

**MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: March 18, 2025  
TIME: 9:00 a.m.  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Online via Zoom, Meeting ID: 871 9305 1716

Online link to the video recording of the March 18, 2025 Commission on Water Resource Management meeting: <https://vimeo.com/1067191105>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:02 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments, as it presents a Sunshine Law issue. She also read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

**MEMBERS:** Chairperson Dawn Chang, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike

**STAFF:** Deputy Director Ciara Kahahane, Mr. Dean Uyeno, Mr. Ryan Imata, Mrs. Katie Roth, Mr. Neal Fujii, Mr. Nicholas Ing, Ms. ‘Iwalani Kaaa

**EXCUSED:** Ms. Kathleen Ho

**COUNSEL:** Ms. Cindy Young

**OTHERS:** Mr. Jeffrey Ueoka - Waikapū Country Town, Mr. Albert Boyce – Waikapū Properties LLC; Mr. Ming Ding & Mr. Brad Scully – US Army Garrison; Mr. Sinclair Salas-Ferguson – Hawai‘i County, Mr. Jim Niermann – R.M. Towill Corporation; Mr. Enjon Angelo & Mr. Winston Ing – Ouli Land Company; Mr. Brian Kau & Ms. Janice Fujimoto – Department of Agriculture; Ms. Eva Blumenstein – Maui Department of Water Supply, Mr. Stephan Zahniser & Mr. Kolja Rotzoll – US Geological Survey

*All written testimonies submitted are available for review by interested parties and are posted online on the Commission on Water Resource Management website.*

**20250318 00:04:49**

**A. APPROVAL OF MINUTES**

February 18, 2025

PUBLIC TESTIMONY – None

**20250318 00:05:29**

**MOTION: (MEYER / KAGAWA-VIVIANI)**

To approve minutes with non-substantive edits.

**UNANIMOUSLY APPROVED**

**(MIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI)**

**20250318 00:06:52**

**B. ACTION ITEM**

**1. Approval of Pump Installation Permits WCT 1 and 2 Wells (Well No. 6-5030-001 and 6-5131-002), TMK (2) 3-6-004:003, Waikapū Aquifer System Area, Maui**

PRESENTATION OF SUBMITTAL: Ryan Imata, Ground Water Regulation Branch Chief

**QUESTIONS / COMMENTS**

COMMISSIONER KAGAWA-VIVIANI: Are divers only measuring elevation or do they also measure chlorides?

RYAN IMATA: No, just elevation.

COMMISSIONER KAGAWA-VIVIANI: I guess given the main concern is that the adjacent effect is on Maui DWS' other well, will they also be monitoring concurrently? I guess from their purposes as a municipal well, they're going to be concerned about chlorides. So if there are observable effects there, that would be useful to know-- because it's closer. And their active pumping is maybe more indicative of what our concerns are.

RYAN IMATA: That's a good point.

COMMISSIONER KAGAWA-VIVIANI: It's easy to get one that has conductivity to track how that works.

RYAN IMATA: I think with respect to that because they're a pumping well, we would probably coordinate the pump test with Maui DWS to tell them to maybe not put a conductivity meter down but just monitor their chlorides. Maybe they can monitor it on a more frequent basis.

COMMISSIONER KAGAWA-VIVIANI: Especially during that pump test.

RYAN IMATA: The pump test. Do you want me to put that in the recommendation or just as a coordination with Maui DWS to monitor that? I can't say that that would be a requirement of the Commission action if Maui DWS didn't want to do it.

COMMISSIONER KAGAWA-VIVIANI: Sure, but they probably have an interest in being aware.

RYAN IMATA: I would add recommendation #6, staff to coordinate pump tests with Maui DWS.

COMMISSIONER KAGAWA-VIVIANI: That sounds useful. I just want to confirm because there are two wells, both requesting 683,000 gallons per day based on the permit, but it's either going to be one or the other. It looks like there's some...the applicant can talk a little bit about it.

RYAN IMATA: I did ask them about it in crafting the pump test requirement so they're here to answer the question, too.

COMMISSIONER KAGAWA-VIVIANI: One last thing, I did see that the proximity of the Waikapū Aquifer, even though we're far from sustainable yield and probably calculated at a different point in time, but the request is like ¼ of the aquifer's sustainable yield because it's only 3 MGD. I just ran some quick calculations, it looks like the amount of housing, amount of units is quite large. Even if it was just 500 gallons a day, there's going to be need for more water in some ways. I think it'd be incumbent upon us to think about even if the stream is here and the well is here, as uses increase, downstream effects. It would be important for us to coordinate with other branches to think about how to be aware of that. That doesn't necessarily fit within the permit but the permit has us thinking about Waikapū. That's all I have, thank you for the presentation.

COMMISSIONER KATAYAMA: Quick question, Ryan. There are six wells that are labeled Waikapū County and Town, three of which are domestic, one labeled ag, two unlabeled. Are they all under the control of the applicant?

RYAN IMATA: I think so, the ones that I identified- there are eight within a mile.

COMMISSIONER KATAYAMA: Well, within the aquifer that we're addressing of one and two.

RYAN IMATA: If you're looking at the diagram on Figure 3, the one-mile radius map...

COMMISSIONER KATAYAMA: I'm looking at Figure 2, actually.

RYAN IMATA: Oh, Figure 2. Actually the Figure 3 shows who owns which wells and so that's just a one-mile that kind of ignores the aquifer boundary. You'll see that there are four wells owned by Waikapū Properties- three of them are abandoned and sealed.

COMMISSIONER KATAYAMA: It's hard to tell with these pump numbers.

RYAN IMATA: Yeah, sorry.

COMMISSIONER KATAYAMA: I mean it's good to Figure 2 on the map, those six wells, they're all active.

RYAN IMATA: No, I think they're sealed. Sorry, it's hard to read: 5030-002 is abandoned, sealed.

DEPUTY KAHAHANE: Number 4, 5, 6.

RYAN IMATA: All abandoned.

CHAIR CHANG: Ryan, they're abandoned because?

RYAN IMATA: I don't know. They are abandoned and sealed, so they're sealed wells, too. I don't know if they're sealed because they're unproductive.

COMMISSIONER KATAYAMA: Not suitable for domestic use, is that the issue?

RYAN IMATA: Sorry, I don't know.

CHAIR CHANG: We'll ask them.

RYAN IMATA: Number 4 looks like an ag well.

COMMISSIONER KATAYAMA: That's what it's labeled but you said it's abandoned, right?

RYAN IMATA: Yeah.

COMMISSIONER KATAYAMA: Okay, I just wanted to ensure that you had a kind of comprehensive look of what the withdrawals were on this aquifer.

RYAN IMATA: That's on page five, so it's basically kind of nothing.

COMMISSIONER KATAYAMA: No, I saw that. Unless you put the caveat saying that these three are abandoned. The spread is pretty comforting. Thank you.

JEFFREY UEOKA: Jeff Ueoka, I'm the attorney for Waikapū Country Town.

ALBERT BOYCE: I'm Albert Boyce, manager of Waikapū Properties LLC, the applicant.

CHAIR CHANG: Did you want to add anything to the presentation?

ALBERT BOYCE: Sure. Just the history of these wells—we originally drilled six wells at one time. The reason we did that was to try and find the optimal producing well. We just abandoned those three and focused on what we call Wells 1 and 2. As far as pump testing, in 2016 we did a 10-day pump test where we pumped three wells non-stop at higher rates than what we're asking for now. Non-stop for ten days and the abandoned wells were monitoring wells on this side of the stream, and there really wasn't any effect. We're more than happy to definitely monitor with the County of Maui, as far as their well and the monitoring well on the other side of the stream, because that is much farther away. So we feel good about the aquifer. And just to confirm, only one well is going to be operating at any one time, so they'll never both be simultaneously pumping. And the initial demand will just be a function as we have units of housing. So, the initial demand, probably through 2000, 30 more, is going to be very minimal.

COMMISSIONER KAGAWA-VIVIANI: You did the pump test in 2013 or 2016?

ALBERT BOYCE: 2016. We did a 10-day pump test where we stressed everything non-stop for 10 days.

COMMISSIONER KAGAWA-VIVIANI: Maybe a question for Ryan—at what point did changes to the 'Īao Aquifer happen with the cessation of HC&S operations? I want to consider...we're going to do a pump test now under different hydrological conditions.

RYAN IMATA: Changes in terms of total pumpage?

COMMISSIONER KAGAWA-VIVIANI: Or the agricultural irrigation-related recharge to the ‘Īao Aquifer?

RYAN IMATA: I think the best indicator of that would be our profiles on the ‘Īao Deep Monitoring Well. If I remember correctly, it’s the one on the map in the submittal. That one shows maybe an upward trend in the midpoint of the transition zone. Which is also why staff has concerns over what happens with pumpage of these wells.

COMMISSIONER KAGAWA-VIVIANI: It would be good to keep an eye on that and also look at chloride levels.

CHAIR CHANG: I was just wondering—on those abandoned wells, did you get any good information on those before you decided not to use them?

ALBERT BOYCE: Honestly, I don’t recall. It was that far back if it was volume or chlorides.

PUBLIC TESTIMONY- None

RYAN IMATA: Clarification—is the Commission moving on the amendment for Item 6?

CHAIR CHANG: Yes, I’m assuming Paul was going to include that. Thank you for the reminder.

**20250318 00:22:14**

**MOTION: (MEYER / KATAYAMA)**

To approve staff recommendation with addition of Item 6.

*6. Staff to coordinate pump tests with Maui DWS.*

**UNANIMOUSLY APPROVED**

**(MIIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI)**

**20250318 00:22:50**

**B. ACTION ITEM**

- 2. Approval of Stream Channel Alteration Permit (SCAP.6364.3) Application and Special Conditions, Army Garrison Hawai‘i, Directorate of Public Works Bank Stabilization Kahauiki Stream, Honolulu, Hawai‘i, Tax Map Key(s): (1) 1-1-008:005**

PRESENTATION OF SUBMITTAL: Dean Uyeno, Stream Protection and Management Branch Chief

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Thanks Dean. So, this is basically proposing a 160-foot channelization of Kahauiki Stream. Is that correct, functionally, from a stream ecosystem perspective?

DEAN UYENO: Correct, it's a partial, if you want to call it "channelization"—but kind of like a revetment on one side of the stream channel. But the consultants can provide more information—I believe they're there.

COMMISSIONER KAGAWA-VIVIANI: Okay. Maybe before we go on—my gathering from the submittal is that DAR (Division of Aquatic Resources) has expressed concerns, given the ecological value of this stream, that the applicant should just be cognizant of in their practices. But there's not necessarily concern from the Stream Protection and Management Branch beyond that?

DEAN UYENO: Correct.

CHAIR CHANG: Dean, I noticed that staff concludes that the project does *not* trigger an EA (Environmental Assessment). However, this does seem to be a rather...they're building a retaining wall approximately 10 feet tall, 160 feet long. I'm assuming there's going to be excavation, it seems like a rather intensive construction project. Am I reading that wrong?

DEAN UYENO: I guess it depends on how you define "substantial." Yes, it is in the upper watershed of the stream within the military base.

CHAIR CHANG: Who owns that land? Who owns the stream?

DEAN UYENO: I believe it is U.S. Army Garrison. It's all completely on Fort Shafter property.

COMMISSIONER KAGAWA-VIVIANI: I share your concern, that it could potentially. My understanding is that they still need to get—well, it's Army and Army Corps—but what's the situation with their permit with Army Corps?

DEAN UYENO: That, I do not know. That would be a question for the consultant.

BRAD SCULLY: This is Brad Scully on the Zoom line. I'm with the U.S. Army Corps of Engineers. We have the 401 permitting, the NPDES (National Pollutant Discharge Elimination System), and the normal processes that we do.

MING DING: Yes, we do have the 404 permit as well. As far as the stream, it's not really a retaining wall. We have three options: one is a true concrete retaining wall, as well as a gabion rock wall. This is the actual option to minimize the impact. This is putting a four-to nine-inches of shotcrete on the slope to protect the slope erosion. That's what we're trying to do. We've got all the permits except the SCAP.

CHAIR CHANG: I guess that's not consistent with the recommendation- it's to approve a SCAP that proposes a 15-foot-long soil nail wall retaining system, approximately 10 feet tall by 160 feet long, to stabilize the Kahauiki Stream Channel. Are you not proposing that?

MING DING: We are. It's just different from a conventional retaining wall- big footings on the bottom, a high retaining wall. If it were conventional it would be maybe a 15 to 20 feet tall wall and four to five feet deep foundations.

CHAIR CHANG: Is it going to require excavation to put in this structure?

MING DING: Only at the bottom of the stream, there's a key part about three to four feet deep, a shotcrete to prevent the erosion. That's all the excavation. The slope itself is already eroded. We're going to shave out the slope to a certain slope then we'll put the shotcrete on. The excavation will be minimal as compared to the conventional retaining wall.

COMMISSIONER KAGAWA-VIVIANI: I have a question for either Dean or the consultants- how many times a year does this stream flow?

BRAD SCULLY: It's an intermittent stream based on rainfall. Generally during the dry season, it tends to have minimal or no flow and then during the rainy season we'll have some.

COMMISSIONER KAGAWA-VIVIANI: So how many months of the year?

MING DING: Hard to say. When we visited a few times during the summer, it was relatively dry. But in the winter, I'm assuming half the year, if I had to guess.

COMMISSIONER KAGAWA-VIVIANI: It's in the submittal, but that work is done in the dry season. Another question I have is potential for scouring. If it is intermittent then it's flowing in heavy rain periods and so how is that being proactively considered. It's just



not clearly addressed in the submittal, so if you have any comments on how you've considered that.

BRAD SCULLY: Our intent is to have this done during the dry season and it's certainly in our contractor's advantage to do it during a dry season. We're on track to award this probably next month and allow this during a dry season.

COMMISSIONER MIIKE: It's an intermittent stream but it doesn't flow all the way down, correct? When it does flow, how far down does it go?

BRAD SCULLY: I think it goes all the way down through Māpunapuna to the harbor.

COMMISSIONER MIIKE: All the way down to the that business district there?

BRAD SCULLY: Yes, it goes through Shafter flats and then skirts the side of Māpunapuna.

COMMISSIONER MIIKE: Into Moanalua Stream?

BRAD SCULLY: I'm sorry, I'm not sure the stream name.

COMMISSIONER MIIKE: If it goes all the way down to Māpunapuna it's got to end up in Moanalua Stream, correct?

MING DING: Yep.

DEAN UYENO: I believe that's where DAR's comments were more directed towards was the estuary portion of Moanalua Stream.

CHAIR CHANG: What are your BMP measures to ensure that during the construction phase the debris is captured on site?

MING DING: What we propose in the four permits is that we're going to block half of the stream, use that concrete barrier or set big bulking sandbags, isolate the working areas, and have them working during the summer to minimize and collect all the settlement and minimal impact during the winter time.

#### PUBLIC TESTIMONY

JONATHAN SCHEUER: Aloha mai kākou, Commissioners. For the record my name is Dr. Jonathan Likeke Scheuer. I reviewed this permit for the Department of Hawaiian Home Lands and we had no specific comments related to our kuleana, but I did note when we were doing our research on this that there was this 2015 article by Nina Wu in

the Star Advertiser that a series of petroglyphs were found along this stream at Fort Shafter by the Army. They took some efforts to protect them, so I was a little surprised when the 'Aha Moku asserted there were no traditional and customary practices in this area and State Historic Preservation Division noted no historic properties in the area. I would just humbly suggest that perhaps one of the Commissioners might ask the proponents to go on the record to say that they've surveyed this particular reach of Kahauiki Stream. The article highlighted that they used this technology to find very faint petroglyphs that were otherwise hard to see, that they've somehow employed surveys to make sure that there's no historic property in the area that they're proposing for revetment.

CHAIR CHANG: That being said, the applicant or representatives of the applicant, do you have a response to that comment that was just raised about petroglyphs being identified along here?

DAVE CROWLEY: Thank you, Chair Chang. Dave Crowley, Army Garrison Hawai'i, cultural resources manager. I appreciate that question, we do have petroglyphs along Kahauiki Stream. They're about three-quarters of a mile south downstream from the proposed location. They're outside of the stream channel and it is a site that is culturally significant. We do take our Native Hawaiian partners to those sites when they request to see it. That being said, we have conducted 100% pedestrian surface inventory of the proposed project area, we have looked at both sides of the stream channel. There are no cultural sites, historic properties in the vicinity of the proposed stream alteration. Just for a little bit further information, the stream channel at the proposed location has meandered over the course of the years and we don't at that location have the same tall basalt cliff that allows for the petroglyphs further down the stream closer to the highway. I hope that answers your question, I'm standing by for further questions if you got them.

CHAIR CHANG: Thank you for that clarification and that additional information. That is helpful to know.

DAVE CROWLEY: Yes ma'am and just to follow up on that, we did provide that survey that we conducted at the project area to SHPD as well as to OHA and 17 other Native Hawaiian organization consulting parties in 2019. We did not receive any response back or of any concerns about the project area. In addition to that, we've done further work farther downstream at the petroglyphs to continue documentation and work with our Native Hawaiian partners to ensure protection of those petroglyphs from a variety of things. Vandalism is our primary concern.

CHAIR CHANG: I do notice it as one of the conditions and I appreciate that OHA has submitted comments. I would ask that you include that in your responses to them, the information regarding the AIS, the survey that you did as well as the fact that there are petroglyphs in the area. You said the stream meanders?

DAVE CROWLEY: The stream had meandered. We have a 1922 aerial photo that shows the stream essentially had shifted to the east by a couple hundred feet and then shifted back west over the 20<sup>th</sup> century.

CHAIR CHANG: What impact if any will this structure have on the stream flow?

MING DING: If you want, I can share a photo of the stream meandering. This is where they talk about the 1926 stream meandering here. This is the current condition from the Google map showing the stream channel, all the big storm coming here to wash away like this slope here and you can see this is all washed away. That's where our parking structure sits right on the top of it. This is like a shotcrete wall. We have some leanings. At the bottom here, we have the keys. By doing this, they were withstanding all this storm, the hydraulic force, and it will prevent further erosion of the slope.

CHAIR CHANG: Thank you for that additional information.

COMMISSIONER KAGAWA-VIVIANI: I think this is for Stream Protection and Management branch for Dean. I think what would help is having a little bit more careful assessment. The status of the Army Corps documentation. If on the preparation of the submittal, you could synthesize this a little bit more for us so we're not doing it on the fly in the meeting, especially the kind of statement that an EA is not necessary. I know this is not a big, heavy construction, but in terms of stream channel alteration permits, this is a little bit more, this is definitely like intentionally constraining the natural meander of a stream because the structure wants to be put on the bank. Then to help us as a Commission and deciding body look like we've done our due diligence, it would be helpful to have a little bit more analysis of that in the staff submittal. I think a concern that Chair has raised- or that I'm reading has raised- is that us stating that we don't need an EA could be potentially problematic. I may be interpreting, but I think because it is a little heavier alteration than like fixing a bridge, us demonstrating why - versus just stating it does not trigger an EA- would be helpful. And I think we need to articulate why it doesn't trigger an EA, and I am not a stream person, I would like us to clarify that somewhere in the submittal.

CHAIR CHANG: I appreciate the articulation, Aurora. I will share with you, I'm extremely sensitive to the Chapter 343. We have been sued more recently, but I also do believe that we do have an obligation to look at what impacts. I did a project with Department of Ag, it was on Maui, we did a similar project, and what we decided to do a restoration or stabilization of the stream. We used shotcrete instead of building a wall because it was deemed to be less intrusive and it minimized impacts to construction as well as impacts to the stream. That's my only hesitation, but I too, I think our Chapter 343 analysis, cause there's always a provision under 343, if the cumulative impact can have, even if it may be exempt, but if the cumulative impact can have an adverse impact, I do believe at that point in time, we do have to look at something more than just exempting the activity or saying that it doesn't apply. We did receive responses to the questions that we had by the Army, but I do share Aurora's concerns and I guess I would like greater

detail in our submittals addressing that. I've appreciated the work on the Ka Pa'akai analysis and the fact that you guys even include 343. I do have some divisions that don't include 343. I do appreciate the fact that you are doing that.

COMMISSIONER KAGAWA-VIVIANI: I just have a question. Is the statement in the submittal that this project does not trigger an EA mean that we are, it means that we're approving it just without an EA. Sorry, let me take a minute to think about my question. Do we normally require like an EA or is that decided outside of?

CHAIR CHANG: No, we are the accepting agency. We have to decide whether we're going to require an EA. I think these are, this is the regulatory framework that we use in applying that, but it is for the Commission to decide whether compliance with Chapter 343.

COMMISSIONER KAGAWA-VIVIANI: And then based on the statute, it appears it does not meet any of the criteria that requires an EA.

COMMISSIONER MIIKE: Just procedurally, we should have had this discussion before you asked for the vote. If we're going to vote, then we vote.

CHAIR CHANG: Aurora, there's been four, how would you like to vote?

MING DING: Commission chair, we have a raised hand. We wanted to clarify the environmental assessment and we did the EA for the entire commanders and the facilities, control facilities, including the parking structures.

CHAIR CHANG: Okay, that should have been included in our submittal. With that being said...

COMMISSIONER KAGAWA-VIVIANI: I guess I do not approve this submittal as proposed. May I suggest an amendment that that be added?

CHAIR CHANG: We're not going to approve the submittal. We're approving the recommendations. You can add that to the recommendations that you want to note that a Chapter 343, an EA was prepared by the applicant, which included the properties. Just for purposes of the – under – I guess you could prove – Cindy, you could just add it to the recommendations? Because the only thing we're approving is a recommendation. We're not approving the staff submittal. Is that correct?

COMMISSIONER MIIKE: Sorry. Again, Chair, now I'm totally confused about what we're voting on. Yeah. Can we just do it procedurally the correct way? This is getting very frustrating.

CHAIR CHANG: I understand, but I think we do have a Commissioner who's wanting to ensure that.

COMMISSIONER MIIKE: Well, I understand that, but that should have been raised before you called for the vote. If she has concerns, then she votes no.

CHAIR CHANG: That's probably true procedurally. You can either vote yes or no.

COMMISSIONER KAGAWA-VIVIANI: I vote no.

CHAIR CHANG: Okay, the vote passes. Four votes, yes and one vote, no.

**20250318 00:41:09 / 00:49:19**

**MOTION: (MEYER / MIIKE)**

To approve staff recommendation as submitted.

**APPROVED (MIIKE/MEYER/KATAYAMA/CHANG)**

**NO (KAGAWA-VIVIANI)**

**20250318 00:49:35**

**B. ACTION ITEM**

**3. Approval of Stream Channel Alteration Permit (SCAP.6363.8) Application and Special Conditions, County of Hawai'i, Department of Public Works South Wilder Road Culvert Replacement Kaūmana Stream, Hilo, Hawai'i, Tax Map Key(s): (3) 2-5-045:001 and 999; 2-5-005:157 & 159**

PRESENTATION OF SUBMITTAL: Dean Uyeno, Stream Protection and Management Branch Chief

**QUESTIONS / COMMENTS**

SINCLAIR SALAS-FERGUSON: Hi, Chair. My name is Sinclair Salas-Ferguson. I'm an attorney for the County. And for this matter, B3, we have one of our County engineers, Preston Vierra, and we also have our consultant on the project, which was R.M. Towill. And for any questions the Commission may have, we have Jim Niermann to answer those questions.

CHAIR CHANG: Thank you very much. Did you want to add anything to the presentation?

SINCLAIR SALAS-FERGUSON: I don't think so. Jim, did you want to add anything to what was presented in the documents or in the staff presentation?

JIM NIERMANN: Not at this time. I think we're open to discussion and questions.

SINCLAIR SALAS-FERGUSON: If the Commission has any questions, we're here to help you guys answer those questions.

CHAIR CHANG: I will note that under Chapter 343, the County, you made a determination that the activity is exempt from Chapter 343.

SINCLAIR SALAS-FERGUSON: That's correct. And Jim can add to this if needed, but this project qualified for an exemption, so the County exercised that exemption.

CHAIR CHANG: Was that exemption because it replaces an existing structure.

JIM NIERMANN: There's no increase in footprint and it's replacing the existing improvements. I didn't have anything else to add. Well, actually the only item is the recommendation from the DAR to consider use of the larger boulders in the grouted riprap downstream. There are concerns from the engineers on doing so because you would change the hydraulics of the stream and the intent of the design is to replace in kind. By adding the larger boulders, it could create hydraulic conditions, turbulence, that could potentially there's some properties that are very close by. I'll share a screen real quick if I can. The area we're talking about is this area downstream. This is upstream flowing downstream. And this is the footprint of the grouted riprap. It's covering the bottom of the stream channel. There's some properties that are adjacent right here that are fairly close and the concern is that especially in a high-flow condition, that the addition of the larger boulders is going to possibly contribute to more scour of that thing. And I wanted to show one other photo.

This is looking downstream right here on the adjacent property, this is looking upstream in an existing [inaudible]. And you can see where it's kind of eroded right at the edge. The idea is to replace this bottom portion. The concern is that the larger boulders the DAR was asking for consideration that that's going to change the hydraulics and potentially contribute to erosion of this bank. The current design is to use 8-12 inch boulders in that grouted gravel pavement. The surface won't be smooth, there will be texture to it. They just won't be at that same dimension as requested by DAR. I just wanted to point that out. Other than that, all the other conditions, there's no objection to any of the other conditions.

CHAIR CHANG: Jim, you have an objection to the recommendation 1a that's being submitted by DAR?

JIM NIERMANN: I guess that's a finer point on it. We object to using three foot boulders or three foot diameter boulders. And our proposal is to use the 8-12 inch that are specified in the design. There was consideration when we saw the conditions that came out. We did have meetings with the engineering and that was the conclusion considering the use of the larger boulder.

SINCLAIR SALAS-FERGUSON: Jim, is it okay if I just add something for the Commission's consideration? This is Sinclair, deputy corporation council. The condition

says if at all possible they asked that the project avoid using smooth concrete and the condition is suggesting rubble that is 3 feet in diameter. But what Jim is saying is that 3 feet in diameter would be too big and that the project design is calling for 8-12 inch boulders, which would satisfy that conditions requirement that if at all possible the County of Hawai'i creating a smooth concrete surface. What I understand Jim is saying that we're not going to create a smooth surface, but we can't use the 3 foot diameter boulders, we're going to use 8-12 inch boulders instead which will still satisfy the concern that there's not a smooth surface. Was that correct, Jim?

JIM NIERMANN: That's correct. Thanks for translating.

SINCLAIR SALAS-FERGUSON: No problem. Does that satisfy the Commission's conversation about 1a?

CHAIR CHANG: What you're proposing is to amend the condition to delete "this may suffice if the rubble is large 3 foot in diameter" and you're proposing to replace that with, "this may suffice if the rubble is 8-12 inches."

SINCLAIR SALAS-FERGUSON: That would be a fair solution.

COMMISSIONER KAGAWA-VIVIANI: I have a different question, it's on the design. In the submittal it states there is no change to this culvert. Can you explain to me, when I calculated it, the cross-sectional area does increase when you go from those circular 96 inch diameter to 8x8. Is 8x8 the inner or outer dimensions of the box culvert?

JIM NIERMANN: That's the inner dimension.

COMMISSIONER KAGAWA-VIVIANI: That's a big, there's a difference in the cross-sectional area and, and DHHL efforts. I think if that's the case, it's an increased capacity of the culvert by 28 square feet. Has that been considered in the design? In these big storms, has that been considered, that increase?

JIM NIERMANN: That has been considered in the design and I may have misspoke. My statement was that the footprint hasn't changed downstream and then not wanting to change the hydraulics on that downstream outfall near that bank right at this curve where it comes [inaudible] adjacent property. The turbulence created by those boulders was [inaudible] hydrology. But the design of the culvert, the area, the aperture of the culvert was factored into the design.

COMMISSIONER KAGAWA-VIVIANI: Did staff have access to the other documents you just shared? These were not in the submittal and so to avoid the issue of the previous item, I would like to request that this be included in our documentation.

JIM NIERMANN: I believe we provided the LRFI. These are coming from the field inspection by the archeologists and from the biological survey. I think we included those in the application submittal, but we can confirm and certainly provide them [inaudible].

COMMISSIONER KAGAWA-VIVIANI: If we have those and if it's possible if we can attach those as exhibits to the submittal.

JIM NIERMANN: We certainly have no objection to that. We can make sure that staff has anything and include them.

CHAIR CHANG: Dean, do you have those documents?

DEAN UYENO: Yeah, I believe so. The application is available online by reference in the submittal and it's a 190 page document, which includes the natural resources survey. It includes the safety documentation, the Chapter 343, the nationwide permit application (that's the Army Corp one), the literature review and field inspection report (that's the ARC literature review), as well as construction plans and any additional information.

DEPUTY KAHAHANE: Dean, is that the one that's linked on page two near the heading background?

DEAN UYENO: Correct.

COMMISSIONER KAGAWA-VIVIANI: I see it, thank you.

COMMISSIONER MIIKE: Before we do that, then it's amended a little bit?

CHAIR CHANG: Yes, it's condition 1A. We're going to change it from, delete the "large three foot in diameter" to "8-12 inch." Thank you for the comment.

PUBLIC TESTIMONY – None

**20250318 01:04:04**

**MOTION: (KATAYAMA / MEYER)**

To approve staff recommendation with an amendment to Recommendation 1a.

- a. In conformance with the Division of Aquatic's recommendations, incorporated by reference as **Exhibit 1**, please incorporate appropriate best management practices, consider carrying out work during the dry season when flow is minimal at this perennial stream to prevent the continuous transport of sediments or other pollutants down stream, and consider the use of green-gray infrastructure, which combines natural systems with structures to help manage water and improve the environment. If at all possible we ask project leads to avoid creating a stream habitat that is smooth concrete. In this case it seems that grouted rubble pavement is being proposed. This may suffice if the rubble is large (~~3ft~~ 8-12in diameter).

**UNANIMOUSLY APPROVED**

**(MIIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI)**



**20250318 01:04:35 – Break**

**20250318 01:14:50**

**B. ACTION ITEM**

- 4. Approval of Stream Channel Alteration Permit (SCAP.6306.8) Application and Special Conditions, Ouli Land Company, LLC Crossing No. 6 Bridge Construction Wai‘ula‘ula Stream, Kamuela, Hawai‘i, Tax Map Key(s): (3) 6-2-001:051 – *Item Withdrawn***

PRESENTATION OF SUBMITTAL: Dean Uyeno, Stream Protection and Management Branch Chief

**QUESTIONS / COMMENTS**

CHAIR CHANG: I'm going to start off first with, I'm kind of on this theme today, Chapter 343. I noticed that staff submittal, the project does not trigger an EA. The project is phase one of the farm subdivision and this seems to be, if anything, segmentation, and it appears as if the County has also, they've approved a grading permit, a subdivision permit, or they're in the process of. I looked and I could not find any 343 for this project. Do you know whether this project, which is proposing, I believe, it is a rather substantial project. They're proposing 142 homes, 200 acres, five acre lot homes. I will ask the applicant as well, but I did not see any 343 that was prepared for this. Are you aware of whether there's been any 343?

DEAN UYENO: No, I'm not aware of any 343 being prepared.

CHAIR CHANG: Okay, I'll ask the applicant that when they come up. I also notice, there is under cultural issues, archeological resources, this project is directly above Pu‘ukoholā Heiau. I know that they did an archeological inventory survey. What I'm noticing now is that staff is putting links into the files, and which is helpful, but I think it would be helpful if you noted what may be in these files, because I would have liked to have seen the archeological inventory survey, and I didn't see that. Again, the scale of this project, I'm also concerned about, and again, not reading the archeological inventory survey, apparently they said there was no cultural impact assessment but I noticed the comment that ‘Aha Moku did not provide any comments.

I do believe that Leimana has not been available. There are several po‘o, Charlie Young, Pi‘ilani Kawaiola, who's from this area, that I think that they should have been, I would have appreciated seeing their comments as well in this. This is a major project, and I

would have liked to have seen more, who was consulted for this project. I take it you guys didn't look at the AIS?

DEAN UYENO: We did receive a copy of the AIS when we reached out to OHA to put them in contact, or when we reached out to the consultant to put them in contact with OHA. Consulting can probably speak more to this or the applicant, but my understanding is that the Ka Pa'akai analysis does include past interviews with area residents. I'm not sure if they went, they also consulted more recent members but can provide you with the list of folks.

CHAIR CHANG: I'll ask the applicant as well, because it does say that in the Ka Pa'akai analysis are committing to preserve the mauka makai public access easements, their historic sites and trails. I do notice on under the Analysis for Traditional Customary Practices, it says the applicant will designate mauka makai public access trail easements over the final trail alignments determined by the County planning director. Now, are these the Ala Hele trails? If they are, then the State owns those.

DEAN UYENO: That I'm not exactly sure about, just my understanding from reading through a portion of the AIS is that they are planning to put a public accessible trail through the development and the bridge would be, I guess, part of that, I believe. They will provide access to certain portions that of the property that may have some culturally sensitive sites.

CHAIR CHANG: For me under Ka Pa'akai, we wouldn't delegate that responsibility to the applicant. That's really our responsibility to determine impacts and it would have been helpful if there was an identification of where these trails are. I was troubled with the submittal as we're only looking at the stream alteration permit, but this project appears to be critical to the overall project, but there's not very much information about the project. Like I said, it's a large development, 840 acres, it's zoned ag, it includes five acre lot homes. DHHL has several parcels up mauka. My understanding is that Benioff has also donated 440 acres in Ouli to develop affordable housing. So again, my concern is that the only thing before us is this SCAP permit, but it does appear to be critical to the overall development, yet we are not briefed on the overall development. I think that the applicant is here, they hear my concerns and I will await their responses to the concerns.

COMMISSIONER MIIKE: What struck me is that this bridge is 26 feet long, but it's a hundred feet wide. This sounds like a major highway to me. It seems to me that if it's that big, I'd want a closer look about how it's affecting the stream. It's not like putting little concrete pillars down and then you can go across. A hundred feet wide over a stream seems to me just alters the nature of the stream underneath for whatever reason. I share the concerns that the Chair has, but I'm also just focusing on that bridge. It just seems out of proportion that we can't just sort of talk about this kind of alteration.

CHAIR CHANG: I think that was my point as I was reading this is there is much more to this than just the bridge, but the bridge also seems to be a critical component to the overall development.

COMMISSIONER MIIKE: I don't know if Cindy can answer this, but can we, or are we obligated to look at the whole project in order to approve this particular channel alteration?

CHAIR CHANG: In my view, at a minimum, there should have been an environmental review so we can see what context this permit has to the overall project.

COMMISSIONER MIIKE: I want to put Cindy on the spot.

DEPUTY AG YOUNG: That's my answer to that. Before you is a stream channel alteration permit, but to the extent that it involves environmental review, a project shouldn't be segmented. So if the whole project is this entire thing, then that's analyzed in terms of whether there is a trigger.

DEAN UYENO: Just to go back to Dr. Miike's point, just so you folks are aware, when we ask for dimensions for a project, we're looking at the stream longitudinally. The distance up and downstream, that'll be the 12 feet long. And then the width is across the stream channel, so that's the 106 foot width.

COMMISSIONER MIIKE: So it's the opposite of what I expected.

DEAN UYENO: Yes.

COMMISSIONER MIIKE: How big is the stream? What's the width of the stream?

DEAN UYENO: If you look at the photos that are on page three, you can see that it's a fairly wide channel. It's not quite a clear span, but it's almost a clear span across the entire width of the stream with the wing walls set a little further in.

COMMISSIONER MIIKE: My last question is that when you look at the proposed subdivision, you're not talking about a bridge that's about as wide as my driveway and corner. If you're having that many houses on it, what is in terms of the subdivision, the access to that? Is this the only access or what? It seems small compared to what's being proposed.

DEAN UYENO: They are constructing bridges over other dry gulches that were not included as part of this submittal. We didn't feel that a SCAP was required in those situations because there is no flowing water typically.

COMMISSIONER MIIKE: I understand that, but I was just wondering how many egress and ingress there are to this proposed subdivision. So there are multiple?

DEAN UYENO: That would be a question for the applicant.

ENJON ANGELO: My name is Enjon Angelo and I represent the Ouli Land Company, the property owners. With me is Winston Ing and he's with our civil engineers, Hirota Inc. We also have on Zoom, Matt Clark, he's available. He's our archeologist with ASM Affiliates, also available for questions as well. We mahalo you for considering our application.

CHAIR CHANG: I think you've heard my questions, was a Chapter 343 prepared for this overall project?

ENJON ANGELO: Can you clarify 343?

CHAIR CHANG: It's the environmental law. It's whether an EIS or an EA should have been prepared.  
Was one prepared for this project?

ENJON ANGELO: The application is regarding phase one of the project, which involves 300 acres of the property.

CHAIR CHANG: What's being proposed on the 300 acres?

ENJON ANGELO: What's being proposed is 42 home sites, as well as several other lots for roadways and infrastructure and the water tank.

CHAIR CHANG: Did you prepare an Environmental Impact Statement for this phase one?

ENJON ANGELO: No, we have not. The subdivision application is in compliance with the ministerial action through the regular subdivision application process. The lots are under the current zoning ag five, and we are planning intensive farming as well.

CHAIR CHANG: And it's phase one? How many phases do you have?

ENJON ANGELO: There'll be future phases and, nothing's being applied for right now in the future phases. However, we do plan, if necessary, to have environmental studies on it.

CHAIR CHANG: On future phases, but you didn't do one for this phase. What's the total acreage of your project?

ENJON ANGELO: Total is 847.

CHAIR CHANG: This is first phase, 300 acres, and you did not do a Chapter 343. No EIS was prepared for this, no EA. The County didn't require you to do one for the subdivision approval or the grading and grubbing permit?

ENJON ANGELO: They did not.

CHAIR CHANG: Is this bridge critical to your project?

ENJON ANGELO: Yes, it is. The project has several streams going through it. Most of it stay dry, but Wai‘ula‘ula Stream does flow intermittently. This was under what was required was the stream alteration permit for this bridge.

CHAIR CHANG: And these lots, does your properties all zone ag?

ENJON ANGELO: It is, yes. The entire property is zoned ag.

CHAIR CHANG: Are you connecting any utility lines under the public road? There's Mamalahoa Highway? How are you connecting?

ENJON ANGELO: There's Kawaihae Road.

CHAIR CHANG: Are you connecting any of your utilities to one of those public highways?

ENJON ANGELO: The main access to this property comes up from Mauna Kea Resort. This property was owned at one time by Mauna Kea Resort. It was put up for sale and it was part of the Mauna Kea Resort development plan.

CHAIR CHANG: This project, this first phase, are you going to connect utilities?

ENJON ANGELO: Yes, everything comes up from Mauna Kea Resort.

CHAIR CHANG: But are you going underground? Is that Queen Ka‘ahumanu Highway?

ENJON ANGELO: Yeah, we have utility connections available within the resort.

CHAIR CHANG: You still have to go under Queen Ka‘ahumanu public Highway? How are you going to connect your utilities?

WINSTON ING: There's already an existing sewer, existing DWS waterline within [inaudible] Drive, I believe it is. And then there's also stub-outs leading within the property. We'll be connecting internally within the property.

CHAIR CHANG: Are you gone be expanding those utilities? You're going to have to expand them to accommodate this development?

WINSTON ING: Yes, we will be connecting to existing stub-outs and we're going to be running lines within the proposed roadways going over. Essentially we're going to be putting the utilities within the roadway, but there will be no connections directly to Mamalahoa Highway.

CHAIR CHANG: So you will be opening up a DOT public highway?

WINSTON ING: No, these aren't DOT.

CHAIR CHANG: They're all privately owned?

WINSTON ING: Right, correct.

COMMISSIONER KATAYAMA: For your ag subdivision, are you providing ag water?

ENJON ANGELO: We do have an allocation of potable water from DWS and we are in discussions with Mauna Kea Resort, they have wells on the property, a private well system. We're currently in discussions with them to get irrigation water from them.

COMMISSIONER KATAYAMA: Do you have a estimated pumpage that you would need? I assume this is all ground water that you're looking at.

ENJON ANGELO: Yes and no. Our irrigation water, like I said, we're talking to Mauna Kea Resort right now. That's the South Kohala Water Company. It's a private well system that Mauna Kea Resort owns. Their wells are actually located within this property and we've been in discussions with them.

COMMISSIONER KATAYAMA: For phase one, what kind of water consumption are you looking at?

ENJON ANGELO: Well, eventually we want to do about 200 acres of farming. We're looking at about 400,000 gallons of irrigation water.

COMMISSIONER KATAYAMA: Per day?

ENJON ANGELO: Per day at the max.

COMMISSIONER KATAYAMA: It's not very much. You're going to pump it up?

ENJON ANGELO: Yeah, we'll be pumping and that water will be shared with the 42 homes, the homes that are planned in this development. The association or the entity will require farming on the house lots. It's made that each homeowner will be part of the farm entity or the association. The purpose is to actually farm instead of being...

CHAIR CHANG: Instead of being gentleman estates.

ENJON ANGELO: Yes.

COMMISSIONER KAGAWA-VIVIANI: How familiar are you with this particular landscape?

ENJON ANGELO: I'm pretty familiar. I was working for Mauna Kea Resort for about 25 years.

COMMISSIONER KAGAWA-VIVIANI: We were not provided the AIS, but are you familiar with Kumu Pono Associates' cultural ethnohistory? This was not referenced anywhere in the documents that I received. Are you familiar with the work of Kumu Pono Associates? It's a 75-page report on Ouli, Waimea, Kawaihae area that documents the significance of this corridor. Have you read it?

ENJON ANGELO: No.

COMMISSIONER KAGAWA-VIVIANI: I think it would be really important and maybe this is for staff too. The omission of this publicly available record is sort of glaring and I've worked in North Kohala, I'm familiar with the significance of the area. Has there been stakeholder engagement or contact about this project? AIS is one thing, the materials features on the land are one thing, but how it was used is a different one, especially if you've worked at Mauna Kea Resort.

ENJON ANGELO: Yeah, the company has formed a communique with several people on it from the community. And we are reaching out to members of the Waimea, Kawaihae community and it's an ongoing process, we're actively doing.

COMMISSIONER KAGAWA-VIVIANI: Maybe this is for the applicant, it would be helpful to see that in the record provided to us to inform decision-making.

DEPUTY KAHAHANE: Yes, and I apologize. We received an 89-page Ka Pa'akai o Ka 'Āina analysis for the Ouli Farms phase one development that's not attached to the submittal. I apologize for that. It takes into account some of the studies that were done by Kumu Pono and other reports and relates some of the stakeholder consultation that was done on this project. Since we are attaching more documents to some of our submittals, I would be happy to make sure that that's attached when the submittal is posted online.

ENJON ANGELO: I'm sorry for not connecting.

COMMISSIONER KAGAWA-VIVIANI: No, that's why we have these meetings.

CHAIR CHANG: These are all ag lots, and I appreciate you said, you're not intending this to be gentlemen estates. Are these homes going to be accessory to the ag? Are you planning to have large homes on these parcels?

ENJON ANGELO: Yes, the homes will be averaging about 3,000 to 4,000 square feet.

CHAIR CHANG: Will they be having swimming pools in them?

ENJON ANGELO: They will, yes.

CHAIR CHANG: Appreciate the candor there.

## PUBLIC TESTIMONY

MOMI NAUGHTON: Aloha, I'm Dr. Momi Naughton and I'm retired from UH Hilo. I do want to disclose that I was kind of shocked to see Dean Uyeno on the Zoom here, but he was a student of mine at Western Washington University. I've had no contact with him about this and just to make that clear. At any rate, good to see you, Dean. My concerns have to do with the water and also soil, but I realize that's not your kuleana. I am a historian. I own a home in Waimea, I live here and I'm writing a book on the ancient history of Waimea, really before Parker Ranch and all of that. I really concur that you folks should be looking at the Kumu Pono work that Kepā Mali did on this area. There's a lot of very important sites. Just to clarify a couple of things, there has been a U of H Land Study Bureau land classification, and it goes from an A to E rating, E being the poorest. And this property, if you folks are aware of just coming up above Mauna Kea Beach Hotel, is E, which means the soil is very poorly suited for agricultural use, which means that a lot of soil is going to have to be transported to do a 30 acre community farm with four acres of greenhouses, and then 20 acres also will be set aside for providing plots to farmers. This kind of reminds me of the old Tom Sawyer thing where they're going to basically, these will be gentlemen farmers, these houses will be in the \$3 to \$5 million range from what I can figure out from surrounding places.

You folks do have a couple of letters that I wrote to the Planning Commission, the Department of Water Supply, and the mayor regarding this. In one of the letters, I asked about the 2022 deep monitor well that \$2 million was supposed to fund because this is supposed to let us know sort of the thickness of our aquifer in the Waimea area, and it was targeted for completion June 2024. The response from the Department of Water Supply was that I should continue to pursue, that you got, I'll just read what they said. Their understanding is that the Commission on Water Resource Management will continue to pursue the monitor well in the Waimea aquifer system area, and any information regarding the status or progress of monitor well should be confirmed directly with CWRM. That's one point. Another point is throughout the document, I see that they use the 100-year flood, that this is in a 100-year flood plain. I really disagree with that. There's going to be a new FEMA flood map coming out in 2026. Just since January 23, 2004, there was a flood that closed Kawaihae Road and Queen Ka'ahumanu Highway, and March 14<sup>th</sup> of the same year. August 18, 2015, that was the really huge Kawaihae Village flooding, May 11, 2024.

The only thing I compare this to really locally is the Kihei water issues when there's flooding there. If you can go online, there are tons of videos that show you what occurs. I mean, boulders coming down. That's why this is wide, and all those dry gullies that are being spoken about do get wet. At any rate, that's a big concern. I do feel like they're not being forthright in their advertising for these so-called farms. We have a lot of water issues with the Hawaiian Homes farmers up in Waimea, as well as the ranchers. What I noticed is that they keep changing the website. When I sent a letter in, then they change it, for example, originally. And I do have screenshots of all of these from their original



website that I got them out of. It says, homes will be required to conserve water. In one of the original, and then it also says the natural seasonal patterns in stream water will be captured and used to supplement groundwater for farm and golf irrigation. They will be I can guarantee you, submitting, they would want to do some zone changing in a portion of this property, so that they can do a golf course.

This will make between Kohana Iki, which the same group developed in Kona, all the way to Ouli Farms, that's going to mean 15 golf courses. Although maybe 10% can be sort of recycled water, this is going to be a huge amount of water that will be used. I really think we need to be thinking about how many golf courses, I mean, many of them are barely used, need to go up on this whole, what can we sustain as far as water goes. I think as has been pointed out in the 2023 study, the geological understanding of our aquifers on Hawai'i Island, it says, and I'll quote it, "the hydrogeological framework of Hawai'i Island is not as well known as other islands."

CHAIR CHANG: Momi, could you summarize?

MOMI NAUGHTON: Okay, I'm against this application to further move this ahead and for this particular application.

E. KALANI FLORES: Aloha, I'm E. Kalani Flores, a resident of Pu'ukapu, Waimea. You could also say I'm a kanaka maoli, a native Hawaiian, a hoa 'āina of this area here. I'm also a professor in Hawai'i Lifestyles program at Hawai'i Community College, but not here as a representative of the college, but here as representing a resident of Waimea. I have a simple request to the Commission here, is to defer approval of this permit until a Ka Pa'akai analysis is done and until an EA is done for this project. Let me explain why. This project, because as a nature of this project, as a subdivision, there's been no public review of the project because it does not go through the Leeward Planning Commission, it doesn't go to the County Council. We have no means of public review of it. The subdivision approvals in Hawai'i County is the sole discretion of the planning director, who says since Kento Woods was a former planning director, has since been replaced with a new planning director here at Hawai'i County.

So this planning director has a sole approval of all these aspects, the grading, the subdivision. There's no public input, no public comments on this project. The project's been kind of undercover, as I would say. And, of course, there's been no EA, as has been mentioned. There's been no Environment Assessment. There's been no CIA, no Cultural Impact Assessment for this project. The developers failed to conduct adequate consultation. The developers only been doing select meetings with select individuals. The Flores Case Ohana is actually listed on the Department of Interior Native Hawaiian organization list to be consulted for this area of Kohala, this moku. We reside here. We have not received any letter from the developer or of any of its representatives in any part of this project. So here we have for this project, this project, the reason why it requires, I believe it requires an EA, is that there's a cumulative impact. And this project has been piecemealed in piece at a time. Grading permit, this bridge permit, it's all been piecemealed. Even the developer's representative couldn't even tell you what they're

proposing in future phases. This is phase one. They don't even want to tell us what's in phase two, three, four, five, six, and we don't even know. This project, when you look at this 300 acre, it's not a farm project.

It's an extension of the Mauna Kea and Hāpuna resort area. This is what the housing and this is how it's been sold on. If you go on the website, it's how the project's been sold. It's a resort project. There's concerns about water. This is what comes back to you as a Water Commission. That's where an EA would address these concerns, like how much water do they intend to take for not just the project, this phase, but in all the phases for the entire 800 acres? How can you do intensive agriculture without water? Right now, Waimea does not have sufficient surface water to support this type of project with the proposed intensive agriculture as being proposed with a future golf course and with these luxury homes and pools. We don't have existing surface water. The question is, do we have adequate groundwater? What's the aquifer's capacity for this project? You don't know because no EA has been done for this project. I contend the scope and size of the property and this project requires an EA.

CHAIR CHANG: Mr. Flores, can you summarize?

E. KALANI FLORES: I think the Chair mentioned it, and I'm going to reiterate it again. The applicant cannot do a Ka Pa'akai independent analysis. The agency, which is the Department of Land and Natural Resources and its Water Commission, you have the obligation to do the Ka Pa'akai analysis, not the developer. It's clear in the law as such. I am requesting that this project be deferred, approval of this permit until a Ka Pa'akai analysis is done by the agency, which is you folks, the Commission and DLNR, and then the EA is done. It is as simple as that. That's my two requests here at the moment. I thank you for the time to provide testimony and comments.

JONATHAN SCHEUER: Aloha mai kākou, Commissioners. Once again, Dr. Jonathan Likeke Scheuer for the Department of Hawaiian Home Lands. I appreciate the Chair's recognition that the Department has land in this area, which we have had insufficient or very expensive water to develop. Our beneficiaries of Kailapa and Kawaihae pay over \$10 per thousand gallons of water and do not have sufficient water, even though they actually have ag lots. We have water needs, including Lālāmilo, an additional 200,000 gallons per day. Pu'ukapu, where Mr. Flores resides, 1.4 million gallons per day and another 2.5 million gallons per day for our lands at Kawaihae, minimal just to put homesteads on the land. As some of the context for your consideration of this item, I want to highlight a few things, which maybe some of you were here for, but maybe some of you were not. In 2010, the Hawai'i County Water Use and Development Plan was proposed based on a sort of simple engineering analysis of what's the sustainable yield and what's full build out and are any of these areas is full build out close to sustainable yield. In December of 2011, you approved that plan.

That plan was conditioned on saying there were two areas of concern, the Waimea Aquifer and the Keauhou Aquifer. In February 2015, your Commission approved a project description for both an update to the Keauhou Aquifer Water Use and

Development Plan and the Waimea Aquifer Water Use and Development Plan, neither of which have been completed and which would surely sort of assist you right now in assessing whether or not there is sufficient water available for projects like this. In the 2019 update to the Water Resources Protection Plan, this Commission, based on historic rainfall data, decreased the sustainable yield for the Waimea Aquifer from 24 million gallons a day to 16 million gallons a day. In 2018, your staff, in a presentation on a related matter, pointed out that pumping already was at 12.5 million gallons a day, or just shy of 80% of sustainable yield. I don't know what the current pumping is for this aquifer, but I've heard secondhand that it's actually approached or even exceeded 90% of sustainable yield, which is one of the triggers for designation of a ground water management area. In fact, just to sort of bring it home, and the Department of Hawaiian Home Lands, while we don't actively seek out designation, we've never petitioned for designation, it is the one tool where in designated water management areas, water use permit applicants like these individuals would certainly be, are required to prove that they're not harming the rights of the Department of Hawaiian Home Lands.

In non-designated areas, we do not have those protections. Permits in designated areas are conditioned on non-harm to DHHL water needs, which in this area are extensive. And I'll just quote for you in the water code itself, that one of the triggers for designation, one of the eight criteria for designation, is whether water development projects that have received any federal, state, or county approval may result, in the opinion of this Commission, in one or more of the above conditions of approaching or exceeding sustainable yield. I don't know, you can certainly ask your staff, and I'm sure they have the numbers readily available of what pumping is in the Waimea Aquifer right now. If, as the applicant has suggested to you today, that they need a minimum of 400,000 gallons a day to irrigate 200 acres of land, which would be, by the way, far below the water irrigation standard that I've ever heard any applicant appear in front of you and is below the 2,500 gallons per day that this Commission has adopted in the Waiāhole case and in the EMI case. Even that 400,000 gallons per day figure for this portion of phase one would very likely move approval of this project and moving towards this to pumping well above sustainable yield. In addition to the very well-founded concerns that perhaps the application of this project and the project as a whole triggers 343, I would submit to you that I think separately this project triggers sort of mandatory duties of this Commission to look into designation of the Waimea Aquifer, because clearly there is a heavy demand being put on this aquifer from this proposed project, which already has some [inaudible]. I'd be happy to answer any questions.

COMMISSIONER MIIKE: May I make an extended comment? First of all, we're dealing with a stream channel alteration permit. Almost all of the testimony here has gone about the propriety of the proposed subdivision. If we stick to the stream channel alteration permit, those other things may not be relevant except for perhaps an environmental assessment, but the environmental assessment should have been limited to what would be the impact of the stream alteration permit. On the other hand, the purpose of building this bridge is for what is considered this very large proposed agricultural subdivision. I have not seen anything that tells me that it is critical to the subdivision to build this bridge

now, when we don't know what's going to happen to the rest of it, and the applicant can't tell us what those different phases are going to be.

My preference is to say we just defer this until we get better knowledge and the appropriate authorities make their decisions about the advancement of that subdivision because it seems crazy to me that we approved this bridge with all the discussion about the impact of the large, proposed subdivision on the area, on the aquifers, on the designation process, on permits and then what we may end up with is a bridge to nowhere. I would say that we should not act on this bridge until more further progress is made on the subdivision and then it comes a time that, okay, now we really need this bridge because we have these things going. So right now, it's sort of like, let's build the bridge first and then figure out what's going to happen. My preference is to defer.

COMMISSIONER KAGAWA-VIVIANI: I also think it's premature for us to be trying to make a decision on this permit at this point in time. I think it's insufficient information. I'm not necessarily saying even about the project itself. I think as a commission, we do need to consider this in the context of Waimea's water plan, which Dr. Scheuer pointed out is overdue, but even just the Ka Pa'akai analysis. I would also support a deferral until that case and that documentation is available for us.

COMMISSIONER KATAYAMA: I think I have a similar view as Larry said. We really need to look at these things holistically and to sort of piecemeal it out just to subvert the intention and we'll have an issue later on. I think it's not fair for the applicant nor for the Commission because I don't think we want to put you guys in a position that you're spending money that you're not going to get approval for water usage or whatever it is. I think our analysis or approach to these kinds of permits in the background session needs to be a little more holistic in all the resources and all the impacts. And I know that there is statutory 343 requirements, however, when you look at it holistically, I think you may trigger some of those. Again, I think deferral would be appropriate.

COMMISSIONER MEYER: I think that Larry really put, I think, correct analysis in place. This is premature. There's a lot of facts and information that needs to be shared and approved by the appropriate authorities before we get to the point of approving this individual stream. It really is kind of putting the cart before the horse at this point to approve a bridge issue like this from a water perspective without knowing the full extent of the project and filling in the demand and the requirements for the project overall in its full extent. That may not be exclusively the Water Commission's responsibility. There's a number of other broader issues. I think the community issues that need to be, or perhaps ought to be dealt with before this.

CHAIR CHANG: Yeah, I concur with everything, the comments that have been made. I would take it one step further. I would ask that the staff convey in writing to the County, my concern is about entitlements. They get a subdivision permit and they're permitted to proceed forward on the subdivision without... I feel like we have an obligation to raise these issues and the only body currently before them is the County because they're going through the subdivision process that I think the County should be well aware that these

concerns have been raised and that we're on record at least noting them, whether 343, Ka Pa'akai, the whole project. In my view, I think the fact that they're using a public highway, I mean, if they're going to open up that public highway, I think there is case law that talks about that's a trigger for 343. So to me, there are sufficient triggers for 343, but more importantly, our kuleana about water and availability of water. I have taken to heart Jonathan's comments. But I'm also aware, like I said, of the scale of this project, the scale of other proposed projects in this area. I do believe that we do need to, as the Commission have said, look at this more holistically. I do want to ask more of a procedural issue whether that's Ciara- if we defer this item versus if you can withdraw it. What's the impact of a denial, a deferral, or a withdrawal? There are some permits that if you get a denial, you cannot come back again for another year. I don't know if that's applicable to the SCAP. What's the impact of that?

DEPUTY KAHAHANE: To be honest with you, not sure.

COMMISSIONER MEYER: Yeah, from my perspective, I agree with what you're saying. But basically, I don't think we have anything, we have enough ammunition at this point to do other than defer. It's simply incomplete from our perspective.

CHAIR CHANG: But does a deferral mean that we're going to keep it alive until they come back to us? Yeah, that's what I'm concerned about.

COMMISSIONER MEYER: Yeah, at the same time, I don't think we have the information to deny.

COMMISSIONER KATAYAMA: Dean, are there mandatory approval on these kinds of permits if there's no action by the Commission? If we defer this, or there's no action, is there a timeline that you can administratively approve the stream alteration permit?

DEAN UYENO: For the stream channel alteration permit, there is no ministerial deadlines.

CHAIR CHANG: We could defer this indefinitely, but then this is the record. I guess that's a question for the applicant, too. Do you want this to be a record, or do you want to come back to us with a more complete record?

ENJON ANGELO: Well, yes, we'd like to come back, definitely, and we don't want to stop the process. We're in this subdivision process, and we have a temporary approval already on it from planning. We'd like to continue this process. I do appreciate all the comments and testimony, and I'm hearing it and I'll go back to the ownership and let them know. I think there's a little misunderstanding, I think, of where the access to this property is located. The main access to the property comes from Mauna Kea Resort. We're not actually altering Queen Ka'ahumanu Highway in any way.

CHAIR CHANG: You're going to have to open it up to put in these new utility lines or expanded utility?

ENJON ANGELO: Not on the state highway. We do have utility access. In fact, the DWS transmission line is within this property, and they have a water tank on the property and that's where our connection is.

CHAIR CHANG: Are you mauka of Queen Ka'ahumanu Highway?

ENJON ANGELO: We're just mauka of the Mauna Kea Resort. All the utilities come from the Mauna Kea Resort property [inaudible] and we have access by the Mauna Kea Resort for entrance into the property and access into our subdivision. We'd like to keep going with our Phase 1 application, and if you need more information and if we need to comply more with regulatory or community engagement, we'd like to do that. But we don't want to suspend this application.

COMMISSIONER KATAYAMA: Chair, they said for the initial Phase 1, they need 400,000 gallons per day. If we take a look at sustainable yields of water resources and said that's the cap, or not even that.

Are you prepared if you don't get any more water? Because that has to be approved by this Commission to increase pump capacity from Mauna Kea, wherever they get their water from.

ENJON ANGELO: We're also looking for other sources of water as well in the future depending on what the future phases are, but within the regulatory process. We may or may not get it.

CHAIR CHANG: You'd still have to come back to us.

ENJON ANGELO: Yes, we realize that.

COMMISSIONER KAGAWA-VIVIANI: I'd like to re-up, because according to the 2010 Mauna Kea Aquifer Sector Area Plan, it says full build-out water demands associated with maximum density of land use, LUPHE land uses are not sustainable. If agricultural demands are not included, the LUPHE full build-out water demand requires over twice the sustainable yield. I think there's a need for us as a Commission to really consider this.

COMMISSIONER KATAYAMA: Reaching out to Planning on Big Island.

COMMISSIONER KAGAWA-VIVIANI: Yeah. We do need to consider this context, because again, if we approve your bridge, but we don't approve your water.

COMMISSIONER KATAYAMA: Worse yet, if you get subdivision approval, they can move forward with it.

COMMISSIONER KAGAWA-VIVIANI: I know it's out of scope.

COMMISSIONER MIIKE: I'm trying to remember what was another discussion we had on another project before, and we started discussing the universe. We're talking here about a stream channel alteration permit, and I think the proper way is just to defer it, because this is not necessary for you right at this moment. You got much other things you have to do. And you can always come back to the Commission when it's much more concrete about whatever you were able to get approval of a subdivision, and we can look at that from that perspective. Because right now, it's sort of like, if you build this bridge and you don't get any other letter of approval, you're just going to waste your money.

CHAIR CHANG: Except that, Larry, I think, and maybe Mr. Angelo, I don't want to put words into your mouth, but I think when I asked you if this was critical at this time, you said, yes, it is.  
That the approval of this bridge, is it critical to your subdivision approval?

ENJON ANGELO: Yes, it is. It's part of the 42 lots that we're developing.

CHAIR CHANG: That's my problem with this.

COMMISSIONER MIIKE: Why is it critical?

ENJON ANGELO: Because it provides access to the 42 lots, the subdivision.

WINSTON ING: Yeah, it's part of the roadway.

COMMISSIONER MIIKE: It's the only access to that land?

ENJON ANGELO: Yeah.

COMMISSIONER KAGAWA-VIVIANI: But you just said that Mauna Kea is the access.

ENJON ANGELO: Right. It's the main access to the subdivision, but in order to get to the subdivision and lots that we are...

COMMISSIONER KAGAWA-VIVIANI: So it's not coming from Kawaihae?

ENJON ANGELO: No, so it is critical.

COMMISSIONER KATAYAMA: Have you secured the 400 gallons per day for your build out?

ENJON ANGELO: No, at this time, we're talking with the South Kohala Water Company.

COMMISSIONER MIIKE: Is the building of this bridge critical to your getting approval by the County for your subdivision? Is the fact that you have concrete access to this land, to do what you propose, is that critical to the County's approval?

ENJON ANGELO: I still don't understand the question. Is it something about the bridge?

CHAIR CHANG: Is this bridge, the SCAP, has the County made a condition of your subdivision approval that you must get this SCAP and build this bridge because it provides access?

WINSTON ING: Yeah, I think it is part of subdivision.

CHAIR CHANG: That's what I heard him say, is it's not like they can wait. This, our permit, and the building of this bridge, because it provides access, is critical to whether the County approves their subdivision.

COMMISSIONER MIIKE: It's a 26-foot-wide bridge. I find it hard to believe that a bridge that small is critical to your entire building of that subdivision. I mean, 20 feet wide is, as I keep telling you, it's my driveway in Captain Cook.

WINSTON ING: Sorry, if I might say something, and Dean, correct me if I'm wrong, but I think the length across the entire stream channel is 106 feet wide, the length across the stream is going to be 106.

COMMISSIONER MIIKE: Wait, wait, wait, wait. That's what I thought, and then Dean corrected me.

CHAIR CHANG: I think you're right. I think it is 106 feet.

WINSTON ING: Dean, sorry, correct me if I'm wrong.

DEAN UYENO: Across the stream is 106, that's correct. But what we call in the submittal as the length is 24 feet long. We're looking at it from the stream's perspective.

COMMISSIONER MIIKE: 26 feet is from one side of the stream to the other side of the stream.

DEAN UYENO: That's 106 feet.

COMMISSIONER MIIKE: Now, wait a second. Here is the stream. The bridge is what?

DEAN UYENO: 106 feet across. What we have in the submittal is 24 feet long. That's what you would typically consider the width of the bridge up and downstream.

COMMISSIONER MIIKE: Wait a second, when you say up and downstream, that means something totally different, but I'm talking across the stream.



DEAN UYENO: That's the 106 feet.

COMMISSIONER MIIKE: I'm still confused. Here is the stream, which is this way, the width of the bridge versus the length of the bridge?

DEAN UYENO: In those terms, the length is 106 feet and it's 24 feet wide.

COMMISSIONER MIIKE: That's what I'm saying, a 24 feet wide road across here to be the main access for all of these subdivision improvements doesn't seem right to me.

ENJON ANGELO: The bridge location...

COMMISSIONER MIIKE: I don't care about the bridge location. I'm talking about using that road as critical to the development of the subdivision. You're going to bring all these bulldozers and trucks across a 26 foot wide road? Don't tell me now it's 106, because we just went through that. Anyway, I just want to know, I find it hard to believe that this bridge is critical to the continued development of the subdivision. You understand what I'm saying?

ENJON ANGELO: And it is, because it's part of the main spine road that goes through the subdivision. At one point it crosses Wai'ula'ula Stream, get to the lots on the other side of the stream.

CHAIR CHANG: I think for me, that's the problem, is that we don't have all that information in front of us. So while you're just asking us to look at a very small, just a SCAP permit, but this is part of a much larger project and we don't have the context upon which to say that. I think your initial comment was, let's defer it. Does it make a difference whether we defer, whether they withdraw, whether we deny?

DEPUTY KAHAHANE: Under our administrative rules, the Commission has to take action on the application within 90 days of acceptance, so your options are basically approve or reject.

CHAIR CHANG: I don't think there's a deferral. I think if we defer- is it a default entitlement if we defer, it's automatically granted?

DEPUTY KAHAHANE: That I am not sure.

CHAIR CHANG: I wouldn't want to take that chance. I think it's either approve or deny or they can withdraw and then resubmit. Because there's no penalty for a denial. They can come back. I think LUC, if you get denied, you've got to wait a whole year before you can come back, right? In this case, if they withdraw, they can always come back, give us all the information. Or the same thing, we deny and you can come back. But I think you see the situation. We can only take one of two actions. Approve it or deny it.

ENJON ANGELO: Okay, I know you folks want more information before you can approve. My next question is, what information do you need so that we can come back and continue the process?

CHAIR CHANG: I don't think you'll be able to get the information I'm looking for, a 343 or a Ka Pa'akai analysis. Not in a month or two.

ENJON ANGELO: But we do have a Ka Pa'akai analysis that have been submitted in the AIS.

COMMISSIONER KAGAWA-VIVIANI: I have other matters that came up, but that are not reflected in the application where it said other regulatory requirements, US Army of Corps of Engineers- NA, State Department of Health Clean Water Branch- NA; these are normally part of our review, but the applicant is saying they're not applicable. That includes Chapter 343, Soil and Water Conservation District, which in our submittal, we say, yes, it needs to be in alignment with Mauna Kea Soil and Water Conservation District. I think there's other issues, and maybe if staff can help go through the permit and identify those areas based on this conversation to give guidance to the applicant, I think that would mean a much more informative record for us to make a decision upon in the future.

CHAIR CHANG: I think in addition to that, it's a more thorough description of your proposed project.

COMMISSIONER KAGAWA-VIVIANI: I'm trying to say that, I think there are specific topics that did come up in discussion that do relate to the permit. There are other regulatory requirements. I had not looked at the detailed permit, I admit, because it was a link. But I think those concrete instructions, and also what we mentioned was like the Ka Pa'akai and consultation is going to be important. It's already coming up.

CHAIR CHANG: You said you've indicated you've done that, it may be part of the record already, but I think you've heard the other issues that we've raised.

ENJON ANGELO: I'd like to get your guidance then how to proceed to the next step.

CHAIR CHANG: I think if you can take one of two choices, I think you're hearing from the Commission, they're not inclined to grant it. It's either we're going to deny it, and I don't want to presume as there's been no motion before us, or you can consider withdrawing the application and then resubmitting based upon the new information. Is there a preference you'd like to do? Would you like to withdraw it, or would you like us to take a motion?

ENJON ANGELO: Well, according to my understanding, the two options, we can come back. We don't have a time limit. We can come back. Is one better than the other?

CHAIR CHANG: It doesn't seem like there's a penalty, but you can come back and give us a fuller record with the new application that addresses many of the points that Aurora raised and what the issues that you heard us raise here today.

COMMISSIONER MIIKE: One last comment. I'd like the attorney general to give us an opinion about how expansive a requirement we can impose when we're dealing with a stream channel alteration permit, because it seems to me that if ultimately we approve and they build it, they still have to do the rest, everything else, and then they still have to... We eventually will have some decision about the use of water on that land, about the aquifer and the withdrawals, etc. It's not neither here nor there right now, whether we deny and just don't approve this, or we approve it, but what's going to happen to the rest of the land? We can't really control what's going to happen on the other things with this SCAP, but we can later on.

DEPUTY AG YOUNG: That's correct that if you were to approve the SCAP, doesn't bind you on some other permit or approval that comes before you, for that water itself.

CHAIR CHANG: The problem I would have with that is, I think there's a segmentation issue. I don't think we can just look at the SCAP by itself.

COMMISSIONER MIIKE: No, I understand that. I'm just saying that I think it's a stretch because we're dealing with the SCAP issue here to condition it on the entire project. I'm with you on that, and I think ultimately, whether or not we approve it and whether or not they build that bridge, whether or not they're able to go ahead with the subdivision and the requirements for the subdivision and being able to meet that is beyond this thing, whether we approve it or not. But I would prefer deferral, but since we can't defer, I would go with denial or they withdraw with their understanding that they can come back to us at any time. As long as it's true that if we deny, they don't have to wait a year.

CHAIR CHANG: That's the only question I have. You looked at the rules?

DEPUTY KAHAHANE: I looked at the rules. It's not in our administrative rules and it's not in the Water Code.

JONATHAN SCHEUER: Thank you, Chair. Just following this thoughtful conversation by the Commission, I want to say that I'm slightly troubled that I do think, I've been waiting for this to come up somehow. I think the design of this project as Mr. Flores testified has been done in a way that there's, this is possibly the first time this project is being discussed in any matter before any body. That's one of the reasons why these things are emerging. But one thing that should be now clear on the record, and I've urged you to ask your staff, which I think can be done within seconds, what current pumping is in this aquifer. I think you have an affirmative duty if you're aware that pumping is approaching or possibly even exceeding sustainable yield, and you have a project before you that very reasonably will lead to that condition. But in addition to whatever action you take on deferral or denial or acceptance of this permit, you have, and this is really on behalf of like the acts of homesteaders and weightless folks who are waiting to occupy their lands

in this water short area, that you have a separate duty, you're on notice to take up seriously the issue of whether or not there is a water shortage in this area and whether public trust resources and uses of water are being protected. I don't want to have that lost in the complex legal discussion over what your duties are in relationship to a narrow stream channel alteration.

CHAIR CHANG: That's fair. I don't have a project before us that really tells. I've had representations by this applicant, but there's really nothing before us other than the SCAP. I agree with you, I think there's insufficient information. I think the SCAP is part of a much larger project and I'm uncomfortable taking any action on a SCAP without fully understanding the whole project because at that point in time, when we see the whole project, it may indeed trigger as you're saying, Jonathan. With the project, then our staff can make an assessment on what is, are you proposing to, with your project, does this exceed the sustainable yield? I appreciate the comment because what I'm hearing you say is, we should be now looking at designating this as a management area.

JONATHAN SCHEUER: I'm saying that I believe the body as a whole, and you as the Chair have a sort of affirmative duty that even if it doesn't specifically reference the details of this permit, that you could certainly direct at one of your next agendas to take up the issue of water demand in the Waimea Aquifer on Hawai'i Island and that that would be probably very much in line with your public trust duties.

COMMISSIONER MIIKE: I totally agree with that. All I'm saying is that this is not the vehicle to do it. You know my stance. My stance is that I think the whole State should be a designated water management area. That's what was the original intent of the '87 legislation.

JONATHAN SCHEUER: The only thing that I was thinking and listening to the thoughtful debate among you over what's your kuleana when a SCAP comes up and the only thing that I thought of that might be instructive is Kaua'i Springs when the planning commission for the County of Kaua'i were consulting a building permit, like very narrow things. But they said, hey, wait, we think we have public trust water duties related to this, and when they didn't get sufficient information from the applicant, it's okay, we deny it. Because we can't fulfill our public trust duties and the Supreme Court upheld them and they said, yeah, denial was the right thing when the applicant did not provide sufficient information. That's the only thing, what's your duty under this kind of narrow thing where it's like, it's just the channel alteration permit that can really think about this larger thing. But it's clear, we cannot go like this, right? We know what the larger thing is.

COMMISSIONER KAGAWA-VIVIANI: Can I add? Just even focusing on the SCAP, what I notice is missing from previous submittals, even today was hearing from Division of Aquatic Resources, Clean Water Branch of Department of Health, Army Corps of Engineers, 404. This is missing. I don't think we have enough information regardless of the project, even just for the SCAP.

CHAIR CHANG: Mr. Angel, I think you're hearing all of us. you have two options. You can either choose to withdraw the application or you can permit the Commission to take action. I'm going to give you the first option, you can decide.

ENJON ANGELO: We'll redraw and resubmit.

CHAIR CHANG: Very good. With the withdrawal of the application, we don't need to take any action. I would urge you to reach out to staff, work more with Dean. I think you've heard a lot of the concerns that were raised by the Commission and the additional information that's required.

So I think our staff is also on notice to raise all those things with you. We anticipate that you will come back to us with a more detailed application and information that we're looking for.

**20250318 02:33:58**

**B. ACTION ITEM**

**5. Adoption of the 2019 Agricultural Water Use and Development Plan (Revised 2021) with Conditions for Incorporation into the Hawai'i Water Plan**

PRESENTATION OF SUBMITTAL: Katie Roth, Planning Branch Chief

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Katie, in your experience how is this Ag Water Use and Development Plan actually used in its present form? And I'll just add, we had a discussion about this with the Kaua'i Water Use and Development Plan, but is it folded in? Is it really critical to those other County-level plans?

KATIE ROTH: Sure, the Ag Water Use and Development Plan, as we've heard from other counties like Kaua'i, does inform their own analysis and how they go about preparing the County Water Use and Development Plans. They're using these water demand rates and other data and information in these plans to inform the County-level Water Use and Development Plans. When these plans aren't updated in a timely manner, they're obviously pulling in outdated, insufficient information, as we saw with the Kaua'i plan. The Ag Plan, my understanding is it's also used by the Department of Ag to inform CIP requests that they may make to the State Legislature, but I would defer to DOA to maybe confirm that and or comment about how they're currently using this plan and how it has been used in the past.

COMMISSIONER KAGAWA-VIVIANI: Sure. The second comment I have is, I think because those numbers in table 130 potentially get a lot of use, but also are not reconciled with our own numbers, I'd be interested in having some conversation with DOA.

CHAIR CHANG: I do have a follow-up to the line of question by Aurora. I mean, a specific example, EMI. When EMI goes before the Department of Land and Natural Resources for the water license, there's a question of what's the water estimate for diversified ag? We get one number from CWRM and then we get another number from DOA, very different. What's the guidance on reconciling those two?

KATIE ROTH: I think that's a great question and a great point. I don't think it has been reconciled and I don't believe, this is prior to my time in this position, I don't believe that that was part of a conversation that staff had with DOA when coming up with these estimates, how these numbers may or may not reflect or jive with other decisions by the Commission or other Supreme Court case decisions for that matter.

CHAIR CHANG: CWRM relies upon the IWREDSS in calculating your estimates, right?

KATIE ROTH: I'm not intimately familiar with the tool, but my understanding is it is used by our surface water and ground water staff. When we're reviewing water use permit applications, the applicant has to identify if it's an ag use, they have to identify the different crops they're proposing to use or to use water for. Then IWREDSS basically takes that crop information and pushes out an estimated water demand associated with that particular crop.

CHAIR CHANG: Because there's not a reconciliation, that creates challenges for the ultimate decision maker, whether it's just the Water Commission or whether it's the Land Board, because ag users may be relying upon a different calculation or estimate, and then we've got decision makers looking at another set of numbers. I don't know how to reconcile that. I'm hoping that CWRM and DOA can discuss that because it is going to be critical as even under the Land Board they base their decisions upon CWRM's calculations. As water becomes more scarce and we're looking at water management areas, I do think we have to find a way to reconcile that.

COMMISSIONER MIIKE: These numbers here are really high compared to CWRM's, but it says they're measured at the farm meter. We don't know how inefficiently they're using the water. It's just that whatever water they get. When we did our original Waiāhole case, two things.

One was that when we arrived at what is significantly lower numbers, I haven't heard since that time that the farmers are complaining that they weren't getting enough water. The other part is that per the order of the Supreme Court, we had to decide on water use efficiency by climate and area. These overall statewide numbers are really basically meaningless. Obviously, if you look at the usual rainfall and stuff, the 'Ewa Plain versus Kaua'i is going to be very different. I don't know how these numbers are going to be useful, but you still got to come up with some kind of number. My preference is to go with lower numbers. It then forces users to be more efficient.

COMMISSIONER KATAYAMA: You're not a farmer, are you?

COMMISSIONER MIIKE: Where I am, I'm above 1,400 feet, I never water. I have the afternoon and evening rain, no problem.

COMMISSIONER KATAYAMA: May I make a comment on table 130? Water irrigation needs are very specific, not only by location, but the time of year. They have historical pan rates that span 40, 50 years and that is one factor. The other is the efficiency of the irrigation system that you're using. I assume that table 130 is the water delivered top of field. In other words, that is what the farmer gets to use as opposed to top of source. I thought the Nā Wai 'Ehā analysis, if the taro farmers are happy with that, bless their souls, and that was really low, and that was top of source. If you have systems inefficiencies, that gets taken out of your hide, basically. The other thing that, all of these comments, I think, are very good. The other point that was brought up is that if you want to manage water demand, let's make your system more efficient. There is no vehicle for small farmers or even mid-sized farmers to afford that. Historically, they relied on huge existing infrastructure, which currently, the demand for that has been shrinking, they've ignored replacing that. There is no place where they're addressing storage. And if you look through the cost of renovating storage capacity, that should be a huge number that somebody needs to look at and see if that is something that, both from publicly as well as privately-owned reservoirs, especially if you want to manage demand usage again.

KATIE ROTH: I think you're bringing up a lot of comments and questions and concerns that we as staff also raised with DOA and provided to you in the submittal. I will say that the decision to bring this to you for adoption wasn't an easy one, and that's why we have attached a variety of conditions, but it'll be up to you whether or not you feel that those are sufficient and that this plan actually does meet the statutory intent. I would also say that DOA is here, and I think that they'd be happy to answer or provide more details on some of the questions and concerns you've raised. As someone who's only been with the Commission two and a half years, I don't have all the background about certain conversations that may or may not have been had with DOA. So again, they're here, and I'm sure they'd be happy to answer those.

COMMISSIONER KATAYAMA: No, I think these points need to be discussed, and I'm glad you guys have raised it. I thought it was a really healthy reading through that.

COMMISSIONER MEYER: It really gets to the heart of what we're responsible for.

CHAIR CHANG: How are you, Janice? You heard some of the comments by the Commission?

JANICE FUJIMOTO: I did. I'm Janice Fujimoto. I'm an engineer with the Department of Agriculture, Agricultural Resource Management Division, but also joining me on Zoom today we have two people who are also going to help us. One is Brian Ishii. He is our consultant with EK&A, and the third person is Brian Kau, who is our administrator and chief engineer, and recently had technical difficulties on his computer. He just stepped into my office, give me a moment while I change from headphones to speaker so he can hear what's going on too... There's a lot of things that were said. We appreciate the

position that you all are in. The Department of Agriculture felt like we actually liked the plan. We felt that it met the statutory requirements that were put forth before us. We do acknowledge that it was a little bit lighter on some of the framework issues given scope and time and money and stuff, we absolutely prioritized the law first, and we looked at the framework components as kind of more of the secondary thing that we would try to address as we had the bandwidth to be able to do so. That being said, also in the development of the plan, we kind of did it the same way the first plan was done, and we're realizing now 11 years into this, that it's a different time. It's a different time, and the expectations are different than what we had originally charted out with and scoped as part of our vision in developing the Ag Water Plan.

I think a big part of that is some of this additional feedback and stuff we're having from DLNR, as well as the comments about the DHHL water needs and such. We developed the plan with the intent of it being kind of like the voice for farmers because we do realize, and this kind of is getting to the next point about the numbers being different, but we do realize that CWRM does have their own model that they use, and there are different restrictions often being put on the agricultural community to say you don't need as much water as you think. We want you to still farm but with less water. And one of the things that we wanted to do with this Ag Water Plan, because it is something of the Department of Agriculture, is to provide that voice of the actual farmers and say this is how much they say they need. If you look at the plan, everybody's focusing on that one table. And that table is very generic, right? I mean, we all acknowledge that the table is generic. But there's a whole section that actually goes into a lot of detail about all of the different variations that take place in determining what a water demand is.

And what we wanted to emphasize with the Ag Water Plan is, although we came up with a generic table that can be used, kind of carte blanche across the board, we wanted to emphasize the importance of the farmer in making their decisions for their operation, for their location, for their crops, as to what their water demand needs to be. I think that is the reason why that we will sometimes see the differences. And to some degree, maybe we always will. Because, our position from the department is to provide that voice, reminding people that farming is hard. Water is necessary to farm. The other issue that kind of comes up and was brought up very lightly is the costs, the costs associated with additional infrastructure, and additional means to just, provide water to the crops as well. That is something that we did try to be sensitive of when we put our plan together, in terms of prioritizing. We didn't want to actually come across as though we were dictating, landowner A, you shall da-da-da-da to make these irrigation upgrades, for whatever users we have. We did want to provide the flexibility because a lot of these users that we ended up including in the second version of the plan, that are not state owned, they're privately owned. And they don't have, the same opportunity that we do as a state to go to the legislature and say, can we get some additional CIP funding we can do these improvements? We did try to be sensitive of what the industry is actually facing, not just from the farmers, but also for the purveyors of the water as well.

COMMISSIONER KATAYAMA: Janice, the State went through looking at ag lands and they classified the soils from A to E. What happens if you did a matrix that sort of looked



at irrigation needs from very... on A lands from a very dry situation to a moderate situation or some high elevation A lands that have different water requirements? Obviously, if you're up higher, you have less irrigation needs, or if you're down on a plain somewhere on south your water rates would be a lot higher. And that would sort of help reconcile to me the differences in some of these numbers?

JANICE FUJIMOTO: We totally agree. We have what you're kind of looking for. There is a table in the plan that kind of puts into perspective different water needs based on elevation. It doesn't cross-reference it with soil type, but it does have high elevation.

COMMISSIONER KATAYAMA: I mean, if you've got A soils, to me, that's prime irrigation, and that is what we should try to preserve, I would think. And focus on can we sustain those lands in agriculture?

JANICE FUJIMOTO: Yeah. Another part of the plan, and I'll let Brian Ishii jump in because he can kind of speak to this a little better than I can, but we have a series of maps at the end of the plan, and it does focus on the areas where we have the irrigation systems that we studied in this particular plan. It does show graphically the types of crops in the areas, as well as, the ALISH (Agricultural Lands of Importance to the State of Hawaii) and the irrigated versus non-irrigated conditions.

COMMISSIONER KATAYAMA: I think on table 130, you had a range from all schedule A ag from low elevation to high elevation range from 3,000 gallons per day to 10,000 gallons per day, whatever it is. Then you have the time of year issue, it's really a three-dimensional.

JANICE FUJIMOTO: It really is. And I mean, we tried to capture a little bit more than was emphasized in the O4 plan just by laying out things like regular, I'm going to call it regular, but normal conditions versus drought conditions, right, or dry areas. And whether it's 50% or 100%. That's just scratching the surface, of what kind of differences there are in irrigation water needs across many different matrices. Yeah, you're absolutely right. On one hand, we felt like expanding the table this much already might throw people off, but it only still tells a very small part of the story, right?

COMMISSIONER KATAYAMA: Yeah, I think that was sort of the initial reaction by the Commission is, wow, it's much different than what the water management ag uses were.

JANICE FUJIMOTO: Which is kind of the plan, right? Because ag water use is not one number. And actually, even back in the O4 plan that had one number, and everybody focuses on the one number, when you actually read it, it does say that this is for 50%. And it kind of did a caveat that kind of got lost in it. And really, all we did in the plan this time was bring it a little bit more to the forefront. But even still, everybody seems to be able to acknowledge here that it really is such a difficult thing to pin down what an agricultural water need is, because there's many variables that come into play.

CHAIR CHANG: I know I'm pleased with there's greater commitment for DOA to work with ADC. I think the ADC, if you think water efficiencies to certain deficiencies is kind of based upon a lot of ADCs. If ADC can invest in CIP capital improvements to those irrigation systems, I would suspect that some of the water uses may go down, because we've probably got a lot of waste, given just the age of these systems. I think the better coordination between DOA and ADC, and ADC taking on more of these systems may be very helpful to us in the long run. But I agree with you that this is a much more complicated issue, that there's many different variables in play here. I know for me, some of the challenge, again, is the fact that the numbers, we aren't necessarily all comparing apples and apples. And then we as the decision makers have to reconcile that. And that's a little struggle because your farmers are relying upon the numbers you're giving them.

And then we as decision makers are looking perhaps at another number or other considerations. But I agree with Katie and your comment, Janice, it is better to have a plan and to continually to move forward. While this isn't perfect, this has been an improvement. I appreciate the effort that you guys have put into this and addressing the comments that we had. Have you read all of C1's comments?

JANICE FUJIMOTO: I have, but now I have to unfortunately interject, I'm sorry. We did see what the staff's submittal comments were going to be. And for the things like committing to include DHHL in the future we can do, ADC we can do. But unfortunately, for the comments about kind of doing some revisions to the plan, we're just not able to do it again this time around. Actually, our contract with the consultant ended back in 2018. He's been helping us out of the goodness of his heart for the last seven years. But we will take those comments and considerations to heart when we do our next version of the plan to make sure we include those kinds of hyperlinks that the CWRM staff is looking for, as well as some of the overall just statements reminding them about things like the model that is available for use as well.

COMMISSIONER KAGAWA-VIVIANI: May I ask for clarification? You're saying that you are not able to do items one or two? Adding hyperlinks or links?

JANICE FUJIMOTO: Yeah, we're not, we're just not able to do any more work on the document at this time.

COMMISSIONER KAGAWA-VIVIANI: But I mean, because that's really pretty small. I could do number one and two.

JANICE FUJIMOTO: That's true, but it's a website issue. I'm actually not sure how to solve that. Because depending on whose website it is, is where it's pointing to.

COMMISSIONER KAGAWA-VIVIANI: In the PDF document, right?

JANICE FUJIMOTO: But if it's a PDF document, well, it has to point somewhere.

COMMISSIONER KAGAWA-VIVIANI: There's a simple way in Adobe Acrobat to hyperlink a table of contents to a particular section of that document. And those are really manini edits. I could see number three being more extensive, right? I think what would be helpful is identifying those items that may be for a future update and having a conversation about those. Sorry, I just wanted clarity on what you're saying you're not able to do of the submitted conditions from one to eight.

JANICE FUJIMOTO: I think that we're unable to do any of the document revisions, but we can take the recommendations going forward into the next plan.

KATIE ROTH: If I can, I could probably clarify which conditions and Janice can correct me. But I believe DOA is saying that they would not be able to meet conditions one, two, three, five, and seven.

CHAIR CHANG: Would you agree, Janice?

JANICE FUJIMOTO: Yes.

KATIE ROTH: I agree that condition three is probably the heaviest lift when it comes to changes within the document. We do recognize that that may come with hiring a consultant. But to Commissioner Kagawa-Viviani's point, I think conditions one, two, five, and seven, those are not dissimilar to other conditions we've put on other plans that have come before you, specifically with the counties to add hyperlinks or develop a summary of the plan, things like that, which in those cases, they agreed to. I don't know the extent of costs associated with doing those things. If DOA is saying it's not possible, I will defer to them. But in my understanding of what would be required for some of these, it could be a relatively simple thing.

JANICE FUJIMOTO: I'm going to defer to my boss.

BRIAN KAU: I think what I want to get out there is that we're not refusing to do so. We are simply saying that we are unable to do it in this version that is before you. In the next version, happy to do so. I can't, I cannot speak to the time involved or ease of which, of what it would take in order to do these types of links. I haven't done them before, I have no experience in that. However, I do know, as is the case for most of us, we are severely short-staffed. And I don't want to sit here and commit to you folks that, oh, yes, in fact, we will do it and not be able to meet your expectations.

CHAIR CHANG: Yes, I don't know whether I could do it, but I do find having links like that, it is really helpful for the public to better access information. Have you finalized this document already?

JANICE FUJIMOTO: Yeah, we actually finalized it in 2020, but we knew the Water Commission wanted us to go to hearing. We did it again, but we considered it final. And actually the second iteration that we put together and has now submitted after the public comment period, that was not expected to be done either. But we were trying to change

more of the substantive input into the document itself to try to address some of the concerns that were being raised after the first submittal.

COMMISSIONER KAGAWA-VIVIANI: I have a question for Katie, or maybe it's DOA also. The Ag Water Use and Development Plan really is approved by us. Like there are, are there other bodies that review and approve?

KATIE ROTH: We asked that question of DOA as well. We wanted to understand if their board had actually reviewed this plan and approved it. Janice can correct me if I'm wrong, but I don't believe they did. There was no approval process through the DOA itself. Formal adoption of this plan into the Hawaii Water Plan resides with this body.

COMMISSIONER KAGAWA-VIVIANI: Maybe we can hear from Janice.

JANICE FUJIMOTO: I'm going to let Brian chime in on that too, because he actually has a little bit more recollection too on the original plan.

BRIAN KAU: The Board of Ag was presented the '04 version. I believe there have been informational briefings for subsequent versions, but we, I can't recall recently us going to them for approval of the document. That being said, most of them have referenced it in the past, various portions of it. And the agricultural community itself considers it something that is valuable to them. We haven't had any pushback from the agricultural community as to the validity of what the plan contains. I'm not saying it's that we wouldn't or we couldn't, but we don't have any, outspoken criticism of the plan, at least within the agricultural community that I'm aware of.

CHAIR CHANG: Brian, your board doesn't need to approve the plan?

BRIAN KAU: No.

COMMISSIONER KAGAWA-VIVIANI: Maybe I'm overstepping, but I have a proposition for recommendations one, two, and seven, because they could easily be done by a student. If I found a student to do it for free, to work with DOA, to update and hyperlink it, to make it more usable. I mean, is that potentially a way, because there's always students looking for projects, to get this done. And I know it's probably doing work that's not my job, but like, it just seems like a very easy thing to do. One, two, and seven.

CHAIR CHANG: Would you accept her offer?

COMMISSIONER KAGAWA-VIVIANI: It'd probably be a weeklong or less.

BRIAN KAU: Like we said, nobody on the agricultural side is opposed to it. We're unfamiliar with it is really all it comes down to. We do see the utility of it.

COMMISSIONER KAGAWA-VIVIANI: Katie, would that be a sensible way to address one, two, and seven?

KATIE ROTH: Yeah, staff would agree with that suggestion. Condition five as well, Planning Branch staff would be open to crafting language that could then get inserted. I don't know exactly how that would work. I assume there's some sort of like master word doc that DOA has for the plan that can be accessed and edits can be made.

CHAIR CHANG: Brian, Janice, is that possible?

BRIAN KAU: I'm sorry, I'm not sure what's being proposed.

COMMISSIONER KAGAWA-VIVIANI: Katie, can you restate your...

KATIE ROTH: Sure, condition five, the recommended condition is to add a statement into relevant sections. ideally more than one section of the plan that would better articulate that these water demand rates that they aren't the end all be all and that there are other resources available should planners and others who are using this document want to estimate proposed water demands for particular crops in particular areas. As it reads now within the plan, I think many people will probably just refer to table 130 and call it a day. The Planning Branch staff felt that it would be valuable to insert language into the plan that communicates that there are other resources and that that table and the other tables in the plan are one resource, but not the only resource and ways to calculate estimated water demands. My suggestion is that Planning Branch staff could come up with suggested language and edits to the plan within those relevant sections for incorporation into the plan and that DOA wouldn't have to do that, we could do that.

CHAIR CHANG: How do you feel, Brian and Janice?

BRIAN KAU: We'd be happy to look at that. I can't, without seeing it, I wouldn't be able to just blanket and say, yeah no problem, but I would be very open to the language.

CHAIR CHANG: What I'm hearing from Katie as well, to facilitate that, to provide them a copy of like the Word doc that they could make those, similar to the hyperlinks, you'd still need a Word doc. Is that possible to share your Word doc for this plan that both the student can hyperlink and then Planning division can maybe craft some language for your consideration?

BRIAN KAU: Sure.

CHAIR CHANG: That's a good sign. That's a good thing.

JANICE FUJIMOTO: And thank you, too.

KATIE ROTH: Well, we want to make sure the plan is usable and has utility.

CHAIR CHANG: I appreciate Katie and Aurora, I think we understand DOA, DLNR, we lack capacity, but we understand the constraints that you guys have as well but if we're going to do this, we should do it right. And we should try to put as much information in there as possible. And we've got some people that are willing to help DOA, sort of the collaboration if, maybe Katie can work with you, Janice, and your cons, and your consultant on providing that, that Word doc that they can make some proposed language. And again, you will have to approve whatever proposed language they come up with, but at least they'll draft something for your consideration.

JANICE FUJIMOTO: Okay, thank you.

CHAIR CHANG: And then the other things, I don't know if we reword number three to be less prescribed, but the DOA will update because e you said that's going to be...

JANICE FUJIMOTO: That one is harder.

CHAIR CHANG: We'll take its best efforts.

KATIE ROTH: That sounds like number three is not something DOA has the capacity to do. And it would be the next update of this plan that would better.

JANICE FUJIMOTO: Yeah, actually, I think it would be better in the next update. Just for the simple reason of, let's say we did undertake it and we came up with 2025 numbers. All of a sudden we have to rename the plans and it becomes a 2025 plan because you can't have 2021 update with 2025 construction and CIP numbers in there. I think that one is probably best to just leave it as is. And I think anyone who looks at the plan can very easily scale rate increases over time, typical construction rate increases to come up with a more present date figure.

CHAIR CHANG: We're not including that as a condition?

KATIE ROTH: I think the suggestion is to strike that as a condition. I mean, that was kind of the low hanging fruit of a way to address the larger issue of capital improvement costs and some lacking information in the plan. This was one way we thought we could address that, but this is part of a larger conversation about the next update of this plan, how it needs to do a better job of articulating those capital improvement costs. I think the suggestion here is that we would remove condition three.

CHAIR CHANG: And you guys are comfortable with that, Janice and Brian?

BRIAN KAU: Yeah.

CHAIR CHANG: Yes. It does appears that we have agreements for conditions one, two, and seven, Aurora is going to assist. Then condition number five, Planning Branch will assist, and four, six, and eight will remain as is?

KATIE ROTH: Correct. I think the language in the conditions will remain as is with the exception of striking condition three. And for condition five, it's semantics, but maybe instead of saying the DOA will, we could say the Commission or the Commission's Planning Branch will assist the DOA.

CHAIR CHANG: Yeah. Maybe DOA in coordination with CWRM, however.

KATIE ROTH: If you want to get that specific, we can do that however you want to phrase it.

COMMISSIONER KATAYAMA: Can I ask a quick question? Katie, DHHL, their projects and their water reservations, how much of that is on the ag side versus urban?

KATIE ROTH: That's a good question. We have a representative who could probably comment.

JONATHAN SCHEUER: Aloha Commissioners, Jonathan Likeke Scheuer with DHHL. In terms of overall volume, our agricultural demands unsurprisingly greatly exceed the demand that we need for domestic use of water in homestead plots. We have, thanks to cooperation with the Water Commission over the last few years, at least some groundwater reservations for all of our lands in the state in all non-designated water management areas. We still have some outstanding needs for reservations for groundwater for potable use in designated areas. We only have some surface water reservations in place for non-potable agricultural uses, which the Commission has chosen to take up largely in conjunction with the amendment of interim instream flow standards that you'd take up in different places. Notable outstanding needs for reservations include for our lands at Kēōkea and Waiohuli Upcountry related to the East Maui irrigation system and additional needs on Hawai'i Island, parts of Maui and parts of Kaua'i.

COMMISSIONER KATAYAMA: Do you have something up in Kōke'e?

JONATHAN SCHEUER: We have a roughly just shy of 7 million gallon a day reservation related to the Kōke'e irrigation system, which was granted as part of the Waimea River settlement agreement accepted by this body. The challenge we have there, in addition to the historically low flows going on is that we were counting on the pumped storage hydroelectric project of KIUC to go forward, which was going to provide critical road and power infrastructure. That said, we still have the reservation and we are trying to figure out how to...

COMMISSIONER KATAYAMA: Is that considered ag water or?

JONATHAN SCHEUER: That would be ag water. That was for agricultural use on around 2,500 acres of land, I believe, in and around Pu'u'ōpae.

COMMISSIONER KATAYAMA: That non-comprehending your reservation sort of has a pretty big impact on the total ag water use and development plan.

JONATHAN SCHEUER: I think the biggest disappointment was that I appreciated the statement from Janice that said that we were trying to speak up for farmers, but that didn't seem to include our beneficiaries or farmers.

COMMISSIONER KATAYAMA: Would that exclusion, Katie, impact the results where you sort of influence the ag plan?

KATIE ROTH: The omission of DHHL?

COMMISSIONER KATAYAMA: Reservations.

KATIE ROTH: I think it's a pretty big gap in this plan. And as we pointed out in the submittal, we're pretty explicit, especially within the framework, the 2000 framework that the needs of DHHL need to be considered and articulated in the plan. I guess that the fact of the matter is that they weren't and DOA can comment on exactly why. I don't have all the history.

COMMISSIONER KATAYAMA: That's not the issue. The issue is if you're looking at a planning document or resource allocation document to have this sort of chunk of the pie not there, I think it would sort of... Janice, when would you comprehend DHHL agricultural water needs or how would you do that so we don't have sort of this bias?

JANICE FUJIMOTO: I think that would start with conversations with DHHL and I presume that their plan is a good place to start, but also not just what they have in their plan, but also what maybe some of their future plans are as well and their efforts moving forward with that. That is a conversation that we did not have when we put this plan together. And as I had mentioned, kind of emphasize the farmers. There were some DHHL lands that were included in it. They may not have been called out specifically, but if DHHL lands were associated with some of these irrigation systems that we did cover, they were incorporated that way, but not from the standpoint that DHHL is looking for, where they're brought a little bit more front and center.

COMMISSIONER KATAYAMA: Especially in the water management areas, because that's where it's very sensitive at this point today. Thanks, Katie.

DEPUTY KAHANE: I have a markup of the conditions if you'd like to look at it before you vote.

COMMISSIONER KAGAWA-VIVIANI: I do have one more. If we approve the plan as is, and I know we said to deemphasize the problematic table, even if staff kind of add some language to state that water demand may not apply to all locations, state other methods- is that going to potentially cause issues for us at the Commission when we have inconsistent numbers and people just pick the highest number and then we have to sort of spend more time to argue back? Is there a way to, I guess for me walking into this meeting, I support everything except this table, basically everything except this table.



Would it be possible to approve everything except that table until it is addressed and revised at an undetermined time in the future?

COMMISSIONER KATAYAMA: Well, I have a different take on that because if we look at water allocations, water demand, you can now zero down and focus on very specific regional areas as opposed to sort of a generic. I think when the applications do come before this Commission, you can have specific information rather than going back to some study, which is universal, like what we do in Nā Wai 'Ehā. To me, we should have been much more focused on Wailuku systems, East Maui systems, and how their deliveries work and what their efficiencies were.

COMMISSIONER KAGAWA-VIVIANI: You think it's a moot point?

COMMISSIONER KATAYAMA: I think Department of Ag has shined a light on a topic that when it comes before us, we need to really take a look at what is your real number and today we had representations of they need 400,000 gallons per day. You really need to shine a light on that.

COMMISSIONER KAGAWA-VIVIANI: What it is, is we need to have a better tool and that will be the authority.

COMMISSIONER KATAYAMA: And do an examination of what went into that request.

COMMISSIONER MIIKE: Well it's the obligation of the applicant to come up with something that we can accept. They can't just give a generic stuff. They can't just quote DOA numbers anymore. They've got to tell us what you need for a particular place you are in. It's their requirement.

CHAIR CHANG: I agree. And that is exactly what we should be doing. And I will say that, at least for the Land Board, that exercise was done when we were looking at the EMI water permit. Because DOA came in with a much higher number than what we relied upon, what Land Division staff was relying upon, CWRM. The Board took all of those information into consideration and came up with, I think it might have even been a compromise number. I think we were, at that point in time, you look on it as a case by case. I think you're right, Wayne, that once this comes forward, before the Commission we're able to take all of that different information, because I don't necessarily hear DOA is ready to change table 130.

JANICE FUJIMOTO: No, and in fact, I feel like that table 130 does have its value, that I think it's being lost as we're talking about farmer-specific water demand numbers. I think table 130 does have its value because it does have a good generic starting point of what our survey of farmers across the state have told us that they need for water. I don't feel like it should be discounted because it is actually based on real farmer data that was collected over 100 different locations.

BRIAN KAU: I'd like to add that, I'm trying to stay away from controversial comments here. But I'd like to add that I think everyone kind of at least agrees that farming is a very, very difficult business. There's a lot of competition from global supply, which makes having a farm in Hawaii super challenging. For the most part, and I'm definitely not claiming this for every case, but for the most part, farmers tend to be very aware of what their expenses are, their outputs are, because every penny will count. I don't think it's fair to assume that a farm is, for lack of a better word, wasting water or using more than they need. There's a lot of science behind what a crop can use and because it's competitive and difficult, the market itself, our experience is, tends to actually be the opposite, is they will use as little as possible to get the best yield that they can get. Now, if they used more, could they get a higher yield? Yeah, actually, in some cases, but it's a diminishing returns- you water a lot more, you get a lot less. While the numbers are different, for sure, and there's definitely a variability here that I think will always be there, I would ask the Commission to do as Chair Chang has mentioned just now, to take all of the data in making your final decisions as to how much to appropriate for applicants that come in. And caution, I would hope that a one-size-fits-all model, maybe at least at this point in time, be very, very cautiously considered, if at all.

COMMISSIONER MIIKE: I think that's an unfair criticism. We've never taken a one-size-fits-all model. The requirement is the person who's applying for the water has to justify the amount that they use. And they can't just say, oh, I use DOA numbers or CWRM numbers. We wouldn't accept anything like that. The onus is on the person who's applying for the water to come up with numbers that are reasonable and acceptable. They can't just pull something out of the air. They cannot rely on average.

BRIAN KAU: No, I agree. I completely understand. I think my point is that I think it's great to have, like Janice said, starting points for the consideration that at least gets everyone into the ballpark of how to start looking.

COMMISSIONER MIIKE: Yeah, I agree. Look, the table, to me, is legitimate in the sense that it says for different kinds of uses, we have different requirements. We're not going to stick with a particular number. There's no way you're going to come up with a table that is 1,000 pages. '

BRIAN KAU: No, you're absolutely correct, yes.

COMMISSIONER KAGAWA-VIVIANI: I work on evapotranspiration, I think there's really important value to the survey that was done for highlighting those gaps that Commissioner Katayama also did. There's what the crop water requirement is for the plants that planted at a certain density, planted at a certain time on this certain soil in this certain climate. But the average farmer or the small farmer, at least, is not going to have the time or bandwidth to calculate that. It's useful to have a table. But also, the onus is really on us as a Commission. Not say onus. I think there's an opportunity for us to do more to help people get the numbers and have an objective process. I do appreciate this 127-person survey for identifying that kind of farmer perspective, which is often lacking when we're just looking at a map and trying to do the math. It does sound like it's right

before the next version and that's clear. I appreciate this conversation for highlighting. There's a real need. And especially given the known issues with drought, it's going to be even more important that we justify the use. We know that there's more competition between ag water use and urban. And being able to think about drinking water and water for the farming landscapes people may want is also important. I'll stop soapboxing. When are we expecting the next update? And maybe we don't have a date, but maybe there's an anticipated workflow.

KATIE ROTH: As it stands now, all of these plans are supposed to be updated on a five year interval. You could say five years from now is when the next update of this plan should be coming before you. With that said, we're working on the framework update, which we hope to have to you by the toward the end of this year, hopefully sooner in the next six to eight months or so. And within that framework guidance, there would be a lot more details for plan preparers like DOA to better understand what is being required within these plans. And we could there's even an opportunity, I think, to be a bit more prescriptive about how they may go about coming up with these demand water rates, considering some of the ideas and suggestions that were brought up today. I think there's an opportunity for us to maybe better articulate that within the framework document and have those conversations with DOA as part of that to come up with a methodology for how you come up with these demand rates for ag water. I think for me, this is bringing up larger policy questions as well. We are, as Aurora mentioned, drought is going to be recurring. within this table right now, it's suggesting that you use more water during drought conditions. Is that something that we should actually be encouraging in these plans or actually stating? I think that's open for debate.

COMMISSIONER KATAYAMA: The alternative would be dead plants.

KATIE ROTH: This says under drought conditions or in dry areas, should we be considering limitations of water? We need to be more strategic about maybe where we're placing ag when thinking through all of those things involved in the strategic planning efforts surrounding ag, which I know is not necessarily our kuleana, but this plan definitely interrelates with those larger discussions about...

COMMISSIONER KATAYAMA: Water policy will determine that, right? If you have class A lands that says that you only get a thousand gallons per acre, there's not much you can grow other than cactus, probably.

KATIE ROTH: Yeah, and this really contemplates, I think, diversified ag outside the context of traditional agriculture. And this table doesn't include what the water demands are of more traditional type crops. There are certain studies related to kalo where we do have that information, but that's something that Planning Branch is also thinking through how to come up with better estimates for traditional agricultural crops that could be incorporated into these rates.

COMMISSIONER KATAYAMA: It'll be interesting to see that because it would be interesting to look at sustainability of those kinds of crops because you need sort of a

critical mass to manage these infrastructure issues. And you're losing that critical mass right now. Okay, that's good.

CHAIR CHANG: My only comment is, well, I thought we were kind of doing this ass-backwards in a sense, playing the framework after. I mean, we should have done the framework before, but now all of these plans feed into a better framework. I think, oddly enough, it may end up working because now you take into consideration all of the other plans that you have to come up with the framework....I think everybody kind of gets to where I was going anyways.

BRIAN KAU: I wanted to share that each system has to be site-specific water demand and that is in the document itself on page 196 that we do recommend specific sites for water demand. The table itself with me only as a general planning guideline. To me specific systems and it does matter what you plant, what technology you use, and what needs to be planted, and pest control. It is in the document that we do recommend site-specific studies for water demand.

CHAIR CHANG: Thank you for that clarification, Brian.

BRIAN KAU: The other thing you need to remember is that ag systems are developed for sugarcane and pineapple, which is large field crops. Now with diversified ag, and it's stated in the document, kind of not real clearly maybe, but it stated that the diversified ag water needs are different from sugarcane and pineapple. The whole ag system for that system has to be really looked at for the demands for diversified ag, not for sugarcane.

CHAIR CHANG: Thank you. With that being said, are there any other comments? I'm going to call for the question and Ciara, you were putting on screen what our amendments are.

DEPUTY KAHAHANE: I debated internally whether I should just call out Commissioner Kagawa-Viviani on the conditions.

COMMISSIONER KAGAWA-VIVIANI: I'm open to revisions. My intention is I will find a student maybe to work with Planning Branch on this issue. That does not need to be mentioned unless I have volunteers.

CHAIR CHANG: DOA will coordinate with CWRM.

DEPUTY KAHAHANE: Conditions one, two, and seven are conditioned on availability of a volunteer.

KATIE ROTH: Do we want to specify the DOA will work with us?

CHAIR CHANG: Yeah, maybe that might be more appropriate.

COMMISSIONER KAGAWA-VIVIANI: I think it's just DOA will work with CWRM.

CHAIR CHANG: Aurora will make her volunteer available to CWRM. In either event what I was hearing was DOA would provide CWRM the file, the word docs. It's probably better to coordinate with CWRM.

DEPUTY KAHAHANE: Okay. I'm going to scroll down so you can see seven.

CHAIR CHANG: That is correct. And you deleted three.

DEPUTY KAHAHANE: I did, yes.

COMMISSIONER MIIKE: I'm ready to vote.

PUBLIC TESTIMONY – None

**20250318 03:52:40**

**MOTION: (MIIKE / KATAYAMA)**

To approve staff recommendation with the following amendments:

Accordingly, staff recommends that the Commission adopt the 2019 Agricultural Water Use and Development Plan (AWUDP) (Revised 2021) for incorporation into the Hawai'i Water Plan (HWP) with the following *modified* conditions:

1. The DOA will *work with Commission staff to* add hyperlinks to the Table of Contents, List of Appendices, List of Tables, List of Exhibits, and List of Maps in the AWUDP.
2. The DOA will *work with Commission staff to* include a link and reference to the 2004 AWUDP in appropriate sections of the plan, so electronic readers can pull up the document to access information more easily about the agricultural water systems inventoried in the 2004 AWUDP.
3. ~~The DOA will update the 2018 capital improvement project dollar amounts to reflect 2025 cost estimates. [Stricken]~~
5. The DOA will *work with Commission staff to* add a statement to relevant sections of the AWUDP stating that the water demand data in the plan may not apply to all locations in the State and there are other methods for estimating water demands which should be explored by the reader, including IWREDSS.
7. The DOA will *work with Commission staff to* incorporate a reference and hyperlink to the 2020 SWPP into relevant sections of the plan so that the AWUDP can be used by others to understand the full scope of the projected agricultural water demands of DHHL.

**UNANIMOUSLY APPROVED**

**(MIIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI)**

*20250318 03:53:22 – Lunch*

*20250318 04:31:50*

**B. ACTION ITEM**

- 6. Request and Delegation of Authority to Chairperson to Enter into a Joint Funding Agreement with the U.S. Geological Survey for Water Resource Investigations, Launiupoko Deep Monitor Well (Phase 1) for Federal Fiscal Year (FFY) 2025; and Declare that Project is Exempt from Environmental Assessment Requirements under Hawaii Revised Statutes Chapter 343, and Hawaii Administrative Rules Chapter 11-200.1**

PRESENTATION OF SUBMITTAL: Katie Roth, Planning Branch Chief

QUESTIONS / COMMENTS

CHAIR CHANG: I noticed that the JFA is with USGS. What kind of agreement do we have with Maui County since they're also contributing?

KATIE ROTH: Nothing formal or in writing. If that's something you feel would be an added benefit, we could talk about it. Eva, you are going to contribute \$75,000, right?

EVA BLUMENSTEIN: Yes, Chair, I can address that. We actually had contracted USGS originally for fiscal year 2024 to do the initial recon and permitting for Launiupoko deep monitor well. Now we have two separate identical joint funding agreements, one between us and USGS and one with the Water Commission and USGS. Our joint funding agreement was just passed out of County Council Committee yesterday, a bill for an ordinance to adopt the intergovernmental agreement. It's referred to full council now for two readings. We're going to have to amend our joint funding agreement because the schedule is a little different. We have the original schedule of the resource monitoring program that goes from October through September, the federal fiscal year. We need to do a no-cost amendment to that. But otherwise, yes, we have committed the funds in our budget and we're passing the bill through our County Council.

CHAIR CHANG: What is the agreement that you have with the County? Is it going to be memorialized in any way?

KATIE ROTH: We don't have an agreement with the County, but what Eva was saying is exhibit one, which is in your submittal packet. Basically, Maui DWS has something similar, quite similar with USGS directly. They have an agreement with USGS, we have an agreement with USGS.

There is no formal agreement between us and Maui DWS for this phase one.

CHAIR CHANG: Who's actually going to do the work?

KATIE ROTH: USGS.

CHAIR CHANG: That's why they have separate agreements with both CWRM and then with Maui DWS.

KATIE ROTH: Yes, because both Maui DWS and ourselves are contributing funding.

COMMISSIONER MEYER: Eva? Do you anticipate approval by the council?

EVA BLUMENSTEIN: Yeah, the IGA passed out of committee yesterday unanimously. Yes, I expect approval of the IGA before our council goes into budget, so we kind of rushed this. Otherwise, we would not be able to get it executed before the end of the fiscal year.

COMMISSIONER MEYER: And that would be Friday, prospectively?

EVA BLUMENSTEIN: Maybe.

COMMISSIONER KAGAWA-VIVIANI: Thanks, Katie, for clarifying that the well construction itself is not part of phase one. I think that helps us understand. And then to recap, the deliverables for both MDWS and CWRM are going to be identical, right? And it's going to be deliverables or meetings to discuss site selection and well specifications. I was wondering just given some of our experience on Hawai'i Island with deep monitoring wells, that there might be an opportunity or maybe before a single site is selected, it could be helpful for us to understand what the shortlisted options are. Unless there is a, unless staff feel like that can be all handled in-house and that decision on that single site selection be done sort of ministerially. Are there pros and cons to that?

KATIE ROTH: I just want to make sure I'm understanding your question. Is the question, would the Commission be consulted prior to a final site being selected? Or would staff internally be working with USGS to confirm that final selection?

COMMISSIONER KAGAWA-VIVIANI: I guess my understanding is that from the scope of work, and maybe it'd be good to have a presentation, but like from the scope of work, it sounds like USGS will conduct this work with Commission staff.

KATIE ROTH: Yes.

COMMISSIONER KAGAWA-VIVIANI: Including stakeholders who are not, for me, clearly identified and that the decision will be sort of narrowed down to a single site and that will come back to the Commission after that decision happens or will we be consulted during the month or will we be briefed in month six, seven, eight prior to that final decision?

KATIE ROTH: I can explain how generally we develop, go about selecting and moving forward with deep monitor wells. And other staff can correct me if I'm wrong, but we typically don't formalize any approval through the Commission when we select sites. That's something that our geologists in-house will go about reconnaissance and figuring out the best site selection. In this case, we're using the expertise of USGS to do that instead of our staff or a consultant. But again, we typically haven't brought those final decisions before the Commission. We kind of just move ahead. But we can certainly brief you throughout this process if the Commission would like to have more involvement in selecting or better understanding who the stakeholders are as part of those discussions and meetings and what the final candidate sites might be. That's something we could build into this process. It's not explicit.

COMMISSIONER KAGAWA-VIVIANI: Part of my thinking around this is given say contentions about landfill siting, contentions about specific sitings ends up happening late in the process and that could be costly. If that's anticipated by staff, I think it would be helpful to have a briefing earlier in the process. I don't necessarily know what those would be. I wanted to understand your take if you think this would be very straightforward.

KATIE ROTH: Well, given that I have probably the least experience of those on staff with this process for constructing deep monitor wells and all the preliminary work that goes ahead of that, I don't know if Ryan or Dean have any comments on- I think the question is, how beneficial Commission involvement may be ahead of finalizing site selection?

COMMISSIONER KAGAWA-VIVIANI: That sounds like a great paraphrase.

RYAN IMATA: How beneficial? I think including the Commission into the process could potentially be beneficial. A lot of the purposes of our site selection are very, both scientific in nature and more related to things like, is the site accessible to our survey section? But we can certainly present those criteria to the Commission. To me, one of the biggest criteria for site selection is making sure the deep monitor well is away from pumping centers. Because pumping centers can potentially impact the data that we collect from deep monitor wells. I don't want to opine on the value of taking it to the Commission, but I will tell you that that's our criteria for doing site selections. And if the Commission feels in your wisdom that you could have feedback on those things, then the question, I guess, is posed more to the Commission itself.

COMMISSIONER MIIKE: The specific location of a site is within a general area, right?

RYAN IMATA: Yes.

COMMISSIONER MIIKE: The general area is already picked. And then, two things from my standpoint is that I don't know how we would make any decision about specific site versus another specific site. And second of all is that except for Commissioner



Kagawa, we don't have any of the expertise about that to make any kind of decision on that. Maybe a more practical solution would be that you guys can brief Commissioner Kagawa about these kinds of things, but you don't have to bring it to us. I don't see how we could make any kind of intelligible decision on that if we say yeah or no.

CHAIR CHANG: Ryan, as I understand, and Katie, and looking at your page 6, you actually have criteria for site selection, so you apply those criteria. A lot of times delegation to the chairperson, I assure you I'm no more qualified than anybody here to do that. I will rely on the recommendations made by USGS and staff in that selection. But many times delegation is for purposes of facilitating process. Ryan, what's the advantage to have the delegation versus coming back to the Commission?

RYAN IMATA: Well, maybe what Larry said kind of speaks to that, that I think things that require technical expertise. I think the Commission in general relies on staff to opine on. And in addition to that, for this one, we have the expertise of the USGS, which has far more scientific capacity than we currently do have on staff. Maybe for this particular one, we can defer to USGS in terms of the site selection.

KATIE ROTH: Maybe I could follow up, Commissioner Kagawa-Viviani, with your line of questioning. Are there other criteria you feel we should be considering or thinking about when selecting sites that aren't articulated?

COMMISSIONER KAGAWA-VIVIANI: One thing I noticed about the scope of work is that in the historical characterization of the area, it sort of just begins with plantation history. Given that there are other stakeholders or residents of West Maui that are not maybe reflected in this scope of work, I just want to make sure even though this is a monitoring well, that we're cognizant of potential concerns that might be raised when we are at the point of well construction. I don't think it's necessarily a decision to be made in full commission, but if at some point, I don't know if those meetings that are part of the deliverables include our ability to listen in and participate as Commissioners without talking to each other, or if there is like a briefing and an update from USGS saying, here's the sites we've narrowed down to. I think it could be helpful. Knowing that at some point there will be a well construction and pump installation permit before the Commission, whether I'm here or not, I don't know, but it would allow us to consider and be able to make the case for that particular installation. I think it's just making sure there's a well-justified process for landing on that.

KATIE ROTH: I would say that this process as outlined in this phase one, to me, appears to be slightly more robust than the analysis maybe we typically go through, like in terms of meetings with stakeholders. I mean, we do some of that, but my sense, and Ryan can correct me, is that this process is a little bit more well-defined for this particular deep monitor well. And I could defer to Stephan and others to maybe clarify what they envisioned for those meetings. I don't know if they have thoughts on that, but they might be able to comment.

COMMISSIONER KAGAWA-VIVIANI: I think that would be helpful. I do want to set the record straight. I am not a hydrogeologist, I understand enough hydrology to get me in trouble, and I think we should rely very much on the expertise of USGS and Ground Water staff. What we often deal with is sort of the political implications of those. It would be great to hear more from USGS.

STEPHAN ZAHNISER: This is Stephan Zahniser with the Pacific Islands Water Science Center. I'm the acting center director here. I think, one of the things that we're all very cognizant of is just this area with the recent wildfires that have come through. There's probably going to be a lot of concern. There's going to be a lot of comments. There's going to be a lot of interest in general. We're certainly open to any of the conversations that go on. We'll be working very closely with the Maui Department of Water Supply, as well as CWRM, just to make sure that we're kind of thinking through all those various criteria that go into it. What are some of the pros and cons of this particular location? What's the accessibility? What could be the public opinion of some of those spots? I think those will all be part of the conversation as we go through, and I'll certainly defer to Katie and Eva when it comes to setting up those particular engagements when we reach out to the Commission. From a racing matrix standpoint, there's a need to know or want to be in the know portion of what the Commission is. And we're certainly open to keeping that communication channel going with deference to what CWRM and Maui Department of Water Supply want to work with and kind of get out there.

From the overall, yes, we're evaluating a number of different criteria. I think most of them were outlined pretty well within the report. And then whenever there's additional criteria that kind of creep up as we go through this process, or there's new concerns that are being heard from the community and we might want to look into a little bit more, we're certainly open to kind of evaluating that and kind of feeding it into what that cycle is. I'd say one of the major benefits we have right now, and we've got Kolja on the line as well, as Kolja has worked quite extensively on Maui, and particularly in West Maui, when it comes to a lot of the groundwater modeling and work done there. And a lot of what we're currently looking at when it comes to this well siting aspect dovetails well with some of the work that we're currently doing with Maui Department of Water Supply when it comes to updating the groundwater model within the area. I don't know, Kolja, do you have anything that you wanted to add on?

KOLJA ROTZOLL: Certainly in respect to the current work we're doing with the Maui Department of Water Supply, where we're trying to optimize pumping for the 2035 projected pumping rates. Part of that is also including or adding new potential wells for expansion. And those are going to be, of course, considered that if they're going to be proven to be successful, or going to be at least, I mean, we don't locate the proposed well very close to these new potential wells, even they might not even be used right now. Definitely some things to consider and something to learn from one study to the next. And since I'm probably going to be working on this, we're going to incorporate all the knowledge that we already gained and include it into the site selection.

COMMISSIONER MEYER: Stephen and Kolja, thank you very much for your help on this project. It's certainly sorely needed in that area.

COMMISSIONER KATAYAMA: Just to 180,000 for phase one, basically planning the well, what's the total cost of actually having it working and monitoring? And what is the annual ongoing cost of doing that? Well construction, roughly.

STEPHAN ZAHNISER: Well construction, that's tough. And I think part of that is where it's sited, how deep we have to go. That's all part of the criteria as we work through what are the optimal site selections. And certainly what we want to do is minimize the amount of, gosh, I hate to use the term, but overburden. You want to make sure you have the most effective wells possible with having the minimal amount of material to drill through and give you the maximum results for what you get. For the installation side, yeah. I know, Ryan, you've got your hand up. I'm going to defer to Ryan.

RYAN IMATA: Yeah, I can tell you that for the last maybe five or six deep monitor wells that we've drilled, we budget about \$1.8 million for the construction of the well and about \$200,000 for the design of it. In terms of annual operating costs, it's basically just the cost of flying our staff out to go drop a CTD probe down the well and the airfare and the hotel costs and everything. But relatively, it's relatively cheap for the amount of information we get. And currently we do quarterly monitoring on all of our deep monitor wells, which I think in this case, in conjunction with Department of Water Supply, we intend to monitor this quarterly as well.

COMMISSIONER KATAYAMA: Oh, yeah. I don't think there's any question about the need for the data. How critical is the cost sharing to move forward on the \$1.8 well construction?

RYAN IMATA: How critical is the cost sharing? I think we have about \$2 million budgeted annually for deep monitor wells. I don't want to say it's critical, but I think the more that we can partner with other agencies to drill deep monitor wells, the better it is for us because if we have a cost sharing for Lahaina, we can then divert some of the money that we would have spent on that to Wai'anae, for example, or any other area. You got to remember that we don't have nearly enough deep monitor wells for the entire state. We could drill one well a year for the next 30 years and still not have enough.

COMMISSIONER KATAYAMA: Is the Maui board expecting to come up with another \$600,000 for the actual construction, \$600,000 for us and another \$300,000 from USGS? I mean, in the same proportion that you have.

RYAN IMATA: I'm going to pass the baton on to Eva.

EVA BLUMENSTEIN: I think we don't have the answer. But I just want to clarify that we are both asking council for sufficient funds for development up to two monitoring wells in West Maui in our fiscal year '26 capital improvement budget. We're also asking

for federal hazard mitigation grant program funds to pay for them. I think the approach is sort of like who's more lucky securing outside funds in the end.

CHAIR CHANG: What are you budgeting, Eva? What was your request?

EVA BLUMENSTEIN: For \$2 million in our CIP.

CHAIR CHANG: Was that anticipating cost sharing with the state?

EVA BLUMENSTEIN: Yeah, that's kind of like the placeholder hoping that we get the hazard mitigation grant program funds, and if not, we can split it with the Commission.

COMMISSIONER KAGAWA-VIVIANI: The ideal is to actually have at least three monitoring wells in West Maui, correct? But this plan, this phase one is really for one. I assume some of the scoping done here will inform subsequent. Did I miss that? Is that correct?

KATIE ROTH: That is also my assumption. But USGS could clarify if the process for site selection for this particular well would relate or influence site selection for the other two as part of phase three.

STEPHAN ZAHNISER: Yeah, I appreciate the question. And yeah, I do think as we put that information together and we kind of determine where those puka exist for a deep monitoring well, it will kind of give us that idea of where other site selections can go. It is really a holistic effort of looking over the Launiupoko area and getting a better understanding of that. I think from there, we'll have a priority list of locations that we can kind of pick and choose from as we go down. That's where it'll be important for Maui Department and the Commission for Water Resources to get together and having those conversations of who's going to take what, where, and what makes the most sense to kind of move forward with first, and then kind of have that priority list going down. We'll certainly be working amongst everybody to make sure everybody's informed of the decisions and the information we're finding.

PUBLIC TESTIMONY – None

**20250318 05:00:52**

**MOTION: (MEYER / KAGAWA-VIVIANI)**

To approve staff recommendation as submitted.

**UNANIMOUSLY APPROVED**

**(MIIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI)**

**20250318 05:01:28**

**C. NON-ACTION ITEM / INFORMATIONAL BRIEFING****1. Briefing by Commission Staff, Planning Branch - Overview of the Ka Pa‘akai Analysis Process – *Item Deferred*****20250318 05:01:46****C. NON-ACTION ITEM / INFORMATIONAL BRIEFING****2. Briefing by Commission Staff, Planning Branch - Hawai‘i Water Audit Program Summary**

PRESENTATION GIVEN BY: Nicholas Ing, Planning Branch

**QUESTIONS / COMMENTS**

COMMISSIONER KAGAWA-VIVIANI: I’m aware that DOD had not, in general doesn’t meter, but then there are DOD installations that are now auditing and reporting. My understanding is they’re still not household water meters, but is it just further back in the system? How do you do a water audit if you haven’t like metered at the household? They have figured out some other ways.

NICHOLAS ING: With great difficulty. Sometimes they actually, they estimate it. They estimate it based on how much they bill them. Because they only recently started doing projects to meter some of their apartments and all of their other facilities. The thing about water audits too, I mean, we can talk to our Ground Water branch and our Surface Water branch, but they also tip us off based on their future projects and what they’re planning for their system too. It might be they’re planning to install a new well, or maybe they’re planning to move the well or close a well. Basically in the water audit, we know what’s going on.

COMMISSIONER KAGAWA-VIVIANI: In water management areas, we have everybody?

NICHOLAS ING: Yep.

COMMISSIONER KAGAWA-VIVIANI: That’s useful. Because then if we want to be able to manage and reduce losses, it is really helpful to have that data.

NICHOLAS ING: It’s great to keep track of what they’re doing and how they’re trying to improve. Every year when we do water audits, me and Neal try to look for, you’re improving your system, right? You want to make strides. It’s not like, okay, okay, check, check, check, check, and then we’re done. It’s what projects are you doing? Are you doing like Asterra, this GIS project that can, it’s kind of amazing. The Asterra system

can, from a satellite, look at stuff on the ground and be like, look, there's a leak. And sometimes it actually works. Honolulu Board of Water Supply, they do the Asterra system and they've managed to actually lock down some of their active leaks, which is quite amazing.

COMMISSIONER KAGAWA-VIVIANI: Are you seeing aging infrastructure and corrosion being a major issue that utilities have to confront?

NICHOLAS ING: Yeah, I mean, but that's replacing the miles of main, that's a major financial strain for them. But usually they just do spot checks and if there's a leak, they replace it. And sometimes it gets added on. It's not in the slide that I showed you, but there's a variable production cost that shows how much money they spend to operate their system every year. Sometimes when they have to do miles of main changes, it'll add on to that cost as well.

COMMISSIONER MEYER: Do you get involved in contamination testing?

NICHOLAS ING: Not really, but we hear their complaints about contamination testing. Some people are like, oh my system has been flagged for tons of PFAS.

COMMISSIONER MEYER: How does that take place? Does the AWWA (American Water Works Association) get involved in that or is it just each individual utility that runs it?

NICHOLAS ING: Not that I know of. There might be a different methodology for contamination testing, but that will be with DOH.

NEAL FUJII: It would be whatever the Department of Health / EPA standards and guidelines.

COMMISSIONER MEYER: They got their own testing programs and take samples.

NEAL FUJII: I'm not sure exactly how the Department of Health, but they have a program of sampling and that's when they detect certain contaminants or material. Dr. Miike was a former DOH director, he knows all about it, but we have pretty strict rules on testing the water system.

COMMISSIONER MEYER: That's hands off for you guys.

PUBLIC TESTIMONY – None

**20250318 05:29:58**

**C. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

### 3. Briefing by Deputy Director Kahahane - Tracked State Legislation Related to the Commission on Water Resource Management for the 2025 Legislative Session

- **SB145 – RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY.** Amends the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies.
- **SB438 SD2 – RELATING TO WASTE DISPOSAL FACILITIES.** Prohibits the construction, modification, or expansion of hazardous or solid waste disposal facilities near or above a significant aquifer, as determined by the Department of Health in consultation with CWRM. Prohibits such facilities on class A and B agricultural land. Clarifies buffer zones and bans the use of fly ash, bottom ash, or a combination thereof from municipal waste combustors for road building, construction, or landfill cover. Requires the disposal of such ash in a double-lined, duly licensed municipal solid waste or hazardous waste landfill. Effective 12/31/2050. (SD2)
- **SB867 SD2 – RELATING TO AFFORDABLE HOUSING.** Establishes a working group within the Office of the Governor to assess the State's water resources and water system source capacity and to streamline well permit approval processes for affordable housing development. Requires the working group to inventory all available water resources statewide and identify sources of aquifer replenishment in relation to affordable housing development. Requires an interim and final report to the Legislature. (SD2)
- **HB306 HD2 – RELATING TO STATE WATER CODE PENALTIES.** Adds a minimum penalty and maximum penalty per violation of the State Water Code and makes each day that a violation exists or continues to exist a separate offense. Establishes factors the Commission on Water Resource Management must consider when determining the amount of the penalty. Increases maximum fines in five-year increments from 2030 to 2045. Effective 7/1/3000. (HD2)
- **HB510 HD1 – RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY.** Amends the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies. Effective 7/1/3000. (HD1)

PRESENTATION GIVEN BY: Deputy Ciara Kahahane

QUESTIONS / COMMENTS

COMMISSIONER MEYER: Is that modification holding, the “may”?

DEPUTY KAHAHANE: Yes, it is.

*20250318 05:37:11 – Deputy Kahahane resumes presentation*

COMMISSIONER MIIKE: What are the minimum penalties?

DEPUTY KAHAHANE: The minimum penalty right now in the statute is \$50 per violation.

COMMISSIONER MIIKE: How about the upper tier? The one that goes to \$25,000.

DEPUTY KAHAHANE: We don't currently have a minimum suggested for the second tier.

COMMISSIONER MIIKE: It could be zero to \$25,000.

DEPUTY KAHAHANE: It could be anywhere in there, yes.

COMMISSIONER MIIKE: And it wouldn't kick in until 2030.

DEPUTY KAHAHANE: I should have mentioned that. It would kick in immediately effective on signing or July 1st, what have you, whatever they decide to put in there. I've retained the structure of increasing the penalties every five years. However, I backed off the amounts a little bit. Essentially we had that schedule that would have ended up with \$75,000 in 2045. There was concern about that quantity. And essentially the structure that I came up with is loosely based off of, I rounded it to nice numbers, but it's 3% inflation starting with the \$25,000, adding 3% inflation every five years- 2030, 2035, 2040, 2045. And where we would end up is basically \$45,000 in 2045 if memory serves.

COMMISSIONER MIIKE: Where would the fines go, in the general fund?

DEPUTY KAHAHANE: The fines go into our special fund.

COMMISSIONER MIIKE: Oh, good.

DEPUTY KAHAHANE: Yes, any fines that we collect would directly support our operations.

COMMISSIONER MIIKE: Is there any concern about that, like the finer gets the money?

DEPUTY KAHAHANE: I have not heard any concern about it. In our informal discussions with the counties, I may recall them wanting to ensure that those fines were actually used to support the Commission's operations.

CHAIR CHANG: And I think there were community testimony in support of that as well, that they would go back to mitigation for any damage or something.

COMMISSIONER KATAYAMA: WAM would probably have the biggest impact on that, where the funds go, ultimately.



CHAIR CHANG: Yeah, you're right. It all depends upon what comes out of conference. Right now, this is the bill.

COMMISSIONER KATAYAMA: And it goes to the special fund. Did you specify what special fund?

DEPUTY KAHAHANE: Under our statute, it's 174C-15.5, I think. It creates the Water Resource Protection Special Fund, or that might not be the exact name, but that's the statute. Under the statute, that is where penalties go. By law, when that statute was passed, all of our penalties go straight into that special fund.

COMMISSIONER KATAYAMA: And does it have a use?

DEPUTY KAHAHANE: There are uses specified. It's very broad. The statute is very broad.

COMMISSIONER MIIKE: As long as they don't cut your appropriations by the same amount.

COMMISSIONER KATAYAMA: That's a challenge.

CHAIR CHANG: She's actually been very lucky. CWRM has survived well this session, both from the Executive and the Leg.

DEPUTY KAHAHANE: I'll send you all an email later about our budget.

COMMISSIONER KAGAWA-VIVIANI: It's 174C-5.5 and it goes from monitoring to benefiting water resource protection and management.

DEPUTY KAHAHANE: Yes, we use that special fund right now for a lot of our operations, actually, especially on the SPAM side.

COMMISSIONER KATAYAMA: How's it funded currently? Where do you get the money in for that fund?

DEPUTY KAHAHANE: A lot of the money comes from Waiāhole and there might be a few other sources of funding for the special fund which I think Dean would be better able to speak to what goes into that fund, but a lot of it is Waiāhole. Because the decision in that case required an assessment for, there's Dean...

DEAN UYENO: Yeah, actually Waiāhole is a separate trust fund that we've set up to receive funds from the water use permittees on the Waiāhole system. We have two different special funds. One is the water resource management fund that Ciara was referring to. That's where any of our fines, application fees, and any other fees that we collect go into. And then the other one is our Stream Protection and Management special

fund. That one is a Legislative appropriation. We get about \$110,000 into that fund each year. \$10,000 of it goes to travel and then \$100,000 goes to studies and such. A lot of it goes towards travel and work that Ayron and his team do across the state.

**20250318 05:42:56 – Deputy Kahahane resumes presentation**

COMMISSIONER MIIKE: In a severe water shortage, the high priority users won't be docked?

DEPUTY KAHAHANE: They probably will to some extent. I forget what's provided under the Pearl Harbor water shortage plan. It contemplates a reduction even to the highest priority permits, but it's less than 20%. I think it's like 10, 15, 20.

COMMISSIONER MIIKE: Okay. I was just concerned that you emphasized the low priority. I thought everybody should have a list.

DEPUTY KAHAHANE: Probably the intermediate step would be asking people to voluntarily do water conservation measures. And many users have their own water conservation plan. So one of the first steps before we got to forcing people would be to ask them to reduce their usage voluntarily. And that also has only one more committee to go before we head to conference.

CHAIR CHANG: Did you have one more bill?

DEPUTY KAHAHANE: It wasn't on the agenda, I don't want to get in trouble.

COMMISSIONER KAGAWA-VIVIANI: The affordable housing one? 867 was on the agenda.

CHAIR CHANG: Yeah, that was on the agenda.

DEPUTY KAHAHANE: Yes, 867 was on the agenda, but it's not on this table because it was deferred. It's *make*.

CHAIR CHANG: At least for now.

DEPUTY KAHAHANE: Yes. At least for now.

COMMISSIONER MIIKE: One last question. On the landfill issue, Maui County wasn't concerned about building over an aquifer?

DEPUTY KAHAHANE: I don't recall.

COMMISSIONER MIIKE: They had a lot of debris from the Lahaina fire.

DEPUTY KAHAHANE: Yes, they do. I don't recall whether they submitted testimony or not under the current language of the bill. It wouldn't affect them because it only applies to Honolulu, unless Maui County's population grows substantially.

COMMISSIONER MIIKE: But it's within the purview of Maui County to decide where those landfills would be.

DEPUTY KAHAHANE: Yes.

COMMISSIONER KAGAWA-VIVIANI: I have a simple question of not knowing how these SB 145 and HB 510. They are overlapping but different. How does that work? What are the scenarios like for these two different bills that do sound quite similar?

DEPUTY KAHAHANE: These are companions of each other. When they started out, they were exactly the same. One has now been amended and the other one has never been amended, so it's in its original form. If both of these bills make it to conference, very likely the Legislature is going to make a decision on which one.

CHAIR CHANG: Has a great chance of surviving one way or the other if they both make it across.

CHAIR CHANG: Our admin bills are both, is that HB 510 and HB 306?

DEPUTY KAHAHANE: Our admin bills are both dead.

CHAIR CHANG: But conceptually they are contained in these.

DEPUTY KAHAHANE: Conceptually, only one of our two LPs was included in the admin package and that was the penalty bill. Our admin bill lives on in HB 306. 510, at this point with the amendments from this last draft, doesn't as closely track what was in our administration package, but certainly the first draft of 510 was almost exactly the same as our administration bill.

PUBLIC TESTIMONY – None

**20250318 05:51:10**

#### **D. ANNOUNCEMENTS**

1. Application Deadline for Two CWRM Commissioner Appointments – March 31, 2025  
<https://files.hawaii.gov/dlnr/cwrn/notice/2025/nt20250128.pdf>
2. Lahaina Community Meeting – April 7, 2025 at Lahainaluna High School Cafeteria  
<https://files.hawaii.gov/dlnr/cwrn/notice/2025/nt20250407.pdf>

3. Story Map is live on the CWRM website  
<https://storymaps.arcgis.com/stories/69daeacc67d648fe8d32a02cd44ba97e>

***20250318 05:57:27***

**E. COMMISSION MEETING SCHEDULE (*Tentative*)**

April 1, 2025 (Tuesday)  
April 28, 2025 (Monday)  
May 20, 2025 (Tuesday)

The meeting adjourned at 3:00 p.m.

March 18, 2025

Minutes

Respectfully submitted,



'IWALANI KAAA  
Commission Secretary

APPROVED AS SUBMITTED:



CIARA KAHAHANE  
Deputy Director

**WRITTEN TESTIMONIES RECEIVED:**

Please refer to the Commission website to read and view written testimonies received:

<https://dlnr.hawaii.gov/cwrn/newsevents/meetings/>