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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.3
NOVEMBER 13, 2018**

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Mr. Alueta: Thank you Mr. Chair. Your next item is Director Michele McLean transmitting the Council Resolution No. 18-149 to the Lanai, Maui, and Molokai Planning Commissions containing a proposed bill to establish a zoning district to be known as the Wellhead Protection Overlay District. I believe you have a memorandum. David Raatz is here as well as other resource people to go over that item. Thank you.

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Mr. Robinson: Aloha David.

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3. MS. MICHELE McLEAN, Planning Director, transmitting Council Resolution No. 18-149 to the Lanai, Maui, and Molokai Planning Commissions containing a proposed bill to establish a zoning district to be known as the Wellhead Protection Overlay District. (D. Raatz)

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Mr. David Raatz: Good morning Chair and Commissioners. David Raatz, Administrative Planning Officer appearing on behalf of the Planning Director. We are here for this item because the Council has adopted Resolution 18-149 which seeks the Planning Commission's review and comments on a bill titled, A Bill for an Ordinance Amending Title 19, Maui County Code to Establish a Wellhead Protection Overlay District.

I have a brief procedural overview and then our colleagues with the Department of Water Supply are available to provide a 20 to 30 minute overview on the substance of the legislation at the Chair's discretion.

So the bill's purpose and intent clause says, "Maui County recognizes that many residents rely on ground water for their safe drinking water supply and that certain land uses may contaminate ground water sources. To ensure the protection of these drinking water sources this ordinance establishes a zoning overlay district to be known as the Wellhead Protection Overlay District or WPOD."

The bill is a proposal for a land use ordinance so accordingly the planning commissions must be afforded an opportunity to review and comment on the bill prior to the Council's enactment of the ordinance pursuant to Section 8-8.4 of the Revised Charter of the County of Maui. The planning commission's findings and recommendations are due to the Council by January 7, 2019.

The committee report that recommended adoption of Resolution 18-149 was Land Use Committee Report 18-144. The committee report includes the following passage that provides an overview of this matter. The Department of Water Supply said the proposed bill could reduce the department's expenses for treating contaminated drinking water by preventing potential contamination events around county wellheads. While State and Federal governments provide regulations for wellhead protection the department said enforcement of these regulations is left to the counties who can enforce through land use regulations. The department explained the bill establishes a wellhead protection overlay district consisting of three zones around county-owned wellheads. Zone A is a 50-foot zone immediately around wellheads in which only wellhead related activities are allowed. Zone B and Zone C are larger zones surrounding wellheads and are designated based on travel times and various contaminants as determined by the University of

1 Hawaii, Department of Geology and Geophysics and that ends our quote from the Committee
2 Report.

3
4 We note the bill does not define wellhead. The Merriam Webster Dictionary defines wellhead as
5 the source of a spring or a stream. Also the bill doesn't specifically define what an overlay district
6 is. The American Planning Association advises that an overlay zone is a zoning district which is
7 applied over one or more previously established zoning districts establishing additional or stricter
8 standards and criteria for covered properties in addition to those of the underlying zoning district
9 sometimes called the base zone.

10
11 The Department of Planning has not taken a position on the bill thus far. We did advise the
12 Council Committee on August 1, 2018, that several general plan ordinances do support the
13 concept of a wellhead protection ordinance. Notably the Maui Island Plan at Page 6-25 states as
14 an objective, Complete and implement the Department of Water Supply Wellhead Protection
15 Program to protect the water quality of public and private wells. And it was the Council's Water
16 Resources Committee that pushed this matter out. I apologize I mentioned the Land Use
17 Committee erroneously earlier. This proposal has been pending before various Council
18 committees for several years and it was finally this term when the Water Resources Committee
19 took the time to schedule four different meetings and ultimately recommended adoption of the
20 resolution that's before you today.

21
22 So as with other Council initiated land use ordinances the Commission has several options on
23 what you can do. One, you can recommend to the Maui County Council that the bill be passed
24 with no revisions. You could also recommend to the Maui County Council that the bill be passed
25 with certain specified revisions. You could also recommend to the Council not pass the bill. And
26 additionally you could defer action to another Maui Planning Commission meeting date in order
27 to obtain additional information.

28
29 So I thank you Chair that's my brief procedural overview. If you'd like to proceed with the
30 Department of Water Supply getting into the substance we would defer to your judgment on that.

31
32 Mr. Robinson: It's...I'd like to see who can tell me about this map and actually what we're looking
33 at and what these circles and half circles mean.

34
35 Mr. Raatz: Thank you. That would be the Department of Water Supply.

36
37 Mr. Robinson: Okay.

38
39 Mr. Raatz: I think it probably be more relevant if you allowed them to do their presentation before
40 you get into their handout I would think.

41
42 Mr. Robinson: Please.

43
44 Ms. Eva Blumenstein: Good morning Chair, Commissioners.

45
46 Mr. Robinson: Good morning.

1
2 M. Blumenstein: I'm Eva Blumenstein, Planning Program Manager for Department of Water
3 Supply. I want to clarify that the resolution was supposed to include the maps and two lists that
4 are not going to be codified but they belong with the bill. So we were asked by Corp. Counsel to
5 bring them to you this morning. So those maps I'm gonna get into the details of how, what they
6 mean and so on, but those are the actual overlay zoning maps and there's two lists, they're called
7 Appendix A and B that goes with the bill as well.

8
9 So it's a pretty broad and complex topic and if you think it's going on too long...(inaudible)...make
10 it as brief as I can but it's a lot of detail that goes into this bill. So this is, it goes back about a
11 decade it's been a collaborative process between the University of Hawaii, the Water Resources
12 Research Center and the Department of Geology and Geophysics, the State Department of
13 Health, Safe Drinking Water Branch and the County Planning and Water Departments.

14
15 What the Wellhead Protection Program is this is specifically a process where we, we the County
16 came up with a strategy how to protect our potable wells, and it applies to the department's
17 municipal wells only not the private wells at this point. The reason we want to do this is to protect
18 the infrastructure and the aquifers that provide municipal water to the community and to avoid
19 costly treatments in years to come.

20
21 Mr. Robinson: I have a question. The state wells included in this or just county?

22
23 Ms. Blumenstein: This bill addresses only the County's owned wells. So that's the Department
24 of Water Supply potable wells.

25
26 Mr. Robinson: Okay, thank you.

27
28 Ms. Blumenstein: And the wellhead protection area which is the base of what we're going to talk
29 about it's the surface and the subsurface area surrounding a well through which contaminants are
30 reasonably likely to reach the wellhead. So the graphic you see there on the right typically
31 groundwater flow with the gradient mauka to makai towards the ocean. As you start pumping a
32 well you're gonna impact that, you're gonna draw water and associated contaminants towards
33 the well. So the model well protection area could be something as simple as a fixed radius around
34 the well and some municipalities have chosen to do that. In this case it's modeled based on
35 ground water flow and the time of travel it takes contaminants and water to reach the well.

36
37 Why do we do well protection? About 70 percent of Maui's drinking water supply comes from
38 groundwater sources. Because of the slow hydro geologic processes it's many years between
39 when you have a contaminating event and when you detect contaminant in your well. There's
40 been an assessment of...a vulnerability assessment of the aquifers and our wells done by the
41 State Department of Health and all the aquifers that the department withdraws potable from are
42 ranked as vulnerable.

43
44 We also know that there are organic compounds detected in the majority of public water supply
45 wells on Oahu where they face more urban pressure but as Maui grows we sort of see into the
46 future what Honolulu Board of Water Supply deals with today. We also know that there are gaps

1 in regulations that put our drinking water wells at risk. And finally as mentioned there were support
2 and had called for that we do a wellhead protection program and address this ordinance both
3 through the Maui Island Plan and to multiple community plans as well.
4

5 So prevention or treatment. We could just do nothing and expect to have to treat water if we have
6 contaminants showing up in the well. If you have a contaminating event you...normally if you're
7 exceeding allowed legal levels you're gonna have to put in some kind of treatment. You're gonna
8 have to monitor those contaminants over a period of time. You may have to find alternate water
9 supplies and you may have to remediate the site of contamination and in some cases it ends up
10 in litigation which the department did about two decades ago where there were pesticides in
11 drinking water wells that had to be cleaned or filtered using GAC which is granular activated
12 carbon which is one of the typical treatment processes that municipal utilities have to use.
13

14 So granular activated carbon and reversed osmosis are the two typical treatment methods and
15 this just gives you some idea of what it cost per thousand gallons of water to treat. We know
16 Honolulu Board of Water Supply their annual operation and maintenance cost for GAC is about
17 two and a half million dollars a year. So cost to clean up ground water after the fact always
18 exceeds preventing it in the first place.
19

20 So how do we do, how do we go about having a well checks and strategy? We delineate those
21 wellhead protection areas first using a ground water model and we inventory what types of uses,
22 land uses are here already, existing land uses would be grandfathered in if there's a zoning
23 change. And we develop the wellhead protection strategy with public participation and as I said
24 this has been a going on. It's about a decade now and it's a strategy that includes the bill that
25 you have in front of you is just one of the components of this overall strategy. It includes public
26 education and siting of new wells, other pieces.
27

28 So currently how is wellhead protection regulated? The UCPA through the Safe Drinking Water
29 Act mandates the states to conduct a Source Water Assessment. It's really just assessing what
30 are those land uses and what are the potential threats to drinking water wells within those
31 assessed capture zones. The capture zone is the same as the wellhead protection area. They
32 also mandate the states to adopt drinking water rules. Drinking water rules will tell you if you have
33 a contaminating event and you exceed the legal limit now you're gonna have to treat to bring it
34 back to a safe level. It doesn't prevent contamination or tell you what you can do to avoid having
35 that contaminant in your well in the first place.
36

37 So the State's Safe Drinking Branch went through...they did the Source Water Assessment for
38 all public water systems throughout the states and they also developed well protection program
39 guidelines to provide technical and financial assistance to the local municipalities so that we can
40 adopt...develop and adopt protection measures on the local level. That is how the federal well
41 protection program was envisioned to work. So they don't...it's the state is not going to come in
42 and mandate us this is what you have to do in your well protection area. They leave that to the
43 local level. So therefore the Maui County Water Department and Planning Department and with
44 the Advisory Committee going back about 10 years we reviewed the regulatory framework, what
45 are those federal, state and county regulations that are already in place that do provide some
46 protection for ground water and what...are there gaps. We don't want to have new regulations

1 that duplicate what we already have in place. So the protection strategy and ordinance is
2 supposed to really just fill in those gaps where there are no adequate regulations to specifically
3 address ground water.
4

5 So this is an overview of the 12 or so maps that you have. The well protection areas were modeled
6 by the State Department of Health contract using MODFLOW which is the most widely used
7 ground water flow model used by the US Geological Survey. So it's...it defines what the ground
8 water flow is, it defines how long it will take a water molecule or contaminants to reach the well
9 within that spatial area. So there's three zones that are defined. The first one is just a fixed 50-
10 foot radius around the well. That's pretty much the fenced area around the department's well
11 where you shouldn't do anything more than just maintaining the well itself. Then the two-year
12 time of travel, Zone B is where it would take the water molecule two years or less to reach the
13 well. And that's specifically to address microbial contamination based on their typical survival
14 time in soil and water. And then Zone C is same thing but ten-year time of travel. It would take
15 a chemical or a water molecule about ten years or less to reach the well. And these were not
16 discretionary. These were used in the Statewide Source Water Assessment so the protection
17 strategy and the bill is based on that Statewide Source Water Assessment and the criteria they
18 used. So the blue on the maps you see is the two-year time of travel and the red is the ten-year
19 time of travel. And these are the only areas that this bill applies to. So generally you can see
20 they're pretty skinny and long with exception being for Central Maui. I'm gonna address that more
21 specifically.
22

23 So why are we coming to you for this zoning overlay district? Because zoning is the only vehicle
24 to prohibit certain land uses that are compatible with ground water protection and this is the first
25 time we're trying to do a collaborative bill so to say with Planning Department where now the
26 Water Director has an active role in protecting ground water through land use restrictions. We
27 proposing an administrative permit so anything that is compatible with ground water protection
28 should be allowed as long as you have those best management practices in place. Existing uses
29 of course will be grandfathered in. The intent is to supplement and not to duplicate regulations
30 that are already in place. The bill is modeled upon EPA overlay zoning standard with the
31 community input, Department of Planning and Zoning Administration review as well.
32

33 So there's a column on the right there, that list all uses that some are the in the bill are prohibited
34 and that would only new uses. The ones that are in red requires underlying Heavy Industrial
35 zoning. So the existing well protection areas with our wells in place there are no Heavy Industrial
36 zoning. We're really fortunate for Maui most of our wells are in rural areas. There is some in
37 urban but most of the underlying land use and zoning is Residential or Ag. So even though they
38 are included in the bill they are there because they're high risk uses and they are associated with
39 ground water contamination historically and the type of contaminants that are associated with
40 those use, but so just know that those are not...they wouldn't be applicable in capture zones right
41 now.
42

43 So how does an overlay zoning work? Well, you have a...in the example of the right you have a
44 piece of property that's some is zoned Industrial and some is zoned Residential and then you
45 have your well in the middle of those. The wellhead protection overlay is going to span both the
46 zones and it will supersede they underlying zoning. So then the example on the left that's Pookela

1 Well Upcountry. Underlying zoning is Agriculture. And new landfills that are a permitted use in
2 Agriculture zoned areas would be prohibited by the overlay zoning so that would be superseded
3 by the underlying Agriculture zoning. In the case of new Agricultural supply storage, yes that will
4 be permitted but in this case because it's near drinking water well, best management practices
5 will be required such as a secondary containment if you're gonna store pesticides near the well.
6

7 Mr. Robinson: Question. Question. Did I just hear you say on agricultural lands that that would
8 might then become prohibited?
9

10 Ms. Blumenstein: A new landfill would be outright prohibited on Agricultural land.
11

12 Mr. Robinson: Landfill but not agriculture? I'm sorry—
13

14 Ms. Blumenstein: No agriculture.
15

16 Mr. Robinson: --yeah okay, I'm sorry, I'm sorry.
17

18 Ms. Blumenstein: No, no, a landfill.
19

20 Mr. Robinson: Thank you so much. Thank you.
21

22 Ms. Blumenstein: I show this an example because this is our messiest area if you will. As I said
23 most of our wells are in agricultural rural areas except central where most of our water supply
24 comes from the Lao and Waihee aquifer. Most of the underlying zoning here is Residential,
25 Commercial or Project District. We also have three wells used in the Kahului aquifer, the Maui
26 Lani wells. So still the impact on new uses, residential development, the intent of the bill is really
27 not to make it more burdensome or to impact every time you have a residential building permit
28 process. Therefore, you will see the content of the bill has...it only applies to subdivisions of four
29 lots or more. So any building permit coming in for an individual residential dwelling would not...the
30 bill would not apply to that. In this area where you have the most land and existing residential
31 commercial uses there is less than one percent of that land is zoned Light Industrial and Light
32 Industrial is really where you have some uses that will have to be looked at coming in for new
33 Light Industrial use there will be some best management practices required.
34

35 And one of the most important BMP that is part of several proposed land uses in the bill is
36 secondary containment. It applies to a multitude of commercial uses and it's a fairly simple
37 straightforward requirement to have some impervious surface. You have a secondary
38 containment instead of a say an aboveground storage tank sitting right on dirt. The example here
39 are two facilities that we use to grant funds to retrofit because they were close to our drinking
40 water wells and they were you know petroleum, other chemicals sitting on bare dirt. All it needs
41 is a cement slab with a berm so you have a leak or spill it's not going to reach your drinking water
42 well. Or the example on the right for a small storage it doesn't have to be that complex. It really
43 just have to be something to contain the spill or the leak.
44

45 So as I said this is not one thing fits all. The well protection overlay zoning that we propose one
46 component to and that's the only vehicle to really address land uses that are high risk, that are

1 not compatible with drinking water supply and where you have what uses that are...that can be
2 compatible ground water protection as long as you have some mitigating measures in place then
3 there's no need to restrict those instead best management practices such as secondary
4 containment is proposed. And the third component is really important of course as the department
5 sites new wells that these are not sited in an area where underlying zoning is Heavy Industrial.
6 So there is an in-house policy and memo so that new wells that come on are considered the same
7 land use restrictions and the same criteria have to still pass in order to prevent that new wells are
8 site in appropriate area.

9
10 So that's just a brief overview of why, why we're doing this getting into the nitty gritty of the bill.
11 It's a lot.

12
13 Mr. Robinson: Okay, thank you. Commissioner La Costa.

14
15 Ms. La Costa: Thank you Chair. I didn't see a map for Lanai on there.

16
17 Ms. Blumenstein: Chair, the Lanai Public Water System is not run by the Department of Water
18 Supply. It's privately owned.

19
20 Ms. La Costa: Thank you.

21
22 Mr. Robinson: Okay. Thank you. At this time we're gonna take public testimony. At this time
23 Mae Nakahata. Aloha please introduce yourself, you have three minutes.

24
25 Ms. Mae Nakahata: Hello. My name is Mae Nakahata and I'm testifying on behalf of Alexander
26 and Baldwin.

27
28 Mr. Robinson: Aloha.

29
30 Ms. Nakahata: First of all, I'd like to commend the department for taking the leadership in
31 preparing these maps because they do provide an important guideline for all of us to follow and I
32 think that's where we just start to differ. I think the maps are an important guideline and these are
33 based on models and I have worked with many models, but models are only good as you can
34 validate them. So and that's where the difficulty comes especially when we talk about ground
35 water because you're talking about different things. You're applying something up here then you
36 have all of this modeling that you have to do of how it's gonna move down the soil profile until it
37 reaches the ground water and then how it's gonna move in the ground water. And depending on
38 what you're gonna work with it's all different. I'm familiar with pesticides. And depending on the
39 pesticides they're all different how they move down the profile. And then you have your biologicals
40 and then you have your other chemicals like dry cleaner fluid or your gas. So it's very complex.
41 So as you have a model that's exactly what it is. It's a model.

42
43 I commend them for recognizing the need for best management practices, but I think by having a
44 map and having a regulatory framework where you're focused within these zones suddenly if
45 you're at this zone you do this. If you're outside of the zone you don't do...you know it's not as
46 important. But understanding that these maps have a level of uncertainty I think it's more

1 important to develop best management practices that apply to everybody and in this particular
2 case they're talking about municipal wells. I mean you have private drinking wells that people
3 drink from. That's no less important. So I think you know with the County has only so much
4 resources. So how do can we best use the resources and it seems to be to help develop robust
5 BMPs that have a very aggressive public relations outreach to everybody that says if you're using
6 chemicals this is what you do and so forth and it protects, you know, our resources for the future.
7

8 You know they talked about other regulatory frameworks. I'm most familiar with pesticides.
9 Hawaii has the Department of Ag has a very strict ground water protection process. So we have
10 chemicals that on the mainland you can just go and buy and apply. In Hawaii it's restricted use.
11 For our farmers to use it they have to undergo classes and so forth because they utilize a model
12 to check for ground water contamination and it's super conservative. So we have several
13 protections in place.
14

15 The other one is for the gas stations. Okay way back you had underground storage tank
16 regulations. Then you have leaky underground storage tank regulation and now you have
17 aboveground storage tank regulation. So anybody who has a gas station knows, right you have
18 to have your primary containment, secondary containment and you have all these other
19 protections that you put in place. So just like the chemicals, the ones that we're finding in ground
20 water was developed way back when a lot of this knowledge was not known. But now we've
21 gotten to a place that you're recognizing contamination so you're putting regulatory things into
22 place to protect. So you know it goes beyond, it goes into ...(inaudible)...and all of these other
23 rules that ultimately impact how groundwater contamination can occur.
24

25 So I respectfully request you consider, you know, maybe adopting the maps but to the point that
26 it's to the best knowledge now, it can be changed. But not take it to the framework where you're
27 putting regulatory requirements on it, but more pushing for robust, strong best management
28 practices. Thank you very much.
29

30 Mr. Robinson: Thank you. Please, Commissioner Carnicelli.
31

32 Mr. Carnicelli: Thanks Mae. I appreciate that. The question that I have is I mean I know that
33 you're here representing A&B but you're also a farmer?
34

35 Ms. Nakahata: Yes.
36

37 Mr. Carnicelli: And so in the testimony that was submitted this morning, we got some written
38 testimony hand delivered this morning it talks about the violation of the intent and spirit of the
39 Right to Farm Law and it will negatively impact farmers. Could you from your orientation could
40 you please address that?
41

42 Ms. Nakahata: And I guess that's where we're coming from this standpoint of uncertainty. You
43 know if we start banning compounds, you know before EPA requires the banning of use on certain
44 parcels of land you're removing a tool that's available to the farmer and it may not be justified and
45 I think that's what was referencing. So their right to farm, in other words, you know we live in
46 Hawaii you guys know if you folks have guavas in your backyard how much pests you folks have.

1 So the farmers need a robust bunch of tools to utilize. And a lot of the tools that they're using
2 now are...you no longer apply it in gallons per acre or pounds per acre, it's in ounces per acre so
3 it's very miniscule amounts. So the mechanism is there. So we're very nervous about a regulation
4 that ends up saying you know no pesticides within so much area or so forth, it's I know we said
5 no. It's not a one size fits all and I've seen the list and so forth but there is uncertainty from the
6 farming community exactly what's going to happen through the regulatory process.

7
8 Mr. Carnicelli: Thank you.

9
10 Mr. Robinson: Commissioner Pali.

11
12 Ms. Pali: Hi, thank you. I have a question. Are you familiar with what the State imposes to protect
13 their wells that are here on Maui and do you feel like this is like far beyond what the State feels
14 comfortable with at this time?

15
16 Ms. Nakahata: Yeah, I read the Department of Health's comments to the County Council and so
17 forth, and the Department of Health I would imagine has the same regulations as most of us do
18 when we look at ground water contamination even for us as private wells, we have a wellhead
19 protection area. It's required in pesticide laws and so forth. And if you understand your
20 compounds, you know, you take that responsibility 'cause for God's sake you may be drinking the
21 water. You're not gonna poison the water you may drink in the future. So I think again, I'm looking
22 at the broader framework, not just wellhead protection but at all of the other regulations that they
23 have that they have to follow and I think you have to take all of that into consideration.

24
25 Mr. Robinson: Commissioners any other questions? So is...since you're here Mae, what is A&B's
26 BMP?

27
28 Ms. Nakahata: Okay, so we have...we have a very strict Environmental Affairs Officer and he
29 crawls through these regulation and we tend to jump ahead of when a regulatory requirement is
30 there. So for example I'll use Atrazine as an example, and since I was in charge of weed control
31 you know I can speak confidently on that. Atrazine is on the list of contaminants by the...so this
32 happened...I'm gonna show my age, but I wanna say it happened over 25 years ago when on the
33 Big Island and I happened to be working on the Big Island EPA found 3 parts per billion in ground
34 water on the Big Island and that's when the notice, you know this concern went through the whole
35 sugar industry and we looked at how utilized Atrazine. So even if this was in a ground water well
36 that was not used for drinking water purpose it was strictly industrial for the factory, our practices
37 for the industry immediately changed including at HC&S. So for example, Atrazine is a very
38 important compound for us. If, you know, vines are a huge problem in the fields. But I also know
39 if you use too much of it, it's gonna to...you know, end up leaching down into the ground water.
40 Therefore, we only use it once and per crop cycle and I alternate it with other compounds. So we
41 take into the account while it's legal to be used, we have it in our practices how we can minimize
42 its impact on the future. And same thing for aboveground storage tanks. If you came to our office
43 you'll see the huge containments around all of the aboveground storage tanks. Way back when
44 the concern about underground storage tanks happened and that must be about 20 years ago
45 too, we went out of our way to dig out all of the underground stuff and replace it with aboveground

1 and we did all of the clean ups at that time. So we go rule by rule and you know, what's coming
2 down and we take the necessary precautions.

3
4 Mr. Robinson: Okay, thank you. Any other questions Commissioners? Okay, seeing none, thank
5 you.

6
7 Ms. Nakahata: Thank you very much.

8
9 Mr. Robinson: Would you like to comment at all on anything that was just testified?

10
11 Ms. Blumenstein: Thank you Chair. Yes, we appreciate that testimony.
12 ...(inaudible)...discussing back and forth too because—

13
14 Mr. Robinson: Major landowner of Maui, so that's...that we're lucky to have that testimony, so
15 yeah.

16
17 Ms. Blumenstein: Yeah, so we...so we certainly don't want to duplicate where there are
18 regulations in place. Maybe we're really just trying to avoid future contamination of drinking water.
19 So we are aware that there are ...(inaudible)... regulations that are...you have to be certified to
20 apply a restricted pesticide on the island. You have to follow what's on the label. But we also
21 know that there's not leachability assessments done before a chemical is approved and nothing
22 prevents that chemical from being applied near a drinking water well. So there is some risk
23 inherent in leaving it at just trust that everyone is gonna use the pesticide according to the label.
24 I think, and I believe everyone does but this is kind of an insurance to make sure that those
25 pesticides have been proved and we know that they are detected both the Maui and on other
26 islands in wells that we want to make sure that...this is also not saying that you cannot apply
27 pesticide. It's the best management practices integrate the pest management means if you
28 cannot find an alternative pesticide that's going to address the pests that you have by all means
29 you're gonna have to use that one, but there is a second layer where you have NRCS coming in
30 and doing that IPM management. And I also wanna just add that we have the Director of Health
31 and the Director for Safe Drinking Water Branch testify to Council and to the board on numerous
32 occasions that they find there are gaps in the regulations that needs to be addressed. So they
33 are fully in support of this program. This is who they envisioned the wellhead protection program
34 would work and we know that the other counties are sort of looking at Maui to see where this is
35 gonna go. It's been going on for a very long time but we have good backing, good science and
36 regulators telling us that this is needed.

37
38 Mr. Robinson: Thank you. I want to do David and then we come back. David you wanna wrap
39 this up and then we can open it up to the Commission if they have questions.

40
41 Mr. Raatz: Thank you Chair. We don't have any other comments, but we would welcome the
42 body's recommendation to go back to the Council. We are going to Molokai tomorrow and Lanai
43 in December and we'd hope to report back to the Council by January 7th if possible.

44
45 Mr. Robinson: And Commissioners this is recommendations we don't have to all approve on it.
46 It's they can take each individual recommendation as one and decide what they want to do. It

1 doesn't have to be a majority, but it's just recommendations from this Commission. Having that
2 said, do you have a question Commissioner La Costa?

3
4 Ms. La Costa: I have. Thank you Chair. Mae brought up about the need for comprehensive and
5 blanket regulations if you will versus the select wells that you have shown on the map. Can
6 you give me your opinion on that please? Thank you.

7
8 Ms. Blumenstein: You mean in terms of whether it applies to private systems?

9
10 Ms. La Costa: Yes.

11
12 Ms. Blumenstein: Yes, this was discussed to exhaustion in the public process, and of course,
13 water supply is important where it's served. But this bill was designed so to say that it could be
14 addressed in-house with existing staff. We as the...you know we provide 90 percent of water
15 supply on Maui so if we could do this there's...of course there's options to apply to all public water
16 system later but there wasn't support for that in the public process when this bill was designed.
17 So it was addressed but just decided that it should not apply to privately owned water systems for
18 now.

19
20 Mr. Robinson: Thank you. Commissioners? Commissioner Carnicelli.

21
22 Mr. Carnicelli: Thank you Chair. So as I'm looking at these maps I'm going okay it's a map with
23 a line, and we're like okay if you're inside the line or not. And we're going like okay are these
24 lines geo tracked? Are we going to have metes and bounds descriptions for these areas? 'Cause
25 I mean it seems like...anyways how delineated are these lines going to be?

26
27 Ms. Blumenstein: These are ...(inaudible)...files and there is a definition in the bill where you
28 have a parcel that will span say one parcel is partially inside and partially outside the line—

29
30 Mr. Carnicelli: Right.

31
32 Ms. Blumenstein: -- but there's not going to be metes and bounds designations. I mean this is
33 as precise. The ...(inaudible)...file with the model zones will either have a parcel within or outside
34 or partially inside and outside.

35
36 Mr. Carnicelli: So if my parcel is partially inside and I can kinda just sorta guess okay I can do
37 this activity right there, but not right there and it's gonna be up to who to determine where right
38 there and right there is?

39
40 Ms. Blumenstein: I have to go to the language of the bill, just a second.

41
42 Mr. Robinson: Do you have a recommendation on how you would like it to read?

43
44 Mr. Carnicelli: I just...yes, thank you Chair. That's...I'll let her say...you can at least go to the
45 draft there where it's addressed. 'Cause it may be addressed.

46

1 Mr. Robinson: We can be redundant. If you say, and she says yeah it's in there then it's good.

2
3 Ms. Blumenstein: Chair, I'd like to...yeah, refer to 19.61.120, Interpretation of well protection
4 overlay districts zone boundaries. It says, if parts of the parcel lie within one or more of the
5 delineated zones each part shall be governed by the restrictions applied to the zoning in which
6 the part is located. The boundary between two zones passes through a facility the entire facility
7 shall be considered in the more restrictive zone.

8
9 Mr. Carnicelli: Okay thank you. If I could a few more questions Chair?

10
11 Mr. Robinson: Please.

12
13 Mr. Carnicelli: You spoke of earlier in your slide presentation as far as like a vulnerability
14 assessment. Has there been one for Maui? A vulnerability assessment for Maui.

15
16 Ms. Blumenstein: Yeah, that was in the context of the source water assessment that was done
17 by the Department of Health for all public water systems whether they're privately owned or county
18 owned. So that was done for all public water systems on Maui. And the aquifers so you don't
19 really look...this sort of assessment is not done aquifer wide but the vulnerability assessment is
20 for the aquifer as a whole. That's a separate...that was separate research that was used for the
21 source water assessment.

22
23 Mr. Carnicelli: And do we have statistics and/or breakdowns 'cause you used cost as well for
24 Maui. You didn't have any Maui statistics or Maui costs like you used Oahu. But is there anything
25 that you have for Maui?

26
27 Ms. Blumenstein: In terms of treatment?

28
29 Mr. Carnicelli: In terms of data, statistical data.

30
31 Ms. Blumenstein: I'm sorry can you specify what kind of data you're referring to?

32
33 Mr. Carnicelli: I don't know it's your guys presentation, you're saying—

34
35 Mr. Robinson: You're talking about the treatment of contaminated water is that what—

36
37 Mr. Carnicelli: Yeah, I mean is if I'm looking at—

38
39 Mr. Robinson: The R.O.

40
41 Mr. Carnicelli: Let me see if I can gather what it is I'm trying to say. If you go back to either slide
42 4 or 5. Go back to 4, go back one more, see if you got...so I mean is maybe my question is this,
43 this sounds great like who's against it. But is though the data showing that we actually need it?

44
45 Ms. Blumenstein: That's the question?

46

1 Mr. Carnicelli: That's the question.

2
3 Ms. Blumenstein: Well, based on the support, this testimony that we had from the scientific
4 community and the Department of Health who really are the experts in the field saying yes, this
5 is how the Federal Wellhead Protection Program...(inaudible)...was envisioned to work. We are
6 fortunate to say that we don't have a lot of contamination in our drinking water wells. A lot of other
7 privately owned public water systems are not as lucky. So we both have sort the luxury to site
8 our new wells away from contaminating sources but we also need to protect what's already there.
9 The infrastructure that's there because once a well is contaminated it's not...it's years, I mean it's
10 essentially permanent. So we know there's gaps in regulations and we know that there are
11 contaminating events and I will say that we have been more fortunate than doing something that
12 unnecessary at this point. We would really not pursue it if we thought it was unnecessary.

13
14 Mr. Carnicelli: Okay. Yeah, we just didn't get any of that data. I didn't get any of the information
15 from you know, Department of Health or these experts that you're talking about. So I mean, I just
16 haven't received them.

17
18 Ms. Blumenstein: Okay, they were with the Water Resource Committee with a resolution there
19 were testimonies provided by DOH and other resources. I can provide that—

20
21 Mr. Carnicelli: Okay, I'll to...(inaudible)...that's fine. So one last question Chair. How is this
22 going to affect future sourcing?

23
24 Ms. Blumenstein: Yeah, I touched upon new well siting as the third component.

25
26 Mr. Carnicelli: Right.

27
28 Ms. Blumenstein: When the department sites new wells the same criteria...I have to go back a
29 slide, but essentially—

30
31 Mr. Carnicelli: I saw you had well sitings I think is the word that you used there.

32
33 Ms. Blumenstein: Well siting. Yeah, so when we site new wells, again we site those...we'll do
34 the vulnerability assessment first to assess whether that's...we even have the well protection
35 modeled before deciding on a well site so you know what kind of underlying zoning, what kind of
36 existing, potential contaminating activities are there and you choose the site that has the lowest
37 vulnerability...(inaudible)...information. So that part of the full strategy that restricts the land uses
38 are high risks, outreach and best management practices and well siting.

39
40 Mr. Robinson: Any...you've got questions or recommendations? 'Cause okay, we got a couple
41 minutes left guys. Commissioner La Costa.

42
43 Ms. La Costa: Thank you, I'm looking at Exhibit or Map No. 2 and I noticed that the Kauaula
44 Stream is not a protected area yet that water feeds a lot of residences and ag land. So what was
45 your...how did you determine we're going to do here but we're not gonna do here?

46

1 Ms. Blumenstein: The wellhead protection area the capture zone is based on the groundwater
2 flow and particle tracking model. So it's not a decision sort of what area gets covered or not, it's
3 simply just in this area, the west side the wells are located fairly far mauka and they're fairly steep
4 gradient so that's why those wellhead protection areas are gonna look long and skinny. That's
5 the only area where water is gonna flow and reach the well within a two-year tentative travel time.
6 You can protect the entire aquifer or you know an arbitrary but if you gonna pass restrictions on
7 land uses you really gotta have a scientific basis and this model is the most widely used by USGS
8 and it was specifically designed to delineate capture zones.

9
10 Ms. La Costa: Thank you.

11
12 Mr. Robinson: Any other questions? Vice-Chair Larry Hudson.

13
14 Mr. Hudson: Really not sure as to who I address this question to. Are either of you familiar with
15 the Land Use Research Foundation of Hawaii or is there anybody from that organization in the
16 audience? Did you get a copy of this letter? Okay, go ahead follow at least we can start from
17 there. Page 2 they have something and I'll read from it. While the significance of the proposed
18 ordinance, as well as the potential economic and legal implications thereof would presumably
19 have prompted a thorough vetting of the issues raised by the board, they're referring to the Board
20 of Water Supply, as far as this organization is aware no such comprehensive follow up to the
21 board's concerns or the Committee's report including any credible studies was ever performed by
22 the Department of Water Supply. Did you read that?

23
24 Ms. Blumenstein: Yes, there were questions about ...(inaudible)... reviewed and the information
25 for that board meeting, is that back in 2015 I believe?

26
27 Mr. Hudson: I'm not sure. This letter is dated November 9, 2018.

28
29 Ms. Blumenstein: Yeah, I think it refers back to a 2015 letter. The information was provided to
30 the Board of Water Supply.

31
32 Mr. Hudson: Did anybody else get to view that information?

33
34 Ms. Blumenstein: It's part of the public record.

35
36 Mr. Hudson: Okay. Thank you.

37
38 Mr. Robinson: Commissioner Pali.

39
40 Ms. Pali: I just wanted a few clarifications and a few questions here. So based off of the proposed
41 bill that you have in front of us, are you saying that, and I'm in reference on Page 5, actually it
42 starts on Page 4 and ends at Page 5 that these items listed on Page 5 in 1, 2, 3, all the way to
43 17, it's not that they're prohibited, it's just that if there is this type of use then that would trigger a
44 need to come in and get this additional overlay permit is that what I'm understanding this bill to
45 be?

46

1 Ms. Blumenstein: That's correct.

2

3 Ms. Pali: Okay, and also just because unfortunately sometimes things that appear to fight one
4 battle secretly fight other battles that sometimes aren't really raised and so I think my biggest
5 concern I'd like to just note that I don't like No. 7, No. 13, 16, and 17 on Page 5. I think because
6 it's too broad. It also would impact development, affordable housing, and so the other thing I
7 would like to just comment on is I like that you pointed out 90 percent of the drinking water wells
8 is handled and I guess managed by Maui County. That was important for me to understand. But
9 I want to know how many contaminations have been recorded in Maui County that you guys, your
10 department is aware of or that's been reported?

11

12 Ms. Blumenstein: Any time there is a contaminating event the Department of Health is the
13 regulatory authority.

14

15 Ms. Pali: Okay.

16

17 Ms. Blumenstein: I did show a map on the slide that shows the—

18

19 Ms. Pali: It's the Oahu—

20

21 Ms. Blumenstein: -- Department of Health, no...yeah, so this is Maui and this is Department of
22 Health, Safe Drinking Water Branch. So they track contaminants year to year and do this primarily
23 to see if there's patterns, if there's changes and how persistent they are on the aquifer over time.
24 So we, the department if we have a contaminating event we would be subject to the same drinking
25 water rules under Safe Drinking Water Branch. But we don't necessarily track the water quality
26 of private purveyors.

27

28 Ms. Pali: I understand, but who had the...I mean I would assume that there must have been
29 some sort of continued contamination to trigger such a...you said you've been working on this for
30 ten years so to put collaborative efforts and time and money into something like this is it because
31 it was triggered by excessive contamination throughout the last 40 years? I guess I'm missing
32 that data.

33

34 Ms. Blumenstein: It was...well part of it is that there are contaminating events both...there's been
35 contaminating events for Maui wells, a few of them...most of those were legacy pesticides they
36 are not applied any more where we had to install costly granular activated carbon treatment. But
37 more so because we know there's contaminating events for private systems and on other islands.
38 So we know that the risks are there and like I said before I think we're more fortunate that we
39 have not...(inaudible)...

40

41 Ms. Pali: So...okay, so you don't really have record of multiple contaminating events that
42 triggered the need for this but you're thinking because you know that in the future it exists that
43 you'd like to get ahead of it like a preventative maintenance is that what I'm hearing? I'm just
44 trying to clarify, I'm sorry.

45

1 Ms. Blumenstein: Yeah, absolutely. This is just future and that it proposes to address only new
2 uses. So whatever is already there, it's grandfathered in. Whatever contaminants already there
3 we have installed treatment for for select wells. So this is more seeing when you increase urban
4 land uses, you know changes in land uses that you increase your risk.

5
6 Ms. Pali: So can I give my opinion.

7
8 Mr. Robinson: Your recommendation?

9
10 Ms. Pali: Oh yeah. So my recommendation just to be a happy medium would I like the 50 feet
11 around that, on heavily regulating that. I'm completely against Zone B and C. I think it's not
12 enough evidence that it's needed quite yet and I think that this could be a way to kill other future
13 endeavors as far as development goes. Also we have to remember that regulation has nothing
14 to do with enforcement. So I know that you mentioned gaps that are there but you can make all
15 the rules you want people are still gonna be illegal and there's nothing we can do about that. So
16 I just want to make sure that we're being friendly to other things happening on Maui. Drinking
17 water is important and I appreciate the effort, but as a happy compromise I think I'd be okay with
18 Zone A, but not Zone B and C.

19
20 Mr. Robinson: Commissioner Carnicelli.

21
22 Mr. Carnicelli: What is the Board of Water Supply weigh in on this?

23
24 Ms. Blumenstein: I can't recall how many times the board have addressed it, but I think there's
25 still a pending inquiry from Water Resources Committee to the Board.

26
27 Mr. Robinson: Does anybody have a recommendation? Yes, no?

28
29 Mr. Carnicelli: You know I'll just. Thank you Chair. I don't know...I don't have a recommendation
30 right now. Is truly what this is and I'm gonna, you know I mean,--

31
32 Mr. Robinson: Concern? You have a concern that you—

33
34 Mr. Carnicelli: Yeah, I mean yeah I do have a concern. I think that we...there's data that we have
35 nothing given. And I don't necessarily want to revisit this. We can send it up to Council 'cause
36 they're gonna do whatever they're gonna do anyways. You know they're not gonna listen, they're
37 not gonna read the minutes of this. You know, they'll get whatever they're gonna get. But to
38 recommend passage, I think that there's just items in here that we don't have that we would have
39 to just say okay, is this a good law or not to recommend that we not do it it's just like well, to
40 prevent clean drinking water, like how could I not want to prevent clean drinking water. So that's
41 like, you know like okay, that's a no brainer. You want it. You want something like this but in
42 being around law and making law and ordinances and enforcement of a ordinances there's
43 intended and unintended consequences and I think right now for me there's to many unintended
44 consequences that I don't know to be able to just say wholeheartedly say yes and yet the intent,
45 love the intent of this.

46

1 Mr. Robinson: You recommend that we get more data? It's just a—

2
3 Mr. Carnicelli: No. I'm just gonna say like for me personally I don't have a recommendation on
4 this. That's just what I'm saying is I have no recommendation because I don't feel like I have
5 enough information to say yes or no to it, and so that's just me personally, Lawrence Carnicelli is
6 transmitting to the Council.

7
8 Mr. Robinson: Okay, so is David did you get Commissioner Pali's recommendation? Kahu Hill.

9
10 Kahu Hill: Mahalo. Wai o ke ola and water is life and it so important for all of us. There is some
11 contradicting things in this paperwork. I'd like to be able to study more or have more information.
12 This is a big step looks like for us protecting the waters is so important, but there's some other
13 things that's been handed to us and it seems so important that we be really aware of that and
14 more informed so I stand with Carnicelli in really wanting to know more information or being able
15 to go through what we have. That's just where I'm standing. And I also believe in protecting the
16 waters.

17
18 Mr. Robinson: Vice-Chair.

19
20 Mr. Hudson: I think needs assessment was completed. I think that there is evidence to show that
21 something like this is definitely needed. I do not like being reactive to anything. I'd rather be
22 proactive. And just because something didn't happen before doesn't mean it's not going to
23 happen in the future. So as Lawrence said earlier the intent is very good, but now let's talk about
24 the law itself.

25
26 Kellie mentioned that it doesn't matter what laws we make if can't enforce them then they shouldn't
27 be on the books and that's a 100 percent true based upon my past experience. We can make all
28 the laws we want but we have clearly state who's gonna enforce this. As for myself, there's some
29 flaws with this, but it's not that bad. And so I would recommend approval as it is written and the
30 reason why is because now we have a starting place. This isn't the end of it. Once we get an
31 ordinance in enacted it changes and changes and changes and tweaks, and tweaks, and tweaks,
32 and tweaks, until it finally is a workable instrument. But I don't have a problem this. Thank you
33 very much.

34
35 Mr. Robinson: Thank you. Anyone else? I have a recommendation that we start with what's
36 proposed and we allow exemptions for people who can prove that they are safe. It's kinda like
37 we do everything else with zoning. It's gonna be zoning, so it's gonna be Planning, so it's gonna
38 able to be looked at from different people. But drinking water is too important to reactionary and
39 we shouldn't have to prove that there is a problem before start protecting from a problem. That's
40 all. Anyone else? Seeing none. Calling Lunch, see you guys here at 1:30.

41
42 A recess was called at 12:23 p.m., and the meeting was reconvened at 1:33 p.m.

43
44 Mr. Robinson: Aloha. Thank you. Planning Commission is back in session.
45 Commissioner Carnicelli, yes?

46

1 Mr. Carnicelli: Thank you Chair. I just wanted to formally tie up B.3. I know that we kinda finished
2 it but I think we didn't actually make a motion recommendation to the Council. So I would like to
3 if it's okay with you make a motion to approve with our recommendations.

4
5 Mr. Robinson: Actually we did do recommendations. You had one, Commissioner Pali had one,
6 I had one and no other commission.

7
8 Mr. Carnicelli: We didn't have – I just want to make a formal motion that can then be transmitted
9 to the County Council.

10
11 Mr. Robinson: So David can you...(inaudible)...and go back to what you have for that please?

12
13 Mr. Raatz: Sure, and we are of course keeping recorded minutes. We can go back and later and
14 ...(inaudible)...

15
16 Mr. Robinson: Which we know all the Council Members are just waiting for.

17
18 Mr. Raatz: So we did have comments from Commissioner Pali recommending approval of the
19 50-foot Zone A, recommending against the Zones B and C because it there hasn't been enough
20 shown that it's needed. It may unduly restrict development and there's questions about
21 enforcement. And Commissioner Carnicelli said, we don't have enough information to
22 recommend passage but yet we don't want to go against clean drinking water. He's in support of
23 the intent but there may be too many unintended consequences so no recommendation at this
24 time. Commissioner Hill noted that there appear to be contradicting elements in the paperwork.
25 Other documents haven't been provided reiterating the concerns of Commissioner Carnicelli.
26 Need more information. Also on record as of course believing in protecting water. The
27 Commission's Vice-Chair expressed the view that the needs assessment has been completed so
28 there is enough evidence to show that this legislation is warranted. He expressed the view that
29 the intent is certainly good although he also noted enforcement concerns and on balance he said
30 there are some flaws but not that bad and he would recommend approval. Thank you Chair.

31
32 Mr. Carnicelli: Okay, so I would like to move that we recommend to the Council approval with the
33 just read and stated recommendations to the Council.

34
35 Ms. La Costa: Second.

36
37 Mr. Raatz: Oh sorry Chair, I neglected your comment it was at the bottom of the—

38
39 Mr. Robinson: It's alright. I just want to move onto the next topic. I know you got it. All those in
40 favor please raise your right hand. So moved. Thank you. Director next item.

41
42 Ms. La Costa: I had seconded.

43
44 Mr. Robinson: Yeah, it's just a recommendation. Thank you.

1 **It was moved by Mr. Carnicelli, seconded by Ms. La Costa, then**
2

3 **VOTED: To Recommend Approval of Council Resolution No. 18-149 to the**
4 **County Council with the Recommendations of the Commission as**
5 **Discussed.**
6

7 **(Assenting – L. Carnicelli, P D. La Costa, A. Hill, K. Pali, L. Hudson,**
8 **C. Tackett, S. Castro)**
9 **(Excused – T. Gomes)**
10

11
12 Respectfully Submitted by,
13

14
15 CAROLYN TAKAYAMA-CORDEN
16 Secretary to Boards and Commissions II
17