

WATERSHEDS SECTOR, DRAFT GENERAL PLAN 2020-2035

To the Planning Commissioners,

What is Missing From the Draft General Plan?

Two very important words -- PUBLIC TRUST

The Plan states that 3 mgd of water will be required to support the development near Lihue. All this water will come from our streams. I humbly request the Planning Commission return the Draft to Planning so that the "Public Trust" concepts can be embedded in the Plan.

The Court of the State of Hawaii identifies the Public Trust as the Framework for protection of the:

- 1) Environment
- 2) Traditional/customary Native Hawaiian rights
- 3) Appurtenant rights -- water rights of kuleana and taro lands
- 4) Domestic water uses
- 5) Reservations for the Department of Hawaiian Home Lands

(Waiahole I, 94 Hawaii @ 137-39, 9 P. 3d @449.51; Wai`ola o Molokai, 103 Hawaii 401, 431, 83 P. 3d 664, 694 2004)

(p.8, Sproat, D. Kapua`ala, Ola I Ka Wai: A Legal Primer...)

The following requirements must be met:

- 1) Water required for growth in the Lihue area must first be allocated to Public Trust needs
 - 2) As the Applicant, the Planning Dept must first demonstrate that there is no reasonable alternative water source before approving development that will depend upon our stream water
 - 3) Planning then must assure that there is no impact to the streams and streams' users before that water is allocated to development
- "Public Trust purposes have priority over private commercial uses, which do not enjoy the same protection." (p.8, Ola I Ka Wai...by D.K. Sproat)

The Hawaii Supreme Court ruling in April 2014 in "Kaua'i Springs vs. Kaua'i Planning Commission" states: "...the Public Trust creates an "affirmative duty" of the State and its political subdivisions "to take the Public Trust into account in the planning and allocation of water resources, and to protect Public Trust uses whenever feasible." Id. (emphasis in original) (footnote omitted) quoting Nat'l Audobon Society v. Superior Court of Alpine Cnty., 658 P. 2d 709,728 (1983) cert. denied, 464 U.S. 977 (1983)).

Please, Commissioners, follow your duties as public water trustees, following the guidelines of the Court.

Thank you.

Sincerely,

Sharon Goodwin

Wailua Homestead