR. RAATZ: Thank you, Chair. Just a couple of brief comments, if the resolution is adopted by the Council the next step will be for the Planning Department to route the proposal

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through the three planning commissions and then we'll report back to the Council as expeditiously as possible. We don't have a particular position on the bill that's before you today. We do note there are several General Plan ordinances that support the concept of a wellhead protection ordinance including the Maui Island Plan, Wailuku-Kahului Community Plan, and the West Maui Community Plan. Thank you, Chair.

CHAIR ATAY: Thank you, Mr. Raatz. Thank your staff, for being here. We now offer an opportunity of Members, the floor is now open for any questions or discussion of clarification that is needed in regards to this resolution. Any Member have any questions? Okay.

VICE-CHAIR COCHRAN: Chair? Chair?

CHAIR ATAY: Member Cochran?

VICE-CHAIR COCHRAN: So, the version we're looking at, the latest is what just got handed out to us--is that correct?--dated July 25 at the top?

CHAIR ATAY: That's my understanding, yes.

VICE-CHAIR COCHRAN: Okay. And so yeah, I think the big question too is the private people. I know this is about us the County and who we service, we want to make sure everything, you know, is health and safety-wise. So, this does not transfer over into the private sector at all? Or obviously they're part of the, you know, prohibitive uses and restricted use...practices that they may do that may affect our, you know, water system. So, I think is that to the extent that the private entities or, you know, population is affected by this? Is that kind of the understanding?

CHAIR ATAY: Who wants to address that, Water or Corp. Counsel? Mr. de Roode?

MR. DE ROODE: Yes, you're correct. So, this draft ordinance only applies to County wells, and there is precedent in other communities for private wells also being regulated in a similar fashion as one of our public testifiers just mentioned. At this point in time given that we, on our County wells don't even have this type of regulation and the fact that the Department of Water Supply does not have jurisdiction over non-County public water systems, that's why they're not included in this ordinance. So, the ones that are not included would be private public purveyors, right, other public water systems that are serving the public that are not County, as well as individual private wells.

VICE-CHAIR COCHRAN: Okay. I think...well, I know Mr. Hokama's here so he's probably going to touch on Lanai's issues. But my other big issue that I think this doesn't address at all are the past, right? How many wells have we dug, how many wells have the private sector, anybody dug that have hit contaminated sources? And who contaminated them? And who has gone back to say you need to clean this up? I mean I know it was, it took...who was it, Maui Tomorrow back in the day to get GAC

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filters, you know, on some of our wells out in the Hamakuapoko and other areas because they fought, but it wasn't this County who fought and brought that to the table to make the private people clean the messes that they made. So, I know Napili we have some contaminated wells up there, we can't use it. How many millions of dollars got expended by this County, you know? So, I look at what happened in the past. This is great, of course we need this, this should have been. But here we are, I understand no crying over spilled milk, but the point is how do we get private people to clean up the messes they made? How many wells are we not able to create and tap into for needed source because of that fact too? So, you know, that part of the picture is really bothersome but of course, you know, we need to move forward here. So, very much in support. Again, as one of the testifiers mentioned, this is a very minimal step forward but no less a step forward so I highly recommend us getting this through to planning commissions to get it vetted and have everyone chime in and make it extremely protective for the future. So, thank you, Chair.

CHAIR ATAY: Thank you, Ms. Cochran, for your expression. You know it's the Chair's position, you know, when I inherited this chairmanship, I also inherited a master agenda list, and this was one of the items that was on the master agenda. And in research, this agenda item has been in this Committee for well over six years, has gone through at least two different directors, at least three different Water Resource Chairs and Committees. And in looking at this, wearing the hat of being responsible stewards of our own island, looking at our...what role the County Department plays in water protection, I think this is the first step that we can address. A lot of folks say this is so minimal, but it is better taking a step forward and taking ownership of the wells that we can control and take care of and be good stewards of that. Along the lines of Ms. Cochran's thoughts, whatever the results of this moving forward, I'd hope that this issue positions ourselves from the whole body of the Council to have our HSAC representatives because this is an issue that needs to be addressed from the State side and so maybe, you know, from the HSAC involvement saying that Maui's Committee would like to ask the State level addressing this issue. But first step is first and let's take care of our kuleana and our County. So, that's why this proposed resolution is to go forward to the planning commissions. Members, any other Members have any other...yes, Member Sugimura?

COUNCILMEMBER SUGIMURA: First, I'd like to welcome Deputy Director Agawa. Today's the first meeting that we formally been able to meet you, so welcome. And you're an engineer from another department, correct, from what I read in your...

MR. AGAWA: Yes, I was formerly with the Public Works Department, Engineering Division.

COUNCILMEMBER SUGIMURA: Thank you. So, what I would like to ask Chair, is that this document, whatever gets passed out of Committee and Council would be sent to the different commissions, so Molokai, Lanai included, Maui. And I wanted to also ask that it go to the Board of Water Supply. So, on your resolution I wanted to make an amendment, Chair, if you would? So, if you look at your first page under BE IT RESOLVED, paragraph one, where it says halfway down, well, that it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI

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COUNTY CODE, TO ESTABLISH A WELLHEAD PROTECTION OVERLAY DISTRICT,” a copy of which is attached hereto as Exhibit “A” and made a part hereof to the Maui Planning Commission, the Molokai Planning Commission, Lanai Planning Commission, the Lanai Planning Commission, and the Board of Water Supply. Also, in paragraph two, that same inclusion with that same sentence structure, number two, that it respectfully requests that the Maui Planning Commission, the Molokai Planning Commission, the Lanai Planning Commission, and the Board of Water Supply transmit their respective findings. Yes. And I guess I was going to change acting Director of Water Supply but at this moment I guess Gladys Baisa is still the acting Director, it hasn’t gone through --

CHAIR ATAY: Okay.

COUNCILMEMBER SUGIMURA: --our Council. Correct? So, I wanted to make this amendment, Chair, to add Board of Water Supply to also comment on this.

CHAIR ATAY: Okay. I have two individuals raising their hands. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I would kindly ask for your consideration of a very short recess.

CHAIR ATAY: Okay, thank you. We go into short recess. . . . *(gavel)* . . .

RECESS: 9:38 a.m.

RECONVENE: 9:41 a.m.

CHAIR ATAY: . . . *(gavel)* . . . We’re back out of recess continuing this morning’s Water Resource Committee meeting on August 1, 2018. We had a discussion on where we are at with the title of this resolution and involvement in this ordinance. Can I ask comment from Corp. Counsel as to where we are at?

MS. OANA: Thank you, Chair. As recent as June 22, 2018, so last month, we did get a communication from Honest [*sic*] Lyons, the Chair of the Board of Water Supply, and he indicated that on July 21, the Board of Water Supply reviewed your letter, Chair, requesting comments on this wellhead protection ordinance. And he said the Board feels that the three previous letters conveyed to the Water Resources Committee explaining concerns with the ordinance adequately represented the Board’s views of the matter. And he attached three letters, March 20, 2018; October 22, 2015; and January 16, 2014. And they offer no further comments at that time. Granted though they did not review the last changes we made from your last meeting. So, I would suggest that we just go ahead and review this resolution, and if you so wish pass it out of your Committee today for referral to the planning commissions. I believe the Water Department has no objection to on their own sending it back to the Board of Water Supply for their review of any revisions that we made since your meeting. So, I don’t think it has to be in this resolution, and I will see it through that they will review it again or have it on their agenda at least within the time period that the planning

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commissions are reviewing it. so, it doesn't have to be in this resolution. I think I, me and the Department can take care of the Board of Water Supply's review of this latest revision --

COUNCILMEMBER SUGIMURA: Chair?

MS. OANA: --if that's okay with you guys.

CHAIR ATAY: Member Sugimura? Does that clarify...

COUNCILMEMBER SUGIMURA: No.

CHAIR ATAY: Okay.

COUNCILMEMBER SUGIMURA: Because why not? I mean yeah you can send it but I want them to have a voice and be part of the resolution so that when we see the final report we'll see final report back from Planning, Molokai, you know, Molokai, Maui, Lanai as well as the Board of Water Supply. I mean I think they're a huge part of this decision. That is their...that is what they're supposed to be doing. Although the other planning commissions are important too, but in this particular case I think their voice is really huge to me. And if it means changing the title and then you're going to have to repost it again, is that the issue, the reason why you don't want to change it?

CHAIR ATAY: No, that's not the issue, but okay, Corp. Counsel?

MS. OANA: I mean either way it operates with the same result, the Board of Water Supply will review this last version and report back to...it'll be probably a report back to the Director who will give a report to you on what the Board of Water Supply said. Or the Chair can write a letter to the Committee with their final comments or their comments on this last revisions. So either way the results will be the same, you'll get their last comments.

COUNCILMEMBER SUGIMURA: So, Chair, I still stand by my motion that I would like to include them in this, 'cause I think they are a large voice as to what is important as this has been their focus of their commission work. And we as the Council has asked them to represent the people in this one way whereas the other commissions have larger, you know, larger roles. But, you know, they, I think they're an important voice for me. So, I stand by my motion, if I can get a second.

CHAIR ATAY: Thank you.

COUNCILMEMBER SUGIMURA: And I don't know if we have to...

CHAIR ATAY: Corp. Counsel?

MS. OANA: Just further, Chair, that it's the Charter requirement that zoning ordinances go to the three planning commissions.

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COUNCILMEMBER SUGIMURA: I know that.

MS. OANA: It's not a Charter requirement that it go to the Board of Water Supply, and it has gone to the Board of Supply...Water Supply multiple times and, you know, we're not opposed to sending it again. But this particular resolution, you know, abides by the Charter.

CHAIR ATAY: Thank you. 'Cause that was my understanding, my understanding is that this subject, this topic has been delivered to the Board of Water Supply. My understanding too was then Deputy Director Baisa attended a meeting and discussed this thing, and I think Staff addressed the previous concerns and which brought us here to allowing this to go to the different commissions. So, they do have review. But, Member Sugimura, if you're adamant about trying to make this as an amendment to this, that process is there. First thing I think is we need a first, maybe I need some guidance on Corp. Counsel or County Staff here is first we need a main on this proposed resolution and then an amendment to that. Is that correct, Staff? Yeah?

MR. KRUEGER: Mr. Chair, yes, that would be correct. It would be best if we had a main motion first --

CHAIR ATAY: Yeah.

MR. KRUEGER: --for the bill, and then Councilmember Sugimura could move to amend it. Furthermore, we recommend to move forward with this amendment, it would be best to amend the resolution with a second section to separate the Board of Water Supply from the planning commissions. The first BE IT RESOLVED calls out the Charter provisions that require planning commission review.

COUNCILMEMBER SUGIMURA: Okay.

MR. KRUEGER: Thank you, Chair.

COUNCILMEMBER SUGIMURA: So, Chair?

CHAIR ATAY: So right now the Chair...yes?

COUNCILMEMBER SUGIMURA: Can you put another...oh sorry, Chair.

CHAIR ATAY: Okay.

COUNCILMEMBER SUGIMURA: I think what James said then is, what he's saying is instead of...number one would remain the same under BE IT RESOLVED, and he's saying that number two then would have to be a copy of which...talking about this document, a copy of which will attach as Exhibit A and made a part hereof to the Board of Water Supply, sent to the Board of...so you're saying to make a separate paragraph? Okay. 'Cause it's not pursuant to the Charter.

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UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER SUGIMURA: I agree with that.

CHAIR ATAY: First things first. I need...Chair is looking for a motion to address the main and a second.

VICE-CHAIR COCHRAN: Chair, so moved.

CHAIR ATAY: Thank you. Looking for a second.

COUNCILMEMBER SUGIMURA: Oh, that was my motion.

VICE-CHAIR COCHRAN: The main motion.

COUNCILMEMBER SUGIMURA: That was my motion, so.

VICE-CHAIR COCHRAN: No, sorry, Chair. We want the main motion, right --

CHAIR ATAY: Right.

VICE-CHAIR COCHRAN: --so she can do amendments to the main motion?

CHAIR ATAY: Right, yeah.

VICE-CHAIR COCHRAN: Yeah.

CHAIR ATAY: So, I need a main motion.

VICE-CHAIR COCHRAN: So, so moved on your main motion.

COUNCILMEMBER CARROLL: Second.

CHAIR ATAY: And then we got a second from Mr. Carroll. Okay.

COUNCILMEMBER SUGIMURA: So, I'd like to amend then.

CHAIR ATAY: And now Member Sugimura has an amendment.

COUNCILMEMBER SUGIMURA: To create paragraph two and I think I would ask...defer to Carla and James then to be sure that the wording is correct and we exclude the Charter, reference to the Charter to send it to, send this to the Board of Water Supply also for comment. And paragraph two in your document would then turn to paragraph three and add in after the Lanai Planning Commission, also add in Board of Water Supply. And I guess I have a question then, do we need to change the title of this bill or is it...that would be a Corp. Counsel question if it's not necessary?

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CHAIR ATAY: Corp. Counsel?

MS. OANA: Either way.

CHAIR ATAY: Yeah. Okay. So, that's your...Staff, you got her motion, an amendment? Do I...

MS. NAKATA: Mr. Chair?

CHAIR ATAY: Yes?

MS. NAKATA: If Staff may, just to clarify so Staff's understanding is that although it's not Charter required that the Committee is looking at a motion to amend the resolution by requesting that the Board of Water Supply also review the proposed bill attached to the reso. Just at first blush, Staff would recommend possibly adding in the Board of Water Supply to the title of the bill, Referring to the Maui, Molokai, and Lanai Planning Commissions, and the Board of Water Supply a Proposed Bill Amending Title 19, Maui County Code, Relating to Wellhead Protection. Possibly also adding in a third WHEREAS clause that would indicate that the Council is requesting the Board of Water Supply review the attached proposed bill and a new second BE IT RESOLVED paragraph that would refer the proposed bill to the Board of Water Supply for review and omit the recital to the Charter provisions. Oh I'm sorry, Chair, and also to add the Board of Water Supply into the existing paragraph two which would now be paragraph three requesting that they transmit their recommendations to the Council.

COUNCILMEMBER SUGIMURA: Thank you.

MS. NAKATA: Oh, as well as to existing paragraph three which would now be paragraph number four.

CHAIR ATAY: Right. Okay. So, do we have a second to that proposed amendment?

COUNCILMEMBER CRIVELLO: Second.

CHAIR ATAY: I have a second from Member Crivello. Okay.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR ATAY: Discussions on this amendment?

VICE-CHAIR COCHRAN: Chair?

CHAIR ATAY: Yes?

VICE-CHAIR COCHRAN: So, basically, I mean no harm right? It's already being done but it's just another protective measure in, to put it in black and white I guess so to

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speaking? So I guess...okay, thanks. That's...I just getting --

CHAIR ATAY: Okay.

VICE-CHAIR COCHRAN: --nods in affirmation by Corporation Counsel or...

CHAIR ATAY: Member...Corp. Counsel?

MS. OANA: I mean no harm but we could have done this, you know, separately so the result would have been the same.

VICE-CHAIR COCHRAN: Okay.

CHAIR ATAY: Okay. Any other discussions?

COUNCILMEMBER CRIVELLO: Yeah. I just --

CHAIR ATAY: Yes?

COUNCILMEMBER CRIVELLO: --want to...I guess for where the amendment is coming from, how I hear it is to have the assurance that it's, it will be in reference to this Title 9 [sic], that also the Board of Water Supply will have a sense of input. Does anything in here on Title 19 have to further to make mention about the Board of Water Supply, Corp. Counsel?

CHAIR ATAY: Corp. Counsel?

MS. OANA: I'm sorry, I don't understand the question.

COUNCILMEMBER CRIVELLO: I'm just asking if the Board of Water Supply also will be included in this Title 19 or does this resolution cover it already?

MS. OANA: The reference to Title 19 is we're amending Title 19 so you're just adding that the Board of Water Supply is also a reviewer.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR ATAY: . . .(inaudible). . .

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR ATAY: Okay. Any other questions and discussion? Okay. Ready to vote on the amendment, all in favor say "aye".

COUNCILMEMBERS VOICED AYE.

CHAIR ATAY: Opposed? Okay. Five votes. Okay, six [sic].

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**VOTE: AYES: Chair Atay, Vice-Chair Cochran, Councilmembers
Carroll, Crivello, and Sugimura.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers King and White.

MOTION CARRIED.

ACTION: APPROVED amendment.

CHAIR ATAY: Okay. So, going to the main...yes?

COUNCILMEMBER SUGIMURA: So...oh.

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I wanted to...

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR ATAY: Five.

COUNCILMEMBER SUGIMURA: So, I wanted to...at our last meeting if we're talking about the document, I asked the question and I did some research during this period between meetings. I asked this if there's any Federal or State organizations, agencies that protect our source, right? 'Cause I figured there must be. And I was told by Water that...or I don't know who, yeah, I think was Water that there isn't. So, EPA has the Safe Water Drinking Act which we know and has designated Department of Health to administer within the...and for the State, right? So, my question is are they not doing their job, is that why there's a need to then also add this, what we're trying to do onto what the Federal government has asked the Department of Health to administer? I was just wondering 'cause I think that the information that I got was that there's nobody administering it. I was like that's kind of hard for me to believe considering how important water is as a resource. So, if you want some documents that I got, I mean I can give you this that I found, but I think you know that there is EPA and the Federal government regulates water, water's so important. So, it is a resource that is being regulated and the Federal government has given the primacy I think is the terminology they use for the Department of Health to regulate our water source which thank God, you know. I share Member Cochran's concern I think with us. I really don't have a concern with the County, because I think you guys do a good

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job in terms of regulating our water sources. But probably the bigger concern that we heard about and it is still a problem with our water source, the nitrate level Upcountry with the 7,400 cesspools, my house is one of them, 'cause we have no, you know, no system Upcountry that we would have to convert to septic tanks one day. But that water which is private water sources are the problem and really not the County water sources. And during the public hearings that we had with Department of Health there, Member...I mean, well not Member Baisa, so Deputy Director Baisa came to the meetings and had all her data which she presented about the, that all our wells were, you know, well within the concerns of Department of Health, right? So, whatever is being done by Department of Health and they were there, you know, as representatives for the Safe Drinking Water Act. And all the tests that would they do...I mean that they did and they were, you know, the concern is the Upcountry water sources of the private water sources, not the County, really not the County. The County according to what Gladys Baisa reported was we were stellar, there was no concern, thank God, you know, the County's doing a great job. So, it made me wonder just because I have that, you know, attending the other meetings, that the County is not the problem and the private, you know, water sources or water...was more brought up as problems during those Department of Health meetings from the County. So, I just wanted to be sure that we all know that EPA regulates water under the Safe Drinking Act. Department of Health is the primacy that takes care of it for the State of Hawaii. So, there is regulation happening now. I mean the County they must be doing a great job because of what, you know, Gladys Baisa said at those meetings, and it was confirmed with all data and the tests and...I mean I was impressed. So, if you are going to proceed with this that I...if somehow this can say that the Safe Water Drinking Act, EPA, Department of Health, you know, is, supersedes or, you know, mandates whatever we need to do for the water, you know, our water source. And so we don't put if this would put through businesses or residents or whatever that are trying to establish their business to have to go through a permit process like another layer that may be not needed, because we already have the big guns there, you know, if they're doing their job, already protecting our water, Chair.

CHAIR ATAY: Thank you. I'd like to ask the Department of Water Supply to comment. This proposal came through the Department. Why? You know as to what Member Sugimura is claiming involvement of EPA, involvement of Department of Health, why the County of Maui is stepping up?

MR. DE ROODE: Sure. Councilmember Sugimura, thank you for your comments. And we share your surprise at the lack of...it's really the enforcement of regulation. Regulation is there and we refer to it throughout this document so we do refer to Department of Health standards, EPA standards which help us...which guide us as to what needs to be done. The situation on the ground is that the, neither the EPA nor the Department of Health at the State level have the resources to monitor at the level that's needed to ensure safe drinking water. And we've had direct communication with the Department of Health expressing their support for us moving forward with such an ordinance, because they see that it would add that extra layer of protection that they...if you ask them directly, will admit they are unable to enforce and regulate. So, really the majority of what they regulate are areas that have already been identified

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as having been contaminated. So, like H'Poko Well for example or other wells where contamination has been found in the past, they do have a monitoring program in place where they check on a regular basis the level of pesticides or other contaminants that may be in that well area. And once it goes below a certain threshold, they can then clear it for safe drinking water standards. But if there...nothing has been found yet, they're not there to enforce, to prevent really. They don't have prevention mechanisms. What they do have is occasionally some funding that they can pass on to the counties which we've received in the past to help support wellhead protection programs overall. And this, we've mentioned before is just one tool in an overall wellhead protection program. So, some of the others include doing PCA or potentially contaminating activity surveys, and that is addressing what Member Cochran brought up earlier which is existing uses, what is going on out there right now even in grandfathered uses. What we do with that program is more outreach and education and technical support. It's not saying...we have no jurisdiction to say you can't do that if they're already doing something that they have a permit for, but we can at least reach out to the community and say how can we help you. We identify this as a sensitive area, how can we help you minimize potential contaminations. And the Upcountry area is pretty unique there. Specifically the nitrate levels is just one source of potential contamination, right, so the cesspool issue is just one concern. This ordinance really focuses, goes, you know, more broadly to include pesticide application, fueling stations, you know, auto body shops, any...there are a number of additional uses, land uses that could be...that are considered potentially contaminating activities that need to be looked at closely particularly in these sensitive zones. And again we're not saying if they have a permit they can't do it. It's just that the Department would be providing guidance on best management practices, how can you minimize risk and use those best management practices to not contaminate, to do our best to not contaminate public drinking water supply.

CHAIR ATAY: Thank you. Ms. Taomoto?

MS. TAOMOTO: I would like to point out in the Member's binder...or Granicus, you don't have binders like we do. There is a March 2, 2015 letter, from the Department of Health, which explains how this type of ordinance, wellhead protection ordinance is incorporated into the State process. And like what Alex said, they envision that the counties would take the lead in ensuring the regulation. So, we are working very closely with them, and Alex is correct in that the regulation is there but they need the counties to enforce, be the enforcement. So, this letter...do you have this letter?

CHAIR ATAY: What's the date on that?

MR. TAOMOTO: It's the March 2, 2015 letter.

COUNCILMEMBER SUGIMURA: March 2nd.

MR. TAOMOTO: It discusses how EPA established the broad guidelines for the Source Water Assessment Program and provided funding to the State for its implementation. DOH developed the State Water Assessment Program procedures and contracted with UH to

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delineate the time of travel overlay delineations that we see on the maps and to estimate the relative susceptibility to contamination of each of the State's public drinking water sources. DOH also provides funding to water systems throughout its Wellhead Protection Financial Assistance Program to develop and implement protection activities. And Maui Department of Water Supply in addition to being integrally involved in the State Water Assessment Program process, incorporated that SWAP into their Wellhead Protection Program by use of the overlay delineations. And this is how the SWAP/H...WHPP process was envisioned to work. So, this process that we're taking right now is what the State envisioned would, how it would be implemented to protect. Do you guys have...found it in your Granicus? If not, I can give it to Staff to make you copies.

CHAIR ATAY: Thank you. That was a letter from the --

MR. TAOMOTO: State Department of Health.

CHAIR ATAY: --State Department of Health, Deputy Director Keith Kawaoka.

MR. TAOMOTO: Yes.

CHAIR ATAY: Yeah.

MR. TAOMOTO: To Gladys Baisa, Councilmember, Water Resources Committee.

CHAIR ATAY: Thank you. And as I mentioned on a previous meeting, this is what I got from the EPA site, and the EPA site says that state and local governments and water utilities play a critical role in protecting source water. They are well positioned to help tailor protective actions to unique local situations. The local governments can develop zoning requirements to ensure that businesses that are using hazardous materials are not located near water supplies. Localities can also protect source water areas by implementing land use controls such as acquisition or conservation easements. And this is taken, reprinted once again straight off of the EPA site. So, if you're inquiring why we on the local level is trying to set legislation to protect our wells, I mean it gives us...the EPA itself gives us a clear requested involvement as well as the State of Hawaii's Department of Health supporting this measurement.

MR. TAOMOTO: Chair, yeah --

CHAIR ATAY: Wendy Taomoto?

MR. TAOMOTO: --I forgot to read the, yeah, the third paragraph does state what you're saying. The County government is the proper level...and this is from the State. The County government is the proper level for implementing wellhead protection regulation. So yeah, so the State and EPA has the regulation but we have...we are responsible for implementation. Thank you.

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CHAIR ATAY: Thank you. Members, any other questions or clarifications? We're back to the main motion.

VICE-CHAIR COCHRAN: Chair? I think Mr. Hokama...I'll let Mr. Hokama. I know you're not a voting Member --

CHAIR ATAY: Okay.

VICE-CHAIR COCHRAN: --but I know you have something to share.

COUNCILMEMBER HOKAMA: Chairman, thank you.

CHAIR ATAY: Thank you. Thank you for being here.

COUNCILMEMBER HOKAMA: No, thank you for allowing me to participate as a non-Member...voting Member of your Committee, Chairman. Just few comments, one, I look forward to this being sent to Lanai's Planning Commission. I think they look forward to their opportunity to provide comment. And as well as, you know, it's a Council-created entity, the Lanai Water Advisory Committee and so I anticipate...and I'll be forwarding the proposed legislation, Chairman, to make you aware of that I'm asking them for their comments also since it is a entity that again Council created to support Lanai's unique water situation. And thank you for reading those comments and Ms. Taomoto for those State positions I guess that I appreciate. And of course it brings up the uniqueness of this County, Chairman, okay. We have one island that has basically one aquifer that has basically one system. Okay. It is operated by the Lanai Water Company who is also the developer of the island who also owns 97 percent of the rest of the island. Potential conflicts of priority of who protects what for what purpose. Let's get that out of the clouds. I think this is one measurement that the community can take safety behind, Chairman, that at least there's a process and entity that has no interest but the public's in reviewing how it impacts the total island. Okay. There's no other system for the public to rely on if this one system goes down which is private. Okay. No other system. That's the unique situation. But yet, Chairman, I go back and appreciate the definition. It is clear that what we have on Lanai is a public water system. They have a PUC certification. They're recognized by the State. And so, Chairman, when we...I read the purpose and I think your purpose is great, what the Department and everybody has chimed in on, and intent. If that is truly the intent then I would agree with the rest of the Committee's comments earlier about isn't this a pretty narrow application of a good intent? Okay. If it's for the public safety, Chairman, the welfare that we state in your purpose, the health, it doesn't matter who owns the land, if it impacts public water systems they should have some say. Okay. Depends on your philosophy, Chair, if you believe everything in our lava lubes is in solid cells and nothing seeps into the other cells, you know, that's great, you can go with that. But if you believe there's seepage and the cells intermix eventually in certain areas, well contamination then seeps also and goes into other areas. So, what does the private system then impact the public system, Chair? And I think the key thing the Committee is concerned about, excluding the private side, Chairman, how much of that is of the total watershed protection acreage? I don't

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know, I would ask the Department, you know. Half of the total acreage is private? More than half is State or Federal? I don't know the answer, you know, we look to you folks for provide us those things. But, Chairman, we need to look at island solutions. I keep bringing this up because if anything that we see as from a cultural standpoint we understand is mauka makai. We know if we screw up mauka, what happens by the ocean is going to get impacted too, eventually. 'Cause we can see it sooner than the continental US how we damage our environment. So, for Lanai, Chairman, I just bringing up that we have a unique thing, and I hope we can find a way to broaden the applicability portion because for Lanai it's the only thing we have, Chairman. Unfortunately it's private but it serves a total island, a total community, a total public system. Okay. They chose that status. I need for them to be assured that they will have fairness treated, because the residents need to be assured that the development interests doesn't overtake the water company's responsibility of a public purveyor. Thank you, Chairman. I appreciate my opportunity.

CHAIR ATAY: Thank you, Mr. Hokama, for your expressions of what's going on, on the island of Lanai and your interest of your attendance here. Member Cochran, I see your hand.

VICE-CHAIR COCHRAN: Yeah, thank you. And again, I understand the...I'm getting to understand I guess the bigger picture global view of this. One point, I guess Mr. Perez was here earlier but little did I know, I just learned now that every other state has this protective measure already. We're the only state and that just...anyhow, blew my mind. So, I see this...I like...thank you, Ms. Taomoto, for bringing up the State's letter to the Department and to us. And so this does, it supports, you know, and does not conflict at all with State and Federal type of protective measures. And I know this is on the County's behalf to be preventative and protective, so, very, very much in support. But I mean I hear Mr. Hokama's...and private, West Maui, my side of the island, we the County have a little speck in the whole control of the waters over there. I mean from Launiupoko Irrigation Company on the south side and then I got Kapalua up on the northern side and Hawaii Water Service all in between, and I mean it is crazy control just almost similar to Lanai by private people. So, yeah, that is worrisome for me. So, again, I understand the intent and purpose of this and very much in support. And I had the definition "public water system" highlighted in this draft too and Mr. Hokama touched on that. So, as I understand this is an EPA definition and it does include though not only publically owned systems but privately owned systems. But this particular ordinance in front of us today is only focusing on our County-owned public systems at this point. Is that a good understanding to the Department or Ms. Oana?

MS. OANA: Yes.

CHAIR ATAY: Corp. Counsel?

VICE-CHAIR COCHRAN: Yes? Okay. And so I mean we I guess in the future down the road can venture to, you know, a broader perspective. But I just wanted to make that clear, what we're doing. And I, that's a great kuleana. I think we're taking huge

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responsibility on our behalf as the public. And listening to Ms. Sugimura's discussion too and my thoughts as into violators of the past and what have you, I think...well as I understand, unless there is a specific violation that's cited or a specific, you know, some...we know most definitely something's being contaminated by a certain entity, then and only can, you know, a violation of the Safe Drinking Water Act be, you know, be I guess evoked, you know, invoked on. So, that in itself...so EPA, Fed, you know, the State people, there, as you say, there is no boots on the ground. There is no oversight perhaps on their behalf. Yeah, there's all these laws and everything all over the place, but the enforcement and the actual...someone saying you just violated, that typically I mean has not, doesn't occur very often. So, I think this is one way for us the County to get if should there ever be a violation, we have that trigger, that mechanism through this and now we can invoke these other laws and say you are in direct violation of the Safe Drinking Water Act and what have you. So, the other thing is, is there an overall State law I guess that...is that what the letter is saying that they have these laws in effect and until it's being violated, yet State people aren't there looking to see if there's any violations occurring, then is there that, I guess I don't know, a list of laws and things that are on the books currently?

CHAIR ATAY: Staff? Who wants to...Mr. de Roode?

MR. DE ROODE: Yes, if you look on Page 2 in definitions under contamination you'll see the reference to the US EPA Primary Drinking Water Regulations and then the State rules relating to public water systems pursuant to Hawaii Administrative Rules Title 11, Chapter 20. So, that is what governs it at the State level. And they have their own Clean Drinking Water Branch at the Department of Health. Again, they only have really the bandwidth to monitor existing contaminated sites and monitor them for hopefully decreasing levels over time. And the only way they would be aware of contamination would be if it's reported so they would either be someone from the public noticing something and reporting it or a private entity self-reporting. You know, that's pretty much, those are the two main ways that the DOH becomes aware of an issue.

VICE-CHAIR COCHRAN: Right. And so the self-reporting thing is kind of very worrisome to me. But I do like in our purpose and intent section, you know, that we restrict and prohibit land uses that are incompatible with groundwater protection and obviously implement our land use policies consistent with our General Plan and community plans. So, I mean you don't have to create the how-to book here, it's pretty straightforward. So, I just look forward to getting further vetting through the different commissions in our County and, you know, having this roll out and actually be implemented. Some of my questions, Chair, are in the, of course everything we create we need enforcement and we need penalties should you violate. And I'm looking at Page 9 where that's located, enforcement. So, this and administrative rules will be created by Planning Director and Director of Water Supply. So, is that who...who will be doing enforcement? I don't have that chapter, 19.530. And would that be yourselves the Water Department having the total oversight and when you find violators it's under you and then you're going to be bringing down...do we have

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penalties or it's just the revocation of permit? I don't see any dollar amounts I think. Is there any real-hard-hitting hammers here?

CHAIR ATAY: Staff? Ms. Taomoto?

MS. TAOMOTO: If you...giving us a minute, we're pulling up 19.53.

VICE-CHAIR COCHRAN: Okay. I think Mr. de Roode had something, Chair. Mr. de Roode.

CHAIR ATAY: Mr. de Roode?

MR. DE ROODE: Yes, and I'll look to my colleagues here and Corp. Counsel for any additional response to this. But the enforcement would be at the very least a revocation or non-renewal of the wellhead protection permit. And so if you don't have that permit, you are not allowed to conduct the initial land use, or if it was triggered by a building permit for example, you wouldn't be able to continue with that use without that wellhead protection permit. And typically what, the way the Department envisions approaching that is working with the landowner or business owner, et cetera, with the permit holder to help them comply with best management practices. So, once they can demonstrate compliance then they could be considered for having that permit renewed or restored and carry on with their permitted use.

VICE-CHAIR COCHRAN: Okay. But if they...a violation is they created some type of contamination, right? Is that what they did?

MR. DE ROODE: Well, if that was the case then they would fall under US EPA. I mean if they contaminated it in a way that went against US EPA regulations or Department of Health regulations then they would be subject to the fines or other implications of breaking that, you know, going against that regulation. So, that would be pursuant to the rules of DOH or EPA and associated fines or penalties.

VICE-CHAIR COCHRAN: Okay, thank you. So, but then we gave the permit, they violated the permit, we're going to take it away until they clean it up, but in the meantime they contaminated something. So, now you're saying it's EPA or State so we are going to go tell EPA and State listen, this is what this entity did, you need to take the next steps. Is that how that's going to happen?

CHAIR ATAY: Corp. Counsel?

MS. OANA: I believe that's what happens in all contamination situations so the State and the national EPA there's these, you know, superfund kind of contamination cleanup requirements that they have to go through. Now, we are revamping also in the Department of Water Supply administrative rules, the civil fines for violations. Currently of course there is no, nothing for a wellhead protection violation, but we are revamping the whole and will include fines for this as well.

VICE-CHAIR COCHRAN: Okay. And that part will not, does not, doesn't need to be here?

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MS. OANA: No, this is administrative rules.

VICE-CHAIR COCHRAN: Okay. So, under the...

MS. OANA: It's current in, basically in administrative, County administrative rule that combines with Public Works, Planning, and Water. We are revamping it so all departments will have their own.

VICE-CHAIR COCHRAN: All right.

MS. OANA: And in our revamp for the Department of Water Supply we'll include a wellhead protection list of fines.

VICE-CHAIR COCHRAN: Okay. Should we...oh sorry, real quickly to just follow up on Ms. Oana's comments just now. You said revamping the administrative rules so that's on Page 9 at the very bottom, and it's stating here Planning Director and Director of Water Supply may adopt administrative rules but you did toss in Public Works. So, should Public Works not be included here?

MS. OANA: Oh, my mention for that is just that the current rules relating to civil fines, Public Works, Planning, and Department of Water Supply, and DEM are all in that one --

CHAIR ATAY: In administration.

MS. OANA: --section of administrative rules.

VICE-CHAIR COCHRAN: Oh, okay. Okay, good.

MS. OANA: So, all the departments are revamping it so we all have our own, and in our review of ours, we're going to have the wellhead protection violations.

VICE-CHAIR COCHRAN: Okay.

MS. OANA: That doesn't...that's a separate kind of administrative rules for the civil fines for violations. We may be adopting administrative rules just for the administering this ordinance as well.

VICE-CHAIR COCHRAN: Okay. So, it'd be good for us to be in the loop on those, what they're creating.

CHAIR ATAY: The administrative rules.

VICE-CHAIR COCHRAN: Yeah.

CHAIR ATAY: Yeah. I think we have comments from Ms. Taomoto or Mr. Raatz.

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MR. TAOMOTO: So, under 19.61.130, as proposed under enforcement, it refers to Chapter 19.53 [sic]. Under that chapter, the departments and there's various departments referenced, not just Title 19 which is under Planning but Director of Public Works, Prosecutor's, Environmental Management, Water, Planning. We can under this enforcement language, serve them the notice of violation and it says what it needs to include, the date, name, address, nature, location, time, and the order. And the order may require the person to do any or all of the following: cease and desist; correct the violation at the person's own expense before a specified date; pay a civil fine not to exceed \$1,000.00 in the manner at place...manner, at the place, and before the date specified in the order; pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order; and pay a civil fine not to exceed one percent of the project cost as provided in Section 20.08.260.E.2. So, there is language prior to the adoption of our administrative rules that Ms. Oana was referring to, to enforce, and we could with, in conjunction with the Department of Planning enforce a violation through the existing 19.53 [sic].

VICE-CHAIR COCHRAN: Okay.

MR. TAOMOTO: As I just read.

VICE-CHAIR COCHRAN: Okay, thank you.

CHAIR ATAY: Thank you.

VICE-CHAIR COCHRAN: Chair? Chair? So, the Charter amendment we're looking to do to up the penalties from 20,000 to 30,000 would be...20,000 would apply. Would that change what you just stated --

CHAIR ATAY: No.

VICE-CHAIR COCHRAN: --to me? 'Cause I really would like it to apply.

COUNCILMEMBER SUGIMURA: Illegal short-term rentals.

CHAIR ATAY: It's a different.

VICE-CHAIR COCHRAN: I want that amount to apply to all. That \$1,000, it's nothing.

CHAIR ATAY: Yeah.

VICE-CHAIR COCHRAN: It does nothing.

CHAIR ATAY: I want to offer Member Crivello who's been patient --

COUNCILMEMBER CRIVELLO: That's okay. Forget it.

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CHAIR ATAY: --to have...

COUNCILMEMBER CRIVELLO: No, that's all right.

CHAIR ATAY: Okay.

COUNCILMEMBER SUGIMURA: So, I have a question.

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, my question is then, it's interesting to me to hear what Riki Hokama said about Lanai, and I know when we first took this up, he came just to say make sure that this goes to the Lanai Planning Commission also, and here you are today. So, because this is about the County wells and Lanai is private, I'm just curious to hear what Mr. Hokama may say as how can we help Lanai or what is this going to do to help Lanai with, you know, their wellhead situation? 'Cause it's not County, it's not a County resource but it's a private. Although they're like a public, I guess, they're one entity that owns the entire island, so, just curious.

CHAIR ATAY: Thank you for your question. Member Hokama?

COUNCILMEMBER HOKAMA: Chairman, you know, depends how you want to look at it. This to me is just another departmental tool. It's an overlay, it designates a specific district or zone for under specific purposes and that's what's being created by this Committee this morning, Chairman. Again, I come back to how do you feel is the appropriate role of this County regarding governance over things like public water systems, okay, regardless of ownership, just the term that states public water systems. You take responsibilities when you want to have that title. You have requirements. Users of the system have expectations regarding that water, its quality, its purity, its...whatever issues that it may have that should have been mitigated, Chair. I'm just saying that I think this is a smart thing to move forward and under public health if...again, I go back to your purpose and intent, Chairman. If that is the Council's true position then why shouldn't the private entities also be umbrella'd and encompassed too? They're part of it. They already said they want to be part of it, they have this license to verify it. They've agreed to meet the standards of the commission and the health departments or whatnot. This is just to help verify it. What's the issue? I don't see an issue, Chairman, especially not for Lanai, 'cause like I said, Chairman, we only have one aquifer, we cannot screw it up. Okay. I won't talk for any other island but I've been living on this...with this Lanai water thing for 65 years, Chairman, so I think I can speak about Lanai water and why I think the County should have its responsible role of sufficient governance in this overlay. I think it's appropriate and it helps provide Lanai an assurance that there's a third party looking at the public's interest. Thank you.

CHAIR ATAY: Thank you for that sharing. Member Crivello, yes?

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COUNCILMEMBER CRIVELLO: Thank you. Thank you, Chair. So, I'm listening to what we're talking about getting permits, and yet we have the ordinance only applies to the wellhead protection overlay districts for our County water supply wells, right, so, and not to private wells as it states in this particular ordinance that we're going to start working on and what have you. So, what...where does the private well owner or, you know, this is one island that is just omongously [sic] overwhelmed with private wells, whether it's irrigation or drinking water. What permits are...they may be in violation with? Is it with the actual land or is it with the, their wells when we talk about enforcement of the use or lack of permit? Can someone ask...explain that to me?

CHAIR ATAY: Staff, who's wants to...Mr. de Roode?

MR. DE ROODE: So, if you're considered a public water system and we have the definition here which is...let me just pull it up here. System that serves...here we go, this is on Page 3 I believe if we have the same...I'm looking at a working draft here but...yeah, top of Page 3. A water system which provides water for human consumption through pipes or other constructed conveyances, if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of any twelve-month period, as defined in section 11-20-2 of the Hawaii Administrative Rules. So, once you reach that threshold within that definition, you're considered a public water system and you're regulated as such, and that includes regulation by the Department of Health and under EPA. So, they're all regulated the same way in terms of...

COUNCILMEMBER CRIVELLO: I understand that but how does the Department of Water Supply for Maui County become enforcers or what have you? Or...

MR. DE ROODE: We do not.

COUNCILMEMBER CRIVELLO: There'll be none, right.

MR. DE ROODE: We do not, yeah.

COUNCILMEMBER CRIVELLO: Yeah.

MR. DE ROODE: It's outside of --

COUNCILMEMBER CRIVELLO: No...

MR. DE ROODE: --the Department of Water Supply's --

COUNCILMEMBER CRIVELLO: Right, yeah.

MR. DE ROODE: --jurisdiction as it stands currently.

COUNCILMEMBER CRIVELLO: Right.

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MR. DE ROODE: And but they do have to report to CWRM, they do have to report to --

COUNCILMEMBER CRIVELLO: Right.

MR. DE ROODE: --the State Department of Health. And if there was knowledge of contamination then we'd be in the same situation described previously where --

COUNCILMEMBER CRIVELLO: Right.

MR. DE ROODE: --DOH would come out and monitor and there would be fines and penalties but it wouldn't be under County jurisdiction.

COUNCILMEMBER CRIVELLO: I just wanted to, really for the public to understand how that's defined, because we keep referring to violation of permits but yet it's not necessarily with the Department of Water Supply when it comes to the private entity. So, just wanted that kind of clarification to be mentioned on that part. The other comment or I think we can appreciate through this process is the, I guess partnership that has come with funding for us to, for the Department to have come up with this district overlay and identification, and actually through this we already have a plan in place. Am I correct to understand that? Through the, what is it, the State revolving fund through the Department of Health for this particular water [sic] head project throughout the County?

MR. DE ROODE: Yeah, so the State Department of Health does have a State revolving loan fund and also...so that's primarily a loan fund. They do have a small amount of grant funding available too, but they also have their wellhead protection and source water protection program at the State level which helps us fund some of these initiatives including helping to fund the USGS work that came up with the MODFLOW mod map analysis to create these delineation zones around our wellheads. And they can...they have in some cases but they can easily do that for other private public water systems.

COUNCILMEMBER CRIVELLO: I see.

MR. DE ROODE: It's not that...we just haven't had involvement in that work, but USGS and DOH could fund that as well and provide assistance to those public water systems, the private ones to do similar work.

COUNCILMEMBER CRIVELLO: Good. Thank you. May I ask...

CHAIR ATAY: Member Crivello?

COUNCILMEMBER CRIVELLO: Thank you. So, that being said, so supposing throughout this district overlay and you have a County well and then we have our wellhead protection, who is responsible to make sure the contamination is cleaned up with your identification of say a landfill for instance? And we want to make sure that we have the safe drinking water and we have this wellhead protection, but who goes forth to

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make sure that we're going to clean up that contamination or said identified contamination?

MR. TAOMOTO: Chair?

CHAIR ATAY: Ms. Taomoto?

MR. TAOMOTO: Usually contamination for whether it's soil or it gets into the aquifer will be the landowner's responsibility.

COUNCILMEMBER CRIVELLO: Including County landfills?

MR. TAOMOTO: Including County landfills --

COUNCILMEMBER CRIVELLO: Right.

MR. TAOMOTO: --if we're the landowner, or the person operating, yeah, the operations that created the contamination.

COUNCILMEMBER CRIVELLO: Okay.

MR. TAOMOTO: But even if we're not the landowner but we're the operator, the landowner would somehow, yeah, may be involved.

COUNCILMEMBER CRIVELLO: Right.

MR. TAOMOTO: Thank you.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR ATAY: I think the critical part is that this bill is more focused on protection and we'll get there. Member Sugimura, you had a question?

COUNCILMEMBER SUGIMURA: So, I'm hearing that the Department now, you are accepting the responsibility by this of doing enforcement, correct?

CHAIR ATAY: Staff?

COUNCILMEMBER SUGIMURA: And you have the resources to do it? Wendy or...

CHAIR ATAY: Alex?

MR. DE ROODE: The...what we're accepting the responsibility of is when a specific land use is proposed, the change of land use or a building permit is proposed in one of these districts, that we would then review that proposed use and if it meets one of the uses that are required to be following best management practices in order to get a wellhead protection permit, we would then ensure that...so it's not really...I guess you could call

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it enforcement. For the building permit to be issued or the change of land use to be approved or moved forward, we would first go through a process with the applicant and assess what best management practices need to be implemented. And then we would ensure that that has occurred prior to giving them, to issuing a wellhead protection permit. Then once that's issued, they move on through the process of change of land use or building permit. And beyond that we don't have a monitoring, we're not out there policing. We don't have the bandwidth or resources to do that, but at least we've made sure that if they're getting that land use approved or that building permit approved, that they're following best management practices. And if they...and the wellhead protection permit is for up to five years so at the five-year mark to continue that use, we would revisit with that landowner and say are you still implementing these best management practices? If the answer is yes then we renew the wellhead protection permit. If the answer is no then we would try to work with them to have them implement those BMPs, best management practices or they would have to...then we would get into the situation with...that Wendy Taomoto was referring to with cease and desist or other types of consequences of not having a wellhead protection permit.

COUNCILMEMBER SUGIMURA: One more question.

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I'm curious how many of these permits would you issue a year or how many...

MR. DE ROODE: Yeah, it's hard to say but the estimate is...and this is conversations between Planning Department and Department of Water Supply that have occurred that we estimate somewhere in the vicinity of about 20 per year.

COUNCILMEMBER SUGIMURA: For County only --

MR. DE ROODE: Correct.

COUNCILMEMBER SUGIMURA: --of projects or whatever coming up, so, building permits that would affect our water system.

MR. DE ROODE: Because it's such a limited land area compared to the overall, you know, County land area that we don't expect many to come through but approximately 20 per year.

COUNCILMEMBER SUGIMURA: So, if a permit...thank you. If somebody applied for a building permit then--I just want to go deeper into this--the process would be it would go to...I always hear it goes to all the departments that are affected including the Department of Health?

MR. DE ROODE: So, separate from any other agency comments that let's say the Planning Department would require or let's say DSA would require, if the proposed building or

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change of land use fell within the overlay district and it was any of the types of uses listed as requiring a wellhead protection permit, it would then be passed on to us at Department of Water Supply either from the Planning Department or possibly in some cases directly from DSA for our review. And it would only...we would only get them if...so Planning Department would...and we're moving more and more digital with this where we have GIS that we can use, it would flag that TMK as being in the district and then it would get forwarded to us from them. So, that's how the process would occur and then we would...if we issue them the permit, it would be sent back to Planning for them to carry on in the process.

COUNCILMEMBER SUGIMURA: So, oh, so what about --

CHAIR ATAY: Member Sugimura?

COUNCILMEMBER SUGIMURA: --Department of Health? My question was, you know, would Department of Health be involved in this process?

MR. DE ROODE: The Department of Health would only be involved if for a specific proposed use, the Department of Water Supply felt we needed additional comment. But they could, we could have certain situations where we want additional comment from Department of Health or from Department of Agriculture could be another one at the State level. And then we transmit to them, we wait for their response, it comes back to us and then we move forward.

COUNCILMEMBER SUGIMURA: So, it's not standard practice that you would send to Department of Health, because they were the...they administer the clean water...Safe Drinking Water Act?

MR. DE ROODE: Well, we have enough expertise in-house to interpret that in most cases. So, we could follow...we follow the regulation that's already adopted by Department of Health at the State level. If we had...we needed further clarification then we would reach out to Department of Health but not for every permit.

COUNCILMEMBER SUGIMURA: Okay, thank you.

CHAIR ATAY: Okay. Members, it's a few minutes beyond the halfway mid-morning break time so I'd like to ask us to pause for a few minutes, have our mid-morning break. I'm going to recess this for ten minutes and please return five minutes before the hour. We stand in recess. . . . *(gavel)* . . .

RECESS: 10:43 a.m.

RECONVENE: 10:56 a.m.

CHAIR ATAY: . . . *(gavel)* . . . Okay, I'd like to call this Water Resource Committee meeting of August 1st back in session after its mid-morning break. Time now it's couple of minutes before the hour of 11:00. We're addressing WR-18, Wellhead Protection

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Overlay District. We've had previous discussion here. Want to be...Member Sugimura, you have a question?

COUNCILMEMBER SUGIMURA: Point of order, Chair.

CHAIR ATAY: Yes.

COUNCILMEMBER SUGIMURA: So, during the break I had Brian Bardellini accuse me of doing something against the Sunshine Law, I guess, which is called "serial communication." He said he took a picture of me talking to you and he accused me of doing something against, you know, what we are abided by which is the Sunshine Law. I refuse to accept that kind of behavior of disrespect. He was asking me I think when I made that motion to amend the bill to add on Board of Water Supply, a recess was called and, you know, you spoke with whatever Members and I went to talk to you about that. I went up to talk to you and you asked me to speak to Corp. Counsel regarding the amendment that I had made for clarification. I don't think that you wanted to engage in serial communication, I think you wanted to, you know, clarify what, the amendment I had made. And I totally do not accept his accusations and yelling at me during the break and having that kind of behavior, totally disrespectful to a human being, right, to people in general. And I don't know what to do about him but he has presented problems in general in other situations. But I think he owes an apology or he should understand what is going on on the floor. So, Chair, I mean Mr. Bardellini is out of control.

CHAIR ATAY: Okay, Member Sugimura, I recognize your experience of that. My interpretation is his recommendation was just cautioning Members during a break not to communicate anything in regards to any discussions of bills and resolutions for the possibility of serial communication, creating a violation of Sunshine Law. That was my interpretation of the caution as well as, you know, Corp. Counsel was in earshot of this. And I hear what you're saying, at the same time I also accept the cautioning of avoiding any serial communication, creating a potential violation of Sunshine Laws during a break. Things should be --

COUNCILMEMBER SUGIMURA: So, Chair?

CHAIR ATAY: --discussed on the floor and that's where we're at right now. We're now continuing this meeting and we want to return the discussion back to our main motion of what we were discussing.

(Note: Councilmember Sugimura leaves Chambers)

CHAIR ATAY: Member...you were...

VICE-CHAIR COCHRAN: No.

CHAIR ATAY: Okay.

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VICE-CHAIR COCHRAN: No, Chair. Yeah, I mean just back to the main motion. Sorry. That's fine.

CHAIR ATAY: Members, any discussions? We were trying to address this bill and like to...Ms. Oana?

MS. OANA: . . .*(inaudible)*. . .

CHAIR ATAY: You're questioning...

MS. OANA: . . .*(inaudible)*. . .

CHAIR ATAY: Okay. Where we are at is addressing the position of this resolution and the ordinance. If we can go with Page 1 where we're at, going through...anybody got any discussions or corrections? Member Carroll?

COUNCILMEMBER CARROLL: Chair, we have the motion on the floor as amended, is that correct?

CHAIR ATAY: Yes.

VICE-CHAIR COCHRAN: Yes.

COUNCILMEMBER CARROLL: And no other action has been taken besides that one action to amend?

VICE-CHAIR COCHRAN: Right.

CHAIR ATAY: The action to amend has been...

COUNCILMEMBER CARROLL: Has passed and so we have that motion on the floor --

CHAIR ATAY: We're back to our main...

COUNCILMEMBER CARROLL: --as amended.

VICE-CHAIR COCHRAN: Yeah.

COUNCILMEMBER CARROLL: I ask for the call for the question.

CHAIR ATAY: Okay. Call for the question, you feel that adequate discussion has been made on this. Members, call for the question has been made, everyone in favor of the main motion say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR ATAY: Anyone oppose the main motion? Okay. Staff, what's the vote count?

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UNIDENTIFIED SPEAKER: Four "ayes."

CHAIR ATAY: Four "ayes."

**VOTE: AYES: Chair Atay, Vice-Chair Cochran, Councilmembers
 Carroll, and Crivello.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers King, Sugimura and White.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised proposed resolution.

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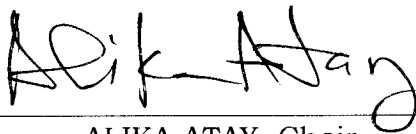
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CHAIR ATAY: Okay. So, standing right now we're done for the day. And with that we would be moving and accepting and having Staff make the various substantive [sic] changes for this and we will have this move towards...move forward for second [sic] reading. Members, we've done the business of the day. Thank you for your attendance. Thank you for your discussion. And in closing I do want to address comments towards Mr. Hokama's concerns. I think I do recognize Lanai's system. Lanai's system is a privately owned public water system and we do want to recognize that. One of the agenda items that I have on my master agenda was what is...what are we going to do or the status of the Lanai Water Advisory Board. And, Member Hokama, I hear you loud and clear the importance of keeping the public involved and having a public say, especially when it's a privately controlled public water system. So, that'll be another agenda item that I'll bring forward in specific to address the people of Lanai and keeping this water advisory involvement from the community. Thank you, Members, for your attendance. We're done for the day. . . . *(gavel)* . . .

ADJOURN: 11:03 a.m.

APPROVED BY:



ALIKA ATAY, Chair
Water Resources Committee

wr:min:180801:ds

Transcribed by: Daniel Schoenbeck

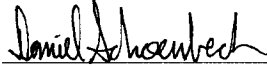
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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 9th day of August, 2018, in Kula, Hawaii



Daniel Schoenbeck