

1 BOARD OF WATER SUPPLY  
2 COUNTY OF MAUI  
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6  
7 REGULAR MEETING  
8 THURSDAY, JANUARY 28, 2010  
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13 Held at the Department of Liquor Control  
14 Conference Room, David Trask Building, Room  
15 105, Wailuku, Maui, Hawaii, commencing at  
16 10:09 a.m.  
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22 Transcribed from the audio recording by Gaye  
23 Hayashida, Commission Support Clerk,  
24 Department of Water Supply, County of Maui.

1 A P P E A R A N C E S  
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5 BOARD MEMBERS:

6 Michael Howden, Chair  
7 Patricia Eason  
8 Donald Gerbig  
9 Kui Lester  
10 Kelli Myers  
11 Phyllis Robinson  
12

13 STAFF PRESENT:

14 Eric Yamashige, Deputy Director of Water  
15 Supply  
16 Edward Kushi, Jr., Deputy Corporation  
17 Counsel  
18 Ellen Kraftsow, Water Resources &  
19 Planning Program Manager  
20 Cole Santos, Water Conservation  
21 Specialist  
22 Gaye Hayashida, Commission Support Clerk  
23  
24

1 OTHERS:

2 Mary Blaine Johnston, Deputy Corporation  
3 Counsel  
4 Carl Freedman  
5 Roy Silva, Executive Assistant to the  
6 Mayor  
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1 CHAIR HOWDEN: Ok. I'd like to call our  
2 meeting order and acknowledge Don Gerbig,  
3 Phyllis Robinson, Kelli Myers, Patricia  
4 Eason, as members of the board present. Ed  
5 Kushi is our Deputy Corporation Counsel;  
6 Eric Yamashige as our Deputy Director of the  
7 Department of Water Supply; and Ellen  
8 Kraftsow from Water Resources and your  
9 friend, your...  
10 MS. KRAFTSOW: Cole Santos.  
11 CHAIR HOWDEN: Cole...?  
12 MR. SANTOS: Cole Santos.  
13 CHAIR HOWDEN: Ok, good. And of course our  
14 omnipresent consultant, Carl Freedman, and...  
15 MS. JOHNSTON: I'm Deputy Corporation  
16 Counsel Mary Blaine Johnston appearing on  
17 behalf of the, Director Eng.  
18 CHAIR HOWDEN: Ok, and...  
19 MR. SILVA: Hi, I'm Roy Silva and I'm with  
20 the Mayor's office.  
21 CHAIR HOWDEN: Oh, thank you for coming.  
22 Ok. So, and Gaye Hayashida, without whom  
23 these meetings don't happen.  
24 MEMBER ROBINSON: Exactly.

1 CHAIR HOWDEN: Ok. Ok, has everyone had a  
2 chance to review the minutes of our last  
3 meeting? Any changes, deletions? Ok, might  
4 we have a motion to approve our minutes?  
5 MEMBER GERBIG: So moved.  
6 CHAIR HOWDEN: Ok, second?  
7 MEMBER ROBINSON: Second.  
8 CHAIR HOWDEN: Ok. Those in favor?  
9 (a chorus of ayes)  
10 CHAIR HOWDEN: Ok. Is there any testimony  
11 from the public?  
12 (silence)  
13 CHAIR HOWDEN: Ok, let's move to Appeals.  
14 Pauwela Farms, LLC, a motion to defer their  
15 appeal. Counsel?  
16 MS. JOHNSTON: Deputy Corporation Counsel  
17 Mary Blaine Johnston appearing on behalf of  
18 Director Eng. We have no objections for a  
19 continuance.  
20 CHAIR HOWDEN: Ok. Do we need to vote on  
21 this, Ed, or...?  
22 MR. KUSHI: Just defer unless there's any  
23 objections.  
24 CHAIR HOWDEN: Ok, great, we'll defer.

1 MS. JOHNSTON: Ah, just, are you, we gonna  
2 assign a new date for it so it'll come back  
3 on the calendar again?  
4 MS. HAYASHIDA: They're gonna be going on  
5 the bottom of the list.  
6 MS. JOHNSTON: Ok.  
7 MS. HAYASHIDA: So that probably will be  
8 December...  
9 MS. JOHNSTON: Ok, alright.  
10 MS. HAYASHIDA: If it ever comes up.  
11 MS. JOHNSTON: Ok, that's fine.  
12 CHAIR HOWDEN: Of which year?  
13 (laughter)  
14 CHAIR HOWDEN: Ok, thank you.  
15 MS. JOHNSTON: Hopefully it'll be, things  
16 will be worked out by then as I'm  
17 understanding.  
18 CHAIR HOWDEN: Good, good.  
19 MS. JOHNSTON: Ok, thank you.  
20 CHAIR HOWDEN: That's good news. Unfinished  
21 Business. Ok. Water Use and Development  
22 Plan. Have all the members had a chance to  
23 review the transcripts? Any comments? Don?  
24 MEMBER GERBIG: No, no, not specific, no.

1 CHAIR HOWDEN: Ok, any other members? Ok.  
2 We'll meet, ah, this will be an agenda item  
3 next time but I think that I would encourage  
4 all members to begin work on whatever  
5 commentary you might have on what came up  
6 and also Carl's plan in general. Carl, do  
7 you have anything to add to this, or Ellen?  
8 MS. KRAFTSOW: We're here today just to  
9 listen to your discussion. I, I think that  
10 we are wondering how the approval or review  
11 process will go so that we can submit...know  
12 how, just kinda how the whole submittal  
13 process will be.  
14 CHAIR HOWDEN: Well, my, my feeling and I, I  
15 hope that the rest of the board is in  
16 agreement with this. What we brought up  
17 last time was encouraging the board members  
18 to begin to write down their commentary and  
19 that we work both toward, you know, where we  
20 agree, work toward a consensus statement.  
21 Where we don't agree have those positions  
22 expostulated for, for, for the council, so  
23 that we're not excluding any points of view  
24 in that. When I review, especially the

1 Kihei meeting but also Wailuku to some  
2 degree, obviously the cultural and  
3 traditional uses, I think we need to  
4 somehow, Carl said, and Ellen both, that we  
5 would be trying to amplify that to some  
6 degree. Yeah.  
7 MS. KRAFTSOW: Those that, T&C uses are  
8 something that we are working on. We had  
9 separate contracts not with Carl.  
10 CHAIR HOWDEN: Yeah.  
11 MS. KRAFTSOW: And those kinda just, the  
12 chapter on, on T&C uses is just not done and  
13 originally the thinking, well, my thinking  
14 had been that...  
15 MR. KUSHI: What's T&C?  
16 MS. KRAFTSOW: Ah, traditional and  
17 customary...that perhaps we could, there's a  
18 whole policy section at the end for  
19 resolving issues between districts and any  
20 uncovered policies and stuff so I had, I had  
21 those things kinda on a longer timeline, but  
22 if they need to come forward, that's fine.  
23 But they weren't really part of Carl's  
24 contract.

1 CHAIR HOWDEN: Oh, ok. Yeah. How about  
2 Molokai?  
3 MS. HAYASHIDA: You wanna come up front?  
4 CHAIR HOWDEN: In, in, in Kihei you said  
5 that we hadn't been able to contract anyone  
6 on Molokai to give us feedback in that way.  
7 MS. KRAFTSOW: We don't have any T&C use  
8 contract for Molokai yet. I have several  
9 portions of Maui, I, I basically got some  
10 data from Kepa Mali who's over on Lana'i and  
11 he helped with Lana'i and he's given me a  
12 lot of data for Maui but not all the  
13 ahupua'a. And then Luana Kawa'a did some of  
14 the ahupua'a. But the nature and character  
15 of the work is very different and so I  
16 haven't quite got my head yet around how to  
17 put all that together and what's still  
18 missing. And so it's, it's, it's at uneven  
19 stages, depending where you are on the  
20 island, the T&C stuff. But this Central  
21 plan was more of I, I, correct me if I'm  
22 wrong but I think that at one point that  
23 council really wanted to just see our  
24 infrastructure plan and so we expedited that

1 portion and the other stuff is kind of  
2 coming but not as fast. There's a whole  
3 master document that Carl has in mind, that  
4 this is just a portion of.  
5 CHAIR HOWDEN: Yeah, I, I spoke with Mike  
6 Victorino yesterday and obviously they don't  
7 expect to see much from us very soon because  
8 they're gonna go into budget sessions but we  
9 have an obligation..what's our date, Ed on,  
10 or Gaye on, on getting..  
11 MEMBER LESTER: June, June 16<sup>th</sup>.  
12 MS. HAYASHIDA: We have to, the Board has to  
13 submit their recommendations to the council  
14 before May 3<sup>rd</sup>, which is a Monday, so it has  
15 to go to council by what, April 30<sup>th</sup> or so.  
16 Yeah, because it has to be within the 180  
17 days and 180 days is May 3<sup>rd</sup>.  
18 CHAIR HOWDEN: Ok.  
19 MR. FREEDMAN: Can I..  
20 CHAIR HOWDEN: Carl, yeah.  
21 MR. FREEDMAN: I wanted to respond to a  
22 couple things. One is, I think there are  
23 different aspects of the traditional and  
24 customary concerns, in terms of, in, how it

1 gets incorporated into the Water Use and  
2 Development Plan. And one thing I don't  
3 think was obvious from the Kihei meeting is  
4 that we have had a substantial amount of  
5 participation by a whole breadth of  
6 stakeholders. Now, not everybody on the  
7 island, I mean all the meetings were noticed  
8 but we did a lot of outreach to get people  
9 to come. And so it's not as if the plan  
10 that, the process we've gone through or the  
11 plan is devoid of addressing any concerns  
12 that have come up before us. And we have  
13 had input from a number of organizations who  
14 represent the kuleana water interests.  
15 Clearly we did not have a dialogue with the  
16 people who came and testified at that  
17 meeting. So one aspect of that is you know,  
18 did we do the plan with sensitivity towards  
19 all the concerns that were out there. A  
20 note, and I think that we have as far as  
21 public process is concerned and what we have  
22 here. Another aspect, and that's what I  
23 think what Ellen is addressing is, does the  
24 plan have the text and explicit material in

1 it that it needs to have to address the  
2 whole gamut of concerns explicitly. And  
3 that's not before you yet for 2 reasons. I  
4 guess one is that particular section isn't  
5 done yet and the other as Ellen mentioned is  
6 the order of presentation of this; honestly,  
7 isn't the way I would've chosen to do it had  
8 I known what the whole routing of this plan  
9 review process was gonna be. When we, when  
10 this chapter was drafted which was  
11 originally 2008, we were responding most  
12 explicitly to the council's explicit  
13 direction "to get something to us as soon as  
14 possible," we have and the concern was about  
15 Central and Upcountry really, about the  
16 County's infrastructure concerns. And so we  
17 kinda lead with where, with the Central and  
18 the Upcountry district drafts and the idea  
19 was rather than wait for the whole thing to  
20 be all signed, sealed and delivered, we  
21 wanna progress. I think there was some  
22 impatience on the council's part. that they  
23 really wanted to see something that they  
24 could get their hands on. And that worked

1 forward and I think a year ago we thought we  
2 were gonna go to council with it but then  
3 they went into budget and at the end of  
4 budget then it was determined that it had to  
5 go through this public hearings process.  
6 So, and then with the October ordinance this  
7 was going through a much more formal plan  
8 than the original conception was. We  
9 thought originally we were gonna throw this  
10 draft out in front of the council, we were  
11 gonna get some idea about what the council  
12 liked, didn't like, are we on the right  
13 track, is it what they wanted to see; so  
14 that we could use that as guidance for the  
15 other chapters. And now in this process  
16 it's become much more formalized. So, I  
17 think had we known that it was going to go  
18 this route we probably would have included  
19 some of the outside glue, you know the shell  
20 document of which this is one part. So,  
21 we're trying to figure out the right way to,  
22 to follow up. But right now, if I can go on  
23 just for a minute.  
24 CHAIR HOWDEN: Oh please Carl, please, yeah.

1 MEMBER ROBINSON: This is very helpful.  
2 MR. FREEDMAN: Right now, I guess the  
3 frustration or the challenge from our part  
4 is that this review process, if we  
5 extrapolate it out is gonna take a long,  
6 long time. And according to the original  
7 plan that we put together and got approved  
8 from the Water Commission and the council,  
9 we're doing this district by district. So  
10 if it's gonna take a year per lap, it's  
11 gonna take a long time and my concern is  
12 just that the drafts that we put together  
13 are gonna be...  
14 MEMBER ROBINSON: Not gonna be relevant.  
15 MR. FREEMAN: Stale by the time, by the time  
16 they come up. And in, there's some things  
17 that it's really good to be kinda waiting  
18 for some out comes for. The Water Commission  
19 is gonna be issuing some rulings which are  
20 definitely gonna affect this. But the first  
21 most important thing for us I think, is to  
22 see how this review process is gonna go on  
23 the first lap especially. What are the  
24 types, what are we missing? Where are we

1 off the mark? And so, on the following  
2 drafts you know we can address those  
3 concerns more directly. And of course, the  
4 first part is for the Water Board to have  
5 some input but it isn't really before it  
6 gets before the council and we hear some  
7 deliberations by the council that we're  
8 gonna know, like water allocations for  
9 example. That whole section of the draft is  
10 not really firm recommendations. It's  
11 mostly an expository discussion about the  
12 subject of water allocations. And the  
13 reason that's written that way was  
14 anticipating that this was gonna be for,  
15 come before council. We're kinda hoping to  
16 have that dialogue. To what extent is the  
17 council really wanting to stick their neck  
18 out and make allocations? Or to what extend  
19 do they want to defer it? We don't know  
20 that. That's a policy call and so that  
21 section of the draft as an example is  
22 something that we really thought was going  
23 to have been before council a long time ago  
24 by now. But it's still you know, and that's

1 one of the things I think we've heard back  
2 in the comments, certainly in the Upcountry  
3 Water Advisory Committee. It's kind of you  
4 know, where, these recommendations are a  
5 little mushy in spots. We wanna see real  
6 firm recommendations from the consultants  
7 and so I'm pointing to the water allocations  
8 section as one, where there isn't really as  
9 much, as a firm recommendation about it as  
10 much as there is framing the issues to get  
11 the policy-makers, yourselves and the  
12 council to kinda give some indication of  
13 direction. So, I guess we're kinda anxious  
14 to hear some discussion, just so that we can  
15 get some direction. We've got, there's a  
16 Lana'i plan and there's an Upcountry plan  
17 which are, I mean they're not quite ready to  
18 drop on your desk. I think we're gonna,  
19 both of them need some, some final tuning  
20 but before we drop them on you which is the  
21 next step. You know we wanna give you a  
22 chance to at least take the first lap and  
23 then get some feedback and so we know what  
24 to give you in the best form that addresses

1 your concerns and is most likely to address  
2 the council's concerns.  
3 MEMBER ROBINSON: So we have a February  
4 meeting which would be the meeting you're  
5 suggesting that we talk about these two and  
6 then in the meantime Lana'i and, and the  
7 Upcountry will come to us and, and then we  
8 have to have those discussed before this  
9 April 30<sup>th</sup> deadline? No?  
10 MR. FREEDMAN: No.  
11 CHAIR HOWDEN: No, no. They haven't been  
12 formally transmitted to us.  
13 MS. KRAFTSOW: Only, only the ones that have  
14 been transmitted.  
15 CHAIR HOWDEN: We have a 180 days once  
16 they're formally transmitted.  
17 MEMBER ROBINSON: I see. So, so it's these  
18 that have that deadline, ok.  
19 CHAIR HOWDEN: I mean if you want to preview  
20 the Lana'i plan, the draft of the Lana'i  
21 plan is up on our website..  
22 MS. KRAFTSOW: As is the Upcountry plan.  
23 CHAIR HOWDEN: That's only seven or eight  
24 hundred pages.

1 MEMBER ROBINSON: As is the Upcountry.  
2 MR. FREEDMAN: The Upcountry, yeah. So you  
3 can see what they are. But, but I think, I  
4 mean I'm not speaking for everybody but my  
5 sense of it, my understanding is that the  
6 formal transmittal to you is gonna wait  
7 until you're ready for it because right now  
8 you've got Central.  
9 MEMBER ROBINSON: Right.  
10 MR. FREEDMAN: And so it seems the most  
11 efficient thing to do is find out what types  
12 of concerns there are first; make as many  
13 changes in those prior to the formal  
14 transmittal because once we give it to you  
15 then that same draft goes to the council.  
16 It doesn't get changed before it goes to the  
17 council.  
18 CHAIR HOWDEN: Yeah, I mean this is kind of  
19 our trial run to begin to cohere our, our  
20 point of view. And, and to get used to  
21 doing it but you know, I would recommend  
22 that one might wanna get started on the  
23 Lana'i plan especially and we're all fairly  
24 conversant with the Upcountry plan. So I

1 think that once we work out the mechanics of  
2 how we want to respond to this, our  
3 methodology but I think we should expedite  
4 it. I, I feel a little strange that we're  
5 kinda treading water but you know we only  
6 have six members of our nine members here.  
7 I mean Scott's resigned now so I, I think  
8 John's input would be very useful on  
9 especially the Upcountry plan. So..  
10 MEMBER ROBINSON: One of, one of my  
11 questions in terms of our deliberations as  
12 a, as a board is, is that are we, are we  
13 responding solely to the comments by the  
14 public or are we making recommendations and  
15 responding based on our, also our  
16 interpretation of the plan itself?  
17 CHAIR HOWDEN: It's all inclusive.  
18 MEMBER ROBINSON: Ok.  
19 CHAIR HOWDEN: Don?  
20 MEMBER GERBIG: Yeah, you answered the  
21 question. It was actually anything, what  
22 we, what we have observed or obtained from  
23 the public and in anything that we wanted  
24 add to it from, as of our board right now.

1 CHAIR HOWDEN: Yeah.  
2 MEMBER ROBINSON: Ok.  
3 CHAIR HOWDEN: Yeah. I mean we need to..  
4 MEMBER ROBINSON: So, so our deliberations  
5 are actually both reading these transcripts  
6 and seeing what the concerns were of the  
7 public and how we wanna form those into our  
8 boards recommendations and looking at the  
9 plan ourselves and saying these are some of  
10 our concerns and recommendations based on  
11 what we're reading in the plan itself.  
12 CHAIR HOWDEN: Yeah, the plan, the  
13 appendices, the modifications, public  
14 testimony. But I would really encourage the  
15 members that have a look at this and, and  
16 if, if can try to have something in writing  
17 or have your something by, by next time so  
18 we can move forward because the Lana'i plan  
19 is massive.  
20 MS. KRAFTSOW: Well, I wanna, I can at some  
21 point if you need do a presentation that  
22 summarizes it for you. One of the things  
23 that the group is wanting is an easier  
24 summary of the plan 'cause it is so big.

1 There will be edits to it but one thing you  
2 might wanna notice is that we made very  
3 explicit allocation recommendations for  
4 Lana'i which we haven't gotten there yet for  
5 Maui; we're still internally as, as division  
6 staff discussing what kinds of policies we  
7 might wanna propose and then those would've  
8 of course be proposed internally before they  
9 would post anywhere else. But for Lana'i it  
10 was a different situation. Lana'i had only  
11 6 million gallons a day and has some  
12 situations with its wells and so it does  
13 have those pieces because it, it's done and  
14 that is the intention also for Maui and  
15 Molokai; it's just that we haven't been able  
16 to prepare those sections or we haven't  
17 actually gotten to them in the same way  
18 because we felt that the priority was to  
19 move in a different direction. And we did  
20 set up the Water Use and Development Plan  
21 with council and with the commission; that  
22 it could be approved in sections, district  
23 by district. With a, with a, integration  
24 phase at the end. So, you would only have

1 to be approving or not approving this as a  
2 portion or a partial update of the Water Use  
3 and Development Plan.  
4 MEMBER ROBINSON: Ok.  
5 MS. KRAFTSOW: That's my understanding.  
6 CHAIR HOWDEN: Yeah, I mean there, there are  
7 a number of loose threads. I mean, Lucienne  
8 brought up questions of the ultimate  
9 productivity of the Kamole Aquifer and in  
10 public testimony when Water Resources was  
11 discussing Hamakuapoko the same kind of  
12 questions came up; what, what would be a  
13 sustained productivity of that particular  
14 well aside from other issues around it. So  
15 we have a lot to kind of tie into this.  
16 And, and, and also Ellen, what's, what's our  
17 relation to the Lana'i system? Is that a  
18 private, that's a private system, isn't it?  
19 MS. KRAFTSOW: It's a private system and  
20 we're still, we're required by the code to  
21 address all uses of water and so we're still  
22 cataloging and describing and filling in  
23 some of the stuff with private systems on  
24 Maui. In all the districts we have partial

1 product for all of that too. But Lana'i is  
2 a private system but the county has to write  
3 the Water Use and Development Plan for the  
4 whole county and also the state constitution  
5 says that the state and its political  
6 subdivisions shall protect the resources for  
7 the people and as a political subdivision of  
8 the state, the county has some  
9 responsibility for oversight, secondary to  
10 the primacy of the commission but...  
11 MEMBER ROBINSON: Especially when...  
12 MS. KRAFTSOW: The commission wanted to see  
13 our recommendations especially with Lana'i  
14 where there is a designation question open  
15 and has been for some years. They wanted to  
16 see what our recommendations would be and  
17 one of the things we actually even  
18 considered was recommending designation;  
19 fall short of that we kinda left it with  
20 some triggers and some, a proposed pace of  
21 development and some mandatory actions to be  
22 taken within X years and stuff but how that  
23 would actually be implemented and what the  
24 teeth are behind that is one of the big

1 questions that the committee has had so far.  
2 And so they want me to reframe that in terms  
3 of in this situation how would this work and  
4 in this situation how would that work.  
5 CHAIR HOWDEN: Is the Lana'i Water Advisory  
6 Committee, are they, have they taken a stand  
7 or they simply asking you for further  
8 delineations?  
9 MS. KRAFTSOW: They are still in  
10 discussions. I had a meeting with Castle &  
11 Cooke, who started the meeting by saying,  
12 "we're very, very close and if we can just  
13 make these adjustments we'll agree." But  
14 basically also the corollary of that is,  
15 "that if we don't agree then we will fight  
16 the plan." And so far I don't think that  
17 most of the committee will agree with some  
18 of the things that they were asking for.  
19 Some of the things that they were asking for  
20 I think I can adapt like I had for, for  
21 Lana'i because it's such a small customer  
22 base and it's so, there's a small customer  
23 base to make the revenues that are needed  
24 and the system is very degraded. So for

1 them I had actually looked at a rate and fee  
2 structure to, to see if it would be possible  
3 to make Lana'i utility self supporting. And  
4 it was possible but the rate structure I  
5 designed was very steeply tiered...

6 CHAIR HOWDEN: Very what?

7 MS. KRAFTSOW: Steeply tiered, to favor  
8 conservation, which means it would have to  
9 be changed anyway and it's a long term rate  
10 anyway. It's not a real rate. But one of  
11 the things that they were concerned about  
12 was that I assigned too much of that rate to  
13 golf, too much revenue bearing on the one  
14 golf course in Manele. And so, some  
15 adjustments I, I'm just gonna recommend to  
16 the committee. Yes, I'll make some of those  
17 adjustments but some of them I don't do.

18 CHAIR HOWDEN: Don has a question?

19 MEMBER GERBIG: I think we're getting side  
20 tracked.

21 MS. KRAFTSOW: You're right.

22 CHAIR HOWDEN: Ok.

23 MEMBER GERBIG: This is Lana'i, it's  
24 interesting, it's great...

1 CHAIR HOWDEN: Ok.

2 MEMBER GERBIG: But I think at this time  
3 our, our priority...

4 MS. KRAFTSOW: Right.

5 MEMBER GERBIG: Should be on how we're gonna  
6 do this and I just wanna offer a suggestion.  
7 I, I, that I blind with this thing. I think  
8 maybe what we might do to start it off  
9 'cause we're not like you say we're floating  
10 out there; maybe we should submit questions  
11 that we might have, you know, just to the  
12 whole board, just everybody throw out some  
13 questions on, on the individual, the  
14 different testimonies from Kihei, from here  
15 in Central Maui, anything that the board  
16 members might have, that we feel that we  
17 should respond to or address and then also  
18 our own concerns. And then we can throw out  
19 what we don't want or, or address them or  
20 whatever; we can kinda narrow it down, maybe  
21 come into like you say of, I like your idea  
22 of coming into some kind of process; we're  
23 gonna have to do this again and again and  
24 again.

1 CHAIR HOWDEN: Yeah, we might as well...

2 MEMBER GERBIG: That we can maybe simplify  
3 it but like I, right now I don't mean to go  
4 on and on but I think the problem is that  
5 we, I'd like to suggest that we, every board  
6 member offer questions and maybe define what  
7 kind of questions.

8 MEMBER ROBINSON: Right now?

9 MEMBER GERBIG: Doesn't have to be now, no.

10 CHAIR HOWDEN: But, but we can email those  
11 to Gaye. And Gaye could circulate those  
12 among the members of the board.

13 MEMBER GERBIG: Yeah.

14 CHAIR HOWDEN: Yeah.

15 MEMBER GERBIG: And then we can address...

16 CHAIR HOWDEN: And, and then, and then...

17 MEMBER GERBIG: That'll start the process

18 CHAIR HOWDEN: We'll be prepared for our  
19 next meeting, ready to go.

20 MEMBER ROBINSON: Ok.

21 CHAIR HOWDEN: Thank, thank you, Ellen, for  
22 that. I, I, Don, I just wanted a little...

23 MEMBER GERBIG: Yeah, go ahead, go ahead.

24 CHAIR HOWDEN: Bit of background because...

1 MEMBER GERBIG: I'm sorry, I just wanted to...

2 CHAIR HOWDEN: You know that the, what I've  
3 seen in the newspaper on the Land Use  
4 Commission's decision on the Lana'i aquifer  
5 kinda concerned me. So if, I, I need just a  
6 little bit more, so.

7 MEMBER ROBINSON: I'm just wondering since  
8 we have the 2 of them here, if there are  
9 questions that we have right now, that might  
10 save time to at least maybe get some of  
11 those questions answered because they've  
12 come to be here where maybe ready or not  
13 ready, some of us might have some questions  
14 that might get answered now if that, I don't  
15 know if that makes sense but...

16 MEMBER GERBIG: In regards to the Central...

17 MEMBER ROBINSON: Yeah, the Central...

18 MEMBER GERBIG: I agree.

19 MEMBER ROBINSON: Yeah.

20 MEMBER GERBIG: Can I offer a question.

21 CHAIR HOWDEN: Please.

22 MEMBER ROBINSON: Yeah.

23 CHAIR HOWDEN: Please.

1 MEMBER GERBIG: Ok, I missed, unclear but  
2 one of things, I mean maybe I need a better,  
3 how would you, maybe that's too big a  
4 question. Your requirement here to produce  
5 this, requirement, I mean it's limited  
6 because the ordinance came along afterwards  
7 and all that, but I, I guess in my mind, are  
8 the amounts of water or available water,  
9 they're all addressed in here or in your  
10 mind is there something that we need, need  
11 to be answered about availability of water.  
12 Is it clear in here or is that gonna, is the  
13 Water Commission, there other hearings gonna  
14 affect that?

15 MR. FREEDMAN: Ok, I'll take a stab at that.  
16 I'm not sure I understand your question  
17 exactly but I think that in this draft the  
18 focus is on determining what are the best  
19 strategies for the County of Maui and  
20 Department of Water Supply to do to develop  
21 infrastructure to serve the projected water  
22 needs for, for the county in the Central  
23 District. And so in there, the availability  
24 of the sources are assessed. The different

1 strategies to develop sources are assessed  
2 and they're compared economically and  
3 they're compared with, with respect to a  
4 number of different attributes to try and  
5 come up with some recommendations. So in,  
6 in this sense I think this document is most  
7 directly an analysis and a policy statement  
8 about the county's development of new  
9 sources. And incumbent in that are a whole  
10 list of other concerns that have to do with  
11 all the planning objectives that we could  
12 identify in the process so that would  
13 include protection of the resources,  
14 protection of streams, protection of the  
15 groundwater resources, environmental  
16 impacts, fairness, and those are, those are  
17 central to the discussion but they tend to  
18 get put aside when you do these economic  
19 analyses which focus on reliability and the  
20 cost. In the end looking at all of that one  
21 of the big considerations was just  
22 viability. I mean we looked at all these  
23 different strategies to develop different  
24 sources, different strategies to develop new

1 sources and every one of them had some  
2 question about it, about the viability. So,  
3 one of the strategy is treating surface  
4 water and there's a water treatment plant  
5 that's essentially completely designed for  
6 the Waiale, at the Waiale reservoir site.  
7 But the source of water for that is not  
8 certain and there's no price tag for the  
9 water yet. At the price Wailuku Water  
10 Company wants for the water it's not so cost  
11 effective as it is at a more reasonable  
12 amount. I just give that as an example.

13 MEMBER GERBIG: Good.

14 MR. FREEDMAN: So viability was in there.  
15 So I don't know if I'm getting at your  
16 question.

17 MEMBER GERBIG: You got, you're covering  
18 perfect.

19 MR. FREEDMAN: Ok.

20 MEMBER GERBIG: Perfect.

21 MR. FREEDMAN: Alright.

22 CHAIR HOWDEN: Don, I'd like to interject  
23 that I, I think that so many unknown kinda  
24 contingencies with this. I mean the Water

1 Commission's decision, the cost of energy  
2 and, and questions of allocation; that just  
3 to have any thing to work with. I mean it's  
4 pretty dicey. I mean who knows what the  
5 Water Commission will decide; whether  
6 Wailuku Water Company will even be in  
7 existence. And, and what about that  
8 watershed; the questions of, potential  
9 question of acquisition of the watershed.  
10 So you know those are very deep issues in,  
11 in terms of public policy. Don? Yeah.

12 MEMBER GERBIG: I agree with what you're  
13 saying, not arguing. I'm just trying to  
14 determine what kind of questions that we can  
15 ask that is something is not covered or it  
16 could be better covered, I, I think that the  
17 data you put together here is probably for  
18 the time and the availability of information  
19 probably couldn't do any better but is there  
20 any some, somehow, is there something when  
21 we analyze it that, that maybe we, we, our  
22 responsibilities, recommend to the council  
23 in here, what's missing or what could be.  
24 And that's all that I'm saying; maybe some



1 of the questions that we could ask on that.  
2 Ellen, do you have some comment?  
3 MS. KRAFTSOW: I, I want to defer to Carl to  
4 see if this is the time to raise it and  
5 maybe your idea about the master, what kind  
6 of master list of what's gonna be...  
7 MR. FREEDMAN: Yeah, one, one thing that,  
8 there's an outline that we've put together,  
9 kinda as a working outline; it's not a  
10 document that was designed for transmission.  
11 But it's, we have a working outline of kind  
12 of a master document...  
13 MEMBER GERBIG: Like, like a guideline?  
14 MR. FREEDMAN: Well, it just shows how all  
15 these pieces fit together. So basically the  
16 district plans would each be part of the  
17 master document but in addition to that, the  
18 master document would have ah, the, well one  
19 of the discussions would be the kuleana,  
20 just certain, concerns, we heard the  
21 concerns about at the Kihei meeting. One  
22 would be discussion of all the non-  
23 Department of Water Supply purveyors and  
24 large users. So clearly Alexander and

1 Baldwin is using a lot of water in the  
2 district. Now, the water actually is  
3 associated with another district in terms of  
4 its source. But we've got a whole list of  
5 issues that are kind of broad. They don't,  
6 they aren't limited to the individual  
7 Department of Water Supply districts. So  
8 one thing that might be helpful would be to  
9 get you an outline of...  
10 MEMBER GERBIG: How many pages is it?  
11 MR. FREEDMAN: Oh, just like a one page  
12 outline.  
13 MEMBER GERBIG: I would love it.  
14 MEMBER ROBINSON: I'd love it too.  
15 MR. FREEDMAN: And Ed can tell us what we're  
16 allowed to do. I mean we don't want to  
17 formally transmit it for your review at this  
18 time but it seems like that is something  
19 that we thought would be helpful for framing  
20 all this. And we can...  
21 MS. KRAFTSOW: We can do that.  
22 MR. FREEDMAN: We can do that. Ellen and I...  
23 MEMBER GERBIG: You'll make it available to  
24 us?

1 MS. KRAFTSOW: Yeah.  
2 MR. FREEDMAN: Yeah, we'll send it to Gaye...  
3 MEMBER GERBIG: Alright, thank you.  
4 MR. FREEDMAN: For distribution. Is that  
5 the right thing to do? Yeah.  
6 MS. KRAFTSOW: Just with a, with the one  
7 caveat that it's still a work in progress,  
8 the master document and therefore the  
9 outline is also a little bit of work in  
10 progress...  
11 MEMBER ROBINSON: It's a draft.  
12 MR. FREEDMAN: Yeah.  
13 MEMBER ROBINSON: So, I, is a time for  
14 another question? Did you get all of yours?  
15 MEMBER GERBIG: I'm done. Go ahead.  
16 MEMBER ROBINSON: Ok. My question actually  
17 stems from, from the testimony of the  
18 kuleana users because I'm a fairly much of a  
19 newcomer to Maui and I'm also aware of  
20 native peoples' concerns and how they're  
21 either seeing themselves as being, having  
22 power over some, some issue and whether or  
23 not that is real power or just power that  
24 gets talked about but nothing actually

1 happens and so my concern as a witness of  
2 that public process was, and I think you  
3 partially addressed it when you responded at  
4 the Kihei meeting to say, and you responded  
5 somewhat in that there are parts to the  
6 public process that I was not privy to that  
7 you felt was inclusive of those voices and,  
8 and the concerns from those voices. I'm  
9 just wondering if there's anything else that  
10 you can add to fill in for me what is the,  
11 the reality of those voices actually being  
12 incorporated into this process.  
13 MS. KRAFTSOW: Yeah, I can give you a little  
14 bit of history on that. Again, that doesn't  
15 really get to this document but if you'll  
16 bear with me for a second. We did early on,  
17 we hired a, a kupuna named Luana Kawa'a to,  
18 to look at Na Wai Eha. And originally we  
19 wanted to be very, very clear and concise  
20 about it. Like we wanted to get every  
21 kuleana use that could, that was, is or  
22 could ever be itemized with an amount of  
23 water assigned and you know, what this meant  
24 spiritually and what this meant like the

1 whole nine yards. So, we had somebody go  
2 through, this is now just for these four  
3 streams out of hundreds, right.

4 MEMBER ROBINSON: Right.

5 MS. KRAFTSOW: We had somebody go through  
6 all of the parcels that had land use  
7 commission awards or patents on them and  
8 created a list of some, it was like a  
9 thousand and some, maybe more parcels; sent  
10 somebody to Honolulu to go to the repository  
11 there and gather them and, with all the  
12 correct numbers and stuff. She brought back  
13 the correct numbers and then we hired this  
14 person to translate them, ok? Well, it  
15 turned out that out of, they couldn't find  
16 all of 'em, of the ones that they could find  
17 in the time that they had over were more  
18 than 900. We thought ok that's a start. We  
19 can go get the next set later. Out of  
20 those, only 300 were even correctly  
21 identified. The other 600 were either not  
22 in Na Wai Eha or in some cases not even on  
23 the island of Maui. So we discovered that  
24 that's gonna be a huge issue. We're not, we

1 don't have anything like the time, budget or  
2 kuleana to untangle a mess like that. So,  
3 Step 2. We asked the same person to give  
4 kind of a summary of uses and descriptors of  
5 the ahupua'a on the Westside and she has  
6 done that. In the process of finishing up  
7 that project, I mean we, and maybe wasn't my  
8 best judgment but I let her finish even  
9 though she felt that there was some  
10 improvements that she still wanted to make.  
11 There had been a lot of illness, herself and  
12 her husband both, and her family and it  
13 just, it just that was as much as they could  
14 do at that point. So now we're kinda  
15 getting back in touch again so about, is  
16 there anything more you're gonna add. Then  
17 we also have some very detailed good work  
18 from Kepa Mali about other ahupua'a. But we  
19 don't have every ahupua'a. And then on top  
20 of that, one of her problems in getting all  
21 the data that she had wanted to get, another  
22 reason that she was unable to and, and it  
23 wasn't realistic to try to force her to do  
24 that contract is because she's not from that

1 particular ahupua'a and so when she went  
2 there, if, if you're not like the moku  
3 aupuni for that moku, it's necessarily that  
4 they're gonna want to give you all of their  
5 data because some of them feel like the  
6 whole process that we're going through is,  
7 is wrong and illegal, that we don't even  
8 have the right to write this plan, ok? So I  
9 did, after that meeting, I met with some of  
10 the people who had been there and, the  
11 Hawaiians and I've also attended a couple of  
12 their ka'apuni meetings. And I got some  
13 names and some introductions. I don't know  
14 what will come of it. If I were gonna do  
15 this in the most meticulous way that it  
16 probably needs to be done and the way that I  
17 kinda in my heart would like to do it, what  
18 I'm seeing is it won't be done in anything  
19 like the timeframe that it's going to be  
20 needed for council and whatever. So what  
21 I'm trying to suggest to the Hawaiian  
22 community is maybe we can take this as Step  
23 1, just like start to get a little  
24 descriptor of each ahupua'a and not go all

1 the way to where maybe we should go. But  
2 there's still some meetings to be had and  
3 some research to be done on that and I, I  
4 can't say that we're as far along as we  
5 should be. But that, that's kind of where  
6 we're trying to go is see what's a  
7 reasonable subset that we can actually get  
8 done because the big picture is a lot  
9 harder. Now, we, we did get from HHL, has  
10 now mapped the ahupua'a and the kuleana  
11 within the ahupua'a. Whether or not that's  
12 complete, I mean part of the ka'apuni is  
13 noticing what's not complete in each  
14 ahupua'a, right. If I'm talking in, in  
15 Greek just let me know but basically we're  
16 still kinda working in that direction to try  
17 to figure out what's missing and what we can  
18 reasonably do within this effort. You know  
19 this may be an effort that is rightfully,  
20 properly undertaken by somebody more like  
21 OHA or HHL and in, in its fullest extent and  
22 maybe just a subset of what's reasonable for  
23 the plan is all that we can do. And so  
24 that's kinda where we're headed now, like

1 ok, what subset can we do that will still  
2 genuinely and sincerely address the issue  
3 without pretending to be comprehensive. So,  
4 that's not a call that I've been able to  
5 quite come down at yet but something.  
6 Lana'i is maybe one example, but Lana'i has  
7 many fewer issues so it was an easier  
8 example. We do have a chapter on Lana'i, a  
9 section on Lana'i in 2 places, in both the  
10 regulatory chapter and in the description of  
11 existing resources and systems.  
12 MEMBER ROBINSON: Thank you, that was  
13 helpful to understand the extent to which  
14 you really tried to be inclusive of that  
15 information and how that gets incorporated  
16 into the overall plan and, and is seen as a  
17 voice that has substance. I know that it's  
18 very difficult because sometimes it feels  
19 like it's apples and oranges, because when  
20 you're taught, if the perception is, is that  
21 what we're doing here is that we're just a  
22 delivery system, that the source is really a  
23 whole other question and, and so, and yet  
24 we're talking about the development of new

1 sources and so where did those new sources  
2 come from.  
3 MS. KRAFTSOW: And everything impact.  
4 MEMBER ROBINSON: And so we're still tapping  
5 into the same vein and it's the, it's the  
6 vein that is in the language and this  
7 transcript that is mentioned over and over  
8 again that that's the vein of, of the  
9 Hawaiian people so.  
10 MS. KRAFTSOW: Right.  
11 MEMBER ROBINSON: It's a, it's a hard one.  
12 And I applaud your efforts for what you've  
13 been trying to achieve and it's very  
14 complicated I'm sure, so thanks.  
15 CHAIR HOWDEN: Thank you. Other board  
16 members? Questions?  
17 (silence)  
18 CHAIR HOWDEN: Ok. Thank you guys so much  
19 and we'll see you next month at our meeting,  
20 God willing. Ok. Our next item is a  
21 proposal by Member Gerbig..  
22 CHAIR HOWDEN: To stay on, on, on subject  
23 which you know often we don't do. Don,  
24 would you like to say anything about that?

1 And we can bring it up again next meeting  
2 too.  
3 MEMBER GERBIG: Yeah, if I can find it.  
4 (silence)  
5 MEMBER GERBIG: Didn't make a copy of it,  
6 did you? Hmm.  
7 CHAIR HOWDEN: I think it was sent to each  
8 of us.  
9 MEMBER GERBIG: Yeah.  
10 CHAIR HOWDEN: Yeah.  
11 MEMBER GERBIG: Can't find my copy.  
12 CHAIR HOWDEN: I mean, as I remember it,  
13 what you said I thought was totally  
14 reasonable.  
15 MEMBER GERBIG: Yeah, it was just, it was  
16 just the whole, the whole purpose was just  
17 to keep us on the right wavelength. That  
18 was the whole purpose of it. And, our good  
19 attorney here, mentioned that there was  
20 something wrong with it but I wasn't sure  
21 what it was. But, I, I just want to throw  
22 out that we, we're, according to the law we  
23 do appeals, we do review of water plans,  
24 basically that's it. And some of the

1 testimony that we got on kuleanas and other  
2 things like that, we have no authority over.  
3 So, it's a, it's a waste of their time,  
4 somewhat a waste of our time unless it's for  
5 educational purposes; my thought. In other  
6 words, some of the testimony that, I just,  
7 try to limit the testimony to our agenda  
8 items; we should concentrate on that. And  
9 those, anything off the agenda would be for,  
10 or outside of our, our responsibility would  
11 be for educational purposes that would  
12 benefit all we could learn from it and  
13 therefore make better decisions. So that's  
14 basically what it was. I don't have it in  
15 front of me so I'm sorry. I, I will, I  
16 think what I will do I'll revise it based on  
17 that. I had a lot of, I, in, in there but I  
18 thought just to simplify it a little better  
19 and I started with everything; I had the law  
20 on everything. But I'll simplify it. I  
21 think Mister, our good attorney said that I,  
22 I was wrong on something and I can't recall  
23 what it is. But I'll look it up and in the  
24 minutes. So that's all I have to say.

1 CHAIR HOWDEN: Ed, do you have any comments?  
2 MR. KUSHI: Um, no. I don't recall what I  
3 told him. But I, I do recall his  
4 suggestions to be more specific on the  
5 agenda. And if you guys would notice the  
6 last couple of agendas are a little bit more  
7 detailed, thanks to Gaye. Again, Don had a  
8 discussion of "Discussion by Board Members."  
9 Before it was just Discussion about so and  
10 so; Verbal Update on the Waikamoi Flume,  
11 who's gonna do it? Now we say, "Verbal  
12 Update by the Director," I think we really  
13 took your, your suggestions accordingly. So  
14 the agenda is a lot more specific. Again, I  
15 repeat, when people come up to testify the  
16 general rule is you should testify only  
17 agenda items. But again you know if, I  
18 would, I would suggest if they get off  
19 track, way off the wall, you know then, then  
20 the chair has I think a responsibility and  
21 duty to direct it back, but just don't cut  
22 'em off. 'Cause that would then cause  
23 another whole...  
24 (laughter)

1 MR. KUSHI: Especially people coming from  
2 Hana, you say "ok, you cannot, cannot talk."  
3 MEMBER ROBINSON: Yeah, exactly.  
4 MR. KUSHI: You, you just pour gasoline on a  
5 fire.  
6 MEMBER GERBIG: Guy spend a hour getting  
7 here.  
8 (laughter)  
9 MR. KUSHI: Right, right. But you know  
10 again, if, if they're just talking about  
11 tangerines and it's apples and oranges.  
12 That, that was my comment.  
13 MEMBER GERBIG: That was my point, that some  
14 of the first testimony that we had of  
15 course..  
16 MR. KUSHI: Right.  
17 MEMBER GERBIG: Is I think because of the  
18 agenda somebody, they misinterpret it and  
19 they thought that, so they came in and  
20 talked about kuleana water because the way  
21 the agenda was worded it was their  
22 misinterpretation but maybe it was our fault  
23 the agenda wasn't clear enough, that' it.  
24 So that was my point too to clarify..

1 MR. KUSHI: And again you know public  
2 testimony, we don't swear 'em in so they can  
3 say whatever they want. They can, they can  
4 say the world's...  
5 MEMBER GERBIG: Can we do that to city, at  
6 the council?  
7 MR. KUSHI: World is flat and but it's up to  
8 you to believe 'em.  
9 MEMBER ROBINSON: The one thing that I, I  
10 recall you're asking for and we actually  
11 didn't do it at the public testimony, which  
12 would have maybe helped things was to let  
13 the people that are testifying know just  
14 exactly what our powers are as a board. And  
15 that helps to save..  
16 MEMBER GERBIG: Yeah.  
17 MEMBER ROBINSON: Save time, maybe not but  
18 it might help to let people know about what  
19 our limits are.  
20 MEMBER GERBIG: Would be, yeah, that would  
21 really clarify the agenda too, that  
22 everybody understands that their, that you  
23 know, yeah, that limits us. No sense them

1 wasting their time with us so we have no  
2 authority. That was my point.  
3 CHAIR HOWDEN: Good. Thank you, Don. Next  
4 was Other Business. Discussion of Resale of  
5 Water by Consumers of the County Water  
6 System. Maybe this seems like a manini  
7 issue but a lot of people in East Maui and  
8 other areas purchase water from commercial  
9 purveyors of water. As Gaye pointed out  
10 this morning before the meeting, we're not  
11 talking about Foodland selling purified  
12 water. That seems kinda petty. But for  
13 instance there's this big tanker truck with  
14 a 572 number on it parked between down, the  
15 Kahului Down to Earth and Papa Place; an  
16 immense tanker truck and its water for sale.  
17 And other people, especially in East Maui,  
18 have asked me about or mentioned that you  
19 know for Honopou and Huelo areas and stuff  
20 like, how they have water trucked in and  
21 trucked in at exorbitant prices which I, I  
22 would presume is resale of water that  
23 they've purchased from the county. Ed, do  
24 you want to comment on any of that?

1 MR. KUSHI: Yeah, maybe first of all, I,  
2 when this came up I did discuss this with  
3 the, the director. He did do some  
4 investigations and, and apparently these are  
5 called "water haulers". And apparently  
6 there's one at our Kahului Baseyard and they  
7 fill up their tanker trucks. And we charge  
8 them whatever it is to fill it up. There's  
9 another one at Kahului somewhere maybe  
10 that's the 572. But they fill up the  
11 tankers with DWS water and then they charge  
12 whatever rates that the market will bear.  
13 But again, the, as far as we're concerned,  
14 they're charging, whatever they charge to  
15 the final destination customers is a  
16 delivery service not the water. Again, I  
17 don't know what the, we don't know what the  
18 arrangement is with these people. From what  
19 I can tell you and I made some copies of the  
20 appropriate rules. The first one I'm  
21 passing out is just a copy of our water  
22 rules. At the bottom section 3-25, it's  
23 just a one sentence rule. It says, "Unless  
24 specifically agreed upon the consumer shall

1 not resell any water received by him from  
2 the department." That's a general rule.  
3 Similarly, the City and County of Honolulu  
4 Board of Water Supply...on the second page of  
5 this 2 pager; section 2-216. Again, it's  
6 almost similarly...  
7 MEMBER ROBINSON: Yeah, sounds exactly the  
8 same.  
9 MR. KUSHI: I don't know who copied whoever  
10 from, but basically says, "Unless  
11 specifically agreed upon, the consumer shall  
12 not resell any water received by him from  
13 the Department." This is the Board of Water  
14 Supply, City and County of Honolulu. I  
15 couldn't find any other sections in the  
16 Honolulu Board of Water Supply that  
17 addresses this point. However, the last  
18 thing I'm passing you out is a codified,  
19 the, one of the rules that was codified  
20 recently, 2008, Maui County Code, Chapter  
21 14.10, and if you look at the section  
22 14.10.010 subsection...ah, where is it? E as  
23 in Ed. Just let me read it to you. "The  
24 penalty for providing water service to lots

1 other than the lot to which the service is  
2 assigned is removal of the meter." So  
3 that's, that's in there. It's been in there  
4 for years. We just codified it into the  
5 code. But I suspect it was put in there for  
6 subdivisions. When you have a, a three-lot  
7 subdivision and you only have one meter and  
8 then somehow they, they hook it up to serve  
9 all three lots. Ok, so that's, that's the,  
10 the hammer or the penalty that the  
11 Department has used historically. This one  
12 is a little different in that, although  
13 let's say in Kahului you have a meter to a  
14 industrial lot, technically the water should  
15 be served, whatever comes out from the meter  
16 should serve that lot. Again, pumping into  
17 a truck and take it up someplace is not  
18 serving the lot; technically, but it does,  
19 it does serve the lot but if not, maybe it's  
20 not being used by the lot. So you have some  
21 issues there.  
22 MEMBER ROBINSON: Who has the meter  
23 that, that pumps the water into those  
24 trucks?

1 CHAIR HOWDEN: Well the, that's what the  
2 question is. I mean...  
3 MR. KUSHI: Yeah.  
4 CHAIR HOWDEN: If, if they purchase by  
5 agreement from the Department for the  
6 purpose of taking water to deliver it  
7 somewhere and the Department understands  
8 what's going on...  
9 MEMBER ROBINSON: Then that's...  
10 CHAIR HOWDEN: I think it's a very different  
11 circumstance unless otherwise specifically  
12 agreed upon. I mean this is agreed upon by  
13 the Department evidently. But I was just  
14 wondering...  
15 MR. KUSHI: I've never seen any agreements.  
16 CHAIR HOWDEN: Oh.  
17 MEMBER ROBINSON: No grievance?  
18 MR. KUSHI: No agreements.  
19 MEMBER ROBINSON: Oh, no agreements. So  
20 it's a verbal...  
21 MR. KUSHI: Eric, Eric may know what sort  
22 agreements with these truckers...  
23 DEPUTY DIRECTOR YAMASHIGE: I don't know of  
24 any written agreements but I know we do

1 allow certain "haulers" to take water and  
2 one of 'em was the national park, because  
3 Haleakala National Park does not have water  
4 service. They would come down to our  
5 baseyard and fill up their tankers. We do  
6 have a meter; they would pay for that  
7 service. And then they would haul the water  
8 up to the park. We've actually worked with  
9 them to maybe take the water out of certain  
10 parts of our Upcountry system to help move  
11 the water as well. So we, we don't, I don't  
12 think we have a written agreement but we  
13 certainly know that they're doing that.  
14 MEMBER ROBINSON: Is there any record of how  
15 much water?  
16 DEPUTY DIRECTOR YAMASHIGE: Oh, I'm sure we  
17 have that kind of records.  
18 MR. KUSHI: 'Cause they pay, pay for it.  
19 MEMBER ROBINSON: Right so (inaudible).  
20 CHAIR HOWDEN: Don? Don.  
21 MEMBER GERBIG: A question on this water.  
22 Are we, somebody told me, I don't know where  
23 I heard it, but somebody told me that we  
24 aren't really selling water, we're selling

1 the transportation of water. Is that  
2 correct?  
3 MR. KUSHI: Well, in the legal sense,  
4 correct because water is a public trust and  
5 we don't sell, like we're selling air.  
6 MEMBER GERBIG: So we're selling  
7 transportation. We're using a gallon  
8 measurement.  
9 MR. KUSHI: But the sale price is usually  
10 measured on X amount per thousand gallons.  
11 That's how it's been sort of done.  
12 MEMBER GERBIG: Yeah, well, transportation  
13 fee.  
14 MR. KUSHI: Correct. But you know again, I  
15 don't know what the arrange, we don't know  
16 what the arrangement is with these private  
17 haulers to an Upcountry's property that has  
18 a catchment system. But I would imagine  
19 they would just dump it into the tanks.  
20 MEMBER ROBINSON: Into their catchment  
21 tanks.  
22 MR. KUSHI: Right. Now again, we can, we  
23 can, you can go expand, expand or expound on  
24 this theory of reselling water. What do we

1 do? We charge all these bottle water  
2 companies...  
3 MEMBER GERBIG: Yeah.  
4 MR. KUSHI: A fee? Because the water they  
5 take from us they put in through a whatever  
6 other system so their, their, their  
7 advertisement is not public water. They put  
8 something in or...  
9 MEMBER ROBINSON: And then it becomes spring  
10 water.  
11 (laughter)  
12 MR. KUSHI: And it becomes spring water but  
13 do we charge them again?  
14 MEMBER GERBIG: They're selling a different  
15 product. They're, they're modifying,  
16 modifying it theoretically.  
17 CHAIR HOWDEN: Yeah, they are. I, I, I  
18 agree with you, Don. I think they are sell,  
19 selling it...  
20 MEMBER ROBINSON: Charcoal filtration,  
21 reverse osmosis...  
22 CHAIR HOWDEN: Yeah, I mean that's, that's  
23 quite different perhaps than what we might  
24 see through the taps.

1 MR. KUSHI: Again, you know...  
2 CHAIR HOWDEN: Go.  
3 MR. KUSHI: Let me just say this...  
4 CHAIR HOWDEN: Sure.  
5 MR. KUSHI: If you wanna explore this  
6 further and then, and this rule, the, the  
7 rule that I passed out, will come before the  
8 council, shortly, hopefully, to be codified  
9 into an ordinance. At that time maybe  
10 discussion should be had by the council  
11 members about these private haulers. And if  
12 the council says ok, that is in their minds  
13 reselling water regardless of what you call  
14 it we, we'll, we'll just remove the meter.  
15 Then, maybe a thousand people Upcountry will  
16 come and start banging on their doors.  
17 Because then the catchment systems won't  
18 have water. But that's the consequence,  
19 right?  
20 CHAIR HOWDEN: Yeah, it just seems somewhat  
21 inequitable that the haulers might get the  
22 water very cheaply from the county and  
23 charge really exorbitant rates simply for  
24 hauling it to these areas where as Gaye

1 mentioned this morning that people can come  
2 into the, domestic users can come to the  
3 Kahului baseyard and get water for their own  
4 catchment systems or for domestic use.  
5 MR. KUSHI: But we, we charge?  
6 CHAIR HOWDEN: Which I never knew about.  
7 What? Yeah, we charge first.  
8 DEPUTY DIRECTOR YAMASHIGE: Oh no, not, not  
9 anybody can come in and get water. It's,  
10 it's not open free for all, please don't  
11 think that.  
12 MEMBER LESTER: Why don't we have that? On  
13 the Big Island they have free water.  
14 (laughter)  
15 MEMBER GERBIG: Eric, let me ask you a  
16 question then. In this, as far as the  
17 sources of this resale water, where, where  
18 could they, I mean, you're not gonna back a  
19 truck up into a little half inch pipeline at  
20 a house, you're gonna find some industrial  
21 site that is hooked into the waterline,  
22 maybe they have a tank, some company and  
23 they're selling the water to the trucker.  
24 The trucker is selling the water to

1 Upcountry or whoever. How would you a,  
2 could, you would never know. Correct me,  
3 would you ever, would you know that somebody  
4 was filling their truck up at some  
5 industrial site even, and it's, assuming  
6 it's potable water, taking it Upcountry and  
7 reselling it? Would you, would you know?  
8 DEPUTY DIRECTOR YAMASHIGE: No, we probably  
9 wouldn't know. We, if it was a new entity,  
10 a new use of the water we would probably  
11 notice an increase in the consumption and  
12 then we would communicate with the, the  
13 owner of the meter. But if it's been going  
14 on for a long time and it's pretty  
15 consistent we really wouldn't know.  
16 MEMBER ROBINSON: Wouldn't know.  
17 MEMBER GERBIG: Yeah it's, to me it goes  
18 back in history that we've made these,  
19 approved these subdivisions without water,  
20 without considering that we're gonna be a  
21 three year drought now, look what happens;  
22 can't live without water.  
23 MR. KUSHI: Again, to defend the Department,  
24 we don't approve subdivisions.

1 (laughter)  
2 MEMBER ROBINSON: Planning Department.  
3 MEMBER GERBIG: You're off the hook.  
4 MR. KUSHI: We recommend against it but they  
5 somehow get it.  
6 MEMBER GERBIG: Interesting subject. If the  
7 council, I ask the question, if the council  
8 is gonna address this in some way, possibly  
9 the Board of Water Supply, because we are in  
10 charge of water rates, might testify for or  
11 against the ordinance; how we feel about it.  
12 That's all that I would offer.  
13 CHAIR HOWDEN: Yeah, I would think that  
14 would be appropriate.  
15 MEMBER GERBIG: We might consider that on  
16 behalf of the Water Department.  
17 CHAIR HOWDEN: Any other comments?  
18 MEMBER LESTER: I think maybe a comment  
19 about the Big Island.  
20 CHAIR HOWDEN: 'Cause they just geeve 'em.  
21 MEMBER LESTER: Where they have a lot of,  
22 yeah they do. They have water outlets  
23 where big tanker trucks can come and  
24 fill up and it's free. But people are

1 buying the water from the delivery  
2 trucks and there are quite a few of those  
3 delivery.  
4 MEMBER GERBIG: Where's this?  
5 MEMBER LESTER: In Kona, at Hookela.  
6 There's one at the end of the waterline.  
7 And I think, in Hilo side they have also.  
8 MEMBER GERBIG: On the Big Island?  
9 MEMBER LESTER: On the Big Island. Because  
10 so many people are, are on water catchment  
11 there.  
12 MEMBER LESTER: Like they have whole,  
13 Hawaiian Ocean View Estates, which is a  
14 5,000 lot subdivision that has all on water  
15 catchment.  
16 MEMBER GERBIG: My father-in-law was one of  
17 those.  
18 MEMBER LESTER: Did he do it?  
19 CHAIR HOWDEN: Poor thing him.  
20 MR. KUSHI: So the Department of Water  
21 Supply of Big Island, they don't get a dime  
22 from that?  
23 MEMBER LESTER: They don't get a dime. And  
24 so you see cars lined up just filling up

1 with gas(?) and big trucks that deliver.  
2 Now...  
3 MR. KUSHI: I'm sure the truckers get paid.  
4 MEMBER LESTER: Yeah, the truckers charge  
5 for it. And I asked my friend well, how  
6 much do you pay? And I don't know what  
7 size, you know the big, he says about a 150  
8 something dollars they get charged for  
9 delivery on that.  
10 MEMBER ROBINSON: So in a way that is how it  
11 should be done based on these laws, which is  
12 that there should only be a charged for  
13 delivery.  
14 MEMBER LESTER: Delivery, yeah.  
15 MEMBER ROBINSON: And that the water itself  
16 is...  
17 MEMBER LESTER: Free.  
18 MEMBER ROBINSON: Truly the public's trust,  
19 yeah.  
20 MEMBER LESTER: And that's probably what  
21 they're doing like keep...  
22 MR. KUSHI: Well, there's gotta be a meter  
23 someplace for these people to fill up.  
24 MEMBER ROBINSON: Right.

1 MEMBER GERBIG: The meter's where the truck  
2 is...  
3 MR. KUSHI: Yeah.  
4 MEMBER GERBIG: Someplace, by there;  
5 probably a meter. Somebody's got to be  
6 charging...  
7 MEMBER LESTER: Well, we've refilled because  
8 we have a cabin there with a catchment and  
9 we haul our own though.  
10 CHAIR HOWDEN: Ok, I just wanted to bring it  
11 up 'cause it, it has, you know a number of  
12 people had asked about it.  
13 MR. KUSHI: If you want me to maybe I can  
14 request the Department to see what City and  
15 County Honolulu does. I'm sure they have  
16 the same situation. Maybe, maybe they  
17 don't. Or ask about the Big Island.  
18 MEMBER LESTER: Yeah, the Big Island.  
19 CHAIR HOWDEN: But it'd be helpful to know  
20 what policy is 'cause this will be coming up  
21 before the council I'm sure. Thank you.  
22 Ok, agenda items for our next meeting?  
23 MEMBER GERBIG: Oh, my suggestion on agenda,  
24 simplify it.

1 CHAIR HOWDEN: Ok, and we'll be dealing with  
2 the Water Use and Development Plan for  
3 Central and South Maui again.  
4 MR. KUSHI: Mr. Chair, if I may. Gaye,  
5 February 25<sup>th</sup> is the next meeting?  
6 MS. HAYASHIDA: The next meeting is February  
7 25<sup>th</sup>.  
8 MR. KUSHI: Yeah, ok. I think we made  
9 arrangements for my colleague Jane Lovell,  
10 Deputy Corp Counsel, to come and address the  
11 Board. Specifically regarding, one of the  
12 public hearings on the Water Use and  
13 Development Plan, there was testimony that  
14 the plan itself or review of the plan  
15 violates the consent decree of the East Maui  
16 Plan.  
17 CHAIR HOWDEN: Yeah, the EMPlan.  
18 MR. KUSHI: The EMPlan. Yeah, so Jane was  
19 involved in that so I've asked to her to  
20 come and respond to that.  
21 CHAIR HOWDEN: Oh, that'll be great. Thank  
22 you. Ok. And Kui, did it work out for you  
23 this time, more or less?  
24 MR. KUSHI: The 25<sup>th</sup>.

1 MEMBER GERBIG: What day?  
2 MEMBER ROBINSON: That's the 25<sup>th</sup>.  
3 MEMBER LESTER: What?  
4 CHAIR HOWDEN: The 10 o'clock starting day  
5 for this.  
6 MEMBER LESTER: Yeah, but next month it goes  
7 back to regular.  
8 MS. HAYASHIDA: Almost regular.  
9 MEMBER LESTER: Yeah, almost regular, well,  
10 not 5 o'clock in the morning but 7...  
11 MS. HAYASHIDA: Seven, yeah, so you should  
12 be here by 8 unless the delay the flight.  
13 MEMBER LESTER: They always, yeah, by the  
14 time you get your rent a car, a little after  
15 eightish I'll be here.  
16 CHAIR HOWDEN: So, 9 o'clock would be ok for  
17 that meeting to start?  
18 MS. HAYASHIDA: Yeah, 9 o'clock should be  
19 fine.  
20 CHAIR HOWDEN: Ok.  
21 MS. HAYASHIDA: Unless they you know...  
22 MEMBER LESTER: The flight was 7:20 or  
23 something; by the time I get in, rent a car  
24 so 9 o'clock would be ok.



1 CHAIR HOWDEN: Ok. Thank you. No  
2 Communications and a verbal update on the  
3 Waikamoi flume system.  
4 MEMBER ROBINSON: Are you still asking for  
5 agenda items?  
6 CHAIR HOWDEN: Agenda items. I wasn't but I  
7 will.  
8 MEMBER ROBINSON: Well, I'm just wondering  
9 about Scott's position, is, was the vice  
10 chair and I just wanna be sure that you've  
11 got a backup for yourself.  
12 MEMBER GERBIG: I think, isn't that up to  
13 the mayor's office to...  
14 MS. HAYASHIDA: Well, I think...  
15 MEMBER ROBINSON: Well, they'll choose a new  
16 person but I'm talking about...  
17 MS. HAYASHIDA: But if you like we can put  
18 the election of a vice chair on the agenda.  
19 MEMBER ROBINSON: Yeah.  
20 MS. HAYASHIDA: It's just that it wasn't put  
21 on this agenda because I didn't get Scott's  
22 resignation letter until the day after I  
23 posted this agenda.  
24 MEMBER ROBINSON: Ok.

1 MS. HAYASHIDA: So, we can put, I guess  
2 election of vice chair on the next agenda.  
3 MR. KUSHI: Good.  
4 MEMBER ROBINSON: Good.  
5 CHAIR HOWDEN: Ok. And we're gonna be  
6 having elections pretty soon anyway, aren't  
7 we? Next few month.  
8 MS. HAYASHIDA: March, if you want. Yeah.  
9 CHAIR HOWDEN: March, yeah.  
10 MS. HAYASHIDA: March, yeah.  
11 CHAIR HOWDEN: So, we'll be looking...  
12 MS. HAYASHIDA: March.  
13 CHAIR HOWDEN: We, we'll...  
14 MEMBER ROBINSON: We could wait.  
15 CHAIR HOWDEN: Have the whole thing in, in...  
16 MS. HAYASHIDA: You wanna do it...?  
17 MEMBER ROBINSON: Just wait until March.  
18 MS. HAYASHIDA: You wanna just wait until  
19 March to do it?  
20 CHAIR HOWDEN: We could, we could have a  
21 vice chair of the month contest.  
22 (laughter)  
23 CHAIR HOWDEN: You know. I don't know.  
24 Don?

1 MEMBER GERBIG: So, remind everybody to  
2 submit their questions, any questions on, so  
3 we have 2 sets of questions. One set on  
4 the, well, one set on the hearings.  
5 MEMBER ROBINSON: One set on the plan.  
6 MEMBER GERBIG: And one set on the overall  
7 plan. Anybody has any concerns or things  
8 that, things that we should discuss or  
9 review, even kuleana, whatever it may be.  
10 CHAIR HOWDEN: Well, especially with Na Wai  
11 Eha kuleana rights are pretty relevant.  
12 They will be relevant...  
13 MEMBER GERBIG: Yeah but it...  
14 CHAIR HOWDEN: For up, Upcountry and like  
15 that.  
16 MEMBER GERBIG: Yeah, but that's water law,  
17 State of Hawaii. So, it's already in place.  
18 Don't they have a percentage? Anybody know?  
19 MEMBER ROBINSON: Na Wai Eha?  
20 MR. KUSHI: Oh, they have...  
21 MEMBER GERBIG: Kuleana water, haven't they...  
22 MR. KUSHI: They have first dibs on stream  
23 water. If they can prove that they are true  
24 kuleana...

1 MEMBER GERBIG: Then they can obtain, they  
2 obtain water.  
3 MR. KUSHI: By common law and by the state  
4 water code, they have first preference.  
5 MEMBER GERBIG: They have, yeah.  
6 MR. KUSHI: For the streams.  
7 MEMBER GERBIG: Yeah, stream water. So,  
8 that's what kuleana is not world water.  
9 MR. KUSHI: Well, an argument has been made  
10 that if you dig a well you affect the  
11 stream. That, that's another argument.  
12 MEMBER GERBIG: Oh, but it is, it is, the  
13 kuleanas are protected under the state law.  
14 MR. KUSHI: The state water code as well  
15 common law.  
16 MEMBER GERBIG: Water, water code, yeah.  
17 That's what I thought. So I mean that's the  
18 county would have to abide by it, whatever  
19 it, whatever it is.  
20 MR. KUSHI: Yeah, so let's say Na Wai Eha  
21 issues, the state commission establishes in-  
22 stream flow standards, what they gonna come  
23 out. You would first take care of the  
24 kuleanas and then everybody else gets

1 whatever the commission wants, I mean  
2 allocates. So they're above all of that.  
3 MEMBER GERBIG: So the kuleana is first?  
4 First, first...  
5 MR. KUSHI: They're the first takers...  
6 MEMBER GERBIG: Claim on the water?  
7 MR. KUSHI: Right. From the streams.  
8 MEMBER GERBIG: On the stream water, yeah.  
9 So the kuleana gets first.  
10 MR. KUSHI: Yeah, if, if, if they are...  
11 MEMBER GERBIG: If they have the, yeah.  
12 MR. KUSHI: If they can prove that they are  
13 kuleana.  
14 MEMBER ROBINSON: So that, that raises the,  
15 another question about, about us drilling  
16 wells in the Upcountry system to give water  
17 to the Central district and I believe that  
18 was brought up in the hearing in Kihei, the  
19 exact question of whether or not by tapping  
20 into, for source, tapping into the...  
21 MEMBER GERBIG: I, I think that's a question  
22 should put in 'cause it did come up.  
23 CHAIR HOWDEN: A classic example of that  
24 would be the Nahiku ahupua'a...

1 MEMBER ROBINSON: Yep.  
2 CHAIR HOWDEN: Where you have the Kuhiwa  
3 Well which taps, the Maui Land & Pine which  
4 taps, I think a million gallons a day. And  
5 then you have Makapipi, is the first intake  
6 of the EMI System. So, and then you have  
7 the stream that doesn't run. But those are  
8 deep legal questions and but the effect on  
9 that, the residents of that ahupua'a is  
10 devastating. Don?  
11 MEMBER GERBIG: Yeah, I, good point. I  
12 think like I say that, we should possibly  
13 put that question in, maybe lobbying for  
14 that in our report but maybe that might be  
15 something that we should throw out at the  
16 council that they are aware of this, that  
17 maybe something should be looked at. That's  
18 later on, I'm just lobbying for...  
19 CHAIR HOWDEN: Good. Ok. Eric? Waikamoi?  
20 DEPUTY DIRECTOR YAMASHIGE: Waikamoi.  
21 CHAIR HOWDEN: My favorite subject.  
22 DEPUTY DIRECTOR YAMASHIGE: Yes. We are  
23 currently reviewing statements of  
24 qualifications for the design for the flume

1 replacement and that has not been, the  
2 consultant has not been selected yet.  
3 CHAIR HOWDEN: Ok.  
4 DEPUTY DIRECTOR YAMASHIGE: So that, that's  
5 really where we are on that project.  
6 CHAIR HOWDEN: Any timelines?  
7 DEPUTY DIRECTOR YAMASHIGE: I think we'll  
8 make the selection soon. It is certainly in  
9 this budget, this current budget. So we'll  
10 have to do it soon.  
11 CHAIR HOWDEN: Ok. Thank you, Eric.  
12 Division Reports.  
13 DEPUTY DIRECTOR YAMASHIGE: I did want to  
14 point out...  
15 CHAIR HOWDEN: Ok.  
16 DEPUTY DIRECTOR YAMASHIGE: On the Division  
17 Reports, that we are doing some work on the  
18 flume. You know it, it requires  
19 maintenance. You notice in the...  
20 MEMBER ROBINSON: You mean like in this  
21 picture here?  
22 DEPUTY DIRECTOR YAMASHIGE: Oh, I don't have  
23 any pictures. Sorry.  
24 CHAIR HOWDEN: Borrow mine.

1 DEPUTY DIRECTOR YAMASHIGE: This is on the  
2 maintenance report from Robert Vida and on  
3 page 8 of the, their reports, under  
4 Construction in the month of December, the  
5 construction crew did go out to Waikamoi to  
6 repair the flume. We are constantly  
7 monitoring it and repairing it as needed.  
8 MEMBER ROBINSON: What kind of repair?  
9 DEPUTY DIRECTOR YAMASHIGE: It's a, I had  
10 this discussion with our maintenance  
11 supervisor just the other day. It is a  
12 redwood flume and redwood I guess is the  
13 best material to have out in that, those  
14 conditions. It doesn't provide any  
15 contaminants to the water. What he was  
16 telling me that the problem is when it dries  
17 out it damages the wood. Redwood swells, it  
18 stops the water from leaking from the flume  
19 but when it dries out it shrinks and  
20 sometimes it turns to powder like dry rot.  
21 So that's one of the challenges we have with  
22 redwood and am certain the consultant will  
23 look at alternative materials. But right  
24 now the redwood seems to work the best.

1 MEMBER ROBINSON: What about cypress?  
 2 DEPUTY DIRECTOR YAMASHIGE: I don't know.  
 3 MEMBER ROBINSON: 'Cause it lives in water.  
 4 I mean it's...  
 5 CHAIR HOWDEN: Oh, swamp cypress.  
 6 MEMBER ROBINSON: Yeah, swamp cypress.  
 7 CHAIR HOWDEN: Yeah. Actually when I met  
 8 with Mr. Victorino yesterday we discussed  
 9 Waikamoi. And we're both of the feeling  
 10 that, that redwood is not something that, I  
 11 mean it, it's great on some levels but  
 12 probably some level of a steel flume system  
 13 that won't wash down the hill and that, that  
 14 also won't degrade, that would last 25 or 30  
 15 years would probably be preferable to going  
 16 back to an already failed material. So  
 17 anyway, that was our discussion yesterday.  
 18 MEMBER ROBINSON: About using steel?  
 19 CHAIR HOWDEN: Steel, I mean they have some  
 20 steel from like, actually make it on the Big  
 21 Island for water catchment systems and the,  
 22 there are sealing agents that are, the  
 23 steel's impregnated with, I, I'm not  
 24 catching the language of it but, and that

1 holds up really well even with the heavy  
 2 metals in the air from the vog from the  
 3 volcano. Although some blond people, their  
 4 hair sometimes turn a little green with the,  
 5 that's true, I mean you know with the heavy  
 6 metals. It's really kind of fun to see  
 7 that. Anything else?  
 8 MEMBER ROBINSON: Don't you want your little  
 9 lawn to be green.  
 10 MEMBER LESTER: He said the hair.  
 11 CHAIR HOWDEN: It's fine for your lawn but  
 12 if you're a blond person you feel kinda  
 13 shame.  
 14 MEMBER ROBINSON: Oh, your hair turns green.  
 15 (laughter)  
 16 MEMBER ROBINSON: I guess you don't want  
 17 your hair to be green.  
 18 CHAIR HOWDEN: Ok, we won't get into that.  
 19 Any other comments. Ok.  
 20 MEMBER ROBINSON: I would definitely look  
 21 into cypress. My, my husband works with  
 22 cypress as a wood that lives in water and  
 23 is, is pretty amazing in that it's ability  
 24 to shrink and dry out and then get wet and

1 it has that flexibility. My husband makes  
 2 Japanese soaking tubs, ofuro. And he uses  
 3 cypress in those.  
 4 MEMBER LESTER: Cost effective?  
 5 MEMBER ROBINSON: Well, it depends on, on  
 6 source but you know sometimes old growth  
 7 cypress forests you can use, you can  
 8 actually get recycled wood. It doesn't have  
 9 to be new growth wood, can be recycled, so.  
 10 CHAIR HOWDEN: Plenty of cypress to go  
 11 around. Ok, if there's nothing else I'd  
 12 like to adjourn the meeting. Thank you.  
 13  
 14  
 15 (The meeting adjourned at 11:25 a.m.)  
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 23  
 24

Prepared and submitted by:

\_\_\_\_\_  
 Gaye Hayashida  
 Commission Support Clerk

Approved on: \_\_\_\_\_