

BOARD OF WATER SUPPLY  
COUNTY OF MAUI

SPECIAL MEETING  
WEDNESDAY, DECEMBER 15, 2010

Held at the Department of Liquor Control Conference Room, David Trask Building, Room 105, Wailuku, Maui, Hawaii, commencing at 01:05 p.m.

Transcribed from the audio recording by Gaye Hayashida, Commission Support Clerk, Department of Water Supply, County of Maui.

1                                   A P P E A R A N C E S

2

3 BOARD MEMBERS:

4

5       Michael Howden, Chair

6       Phyllis Robinson, Vice Chair

7       Kevin Boteilho

8       Patricia Eason

9       Donald Gerbig

10      John Hoxie, Jr.

11      Kui Lester

12      Kelli Myers

13      Ted Yamamura

14

15 STAFF PRESENT:

16

17      Jeffrey K. Eng, Director

18      Edward Kushi, Jr., Deputy Corporation

19                   Counsel

20      Gaye Hayashida, Commission Support Clerk

21

22 OTHERS:

23

24      Clay Rumbaoa

25      John Stubbart

26      Bryan Plunkett

1 CHAIR HOWDEN: I'd like to call our December  
2 15<sup>th</sup>, 2010 Special Water Board meeting to order.  
3 Acknowledging the presence of our director,  
4 Jeff Eng; our deputy corporation counsel, soon  
5 to no longer be deputy, Ed Kushi; board members  
6 Kevin Boteilho, Don Gerbig, Ted Yamamura, John  
7 Hoxie, Patricia Eason, Kelli Myers and Kui  
8 Lester. Phyllis Robinson is undoubtedly on her  
9 way. So, I thought that it might be helpful  
10 looking at some of the documents and the emails  
11 that were going to and fro, to ask our deputy  
12 corporation counsel to give us a sense of what  
13 our powers are; what framework we're working  
14 within, and then to go ahead with the meeting  
15 points of view. Ed, if you would.

16 MR. KUSHI: Gaye. Mr. Chair, before we begin,  
17 Gaye, is it, nobody's gonna testify?

18 MS. HAYASHIDA: From what I understand  
19 nobody's gonna testify.

20 MR. KUSHI: So, so that being the case I would  
21 suggest you make a motion to close Public  
22 Testimony.

23 CHAIR HOWDEN: Ok. Might we have a motion to  
24 close Public Testimony.

25 MEMBER HOXIE: I move.

26 CHAIR HOWDEN: John.

1 MEMBER GERBIG: Second.

2 CHAIR HOWDEN: Second, Don, ok. Those in  
3 favor?  
4 (a chorus of ayes)

5 CHAIR HOWDEN: Ok, we're closed.

6 MR. KUSHI: That being said, Mr. Chair, as you  
7 know we've been...  
8 (at this time Vice Chair Robinson arrived)

9 MEMBER HOXIE: I'm sorry, Phyllis. How are  
10 you?

11 VICE CHAIR ROBINSON: Good, thank you.

12 MR. KUSHI: The board has been looking at this  
13 proposed plan for, for quite awhile; went to  
14 Lana'i on 2 occasions. As I understand it, the  
15 board, the entire board appointed a sub-  
16 committee of 2 to come up with the report based  
17 on all the comments submitted and I got a copy  
18 of it today. As far as what the board can or  
19 cannot do, or what the board is, is ah,  
20 directed to do, pursuant to the ordinance is  
21 that the department comes up with updates to  
22 the Water Use and Development Plan, the last  
23 plan for this section Lana'i was dated 1990.  
24 So it's been awhile and the ordinance says that  
25 the board, the department shall submit updates  
26 first to the board. Board shall hold public

1 hearings and the board will deliberate and make  
2 recommendations on the proposed plan. An issue  
3 came up whether the board can just say No and  
4 just not move it on. My opinion is you can't  
5 do it. You can recommend that the council  
6 reject the plan. You can recommend that the  
7 council modify the proposed plan. Or you can  
8 recommend any other revisions, deletions,  
9 etcetera, in what the board would feel is  
10 proper for the council's recommendations. Now,  
11 at the end of the day, whatever this board  
12 does, it's the council that decides whether or  
13 not to adopt the plan as an update. They do it  
14 by ordinance. As you know, the previous plan,  
15 Central Maui is in its final stages right now.  
16 In fact it passed first reading maybe 2 Fridays  
17 ago. So it's set to be passed. This is the  
18 second attempt for the island of Lana'i. After  
19 this you'll go with the Upcountry, West Maui,  
20 etcetera, Molokai. So again, that's where you  
21 stand right now. As you know the law has  
22 changed as far as the process, unlike the  
23 Central Maui Plan where the board had public  
24 testimony, made recommendations, came up with  
25 an elaborate matrix and sent it up to the  
26 council. Now the law has changed that whatever

1 you do to this plan at this point, it goes back  
2 to the director. Then the director has 60 days  
3 I believe to send it up to the council with his  
4 modification, with his recommendations,  
5 etcetera, but I would suggest the plan as  
6 submitted by the department through its planner  
7 stays intact because the council would need to  
8 have a history of what has been submitted. You  
9 wanna make recommendations, attach that to the  
10 submittal. The director then has  
11 recommendations, attach that to the submittal.  
12 So the council will get maybe 3 binders like  
13 this, ok. Whatever it decides it will pass by  
14 ordinance. So you are here today and you're  
15 facing a deadline of...

16 MS. HAYASHIDA: It has to go to the director  
17 by December 27<sup>th</sup>.

18 MR. KUSHI: Ok. So you have called a special  
19 meeting, you have another meeting on the 23<sup>rd</sup>,  
20 hopefully to finalize. Now, what can happen,  
21 is send it up to the director with no  
22 recommendations. What can happen is send up,  
23 send it up to the director with the  
24 recommendations to go back to the drawing board  
25 but that doesn't stop the process, ok. So  
26 that's where you stand.

1 CHAIR HOWDEN: Ed, some of the points made and  
2 I'm sure there are other questions but I just  
3 want to start with the, a lead question, John,  
4 if I might. The 2 things that, that Don and  
5 Ted quote that are highlighted, the Hawaii  
6 Water Plan and County Water Use Development  
7 Plan, I believe it's page, well anyway, Exhibit  
8 1. (laughing) Highlighted is "The purpose of  
9 the County Water Use and Development Plan is to  
10 inventory all projected water demands within  
11 each county and insure that future water needs  
12 of the county are met." And then on the next  
13 page I assume Exhibit 2. Don, is that right?  
14 Ok. On the Water Resource Protection Plan, you  
15 know, the Commission is responsible for that,  
16 CWRM, the Commission on Water Resource  
17 Management. My question would be, is, is this  
18 exclusive? Do we not address issues of  
19 protection as they're relevant to water  
20 resources? I mean, are we, you know, are, are,  
21 should Ellen have been constrained in, in what,  
22 what she came up with? I mean, how, how do we  
23 deal with that? I mean that, that seems to me  
24 to be the central issue that we're all dealing  
25 with. What, pro or con on this.

26 MR. KUSHI: As I understand the issue or the

1 questions, and, and, and please understand I've  
2 not gone through this process either with the  
3 council or with the state commission. But I  
4 believe the issue is whether or not there  
5 should be any mention of protection plan or  
6 protection items in the proposed Water Use and  
7 Development Plan. One could say that the plan  
8 should include all aspects of water including  
9 resource, including protection, including  
10 conservation. The issue as far as what the  
11 state commission is directing the counties to  
12 do is to come up with a Water Use and  
13 Development Plan not a protection, a resource  
14 protection plan which is as I understand the  
15 statute is that the daily, or the  
16 responsibility is the state commission. That's  
17 not to say that the county cannot make  
18 recommendations to the state. But as far as a  
19 so-called protection plan covering statewide  
20 that is the water, State Water Commission's  
21 responsibility. That is what your ordinance,  
22 your ordinance does not say Water Resource  
23 Protection Plan, Water Use and Development  
24 Plan. But again the argument can be made that  
25 a Water Use and Development Plan should include  
26 all aspects regarding water, including



1 watershed protection. Now, I'm not sure about  
2 going as far as height, specifically height of  
3 a fence but again you know, which this plan  
4 gets into detail. For whatever it's worth I  
5 don't think it should be cast aside just  
6 because of that issue.

7 CHAIR HOWDEN: John.

8 MEMBER HOXIE: So Ed, what, what are the  
9 options that this body has now?

10 MR. KUSHI: Your duty is to review it, take  
11 public input, consider the document submitted,  
12 use your own discretion and come up with  
13 recommendations. And your recommendations can  
14 be one of many things, yeah. Reject entirely,  
15 accept entirely, modify, revise and whatever  
16 you feel is pertinent for, at the end of the  
17 day, the council's consideration. And now with  
18 the director's re-review.

19 MEMBER HOXIE: Ok, thank you.

20 MR. KUSHI: Now, once you submit this to the  
21 director's office, you know that Mr. Eng is not  
22 gonna be there. You might have a new director.

23 VICE CHAIR ROBINSON: We do have a new  
24 director.

25 MR. KUSHI: You may have a new director that  
26 doesn't know what's going on and I would tell

1 him the same thing. He's gotta come up to  
2 speed within 60 days. For all we know he might  
3 just take your recommendations carte blanche  
4 and just submit it to the council and let them  
5 fight over it. I mean, I'm not taking this  
6 cheaply but again, the fact is it comes at the  
7 very crucial time where everybody change;  
8 there's a lot of changes.

9 CHAIR HOWDEN: Kelli.

10 MEMBER MYERS: I have a question. So if we  
11 were say to recommend to revise whatever  
12 portion of this document, would we be required  
13 to go through the process again, sharing it  
14 with the public or is that covered by what  
15 we're already done?

16 MR. KUSHI: No, you don't need to go back to  
17 public hearing; 'cause it'll never be done.

18 MEMBER MYERS: Ok.

19 VICE CHAIR ROBINSON: But the, but is it my  
20 understanding that the, there is a public  
21 process within the county deliberations? So  
22 there, there will still be opportunities for  
23 the public to be involved in the Lana'i Water  
24 Use Development Plan within the council process  
25 not in this process.

26 MR. KUSHI: Right. Absolutely correct. The

1 original ordinance gave them 180 days from the  
2 date they receive it to either say yes or no,  
3 and they could extend for a period of...

4 MS. HAYASHIDA: Indefinitely.

5 MR. KUSHI: No, the original one said 2, 2 six  
6 month periods. Now, they can extend it  
7 indefinitely. And the original ordinance say  
8 if they don't meet, they didn't meet the  
9 deadline the plan is deemed disapproved. Then  
10 we go back to 1990. Now, it doesn't say that.  
11 They've given themselves a lot of time and you  
12 would think they would go to Lana'i and  
13 schedule a meeting, maybe at the same time when  
14 they do their budget hearings. But I can't  
15 speak for them.

16 CHAIR HOWDEN: Any other questions?

17 MEMBER YAMAMURA: So, if I may understand this  
18 hopefully, so if we do nothing it goes up to  
19 the director and ultimately to the council. If  
20 we do something such as provide recommendations  
21 it can be totally regarded and it goes to the  
22 director and it goes to the council.  
23 Everything. So, essentially what are we doing  
24 here?

25 MR. KUSHI: You're making your  
26 recommendations.

1 VICE CHAIR ROBINSON: Making our  
2 recommendations.  
3 MEMBER YAMAMURA: Ah, ok.  
4 CHAIR HOWDEN: It's important to maintain a  
5 sense of humor throughout.  
6 (laughter)  
7 MEMBER YAMAMURA: You noticed my giggle.  
8 (laughing)  
9 CHAIR HOWDEN: Yeah.  
10 MEMBER GERBIG: Mandatory.  
11 CHAIR HOWDEN: It is mandatory.  
12 VICE CHAIR ROBINSON: Mandatory giggle.  
13 CHAIR HOWDEN: John.  
14 MEMBER HOXIE: I have another question and I,  
15 and I, and I don't know the answer but the  
16 Central Maui Plan, we, you know, all of us  
17 worked hard to come up with a recommendation  
18 that we sent along. Was that discussed at all?  
19 VICE CHAIR ROBINSON: Good question.  
20 MEMBER HOXIE: Anybody read it? Are we  
21 getting all heated up over something that..  
22 MR. KUSHI: Um, no, I believe, I can't say  
23 specifically but it was discussed by the  
24 council. The consultant, Carl..  
25 MEMBER HOXIE: Freedman.  
26 MR. KUSHI: Did specifically tell the council

1 this is what the board recommended. Not so  
2 much your matrix but your 3, 4 page letter.  
3 And I believe in the plan there's some  
4 revisions to that effect, specifically water  
5 treatment plant not only at Waiale but other  
6 areas that you guys talked about, yeah.

7 MEMBER HOXIE: Thank you.

8 CHAIR HOWDEN: Don.

9 MEMBER GERBIG: I think we all know and laugh  
10 about it, we're probably, we're not gonna have  
11 a consensus.

12 CHAIR HOWDEN: (laughing) No, I don't think  
13 we will.

14 MEMBER GERBIG: Can, can we have somehow, have  
15 2 different recommendations that, in other  
16 words, the board is split but I say that, can  
17 we have where both sides are heard by the  
18 director, is that possible? Or does it all  
19 have to be 100% agreement?

20 MR. KUSHI: Well, any action you take in terms  
21 of a recommendation, you need to vote on it,  
22 you need a majority vote. So let's say  
23 somebody makes a motion to revise section 7C  
24 and that fails; it's not a board  
25 recommendation. But at least the motion will  
26 be made. Minutes we're taking; we'll send a

1 copy of the minutes up to the council too. If  
2 there's a minority report, that's what you're  
3 talking about; some decision-makers look at  
4 that. But if it's not a majority of the board  
5 some won't even consider it. Again, the  
6 statute, the ordinance says recommendations by  
7 the board not by each member.

8 MEMBER HOXIE: Right.

9 MR. KUSHI: Ok. So if you guys can't act on  
10 anything, get five votes, there's no action.

11 Therefore, there's no recommendation.

12 Therefore, this plan goes up as is.

13 MEMBER GERBIG: As is. So, if there, back up  
14 again. If there is not a majority then, or,  
15 well, if there's not ah, majority rule, is that  
16 correct?

17 MR. KUSHI: Well, it's board action to have a  
18 majority.

19 CHAIR HOWDEN: But with, Ed, can we  
20 accommodate a minority decision in terms of  
21 saying ok, because it seems that we're 5 to 4  
22 one way or another basically. You know,  
23 depending where we end up but who knows. But,  
24 but to at least acknowledge that there, there's  
25 a majority opinion and there's also a minority  
26 opinion. And it's so close. One way or

1 another that, that can they not both be heard?  
2 I mean, you know, I mean, I mean, one wonders  
3 whether the council, you know, how much time  
4 they're actually gonna take with this. I mean,  
5 I hope, I mean, I know Mike has a, Victorino  
6 has a real passion for this. And I hope that  
7 that will be reflected you know, in, in the  
8 interest of the other council members as well.  
9 This is very important. But for me as I see  
10 this board I realize we have very disparate  
11 points of view on many things. I think it's  
12 really important that we all be heard, that's  
13 all. I mean whether it says I was in the  
14 majority or I was in the minority.

15 MR. KUSHI: Let me give you an example.  
16 Maybe, maybe, maybe this is too close to home  
17 but let's say, let's say someone makes a motion  
18 to revise the plan as submitted to, to delete  
19 any all reference to water...

20 VICE CHAIR ROBINSON: Protection.

21 MR. KUSHI: Protection aspects. Ok, now you  
22 put it to a vote. And the vote comes 5-4,  
23 either way. One would look at that vote and  
24 say there's obviously a difference of opinion  
25 but the majority of the board says yes or no.  
26 Then you would hope the minutes would reflect

1 those in favor of the motion, speak up and tell  
2 you why, and those against speak up and tell  
3 you why. But the council will not look at all  
4 and every board, individual board member  
5 comments; not submitted in concert with the  
6 motion. Otherwise nothing will get done. And  
7 again, this is a serious task but it's not the  
8 end of the world for this board because you  
9 guys don't make the final decision, ok.

10 MEMBER YAMAMURA: As a draft document, this  
11 document, who has or does anyone have the right  
12 to reject it and say don't, this document will  
13 not go any further, or now that it has been  
14 presented to the board, not it becomes public  
15 record and now there's nothing we can do or  
16 anyone can do regarding information containing  
17 in this document?

18 MR. KUSHI: You can recommend that it not go  
19 further. Or you can recommend to the council  
20 to reject it as submitted. Then it doesn't go  
21 further. But you yourself or this board in its  
22 entirety cannot just stop it here. Then you'd  
23 be violating the ordinance.

24 CHAIR HOWDEN: Don, do you have a question?  
25 Looked like you're almost...

26 MEMBER GERBIG: Just trying to recall what you



1 stated that, that correct, that we can have 2  
2 opinions on the board? Or cannot be? We'd  
3 have to have a...

4 MR. KUSHI: Well, I mean your opinions, your  
5 opinions will be reflected on the motion vote.  
6 And you know, Robert's Rules say you need an  
7 affirmative, 5 of you to pass any kind of board  
8 recommendation. Now, let's say for, for sake  
9 of argument, a motion to, motion to reject XYZ  
10 sections and that motion fails, 5-4, then the  
11 motion to accept section, same sections and  
12 that motion fails, no board action.

13 MEMBER GERBIG: But both, both votes would go  
14 on the record.

15 MR. KUSHI: Both votes will not be listed as a  
16 board action because the motions failed.

17 MEMBER GERBIG: Oh, didn't have, yeah, didn't  
18 happen.

19 MR. KUSHI: So again, I've read the, the  
20 subcommittee report and I think they, not the  
21 merits but I think they were delegated the task  
22 and they did it and it's up to you guys to, to  
23 look at it. It's not so much addressing the  
24 merits of the sections itself. I think it's  
25 addressing the concept, the purpose of the plan  
26 or of the plan as submitted as compared and

1 reflected to the ordinances in the State's  
2 statutes.

3 MEMBER GERBIG: Yeah.

4 MR. KUSHI: And like I said initially...

5 MEMBER GERBIG: May I comment? I mean the  
6 reasoning that the committee didn't get into  
7 detail is because we are not the experts that  
8 we could argue all these point by point. But  
9 the idea that, how do I say it, we did not feel  
10 there was too many things that lot of people  
11 can question both for and con and whatever.  
12 But why get into that, like you say we can't  
13 alter the report, right? We can't alter it so  
14 why, why argue the points in the overall, in  
15 the thing. Like it's doing little, little  
16 battle for little things and yet there's  
17 thousands of things that people have different  
18 opinions on but we're not overall experts on,  
19 you know, whether 3 cockroaches are better than  
20 2 or whatever.

21 MR. KUSHI: Yeah, Member Don, maybe, maybe...

22 MEMBER GERBIG: But I mean environmental  
23 issues.

24 MR. KUSHI: Maybe I misspoke. It's not that  
25 you can't alter the report; you cannot re-write  
26 this report. What you can do is recommend that

1 section XYZ be revised to say this. You can  
2 recommend that section ABC be deleted in its  
3 entirety, ok, recommendation, but the plan as  
4 submitted will go up to council with your  
5 recommendation.

6 MEMBER GERBIG: Yeah, that's the original.

7 CHAIR HOWDEN: So, perhaps the place we might  
8 begin would be whether we accept the plan,  
9 potentially with modifications or whether we  
10 reject the plan. You know, our recommendation  
11 would be to either accept this plan or to  
12 reject it. I mean, is that, is that an ok  
13 framework for us to be working with?

14 VICE CHAIR ROBINSON: Is it, is it...

15 MEMBER YAMAMURA: So, is a test vote  
16 permissible?

17 CHAIR HOWDEN: (laughing) Well, why not? We  
18 just vote.

19 MEMBER HOXIE: I'd like to make a motion.

20 CHAIR HOWDEN: Yes.

21 MEMBER HOXIE: I would like to move that we  
22 send the Lana'i Water Use, Development  
23 Protection Plan to the, to the director to have  
24 it revised to follow the format of the Central  
25 Maui Water Plan that was submitted to the  
26 council on April 30<sup>th</sup>.

1 MEMBER BOTEILHO: Second.

2 CHAIR HOWDEN: Second. Ok, any further  
3 discussion?

4 MEMBER HOXIE: I'd like to make a few  
5 comments.

6 CHAIR HOWDEN: Sure.

7 MEMBER HOXIE: You know, this thing, I've been  
8 talking about this thing for about 4 months  
9 about this particular plan. This, this  
10 represents about 2 and 1/2 million gallons of  
11 water a day.

12 (Member Hoxie holds up the Lana'i Water Use,  
13 Development and Protection Plan)

14 MEMBER HOXIE: Look at this. This represents  
15 over 20 million gallons of water a day.

16 (Member Hoxie holds up the Central Maui Water  
17 Use and Development Plan)

18 MEMBER HOXIE: Look at the difference. This  
19 thing I think it just goes way off in left  
20 field. And I think we need to bring it back.  
21 We're gonna have, how many more of these? Five  
22 or six more of these to deal with? It's got to  
23 be simple; it's got to be to the point. This,  
24 this is too much in my opinion. So I think  
25 that this plan needs to be re-done, revised to  
26 follow the format of this because we gonna have

1 4, 5 more of these coming. And I'm hoping that  
2 they'll all gonna be the same so that we can  
3 act responsibly on them because we got a lot of  
4 work ahead of us too. So, I'm, that's why I  
5 propose this motion that the plan be revised to  
6 follow this format.

7 CHAIR HOWDEN: Yeah, my comments, John, would,  
8 are that I actually found the Central Maui Plan  
9 to be inadequate. I think the framework so-so.  
10 I think there were a lot of issues as I  
11 expressed earlier that, that I don't think were  
12 really thoroughly investigated. And Lana'i  
13 seems to be, at least to me, to be a unique  
14 circumstance because the continued habitation  
15 in that island depends on one aquifer, you  
16 know, and I, I think clearly Ellen, this is a  
17 work of very deep passion and consideration and  
18 it was produced in cooperation with people who  
19 live on Lana'i and who have very, very strong  
20 feelings and, and, and you know, generations of  
21 experience on that island. You know, I, I, I  
22 would like to see certain revisions. I mean,  
23 obviously the height of the deer fence comes to  
24 mind immediately. But, but the considerations  
25 given to tenuous water resources where you  
26 have, you know, many of the people that we

1 listened to at the public hearing, Sol  
2 Kaho'ohalahala, Matt Mano, many others consider  
3 Lana'i to, Kepa Maly, to, to be in decline  
4 because the mesic watershed which is a very, I  
5 don't know how to say it but, but it's so  
6 sensitive and it's only at a 3370 foot  
7 elevation. Unique plants there. As, as we may  
8 or may not be entering what is considered  
9 global warming but clouds levels rise and you  
10 don't have the same level of, of fog drip  
11 there. It would seem, it would seem premature  
12 to me to guarantee substantial allocations to  
13 Castle and Cooke without knowing that the  
14 watershed, the problems with the watershed will  
15 really be addressed and will be addressed in a  
16 timely manner. I mean, you always hear  
17 conflicting testimony on, on this but, but you  
18 know I can't over emphasize how essential  
19 protection is in, in this process in, in, for  
20 the island of Lana'i. So, I, I'm very open to  
21 some revision of the plan. I think there's a  
22 lot of redundancy in it. But that's how, how  
23 these plans are written. Any legal document  
24 like this, they keep repeating it like it's a  
25 mantra or something, or some religious phrase,  
26 you know. Just over and over again emphasizing

1 some stuff. And I think that that can be  
2 annoying. But it serves a certain purpose and  
3 I, I, I'm, I'm in favor of, of, of limited  
4 revisions of this plan.

5 MEMBER HOXIE: There's a motion on the floor.

6 CHAIR HOWDEN: Yeah. I'm, I'm commenting on  
7 the thing. So, any other discussion?

8 VICE CHAIR ROBINSON: I'd like to comment on  
9 that also. I agree with, with Michael that  
10 this document reflects years of meetings and  
11 discussions by the Lana'i Water Advisory  
12 Committee and I, and I held it in my, in my  
13 heart and in my mind as person after person got  
14 up at those public hearings asking us to adopt  
15 it as is. And we also heard people saying that  
16 they would like certain modifications made.  
17 But I've not heard in anywhere in the public  
18 testimony of anyone saying let's reject it and  
19 have it be reflective of the Central Plan. So,  
20 as a representative of the Board of Water  
21 Supply in having heard the testimony of the  
22 public and having this document be reflective  
23 of in many cases a consensus on the part of, of  
24 a body on Lana'i who live there and know this,  
25 that I just personally cannot support a  
26 recommendation that would say get rid of

1 everything except what's in the Central Plan,  
2 so.

3 CHAIR HOWDEN: Don.

4 MEMBER GERBIG: I'm not gonna argue with the  
5 issues that were brought up. I'll say this in  
6 my opinion some of these things aren't very  
7 clear, these environmental issues are not  
8 clear...

9 CHAIR HOWDEN: Yes.

10 MEMBER GERBIG: They're not specific enough  
11 that you could even follow some; I'm not gonna  
12 go into exactly which ones; you can't follow  
13 these specific recommendations that are in  
14 here. If you want to go nit-pick it I can but  
15 I don't want to do that. But the point is, I  
16 go back to the law and what we have here, the  
17 law states, talks about water use development  
18 plan; it doesn't talk about water protection  
19 preservation plan, which has been submitted and  
20 so that we're, we're not, you know, all of this  
21 add on to the law is like revising the law to  
22 suit our purpose or whatever and I think that  
23 that's above and beyond what, the other thing  
24 that worries me about this accepting it as is  
25 that this is going to set a precedence for  
26 every other water use development plan we have.



1 Well, you accepted it on Lana'i so why can't we  
2 do it on West Maui and Hana and every place  
3 else. We're gonna have all these other issues  
4 above and beyond the water use development plan  
5 that are not, they're gonna side track the  
6 water use development. I don't disagree that  
7 preservation is needed. It is needed; there's  
8 no doubt. I mean, I agree and Lana'i is unique  
9 because of its elevation and other things. It's  
10 little different than what we have over here  
11 but, and there's no, very little stream water.  
12 But the whole point is that, that, I think  
13 everybody on Lana'i is concerned about it and I  
14 don't blame them. I would be too and I am too  
15 but this is the wrong place to address it, in,  
16 in the development plan. The other thing  
17 that's in this plan that we have that worries  
18 me is we have an appendix, we have A, E, and,  
19 have 3 of 'em in there with laws in there. If  
20 this is codified and accepted, Mr. Kushi, is  
21 this correct that they will be in the county  
22 code? You want the number?

23 MR. KUSHI: Ah, you talking about the...

24 CHAIR HOWDEN: The appendices.

25 MR. KUSHI: The proposed ordinances?

26 MEMBER HOXIE: Yeah.

1 MEMBER GERBIG: Yeah.

2 MR. KUSHI: No, they're just recommendations.

3 MEMBER GERBIG: Huh?

4 MR. KUSHI: They're just recommendations.

5 MEMBER GERBIG: They're, they're recommended  
6 in the plan.

7 MR. KUSHI: Right, right, right. Only the  
8 council can enact...

9 MEMBER GERBIG: E, F and H, yeah, but once...

10 MR. KUSHI: Only the council can enact  
11 ordinances.

12 MEMBER GERBIG: They're in here and you codify  
13 this...

14 MR. KUSHI: No, you're not.

15 MEMBER GERBIG: Isn't that, they're right now  
16 ordinances?

17 MR. KUSHI: No.

18 MEMBER GERBIG: Huh?

19 MR. KUSHI: The plan proposes that these  
20 things become ordinances.

21 MEMBER GERBIG: If, no, they don't, if the  
22 council does not approve appendix E, F and H  
23 then they will not be ordinances. But if they  
24 say nothing and it goes through will it not  
25 automatically be an ordinance?

26 MR. KUSHI: No.

1 MEMBER GERBIG: No? Ok.

2 MR. KUSHI: You cannot do ordinances. The  
3 Lana'i people cannot do ordinances. The  
4 Director cannot do ordinances. The full  
5 council...

6 MEMBER GERBIG: Oh so that, ok, that, thank  
7 you. That's settle that, that's what I was  
8 worried about it; we're gonna have this, all  
9 these ordinances.

10 CHAIR HOWDEN: Yeah, and I, I think your  
11 concerns, you know, it's good that your  
12 concerns were addressed. Anybody else?

13 MEMBER EASON: Well, I agree with what Phyllis  
14 is saying because I think this does reflect or  
15 that does reflect what the Lana'i people want.  
16 And for me, the protection is very important;  
17 of the native eco-system and the watershed  
18 because that's what brings the water in. And  
19 so, I also would like to see the revisions  
20 where it should be made. I mean, I'm not ma'a  
21 to all of these things as, and knowledgeable as  
22 some of the others are. But for me personally,  
23 I do think that the Lana'i residents would like  
24 to have it passed and approved but also with  
25 revisions. So, it's like a conditional  
26 approval for me.

1 CHAIR HOWDEN: So, could we re-state the, the  
2 John's...

3 MEMBER HOXIE: The motion I made...

4 CHAIR HOWDEN: Motion.

5 MEMBER HOXIE: Was to send the Lana'i Water  
6 Use and Protection Plan to the director to have  
7 it revised to the follow the format of the  
8 Central Maui Water Use and Development Plan,  
9 which was submitted to the council on April  
10 30<sup>th</sup>. That was my motion.

11 CHAIR HOWDEN: Ok. Might I call the question  
12 then, move forward with the vote.

13 MR. KUSHI: Mr. Chair.

14 CHAIR HOWDEN: Yeah.

15 MR. KUSHI: If I may, if I understand the  
16 motion. I don't think it can be, let's say it  
17 passes, I don't think it can be done within 60  
18 days. Carl Freedman took, I don't know how  
19 many months, not as long as Ellen did but, but  
20 I don't think you can take this and put it into  
21 the Central Maui format within 60 days. I  
22 think the new director would take at least 30  
23 days to find where the files are.

24 (laughter)

25 MR. KUSHI: So, you know, but again, if you  
26 wanna try and do it and if the new director

1 says well, I can't do it, he can't do it. Just  
2 logistically.

3 MEMBER YAMAMURA: But doesn't it stop the  
4 clock?

5 MR. KUSHI: No. 'Cause he has a clock to  
6 submit something up to the council in 60 days.

7 MEMBER YAMAMURA: So it goes back to "what are  
8 we doing here?" It just moves on anyway.

9 MR. KUSHI: But I'm just telling you he may  
10 take this, take the bull by the horn and do it.  
11 But I'm saying don't ask Jeff 'cause he's not  
12 gonna be here.

13 MEMBER HOXIE: Maybe we can hire Jeff to do  
14 it.

15 CHAIR HOWDEN: Oh, no.  
16 (laughter)

17 CHAIR HOWDEN: He needs...

18 DIRECTOR ENG: I have better things do than  
19 this.

20 CHAIR HOWDEN: That, that's mean spirited.

21 Ok. So, may I call the question? So, I'd like  
22 to go one by one so that we know what's going  
23 on perhaps we could start with John? You're in  
24 favor?

25 MEMBER HOXIE: Yep.

26 CHAIR HOWDEN: Patti?

- 1 MEMBER EASON: (sigh) Well, if he's saying it's  
2 gonna be this size instead of that size and  
3 take off a lot of things I, I don't know if I  
4 would do that, you know what I'm saying? So,  
5 isn't that awful?
- 6 CHAIR HOWDEN: Did you want to wait...Ok, no.
- 7 MS. HAYASHIDA: So your vote is no?
- 8 CHAIR HOWDEN: Kelli?
- 9 MEMBER MYERS: No.
- 10 CHAIR HOWDEN: No. Kui, no. Michael, no.
- 11 VICE CHAIR ROBINSON: No.
- 12 CHAIR HOWDEN: No.
- 13 MEMBER YAMAMURA: Yes.
- 14 CHAIR HOWDEN: Yes.
- 15 MEMBER GERBIG: Yes.
- 16 CHAIR HOWDEN: Yes.
- 17 MEMBER BOTEILHO: Yes.
- 18 CHAIR HOWDEN: Yes. Ok, so it, the motion is  
19 defeated 5 to 4. Might we have a motion to  
20 approve or to move this forward with the  
21 possibilities of, of revisions? Anybody wanna  
22 make a motion?
- 23 MEMBER GERBIG: How do we, I'm gonna...
- 24 CHAIR HOWDEN: Yeah.
- 25 MEMBER GERBIG: How, you know how, when we  
26 just, that's a big broad brush. Shouldn't the

1 revisions be stated or defined?

2 CHAIR HOWDEN: Oh, we're gonna get into the...

3 VICE CHAIR ROBINSON: We're gonna get into  
4 that.

5 CHAIR HOWDEN: We'll get into revisions. I  
6 just want know what we're doing with the plan.  
7 You know, it's been defeated 5 to 4 on moving  
8 it forward, having it conform to the Central  
9 Maui Plan. And so I'm asking for a motion that  
10 it move forward but subject to our  
11 recommendations and revisions. Man, it's  
12 strangely silent.

13 VICE CHAIR ROBINSON: I, I'd like to make a  
14 motion that we accept the water use and  
15 protection plan for Lana'i with recommendations  
16 for revisions by the Board of Water Supply.

17 MEMBER EASON: I second.

18 CHAIR HOWDEN: Ok. More discussion? Or shall  
19 we simply vote?

20 MEMBER HOXIE: What are those revisions gonna  
21 be?

22 CHAIR HOWDEN: Oh, we're gonna decide as soon  
23 as we finish this.

24 MEMBER GERBIG: Oh, it can't go forward unless  
25 we come up with a list of recommendations. I  
26 mean the motion can be if but it can't...

1 VICE CHAIR ROBINSON: It will have revisions.  
2 MEMBER GERBIG: Yeah. Where it won't have.  
3 CHAIR HOWDEN: The famous deer fence revision.  
4 Ok. John, are you ready to vote? Or do you  
5 wanna study that for a moment?  
6 MEMBER HOXIE: So, what's the motion?  
7 CHAIR HOWDEN: Or we could start at this side.  
8 MEMBER GERBIG: Ok.  
9 MEMBER HOXIE: What's the motion, if I can  
10 ask?  
11 MEMBER GERBIG: The motion is that we move  
12 ahead with, with...  
13 MS. HAYASHIDA: The motion is to accept the  
14 Lana'i...  
15 MEMBER GERBIG: Recommend we...  
16 VICE CHAIR ROBINSON: Let her, let her, let  
17 her...  
18 MEMBER GERBIG: Ok, go, excuse me.  
19 MS. HAYASHIDA: The motion is to accept the  
20 Lana'i Water Use and Development and Protection  
21 Plan with a recommendation for revisions. And  
22 it was moved by Phyllis and a second Patti.  
23 CHAIR HOWDEN: Kevin?  
24 MEMBER BOTEILHO: Aye.  
25 CHAIR HOWDEN: Don?  
26 MEMBER GERBIG: Aye.



1 CHAIR HOWDEN: Ted?  
2 (silence)  
3 CHAIR HOWDEN: Ted's still in shock.  
4 MEMBER YAMAMURA: Ah, come back to me.  
5 CHAIR HOWDEN: Ok Ted. Ok.  
6 VICE CHAIR ROBINSON: Aye.  
7 CHAIR HOWDEN: Aye. I'm aye.  
8 MEMBER LESTER: Aye.  
9 MEMBER MYERS: Aye.  
10 MEMBER EASON: Aye.  
11 MEMBER HOXIE: No.  
12 CHAIR HOWDEN: No. Ok. Ah, Ted? Shall we  
13 come back to you later? Good. We have to  
14 actually finish this.  
15 MEMBER GERBIG: Let me have, let me, let me  
16 take my vote out of this.  
17 CHAIR HOWDEN: Ok.  
18 MEMBER GERBIG: Right now. I have a question.  
19 CHAIR HOWDEN: Sure.  
20 MEMBER GERBIG: If...  
21 CHAIR HOWDEN: But we actually...  
22 MEMBER GERBIG: If we cannot agree on the  
23 revisions...  
24 CHAIR HOWDEN: Yeah.  
25 MEMBER GERBIG: Ok, then the whole thing falls  
26 apart, right? Yeah?

1 CHAIR HOWDEN: If, we, we have to make..  
2 MEMBER GERBIG: We have to agree on..  
3 CHAIR HOWDEN: Some revisions. I would  
4 assume.  
5 VICE CHAIR ROBINSON: We've all agreed that  
6 there needs to be some revisions.  
7 MEMBER YAMAMURA: Gaye, can you re-state the  
8 motion again, please, sorry.  
9 MS. HAYASHIDA: Ok, the motion is to accept  
10 the water use, the Lana'i Water Use and, Water  
11 Use Development and Protection Plan with a,  
12 with a recommendation for revisions.  
13 MEMBER YAMAMURA: Ok. So you start off with  
14 accept the water, ok. I vote no.  
15 CHAIR HOWDEN: Ok, and Don, where does your  
16 vote, where is your vote again? Are you yes or  
17 no?  
18 MEMBER GERBIG: Yes. I wanna get something.  
19 CHAIR HOWDEN: Yes.  
20 MS. HAYASHIDA: So you vote yes.  
21 CHAIR HOWDEN: So it passes 7 to 2. Ok,  
22 revisions.  
23 MS. HAYASHIDA: So, does anybody wanna look at  
24 these? These are your, your comments from  
25 previous...and may have your recommendations in  
26 here.

1 VICE CHAIR ROBINSON: This is, this is the  
2 summary of the public testimony. This is our...

3 MS. HAYASHIDA: This is what you guys,  
4 comments made.

5 VICE CHAIR ROBINSON: Yeah, I don't need that.

6 MS. HAYASHIDA: Oh, you don't need that.

7 VICE CHAIR ROBINSON: I have all of that.

8 MS. HAYASHIDA: I kinda put it in some kind of  
9 chronological order with board's comments and  
10 public testimony.

11 VICE CHAIR ROBINSON: So, so Michael, do you  
12 have a, a, a way of proceeding with the  
13 discussion of recommendations?

14 CHAIR HOWDEN: No, I don't have anything in  
15 mind other than that I thought we should go for  
16 the low-hanging fruit.

17 VICE CHAIR ROBINSON: Ok, good. I was going  
18 to suggest...

19 CHAIR HOWDEN: Which, which in my mind is the  
20 deer fence.

21 VICE CHAIR ROBINSON: (laughing)

22 CHAIR HOWDEN: Of course. Let's do something.  
23 I mean, we, we, and then, then we can get into  
24 the more esoteric ones with Don. So, my  
25 recommendation would be that we drop the height  
26 between 5 and 6 feet, based on recommendations

1 from DLNR, specifically someone like Bob Hobdy  
2 who might be, who's now retired from DLNR; but  
3 you know, what's adequate for axis deer? What  
4 do you really need to keep axis deer out of an  
5 enclosure, out of the watershed? And, it's  
6 somewhere between 5 and 6 feet.

7 MEMBER LESTER: What is it presently, what  
8 they've already done?

9 CHAIR HOWDEN: Does anyone remember where we  
10 were at, in the, in the plan, how high the deer  
11 fence was?

12 VICE CHAIR ROBINSON: My, my understanding was  
13 that the current deer fence is at 7 feet.

14 MR. PLUNKETT: 7 feet 3 inches.

15 VICE CHAIR ROBINSON: Yeah, 7-3.

16 MR. PLUNKETT: It's a NRCS standard, federal  
17 standard access control fence; 7 foot 3 inches.

18 CHAIR HOWDEN: Now, is that simply for axis  
19 deer? Or, or is that for all deer? Because...

20 MR. PLUNKETT: The word access is, access  
21 control is for any entry, not axis deer but  
22 access control fence.

23 MEMBER LESTER: Anything.

24 VICE CHAIR ROBINSON: Access, A-C-C-E-S-S.

25 MR. PLUNKETT: Yeah, that's their definition  
26 and their, their specs, 7 foot 3.

1 CHAIR HOWDEN: So, to get federal funding, do  
2 you have to meet the 7 foot 3 standard?

3 MR. PLUNKETT: Exactly.

4 VICE CHAIR ROBINSON: Ok, good. So, so much  
5 for your suggestion, Mike.

6 MEMBER LESTER: Plus I think they were half  
7 done already.

8 CHAIR HOWDEN: So much for low-hanging fruit.

9 VICE CHAIR ROBINSON: Well, well, can, can we  
10 recommend that the statement of 9 feet be  
11 changed to the federal requirement of 7.3(sic)  
12 which would allow for federal funding of that,  
13 that height fence?

14 CHAIR HOWDEN: Ok, you wanna make a motion  
15 then?

16 VICE CHAIR ROBINSON: Yeah, I'd like to make a  
17 motion...

18 MR. KUSHI: Can you identify the section, is  
19 there a specific section in, in the plan that...?

20 VICE CHAIR ROBINSON: Well, let's see if I can  
21 if I wrote it down here.

22 MR. KUSHI: Ah, for the record that, Mr.  
23 Plunkett, can you identify yourself?

24 MR. PLUNKETT: Yes. Brian Plunkett,  
25 Conservation Manager, Castle and Cooke.

26 CHAIR HOWDEN: I know this is a little out of

1 order. Expert testimony. We just open it  
2 anywhere, Phyllis.

3 VICE CHAIR ROBINSON: (laughing)

4 MR. KUSHI: Ah, if you can't find it, maybe  
5 the staff can find it later.

6 (silence)

7 MEMBER BOTEILHO: It's listed under  
8 Implementation.

9 VICE CHAIR ROBINSON: Ok.

10 MEMBER BOTEILHO: 8-6, under Mid-Term  
11 Measures.

12 MS. HAYASHIDA: It's page 8-5, figure, Near  
13 Term Measures.

14 VICE CHAIR ROBINSON: In the Executive Summary  
15 or?

16 CHAIR HOWDEN: Oh, 8-5 would be Chapter 8.

17 VICE CHAIR ROBINSON: Chapter 8?

18 MS. HAYASHIDA: Yeah, Implementation.

19 VICE CHAIR ROBINSON: And what is that chapter  
20 source...

21 MS. HAYASHIDA: 8-5 or 8-6. I'm sorry, it's  
22 page 8-6. Mid-Term Measures.

23 VICE CHAIR ROBINSON: 6, "by 2020 raise height  
24 of fence in areas where this is needed which  
25 where fence is less than 9 feet tall." So it's  
26 in, it's on page 8-6 and it's in figure 8-5.

1 CHAIR HOWDEN: And your motion would be,  
2 Phyllis?

3 VICE CHAIR ROBINSON: My motion would be that  
4 the Mid-Term Measure by 2020 found in section  
5 8-6, in figure 8-5, where the statement is  
6 made, "raise height of fence in areas where  
7 this is needed, where fence is less than 9 feet  
8 tall." See, I'm ah, concerned about the  
9 context of these.

10 (silence)

11 MS. HAYASHIDA: Mr. Chair, Mr. Plunkett has  
12 points that he'd like to share with the board  
13 about that, that.

14 CHAIR HOWDEN: About the height.

15 VICE CHAIR ROBINSON: Help with our  
16 discussion.

17 MS. HAYASHIDA: About the height of the fence.

18 MR. PLUNKETT: Brian Plunkett, Castle and  
19 Cooke.

20 CHAIR HOWDEN: Brian, why don't you come  
21 forward and at least come to the table.

22 MR. PLUNKETT: Again, my name is Brian  
23 Plunkett, Castle and Cooke, Conservation  
24 Manager. I just wanted to point out that it's  
25 been mentioned or referred to more than once.  
26 Once it's first mentioned that is, height is 9

1 feet then throughout the document it goes back  
2 to saying that it should be raised, again, so  
3 if you can, if you gonna take it out one place  
4 then it should be removed in all references.

5 CHAIR HOWDEN: Yes. Yeah, we would.

6 MR. PLUNKETT: Ok. Thank you.

7 VICE CHAIR ROBINSON: Yes. And there is a  
8 reference actually on page, on 8-15, so it's in  
9 the, in the, in the Implementation section, 8-  
10 15. It says, "raise height of fence in areas.  
11 Five foot portions are too easily jumped by  
12 axis deer should be no less than 9 feet tall."  
13 And then in parenthesis it says 7 feet 3 inch  
14 standard per CCR. So that would be another  
15 reference that's made to a 9 foot fence; "no  
16 less than". So we want that changed to say  
17 that it should be, it should meet the 7 foot 3  
18 inch standard per the CCR.

19 CHAIR HOWDEN: And throughout the document.

20 VICE CHAIR ROBINSON: And throughout the  
21 document. Wherever there's reference to a  
22 fence being no less than 9 feet tall.

23 MEMBER YAMAMURA: Mr. Chair, so are we gonna  
24 vote on every recommendation that's put forth?

25 CHAIR HOWDEN: Um, I believe so.

26 MEMBER YAMAMURA: And then we'll see..



1 CHAIR HOWDEN: As, as long as we have time.  
2 Yeah.  
3 VICE CHAIR ROBINSON: Yep.  
4 CHAIR HOWDEN: Ok, is there a second to  
5 Phyllis'...  
6 MEMBER HOXIE: I think somebody seconded it  
7 already, right?  
8 CHAIR HOWDEN: Oh, really. Ok.  
9 MS. HAYASHIDA: I'm sorry, who made the  
10 second? I don't have that.  
11 MEMBER EASON: Ok, I'll second it.  
12 CHAIR HOWDEN: Ok, thank you. Ok. Kevin?  
13 MEMBER BOTEILHO: I question...  
14 MEMBER HOXIE: I have some discussion.  
15 CHAIR HOWDEN: Oh, sure.  
16 MEMBER HOXIE: Anybody else?  
17 CHAIR HOWDEN: No, go ahead, John.  
18 MEMBER HOXIE: You know, I'm, I'm, watershed  
19 protection I'm very, it's very important, we  
20 all know that. The Lana'i people know that,  
21 everything else. My question is, should this  
22 be part of the Water Use Development Plan? I  
23 don't think it should be. It should be part of  
24 their Water Resource Conservation Plan and if  
25 we're gonna spend our time going through  
26 everyone of these things, you know, we're gonna

1 be here 'til Christmas. So, you know, I don't  
2 know.  
3 CHAIR HOWDEN: Well, we're gonna be here at  
4 least another hour, so...  
5 MEMBER HOXIE: I'm gonna vote no on this.  
6 CHAIR HOWDEN: Ok, fine. Ok, we'll start with  
7 John. John said no.  
8 MEMBER EASON: Yes.  
9 CHAIR HOWDEN: Yes. Kelli?  
10 MEMBER MYERS: The height of the fence?  
11 CHAIR HOWDEN: Yeah.  
12 MEMBER MYERS: Oh, we're going on every single  
13 one?  
14 CHAIR HOWDEN: Well, if someone has a  
15 different idea but let's do this one anyway.  
16 MEMBER MYERS: Yes.  
17 CHAIR HOWDEN: Kui?  
18 MEMBER LESTER: Yes.  
19 CHAIR HOWDEN: Yes.  
20 VICE CHAIR ROBINSON: Yes.  
21 CHAIR HOWDEN: Ted?  
22 MEMBER YAMAMURA: No.  
23 CHAIR HOWDEN: No.  
24 MEMBER GERBIG: No.  
25 CHAIR HOWDEN: No.  
26 MEMBER BOTEILHO: Yes.

1 CHAIR HOWDEN: Yes. Ok. Ok. So what was  
2 that? 6 to 3, ok. So is there a procedural, I  
3 mean, does someone have an idea on how we can  
4 move forward and, and, and adjourn before  
5 Christmas?

6 MEMBER MYERS: I have an idea.

7 CHAIR HOWDEN: Yes.

8 MEMBER MYERS: Can we provide this  
9 information, all the public testimony, the  
10 minutes of the public hearings along with the  
11 plan and say overall we approve it however we  
12 suggest this, some revisions be made based on,  
13 you know, because we're gonna be back to the  
14 director anyway so at least they have something  
15 that, you know, I mean it's not a matrix but  
16 it's not, you know, I don't, I don't think  
17 it's...

18 CHAIR HOWDEN: Yeah, they, they will, the  
19 council...

20 MEMBER MYERS: I mean, is that...

21 CHAIR HOWDEN: Will have all this  
22 documentation before them.

23 VICE CHAIR ROBINSON: Yeah, they're gonna have  
24 this.

25 CHAIR HOWDEN: It's a question of simply,  
26 truthfully of whether they avail themselves to

1 take the time to look at the, you know, the  
2 public hearing and read through the plan and  
3 stuff. So, do you guys have any suggestions on  
4 how we could expedite this...

5 MEMBER YAMAMURA: Well, I have...

6 CHAIR HOWDEN: In the next hour?

7 MEMBER YAMAMURA: I have a motion that might  
8 expedite the process if it passes. Can, can I?

9 CHAIR HOWDEN: Well, at least go ahead.

10 MEMBER GERBIG: Well, it's discussion, it's  
11 discussion.

12 MEMBER YAMAMURA: Is it discussion or is it,  
13 we vote already?

14 MEMBER HOXIE: We finished the last one.

15 VICE CHAIR ROBINSON: No, we haven't voted.  
16 We've already voted, right?

17 MS. HAYASHIDA: On that last...

18 CHAIR HOWDEN: We voted.

19 MEMBER GERBIG: Oh, we did, ok, so it's a new...

20 CHAIR HOWDEN: It passed 6 to 3.

21 MEMBER YAMAMURA: I move that, well, here's my  
22 recommendation, if we remove all references to  
23 preservation, protection and conservation of  
24 water resources and plan, and submit them as a  
25 separate document to the State Water Resource  
26 Commission or what is that, yeah, State Water

1 Resource Management, for inclusion in the  
2 Lana'i Water Resource Protection Plan. Does  
3 that make, well, anyway.

4 MEMBER HOXIE: I second that if we can have  
5 discussion.

6 CHAIR HOWDEN: Ok, it's seconded by Don.  
7 (the second was made by Member Hoxie not Member  
8 Gerbig)

9 CHAIR HOWDEN: Ah, discussion? Don.

10 MEMBER GERBIG: I think that's a good idea.  
11 We don't have to do it right now but those  
12 things, under that preservation will be  
13 separated out later or we could, I'm just  
14 talking, that the council, we recommend to the  
15 council that these issues be separated out.  
16 Whatever, leave it up to the council to decide  
17 how they separate it out. I'm talk, is that,  
18 is that logical?

19 CHAIR HOWDEN: But I see your point of view.  
20 I think it's, you know, it kind of resonates  
21 from John's original motion. But to me and I  
22 would actually speak in opposition to that, you  
23 know, protection and conservation are an  
24 integral part of any protection of water  
25 resources and you know, ensure that the future  
26 water needs of the county are met. How do you

1 do that? How do you do that? Protect your  
2 resources.

3 MEMBER GERBIG: Well, you have a water use  
4 development plan.

5 CHAIR HOWDEN: Now, well you have a water use  
6 and development plan but it's not exclusive.  
7 It's not exclusive, I mean, these are...

8 MEMBER GERBIG: What does, what does  
9 protecting...

10 CHAIR HOWDEN: These are elements of it.

11 MEMBER GERBIG: Endangered species have to do  
12 with water use development plan?

13 CHAIR HOWDEN: Actually, they, they have to do  
14 with the health of the watershed. Truthfully,  
15 I mean, I think she might, you know...

16 MEMBER GERBIG: Good point. Let's get rid of  
17 the deer. (laughing)

18 CHAIR HOWDEN: Yeah.

19 MEMBER GERBIG: They don't make trails?

20 CHAIR HOWDEN: At, at least in the watershed...

21 MEMBER GERBIG: They don't spread guava?

22 CHAIR HOWDEN: Feral animals need to be  
23 excluded. I mean, that's really, really clear.  
24 And I'm sure John had a lot of experience  
25 running EMI with that. But...

26 MEMBER YAMAMURA: No, but it's not to

1 undermine the importance of protection,  
2 conservation, etcetera, it's just that this is  
3 not the venue. This is not the document for  
4 this kind of stuff. There is a plan, a water  
5 resource management plan where, where it just,  
6 where it should be. So, we're not saying don't  
7 bring it out, just bring it out in its proper  
8 plan. This is a water development, water use  
9 and development plan and should be limited to  
10 that. My comments.

11 CHAIR HOWDEN: Yeah, to, to me again, I think  
12 that they're intimately tied together. Kelli?

13 MEMBER MYERS: I understand what you're saying  
14 and I agree with you. The only thing that I am  
15 afraid of is that if we were to make such  
16 extreme recommendation it might be perceived as  
17 unreasonable and maybe not acted on within the  
18 60 day period. At least if we had specific  
19 suggestions it might be something that they  
20 could be a little bit more, that, that's kinda  
21 why I'm looking at it the way, you know, with  
22 revisions even though it's a lot more time  
23 consuming for us at least it might make it, you  
24 know, being that there was so much support for  
25 the plan.

26 MEMBER YAMAMURA: But wouldn't it be going...

1 CHAIR HOWDEN: Ted.

2 MEMBER YAMAMURA: One by one into like the  
3 height of fences, we'd be here like...

4 MEMBER MYERS: Yeah, it's a little tedious.

5 MEMBER YAMAMURA: A long time.

6 CHAIR HOWDEN: Well, I, I, I think truthfully  
7 if you take out any reference to protection or  
8 conservation you take out essential elements,  
9 in my opinion, take out essential elements from  
10 the plan itself. Patti, did you have comments?

11 MEMBER EASON: No, I was just thinking if they  
12 were to separate, who would do the separation?  
13 And would they be presented at the same time?

14 CHAIR HOWDEN: Oh, Don and Ted.

15 (laughter)

16 MEMBER HOXIE: The Director of the Department  
17 of Water.

18 CHAIR HOWDEN: I'm just kidding.

19 MEMBER HOXIE: I have a comment.

20 CHAIR HOWDEN: John, please.

21 MEMBER HOXIE: You know, and, and again I'm  
22 referring back to the Central Maui Water Use  
23 Development Plan. There's a, there's a part of  
24 it that talks about resource protection and  
25 restoration and it talks about the fact that  
26 it's an essential component of the plan;



1 watershed protection and restoration, support  
2 watershed partnerships and so on, so, I think  
3 that we, we need to separate these 2 out  
4 somehow because restoration of the watershed  
5 which is essential but like Ted says is this  
6 the venue for them, the Water Use Development  
7 Plan? I, I don't think it is. So, I think if  
8 we can separate, separate it out and I said, as  
9 I said there is mention of that how important  
10 it is in the Central Maui Plan. I don't want  
11 to beat a dead horse but it's in there.

12 VICE CHAIR ROBINSON: Could, could you put  
13 together a, a, a motion that..

14 CHAIR HOWDEN: We already have one.

15 MEMBER HOXIE: We have a motion on the floor.

16 MS. HAYASHIDA: We have a motion on the floor.

17 CHAIR HOWDEN: Yeah, we have to..

18 MEMBER HOXIE: So, could you, could you  
19 restate your motion again so we all know that?

20 MEMBER YAMAMURA: Well, I recommended that all  
21 references to preservation, protection and  
22 conservation of water resources be removed from  
23 the plan and be submitted as a separate  
24 document to the State Commission on Water  
25 Resource Management for inclusion in the Lana'i  
26 Water Resource Protection Plan.

1 VICE CHAIR ROBINSON: Ok, so, so I'm wondering  
2 if you in that motion might be willing to  
3 remove the statement of "all" because the  
4 Central Maui Plan has reference to protection  
5 and conservation and watershed protection. So  
6 is there a way that you could amend that to be,  
7 to be able to satisfy some of what Michael's...

8 MEMBER GERBIG: Maybe.

9 VICE CHAIR ROBINSON: Statement was. 'Cause  
10 this says "remove all references" to  
11 preservation, conservation.

12 MEMBER GERBIG: Well, we...

13 CHAIR HOWDEN: Don, go ahead.

14 MEMBER GERBIG: Yeah, I, I see what she's  
15 saying. That maybe and I'm worried about what  
16 Kui says that we don't lose them all,  
17 someplace. But maybe in reference to in  
18 conservation, preservation, in, in to do with,  
19 I'm just, with the watershed, because I know  
20 there's things in here on toilet water  
21 conservation; I don't know if we want to get  
22 into that. But that's in here too, so when  
23 like, Phyllis says when we say conservation  
24 we're all gonna go to low flush toilets but  
25 that's not what we're concerned here; we're  
26 concerned with the watershed. So maybe it

1 could be revised, ah, preservation and  
2 conservation in, in regards to the watershed.  
3 Would that be...?

4 CHAIR HOWDEN: It's Ted's motion so he has to...

5 MEMBER GERBIG: That would separate the  
6 toilets from the...(laughing)

7 CHAIR HOWDEN: Right.

8 MEMBER YAMAMURA: Well, I'm open to ideas how  
9 it can be re-worded. I'm open to it. I don't  
10 know how to re-word it.

11 VICE CHAIR ROBINSON: Kelli.

12 MEMBER MYERS: What if, you know, in line with  
13 the original motion, replace the detailed part  
14 of the plan, referring, I mean the detailed  
15 preservation section with something formatted  
16 similar to the Central Maui, you know what I  
17 mean, like not just eliminate but maybe replace  
18 it with something...that particular portion being  
19 that there's so much.

20 MEMBER LESTER: The recommendations.

21 MEMBER GERBIG: Well, I think we wanna, we  
22 wanna get, we wanna get it out, the  
23 preservation and conservation out of the  
24 development part of it but we don't, like you  
25 say we don't wanna lose it. We want it be kept  
26 but it should be kept like John says with the

1 water preservation plan which is a law,  
2 required by law.

3 MEMBER MYERS: Right.

4 MEMBER GERBIG: It must be in place so that we  
5 don't lose these issues from here; that they  
6 are guaranteed to get into the preservation  
7 plan. That's what you're concerned with that  
8 we don't lose them.

9 MEMBER MYERS: Yeah, well, I mean, even, even  
10 this stated that it was, what did you say? It  
11 was...um.

12 MEMBER HOXIE: Right there, right there.

13 MEMBER MYERS: Oh, that actions, programs and  
14 measures to protect and restore resources are  
15 central components of Maui's Water Use and  
16 Development Plan. So, you know, something like  
17 that would, and it has different you know,  
18 sections so..

19 MEMBER HOXIE: Page 99.

20 MEMBER MYERS: Page 99. It, it's not as, you  
21 know, detailed which, but then maybe in that  
22 way it's not overstepping.

23 CHAIR HOWDEN: Well, I mean there, there's  
24 nothing exclusive, you know, if, if you're  
25 dealing with insuring that the future water  
26 needs of the county are met, in this case, the

1 island of Lana'i. There's nothing exclusive  
2 saying that you can't, you know, have elements  
3 that, that lead to protection of water  
4 resources. In fact, I would, I would advocate  
5 a position that they're really essential. And  
6 that the, the, in large part the residents of  
7 Lana'i are, are very passionate about you know,  
8 our keeping the plan pretty much as is. I mean  
9 everyone, I mean, there are enumerable  
10 revisions that could take place. But you know,  
11 I think that we need to honor that. That if  
12 we, we begin to push it to the side and say, oh  
13 no, it's not important; it's not integral to  
14 this plan then I think we're making a mistake  
15 based on not wanting to put such burdens on the  
16 corporation of Castle and Cooke. You know,  
17 and, and I'm, I'm sure it drives the  
18 corporation nuts to have so many details to  
19 address but I think a lot of these details will  
20 be addressed in public hearings before Water  
21 Resources. I mean that's really a, a, a venue  
22 where there can be public discussion and debate  
23 on this kind of thing.

24 MEMBER YAMAMURA: But we're not trying to, you  
25 know deny or water down or disregard the Lana'i  
26 residents' concerns; they're very important and

1 they're important to us. It just that we're  
2 saying it should belong in its proper document.  
3 We're not saying forget about it and we don't,  
4 we don't wanna hear it. We're saying its  
5 important but put it where, in its proper  
6 place.

7 VICE CHAIR ROBINSON: And I, and I would like  
8 to say that I don't disagree that there are  
9 parts of the detailed aspects of this that  
10 probably do not belong in this document. I'm  
11 not in disagreement. I'm trying to find a way  
12 that we could put this into language that would  
13 be acceptable for those of us who are not  
14 wanting to lose, because I, I just looked at  
15 the recommendations in the Central District  
16 Plan and there's specific information about  
17 water conservation. It even maybe gets into  
18 toilets but there, there, there's no doubt that  
19 resource protection, restoration, conservation  
20 are, are part of the Water Use Development  
21 Plan. It's the level of detail that this goes  
22 into I, my concern is that if we recommend  
23 based on this language that this be taken out  
24 in it's entirety then how do we guarantee that  
25 the people of Lana'i who, who accepted this in  
26 its entirety have this honored in the process

1 of even it getting into the protection plan.  
2 And maybe you can speak to that, Ed. If, if,  
3 if the County Council told the department go  
4 back to the drawing board, get rid of all  
5 references or, or references in this that are  
6 going into too much detail, re-write them so  
7 it's more indicative of what is in this plan;  
8 don't get rid of 'em in its entirety but have  
9 it be more unwieldy then, then how would we be  
10 guaranteed that the detail ends up in the  
11 places where you feel it belongs?

12 MR. KUSHI: Well, I mean, um.

13 VICE CHAIR ROBINSON: I know you're not God.

14 CHAIR HOWDEN: Well, it's close...

15 DIRECTOR ENG: Number 2.

16 (laughter)

17 MR. KUSHI: Just let me say this, I mean this  
18 document just, when I got it I just...but again  
19 it's, it's, maybe it's overkill but let me, let  
20 me bring you guys back to some, square one.

21 The purpose of these plans as set in the  
22 ordinance is, and I'll read it again. "The  
23 Plan shall serve as a primary guide to the  
24 council, the department and all other agencies  
25 of the county. One - In approving or  
26 recommending to other agencies the use or

1 commitment of water resources in the county,  
2 and Two - in using public funds to develop  
3 water resources to meet existing or projected  
4 future demands on the public water system as  
5 set forth in this plan." For this island, you  
6 know we don't have one jurisdiction of one drop  
7 of water. It's a private system. So, unless  
8 we decide to buy their system or they pay us to  
9 operate it, we're not gonna commit any money  
10 to, to their system. Secondly, in approving or  
11 recommending use to other agencies, Planning  
12 Department, Public Works, maybe the State  
13 Commission on Water Resources, the use or  
14 commitment of water resources in the county,  
15 again, we don't control this resource. So, to  
16 me what ever plan the council adopts for the  
17 island of Lana'i is not so much the county's...I  
18 shouldn't say responsibility but jurisdiction,  
19 it will probably be the State Water Commission  
20 because if they over pump that aquifer, I'm  
21 sure the residents, somebody's gonna ask for  
22 designation. Then they gotta deal with the  
23 State. Then the State will look at these  
24 plans, ok? Now, the plan as submitted kinda  
25 goes one step further under their  
26 recommendations as (inaudible) and



1 implementation, they have a statement about  
2 allowing build out of projects which have Phase  
3 One approval under certain conditions, do not  
4 allow projects under certain conditions.  
5 They're talking about Land Use issues here, ok?  
6 And they're tying it in to the height of  
7 fences. Ok. I mean, that's, to me that's the  
8 key. The other, other statement is that if the  
9 watershed protection efforts, most particularly  
10 fencing of Increment 3, "stop or fail to make  
11 demonstratable(sic) progress all entitlements  
12 should be null and void." What is that?! It's  
13 a, they're usually, if the intent is they wanna  
14 use this document as a Land Use Plan so be it  
15 but I don't think it's called for in the  
16 ordinance.

17 MEMBER GERBIG: It's not, yeah. That, that's...

18 MR. KUSHI: So, again, is there some, some  
19 kind of a conflicting, maybe not on purpose,  
20 statements that the council should be aware of.

21 MEMBER GERBIG: I agree.

22 MR. KUSHI: And another statement on the  
23 policy is like, "underscoring the importance of  
24 watershed on Lanaihale, it is recommended that  
25 land use entitlements be conditioned upon  
26 continuing watershed protection." What if they

1 don't? That means all land use entitlements  
2 through this plan are null and void? There's a  
3 separate process for these things. Now again,  
4 the intent of the plan, the Water Use and  
5 Development Plan, as the council drafted it was  
6 to develop water resources ongoing that the  
7 county would control. Exactly what the Central  
8 Maui Plan did; recommended stream water, new  
9 wells, desalination, conservation efforts,  
10 etcetera; nothing in here like this. That  
11 brings you back to square one. So, at the end  
12 of the day think what we're gonna do with the  
13 plan, what ever plan they, they pass. Who's  
14 gonna use it? For what purpose? We don't  
15 control any of their water resources on Lana'i.  
16 Not yet. Once the State gets involved, it's  
17 not our problem. It's their problem. And the  
18 State...

19 VICE CHAIR ROBINSON: But, but you say the  
20 State will, might come back...

21 MR. KUSHI: State, State will, State will look  
22 at the, the county plans. Then maybe the State  
23 will say, hey, you gotta increase the height of  
24 the fence, if it's in this plan. Again, the  
25 plan is used as a GUIDE for the council. It's  
26 not a mandatory. There's no automatic

1 ordinances.

2 MEMBER EASON: That's good to know.

3 MR. KUSHI: So what is your question?

4 (laughter)

5 VICE CHAIR ROBINSON: I forgot. (laughing)

6 MR. KUSHI: Me too. I did a Nishiki on you,  
7 right.

8 VICE CHAIR ROBINSON: Yes you did.

9 MEMBER HOXIE: Can I make a comment? You  
10 know, I, I...

11 CHAIR HOWDEN: Please, John.

12 MEMBER HOXIE: I don't disagree with you on  
13 watershed protection. And hearing the people  
14 of Lana'i and their concerns I, I, I  
15 wholeheartedly support that. All I'm saying is  
16 that the Water Use and Development Plan should  
17 focus on that and not watershed protection.  
18 That's a different area. That's what I'm  
19 saying.

20 CHAIR HOWDEN: Yeah, I actually see them as  
21 integrated and I, I personally would rather  
22 have a little too much as this document is or  
23 much too much then too little. And I, I think  
24 actually Carl missed the boat on some of the  
25 Central Maui stuff. There were a lot of issues  
26 that weren't, weren't addressed or were

1 addressed very superficially or only in  
2 passing. So I, I would recommend a vote  
3 against this if, if indeed we're gonna, I mean,  
4 there's, there, there's no way in hell we can  
5 take this document and, and go through it and  
6 delete all references and still make it a  
7 minimally functional document.

8 MEMBER GERBIG: But I, I'm not, it's like Mr.  
9 Kushi said, there's things in there that are  
10 mandated that are not part of the development  
11 plan.

12 CHAIR HOWDEN: Yes.

13 MEMBER GERBIG: And that, can be utilized to  
14 hold Castle and Cooke hostage, which I don't  
15 agree, I mean there's enough water laws in this  
16 state right now, we don't need more if this is  
17 accepted as is and becomes law, I'm, that's,  
18 that's my point that some of these things are  
19 stated in here. They're nit-picking. They  
20 really are. And, and I think you even said  
21 that to a point; it's very detailed, it's  
22 overly detailed and it can be misconstrued and  
23 that, that's my problem with it. And I hate to  
24 see it, I'd like to see the conservation, the  
25 preservation somehow, but I don't like to see  
26 it being utilized against the powers who be

1 because somebody doesn't like 'um or whatever.  
2 But I think even Castle and Cooke I think agree  
3 that there needs to be conservation-  
4 preservation. In fact there is conservation,  
5 they only have a \$20.00 a month water bill  
6 compared to mine. Wish they would come over  
7 here and subsidize me.

8 VICE CHAIR ROBINSON: We got this.

9 (laughter)

10 MEMBER GERBIG: There it is. There it is.

11 VICE CHAIR ROBINSON: See, see proof.

12 MR. STUBBART: Can I, can I make a comment to  
13 the board?

14 CHAIR HOWDEN: Actually in, in spite of our  
15 legal procedures I think it might be helpful to  
16 have a voice of sanity.

17 MR. STUBBART: Ah, no, not this voice of  
18 sanity but, John Stubbart, Director of  
19 Utilities for Lana'i Water Company. The one  
20 comment I wanted to make was as I was listening  
21 to these last discussions were that if your new  
22 mayor in this next term has an opportunity to  
23 purchase or take over Lana'i Water, you and  
24 this might be to Ed, would you, that the Water  
25 Department then be subject to this report, plan  
26 and its contents and as an ordinance. So there

1 is a possibility that you, the board, could own  
2 this water system and be regulated by this  
3 document.

4 CHAIR HOWDEN: Ok. Any more questions for  
5 John?

6 DIRECTOR ENG: Reasons not to purchase it.  
7 (laughter)

8 CHAIR HOWDEN: Keep it.  
9 (laughter)

10 MR. STUBBART: Well, I read...

11 CHAIR HOWDEN: No, I mean...

12 VICE CHAIR ROBINSON: Yeah, well, I read that  
13 it was, the price tag was so...

14 CHAIR HOWDEN: Yeah, I mean, price tags come  
15 and go.

16 VICE CHAIR ROBINSON: Yeah.

17 CHAIR HOWDEN: And, and certainly our mayor-  
18 elect has stated publicly that it's his goal to  
19 put all water systems in the County of Maui  
20 under public control. How he's gonna do that  
21 who knows. So...

22 MEMBER YAMAMURA: Can we call for the question  
23 on that?

24 CHAIR HOWDEN: So.

25 MEMBER YAMAMURA: The motion.

26 MEMBER HOXIE: Can we get the motion again?

- 1 CHAIR HOWDEN: Shall we call the motion then?  
2 Ted? You wanna keep it the way it is or...?
- 3 MEMBER YAMAMURA: I don't know how to water it  
4 down, so. I'm open for any other comments as  
5 to how it can be watered down.
- 6 CHAIR HOWDEN: (laughing) Literally.
- 7 MEMBER GERBIG: Phyllis.
- 8 VICE CHAIR ROBINSON: Well, I had a suggestion  
9 which is the, it's the word ALL. So...
- 10 MEMBER YAMAMURA: Recommend that...
- 11 VICE CHAIR ROBINSON: Recommend that, that  
12 references to preservation, protection and  
13 conservation of water resources be...
- 14 MEMBER GERBIG: How about corrected?
- 15 VICE CHAIR ROBINSON: Be, be stated in, and  
16 this won't satisfy Michael but, be stated, be  
17 stated in the Lana'i Water Use Development  
18 Plan...
- 19 MEMBER YAMAMURA: Stated in.
- 20 VICE CHAIR ROBINSON: In brevity, may be  
21 stated in brevity in the Water Use Development  
22 Plan for Lana'i. And that the details be, that  
23 we recommend that the details become part of  
24 the water, Lana'i Water Resource Protection  
25 Plan which is the last (inaudible).
- 26 MEMBER HOXIE: So can you read that again?

- 1 MEMBER LESTER: Yeah.
- 2 MEMBER YAMAMURA: Gaye, did you get all that?
- 3 VICE CHAIR ROBINSON: So get rid of "all".
- 4 MS. HAYASHIDA: Ok, remove...
- 5 VICE CHAIR ROBINSON: Get rid of "all".
- 6 MS. HAYASHIDA: Remove references...
- 7 VICE CHAIR ROBINSON: So recommend that
- 8 references to preservation, protection and
- 9 conservation of water resources...
- 10 MS. HAYASHIDA: Be stated in brevity...
- 11 VICE CHAIR ROBINSON: Be stated in brevity in
- 12 the Lana'i Water Use Development Plan. Of
- 13 course it's called Development and Protection
- 14 Plan. And that the details be submitted as a
- 15 separate document to the State Commission on
- 16 Water Resource Management for inclusion in the
- 17 Lana'i Water Resource Protection Plan. It does
- 18 not state in here who would have that power to
- 19 make the revisions we're suggesting.
- 20 MEMBER HOXIE: Isn't it gonna be the...
- 21 VICE CHAIR ROBINSON: Would it be turned back...
- 22 MEMBER HOXIE: Water Director?
- 23 (several board members speaking at the same
- 24 time)
- 25 VICE CHAIR ROBINSON: Back to the Water
- 26 Director? The new Water Director?



1 MEMBER GERBIG: That's our recommendation.  
2 CHAIR HOWDEN: Dave Taylor will make  
3 recommendations with assuming he reads this  
4 document. And at that point it goes to Water  
5 Resources and it's really in the hands of the  
6 council. The council's the one who really will  
7 decide what to do with this. We can make  
8 recommendations and that's what we're trying to  
9 do today. But it's really the council's call,  
10 not the, the new director will simply make his  
11 recommendations or his comments on this, as I  
12 understand it.  
13 DIRECTOR ENG: That's how I understand it  
14 also.  
15 MEMBER GERBIG: Great. Is that...  
16 MEMBER YAMAMURA: So all...  
17 MEMBER GERBIG: Is that read, is the motion  
18 revised?  
19 MEMBER YAMAMURA: I'll amend my motion.  
20 VICE CHAIR ROBINSON: Do you have it?  
21 MEMBER GERBIG: Amended?  
22 MS. HAYASHIDA: Yeah, well I think I do.  
23 Recommend that references to protection,  
24 preservation, conservation of water resources  
25 be stated in brevity in the Lana'i Water Use  
26 and Development Plan and the board recommends

1 that the details of the protection,  
2 conservation and preservation be submitted to  
3 the State Commission on Water Resource to be  
4 included in the Water Protection Plan.

5 VICE CHAIR ROBINSON: Uh huh.

6 CHAIR HOWDEN: Ok, I would offer a, a, a  
7 change in that. Instead of saying "in brevity"  
8 which I think is very strange way to express  
9 it, just more succinctly.

10 VICE CHAIR ROBINSON: More succinctly?!

11 (laughter)

12 CHAIR HOWDEN: More succinctly, that's all.  
13 More succinctly. Which, anyone who's read this  
14 document would be rolling on the floor in  
15 laughter but brevity means you know, briefly...

16 VICE CHAIR ROBINSON: I think it's so succinct  
17 that it's gone overboard so, this is, succinct  
18 I don't think is the right word, I'm sorry.

19 CHAIR HOWDEN: Ok. What is the right word?

20 MEMBER GERBIG: Brevity. Gives it an overall  
21 approach.

22 CHAIR HOWDEN: Brevity.

23 VICE CHAIR ROBINSON: Brevity.

24 MEMBER GERBIG: Huh, the word is distinct.

25 CHAIR HOWDEN: The hallmark of this report.

26 Yeah, ok.

1 VICE CHAIR ROBINSON: Are you afraid that the  
2 word brevity...

3 CHAIR HOWDEN: Oh, no, no, no, no. I just  
4 from point of view semantically, "in brevity"  
5 doesn't, I've never heard that phrase. You  
6 know, "more brevity" whatever, more  
7 succinctness. You know, but less redundancy.

8 MEMBER GERBIG: I like,

9 VICE CHAIR ROBINSON: With less redundancy.

10 MEMBER GERBIG: I like, I'm still stuck. I  
11 like when you talk conservation preservation it  
12 refers, refers to the, to the not, aquifer or,  
13 or to the, what am I saying, the, the forest...

14 VICE CHAIR ROBINSON: The watershed?

15 MEMBER GERBIG: Huh?

16 VICE CHAIR ROBINSON: The watershed.

17 MEMBER GERBIG: The watershed. The watershed  
18 and I don't know if you wanna include aquifer,  
19 something like that, but that differentiates  
20 from toilets. (laughing) But that gives it a  
21 broad, broad brush because there's lots that  
22 other details but we're more specific which  
23 that's part of the plan anyway, I think.

24 VICE CHAIR ROBINSON: So, so the parts, the  
25 parts that would, by saying conservation in  
26 this motion...

1 MEMBER GERBIG: Yeah.

2 VICE CHAIR ROBINSON: What you're saying is  
3 that that details on things like toilet, low-  
4 flush toilets or things like that don't  
5 necessarily belong in the water source, Water  
6 Resource Protection Plan?

7 MEMBER GERBIG: Uh huh, you can say that. But  
8 I mean, it'd be, we're, when we're concerned  
9 with conservation preservation we're concerned  
10 with the outside areas that will affect the  
11 overall water supply or the aquifer or  
12 whatever. So I think we're not, that's what  
13 we're trying to conserve is the, the aquifer.  
14 How ever you do it you protect the forest  
15 whatever.

16 DIRECTOR ENG: If I can just make a comment.

17 CHAIR HOWDEN: Oh, please go ahead.

18 DIRECTOR ENG: You know you're making  
19 reference to potential Lana'i Water Resource  
20 Protection Plan and as I understand it, the  
21 Water Commission did and it's shown in this  
22 exhibit provided, they did do an update of  
23 their Water Resource Protection Plan which is  
24 part of the entire Hawaii Water Plan and I  
25 thought it was fairly recent which it was,  
26 2008. I don't know if they're gonna do a

1 specific Lana'i Water Resource Protection Plan.  
2 So if I, making this reference that it should  
3 be included in, I don't know who would be  
4 preparing that.

5 VICE CHAIR ROBINSON: Yeah, that was part of...

6 DIRECTOR ENG: And I don't have, I'd have to  
7 go back, this is on the Commission's website,  
8 this whole plan. I know when it did come out I  
9 personally was more focused on the revisions to  
10 the sustainable yield of the various aquifers.  
11 I didn't really read it all in detail and I  
12 don't know if there were, there were any  
13 references to Lana'i specifically or any island  
14 specifically. But it looks like they've  
15 already completed the Hawaii Water Resource  
16 Plan, portion of the entire Hawaii Water Plan  
17 so.

18 MEMBER YAMAMURA: Focus it for inclusion in  
19 the appropriate State...

20 DIRECTOR ENG: Or, or in a future update or...

21 MEMBER YAMAMURA: Yeah.

22 DIRECTOR ENG: Something like this.

23 VICE CHAIR ROBINSON: Yeah, 'cause this is,  
24 was a, is adopted an updated water...

25 DIRECTOR ENG: And most likely their not gonna  
26 update it for quite a while...

- 1 VICE CHAIR ROBINSON: Yeah.
- 2 DIRECTOR ENG: But make reference to maybe a  
3 future update of this plan or...
- 4 VICE CHAIR ROBINSON: How often has the Water  
5 Resource Protection Plan been updated? Does  
6 anybody know?
- 7 DIRECTOR ENG: I don't really know. I know a  
8 lot of those sustainable yields were in place  
9 since I know the 1990 Water Use and Development  
10 Plans and so you know, it could've been like 20  
11 years before since they've looked at addressing  
12 some of those...
- 13 CHAIR HOWDEN: Around about 20 years...
- 14 VICE CHAIR ROBINSON: So it could be that 20  
15 years from now it, this, this recommendation  
16 might get looked at. (laughing) It doesn't,  
17 doesn't seem like...
- 18 DIRECTOR ENG: So I'm just not sure what kind  
19 of vehicle you can...
- 20 VICE CHAIR ROBINSON: Yeah, it's a good point.
- 21 DIRECTOR ENG: Make reference to submitting...
- 22 MEMBER YAMAMURA: Well, let's, let's, I call  
23 for the question.
- 24 MS. HAYASHIDA: Ok, so we gonna leave it at  
25 Water Resource Protection Plan or future  
26 updates?

1 MEMBER YAMAMURA: Well, I think as far as the  
2 we should amend that portion as well since  
3 there isn't a specific Lana'i Water Resources  
4 Plan.

5 DIRECTOR ENG: Yeah, as I understand. I'll go  
6 back and look at this one more time.

7 MEMBER YAMAMURA: Maybe the appropriate Water  
8 Resource and Protection Plan.

9 VICE CHAIR ROBINSON: Updates of, and there's  
10 no such thing as Lana'i, the Hawaii, yeah?

11 MEMBER YAMAMURA: Yeah.

12 MEMBER HOXIE: Read the motion again?

13 CHAIR HOWDEN: Three or four times.

14 MEMBER YAMAMURA: You do have it?

15 MS. HAYASHIDA: Recommend that references to  
16 protection, preservation and conservation be  
17 stated in brevity...?

18 MEMBER YAMAMURA: Brevity.

19 MS. HAYASHIDA: In the Lana'i Water Use,  
20 Development Protection Plan and we recommend  
21 that the details be submitted to the State  
22 Commission Water Resources to be included in  
23 appropriate future plan updates?

24 MEMBER LESTER: Twenty years from now.

25 MEMBER YAMAMURA: Well...

26 VICE CHAIR ROBINSON: For future updates of

1 the Hawaii Water Resource...

2 MEMBER YAMAMURA: Get rid of "appropriate",  
3 it's future updates.

4 MS. HAYASHIDA: In future updates of the  
5 Hawaii...

6 MEMBER YAMAMURA: Water Resource Protection  
7 Plan.

8 CHAIR HOWDEN: Ok, everybody seems bright eyed  
9 and bushy tail and ready to vote. Kevin, may  
10 we start with you again?

11 MEMBER BOTEILHO: Aye.

12 CHAIR HOWDEN: So, what would...

13 MEMBER BOTEILHO: Yes.

14 CHAIR HOWDEN: Yes.

15 MEMBER GERBIG: Yes.

16 CHAIR HOWDEN: Ted?

17 MEMBER YAMAMURA: Yes.

18 VICE CHAIR ROBINSON: No.

19 CHAIR HOWDEN: No.

20 MEMBER LESTER: No.

21 MEMBER MYERS: No.

22 (Member Eason and Member Hoxie inaudible  
23 response)

24 CHAIR HOWDEN: So the motion defeated 5 to 4.  
25 And, and I, I would like to bring up one thing.  
26 I mean we have at least another half hour



1 depending...

2 (laughter)

3 CHAIR HOWDEN: Before Christmas. Look, what  
4 Ed brought up in terms of land use entitlements  
5 and this has been a standing concern of the  
6 corporation but I think just in, I think  
7 somehow we need to address that, that if, if  
8 Castle and Cooke doesn't perform to Ellen's  
9 high standard, I think it's kinda unfair to  
10 take away all the entitlements myself. And so  
11 I think that that's something we should be  
12 trying to address now because these are, I  
13 think the vulnerabilities of the plan is that  
14 sweeping thing of "off with heads" kind of  
15 mentality in this. But, but that we need, I  
16 think that that part of, of the recommendation  
17 needs to be modified and I try to open that to  
18 discussion.

19 VICE CHAIR ROBINSON: So, can you, the, the,  
20 I'm unclear about what you're asking for.

21 CHAIR HOWDEN: Well, I mean, Ed just quoted  
22 parts there that he had questions about.

23 VICE CHAIR ROBINSON: Ok.

24 CHAIR HOWDEN: And that I, I think are kinda  
25 legally dubious.

26 VICE CHAIR ROBINSON: Ok.

1 CHAIR HOWDEN: 'Cause it's not really, I mean  
2 the Water Department either approves things or  
3 not, vis-à-vis, Show Me the Water, etcetera.  
4 It's really Planning and Public Works that  
5 address land use entitlements and the land  
6 board. So, and to some degree maybe the  
7 Commission on Water Resource Management. But  
8 that's not really in our purview to take away  
9 entitlements that have already been granted.

10 MEMBER GERBIG: I agree.

11 CHAIR HOWDEN: If, if, if they don't perform  
12 to Ellen's standards or my standards or  
13 whatever. That's not, I don't think that's how  
14 this game is played. Kelli, yeah.

15 MEMBER MYERS: I'd like to ask a question;  
16 actually, I'd like to ask Jeff a question.

17 DIRECTOR ENG: Sure.

18 CHAIR HOWDEN: Please.

19 MEMBER MYERS: As director, you heard the  
20 first motion that, that was put out there.  
21 What is your opinion on like say we had  
22 approved that motion and sent it back and said  
23 we wanted it in this format, is that something  
24 that could reasonably be done?

25 DIRECTOR ENG: I, I don't think the director  
26 has authority to do that. I believe it, it, as

1 JR mentioned it goes intact to the council; I  
2 can make a recommendation also if, if let's say  
3 it concurs with your recommendation to reformat  
4 it. That, you know, but I'm gonna leave this  
5 up to the new director just to keep this  
6 process open. I don't want them to think that  
7 the remaining few days of, I did something  
8 fishy, so. In fact, I'm gonna plop it right in  
9 front of his chair.

10 (laughter)

11 DIRECTOR ENG: 'Cause the new director asked me  
12 the other day, what will the desk look like and  
13 I said it's gonna be all clear and then I  
14 realized after that, no. Yeah so, I'm gonna  
15 put a little note "Read a minimum of 15 pages a  
16 day over the next 60 days and you'll get  
17 through this." Ah, but yeah, that's what I  
18 would do probably, just make a recommendation.

19 MEMBER MYERS: And you think that, that might  
20 probably be the..

21 DIRECTOR ENG: I think if the board and the  
22 director were in, were in concurrence I'd say  
23 that would have some influence. Obviously,  
24 it's still a long process before this is even  
25 accepted by the Water Commission. You know  
26 it'll go to the Water Resources Committee, 2

1 readings by council and whatever time the Water  
2 Commission is willing to take it up, you know,  
3 they will be reviewing it also, to accept it.  
4 I know Honolulu is having a hard time getting  
5 their first 2 of 8 plans accepted by the  
6 Commission. So there's some, some uncertainty;  
7 do they want like in Honolulu's case all 8  
8 plans at one time or piecemeal? It's still  
9 some confusion from the Water Commission. So  
10 there's a lot more public review of this  
11 process. Yeah, I would like to, you know, I  
12 think it's good to move it on but make your  
13 recommendations of course and I'm hoping I'll  
14 recommend to the director, make sure he abides  
15 by this 60 day period.

16 MEMBER YAMAMURA: So this ordinance does give  
17 the director the authority to revise the  
18 proposed update accordingly?

19 MEMBER LESTER: Revise or to make  
20 recommendations?

21 MEMBER MYERS: But if we say reformat the  
22 whole thing the expense...

23 MEMBER LESTER: (inaudible)

24 DIRECTOR ENG: It'll be a couple Christmases  
25 we'll be spending here.

26 (laughter)

1 MEMBER LESTER: Which, and we don't have the  
2 time for this.

3 CHAIR HOWDEN: Well, it's a jolly crew.

4 VICE CHAIR ROBINSON: So, I would like, I  
5 would like to acknowledge the level of detail  
6 that Don and Ted and John went into this plan.  
7 And I'd like to bring attention to another low-  
8 hanging fruit that we possibly could come to  
9 some agreement on in the next 20 minutes maybe.  
10 And that is having to do and, and I'm probably  
11 not gonna be the one to argue it because Don  
12 and Ted you went into a lot of detail about the  
13 allocation tables and they're being based on  
14 2008 figures and I actually had that as one of  
15 the things I wanted to recommend was to re-look  
16 at that.

17 MEMBER GERBIG: I agree.

18 VICE CHAIR ROBINSON: So, I was just wondering  
19 if perhaps Don, you could state what you had  
20 come up with, you and Ted about the allocation  
21 table and the issues 'cause you mentioned a  
22 serious statistical error and we might be able  
23 to actually come up with a recommendation about  
24 that. And this is on page, now, we got a new  
25 one of these so it's on page 5 of, of Don's  
26 document. So if it's in the packet that you

1 just got handed which I didn't, I didn't take,  
2 maybe...

3 MEMBER GERBIG: Yeah, demand analysis.

4 VICE CHAIR ROBINSON: Yeah. So maybe you  
5 could direct people to where, where you talked  
6 about this.

7 MEMBER GERBIG: Doing a couple of, the thing  
8 that...

9 VICE CHAIR ROBINSON: It refers to Chapter 4.

10 MEMBER GERBIG: Yeah, Chapter 4-1, Metered  
11 Consumption. I'll start it off with I'd like  
12 to make a motion that the metered consumption,  
13 2008 column, be, how would I say, scrutinized  
14 for accuracy since that includes brackish water  
15 and brackish water is not a potable water and  
16 that would affect the total. The other thing,  
17 this is strictly a metered number, what came  
18 through a pump meter; it's not house meters,  
19 pump meter and the water, I'm just gonna say  
20 that's where the meters were but it was pumped  
21 in, in 2008. It's been stated by Castle and  
22 Cooke, this was a down year because it was, you  
23 know, it was a poor, poor growth, regressive  
24 growth. So this year, why it was selected,  
25 there's no, does not seem to be any basis for  
26 it; any, any criteria behind it except that

1 it's a meter, it went through a meter and you  
2 can read the meter and get the number. But the  
3 point is it also excludes water that's been  
4 approved for development even though the house  
5 hasn't been built, Castle and Cooke have  
6 permission, they have a water meter for that  
7 house. That water was not counted because  
8 there was, it was not installed. So that, the  
9 real number in this 2008 is, is light, excuse  
10 me, it's reduced on 2 basis. One, it contains  
11 brackish water and the other it does not  
12 include the build out water that has already  
13 been approved for development. So there, it's,  
14 the number in 2008 is a very low number to use  
15 that number for a 20-year plan is gonna throw  
16 everything off.

17 VICE CHAIR ROBINSON: Right.

18 DIRECTOR ENG: Excuse me, Don. If I may  
19 participate?

20 CHAIR HOWDEN: Please.

21 VICE CHAIR ROBINSON: Yes, please.

22 CHAIR HOWDEN: Oh yeah, please.

23 DIRECTOR ENG: Ok, so therefore because the  
24 non-potable was included in these meter  
25 readings?

26 MEMBER GERBIG: There's some brackish water

1 listed in there.

2 DIRECTOR ENG: Ok, so therefore it's over  
3 stated?

4 MEMBER GERBIG: Yeah. The meter is over-  
5 stated, that's right, I'm sorry.

6 DIRECTOR ENG: Ok. And, and the other thing  
7 is understated, in other words some of these  
8 meters should be normalized.

9 MEMBER GERBIG: Yeah.

10 DIRECTOR ENG: They've issued the meter,  
11 approved the dwelling...

12 MEMBER GERBIG: The approved meters that were  
13 not built.

14 DIRECTOR ENG: So normally, you do normalize  
15 it. I used to do this when I was in the  
16 private, let's say for the PUC sake, when we  
17 went for rate increases. I try to normalize  
18 what current consumption is. And then add any  
19 projected new growth to the system.

20 MEMBER GERBIG: Yeah.

21 DIRECTOR ENG: So, 'cause many homes are in  
22 the process of being built, so the meter's  
23 issued but not in the full extent of its  
24 consumption.

25 MEMBER GERBIG: Yeah, so that's, that, so my  
26 point, maybe I'll make motion just to, Phyllis,



1 I make a motion that the 2008 metered number as  
2 a starting point for the overall development  
3 plan should be evaluated for accuracy.

4 CHAIR HOWDEN: How about reassessed?

5 MEMBER GERBIG: Reassessed.

6 CHAIR HOWDEN: Reassessed.

7 MEMBER GERBIG: Should be reassessed due to  
8 the fact that there is, there's possibility  
9 that brackish water is included and non-metered  
10 developed water has not been included.

11 VICE CHAIR ROBINSON: Ok, and can we make  
12 specific reference to Chapter 7, page 7-17?  
13 'Cause you did in your recommendations, you,  
14 you actually pointed out where. You also said  
15 a comparison of CCR numbers in Chapter 4-92,  
16 where the GPD, ah, this is on page 6,  
17 everybody. Down at the bottom under Policy  
18 Issues and Recommendations, Chapter 7 of, of  
19 Don's comments.

20 MEMBER GERBIG: That would just further, yeah,  
21 evaluate, yeah.

22 VICE CHAIR ROBINSON: Yeah, so, so I'm just  
23 saying you're saying normalize, you, you made  
24 your, your recommendation statement. I just  
25 wanted to have it, have the references to the  
26 document...

- 1 MEMBER GERBIG: Yeah, they can, yeah.
- 2 VICE CHAIR ROBINSON: Included in that.
- 3 MEMBER GERBIG: They can refer to page, they  
4 can refer to page 7-17.
- 5 VICE CHAIR ROBINSON: Chapter 7, page 17.
- 6 MEMBER GERBIG: Yeah, Chapter 7, page 17, the  
7 Castle and Cooke water chart.
- 8 CHAIR HOWDEN: Ok, might we have a second to  
9 Don's motion?
- 10 VICE CHAIR ROBINSON: I second.
- 11 CHAIR HOWDEN: Ok. Any discussions?
- 12 VICE CHAIR ROBINSON: Can you make, state the  
13 motion?
- 14 CHAIR HOWDEN: Yes, Gaye? Would you please  
15 re-state that?
- 16 MS. HAYASHIDA: Could you finish up what you  
17 said about the meters? I got the part where it  
18 says that the 2000, ah, 2008 figure should be  
19 reassessed because of the possibility of  
20 brackish water was included and that the  
21 meters, and that's when I lost you.
- 22 MEMBER GERBIG: The meter, metered water  
23 doesn't include...
- 24 MS. HAYASHIDA: Metered water was not  
25 included?
- 26 CHAIR HOWDEN: The allocated...

- 1 MEMBER GERBIG: Allocated, all allocated or  
2 approved water.
- 3 VICE CHAIR ROBINSON: Approved water.
- 4 MS. HAYASHIDA: The metered water did not  
5 include all allocated water?
- 6 MEMBER GERBIG: Approved I think is a better  
7 term.
- 8 MEMBER LESTER: Build out.
- 9 CHAIR HOWDEN: Yeah.
- 10 MEMBER GERBIG: Approved water.
- 11 VICE CHAIR ROBINSON: Well, you, you stated it  
12 nicely. You said excludes the amount of water  
13 allotted and already approved for current  
14 development.
- 15 CHAIR HOWDEN: Yeah, that's good phrasing.
- 16 VICE CHAIR ROBINSON: Yes.
- 17 MS. HAYASHIDA: Ok, where's that now?
- 18 VICE CHAIR ROBINSON: It's on page 6 of Don's  
19 recommendation. It's down the bottom; it's the  
20 second to the last paragraph...
- 21 MS. HAYASHIDA: Ok.
- 22 VICE CHAIR ROBINSON: "The problem with the  
23 present metered 2008 column number is that it  
24 excludes the amount of water allotted and  
25 already approved for current developments," and  
26 you said about the brackish...

- 1 MS. HAYASHIDA: Yeah, ok.
- 2 VICE CHAIR ROBINSON: Piece which I think you  
3 already have in there.
- 4 MEMBER GERBIG: Ok, so that's the  
5 justification for the motion.
- 6 VICE CHAIR ROBINSON: The motion which is that  
7 it...
- 8 MEMBER GERBIG: To re-evaluate that.
- 9 CHAIR HOWDEN: Yeah.
- 10 MEMBER GERBIG: However it was stated. Is  
11 there a second?
- 12 CHAIR HOWDEN: Ok, any, any further  
13 discussion? Phyllis had seconded it.
- 14 MEMBER GERBIG: Oh, Phyllis seconded it,  
15 alright.
- 16 CHAIR HOWDEN: John?
- 17 MEMBER HOXIE: I'm gonna vote for the motion  
18 but you know I think we're go through this  
19 thing, we're just cherry-picking, you know, the  
20 fence of the height, the height of the fence  
21 and this and you know, what else have we  
22 missed?
- 23 VICE CHAIR ROBINSON: Well, we still have  
24 another board meeting.
- 25 CHAIR HOWDEN: The other 700 pages.
- 26 VICE CHAIR ROBINSON: We're, we're not done.

1 I mean I don't think this is...

2 MEMBER HOXIE: That's my point, that's my  
3 point.

4 VICE CHAIR ROBINSON: Yeah, we're not done.

5 MEMBER HOXIE: You know, we're going through  
6 this thing and we're just kinda picking. I'm  
7 gonna vote for this but I, I just, I think  
8 we're going, I don't know.

9 MEMBER GERBIG: I think he's got a point  
10 because there's a lot of things in here that we  
11 could broad brush on and I don't know where to,  
12 we may have missed, these are some of the  
13 bigger ones that I could see but I don't know  
14 how we, you have another, you have brought up a  
15 lot of work for, let's take care of this.

16 CHAIR HOWDEN: Ok, let's, let's move with  
17 this. Might I call the question then? Ok.  
18 Kevin?

19 MEMBER BOTEILHO: Yes.

20 CHAIR HOWDEN: Yes.

21 MEMBER GERBIG: Yes.

22 MEMBER YAMAMURA: Yes.

23 VICE CHAIR ROBINSON: Yes.

24 CHAIR HOWDEN: Yes.

25 MEMBER LESTER: Yes.

26 MEMBER MYERS: Yes.

- 1 MEMBER EASON: Yes.
- 2 MEMBER HOXIE: Yes.
- 3 VICE CHAIR ROBINSON: See, it was something we  
4 can all have consensus on.
- 5 CHAIR HOWDEN: Ok.
- 6 MEMBER GERBIG: You brought up one...
- 7 CHAIR HOWDEN: Land, Land Use Entitlements. I  
8 think this is...
- 9 MEMBER GERBIG: Yeah.
- 10 CHAIR HOWDEN: A real concern.
- 11 MEMBER GERBIG: That has to do with penalizing  
12 or taking away water that already been allotted  
13 or, or, approved.
- 14 CHAIR HOWDEN: I, I, it's not so much...
- 15 MEMBER GERBIG: How do you...
- 16 VICE CHAIR ROBINSON: You have a motion?
- 17 CHAIR HOWDEN: Taking, taking aware the water...
- 18 VICE CHAIR ROBINSON: Go ahead, Michael. Make  
19 a motion.
- 20 CHAIR HOWDEN: But, but it's a, it's saying  
21 that we, it's not within our purview to demand  
22 that, that already approved land use  
23 entitlements be negated. That's, that's Public  
24 Works' and Planning.
- 25 MEMBER GERBIG: I make a motion.
- 26 VICE CHAIR ROBINSON: Ok, you have it?

- 1 MEMBER GERBIG: That reference, reference  
2 within the plan to disapprove, disapprove  
3 already approved or to take, or whatever you  
4 word it, take away the already approved  
5 entitlements due to not meeting a portion of  
6 the plan should be, should be re-evaluated,  
7 eliminated, no, I'm saying, in other words,  
8 you're saying what this...
- 9 CHAIR HOWDEN: I, I, I'm saying it's not  
10 within our purview...
- 11 MEMBER GERBIG: Yeah.
- 12 CHAIR HOWDEN: To...
- 13 VICE CHAIR ROBINSON: When you say "our" are  
14 you talking about...?
- 15 CHAIR HOWDEN: The department's.
- 16 VICE CHAIR ROBINSON: The department's.
- 17 CHAIR HOWDEN: D-W-S's.
- 18 VICE CHAIR ROBINSON: Not the Board of Water  
19 Supply.
- 20 CHAIR HOWDEN: If I may speak for Director  
21 Eng.
- 22 VICE CHAIR ROBINSON: It is not within the  
23 department's purview...
- 24 CHAIR HOWDEN: Yeah.
- 25 VICE CHAIR ROBINSON: To?
- 26 CHAIR HOWDEN: To, to...

1 MEMBER GERBIG: To remove entitlements.  
2 CHAIR HOWDEN: To take away...  
3 VICE CHAIR ROBINSON: To take away.  
4 CHAIR HOWDEN: Already...  
5 VICE CHAIR ROBINSON: Already approved...  
6 MS. HAYASHIDA: Entitlements.  
7 VICE CHAIR ROBINSON: Land Use Entitlements.  
8 CHAIR HOWDEN: Yeah, it's not ours.  
9 MEMBER GERBIG: Water.  
10 CHAIR HOWDEN: Yeah. Well, no it's the...  
11 VICE CHAIR ROBINSON: It's the land use.  
12 CHAIR HOWDEN: Ok, yeah, yeah. Land use.  
13 MS. HAYASHIDA: Ok, so your recommendation, or  
14 you're just stating the fact? Or you making a  
15 recommendation?  
16 CHAIR HOWDEN: I making a motion.  
17 VICE CHAIR ROBINSON: Yeah, maybe you could  
18 make a recommendation.  
19 CHAIR HOWDEN: Don and I are making a joint  
20 motion.  
21 MEMBER GERBIG: Trying to figure it out here.  
22 CHAIR HOWDEN: Did you get that, Gaye?  
23 MS. HAYASHIDA: Well, I got the part that it's  
24 not within the department's purview that the  
25 plan take away already approved land use  
26 entitlements if...



1 CHAIR HOWDEN: If, if, if Castle and Cooke  
2 does not perform to the standards of the...  
3 MEMBER GERBIG: Of the plan.  
4 CHAIR HOWDEN: Water Use, Development and  
5 Protection Plan. That it, the standards set  
6 forth...  
7 MS. HAYASHIDA: To the standard set forth  
8 within...  
9 VICE CHAIR ROBINSON: In the Water Use  
10 Development Plan.  
11 CHAIR HOWDEN: And Protection Plan.  
12 VICE CHAIR ROBINSON: So, make, make your  
13 recommendations. So we recommend, the Board of  
14 Water Supply recommends that...  
15 CHAIR HOWDEN: This, this part of the plan be  
16 deleted.  
17 VICE CHAIR ROBINSON: Ok.  
18 CHAIR HOWDEN: Yeah.  
19 VICE CHAIR ROBINSON: Do you have specific  
20 references that you'd like to make?  
21 CHAIR HOWDEN: Ed does but we'll, we'll read  
22 those for later.  
23 VICE CHAIR ROBINSON: Ed, do you wanna, do you  
24 wanna just take one or two examples?  
25 MR. KUSHI: Yeah, yeah, yeah. Specifically at  
26 page 1-23, under the Executive Summary, where

1 it, where it references allow build out of  
2 projects, do not allow build out of projects.  
3 And page 7-16, under the Policy Issues and  
4 Recommendations. It kinda goes over the same  
5 statements.

6 VICE CHAIR ROBINSON: 7?

7 MR. KUSHI: 7-16.

8 MEMBER GERBIG: Allocation Build Out.

9 MR. KUSHI: Those are the 2 areas that I...

10 VICE CHAIR ROBINSON: You got those, Gaye?

11 (silence)

12 CHAIR HOWDEN: So, discussion?

13 MEMBER YAMAMURA: I also have, I don't know  
14 where I picked this up from but there's  
15 qualification criteria for mid-term, mid to  
16 long term and long term projects to occur. Ok,  
17 that's 7-16.

18 CHAIR HOWDEN: Yeah, stand, standards and  
19 schedules set forth.

20 MS. HAYASHIDA: Ok, so can I re-state this  
21 motion?

22 CHAIR HOWDEN: Oh, please.

23 MS. HAYASHIDA: Alright. The board recommends  
24 that to take away already approved land use  
25 entitlements that Castle and Cooke Resorts does  
26 not perform to the standards set forth in the

1 land use, the water, the Lana'i Water Use,  
2 Development Protection Plan be deleted.  
3 CHAIR HOWDEN: Yes.  
4 MS. HAYASHIDA: Ok, that makes sense?  
5 VICE CHAIR ROBINSON: Right. So, and the  
6 first part?  
7 MS. HAYASHIDA: You want, ok.  
8 VICE CHAIR ROBINSON: I want the whole motion.  
9 MS. HAYASHIDA: Yeah, well, that's the motion.  
10 VICE CHAIR ROBINSON: It is? Ok.  
11 MR. KUSHI: And then maybe, and, and, and put  
12 maybe specifically those pages that are cited..  
13 MS. HAYASHIDA: Oh, and in reference, and make  
14 reference, and we make reference to pages 1-23.  
15 MR. KUSHI: Yeah.  
16 VICE CHAIR ROBINSON: And 7-16.  
17 MS. HAYASHIDA: And 7-16.  
18 CHAIR HOWDEN: Discussion?  
19 MR. KUSHI: We need to take a break.  
20 CHAIR HOWDEN: Ok, take a break, take break.  
21 VICE CHAIR ROBINSON: Take a break? We're 10  
22 minutes from ending.  
23 MS. HAYASHIDA: Well, we have until 3:30.  
24 CHAIR HOWDEN: No, Ed needs to take, let 'em  
25 take a break.  
26 MR. KUSHI: Go ahead, go ahead.

1 CHAIR HOWDEN: Let 'em take a break, it's  
2 cool.

3 MS. HAYASHIDA: We do have the room 'til 3:30.

4 CHAIR HOWDEN: We'll survive.

5 VICE CHAIR ROBINSON: So are we gonna vote on  
6 this motion yet or we gonna take a break?

7 CHAIR HOWDEN: We're gonna have discussion and  
8 then we'll vote and then if we wanna take a  
9 break or we wanna end this meeting and labor  
10 once again at our regular board meeting on some  
11 of these issues that's...

12 VICE CHAIR ROBINSON: Well, I think we're  
13 gonna have to.

14 CHAIR HOWDEN: Well, surprise. Ok, any  
15 further discussion on this?

16 MEMBER HOXIE: I will have some discussion.

17 CHAIR HOWDEN: Please, John.

18 MEMBER HOXIE: Again, I, you know I'm gonna  
19 vote in favor of this thing but I guess you  
20 know we're just nit-picking at this thing  
21 again. And I just don't think this is the way  
22 we should be doing it.

23 MEMBER YAMAMURA: Yeah, I sort of feel  
24 hypocritical myself.

25 CHAIR HOWDEN: Hypocritical?

26 MEMBER YAMAMURA: Yep, because I voted against

1 passing this on and yet here I am voting in  
2 favor...

3 MEMBER HOXIE: Yeah, I know.

4 MEMBER YAMAMURA: Of these recommendations, so  
5 yeah, I'd say hypocritical.

6 CHAIR HOWDEN: Well, I mean a lot of the  
7 concerns that we're trying to address are  
8 concerns that the minority had on the, you know  
9 on, on terms of mere reasons for rejecting the  
10 entire plan. Are we doing the entire plan?  
11 So, we're trying to address as a board some of  
12 these concerns. I, I, acknowledge John, in  
13 John's face that we're cherry picking. I don't  
14 think there's any way we can deal with all of  
15 this but let's try to deal at least with some  
16 of it.

17 MEMBER GERBIG: And then, and then maybe leave  
18 a broad brush paragraph that there are other  
19 issues...

20 CHAIR HOWDEN: Oh, absolutely.

21 MEMBER GERBIG: That should be...

22 CHAIR HOWDEN: Yeah, I mean that's understood  
23 and if we don't get to that today we need to  
24 get to it at our board meeting.

25 MS. HAYASHIDA: You're gonna have to finalize  
26 by the 23<sup>rd</sup>.

- 1 CHAIR HOWDEN: Yeah. John?
- 2 MEMBER HOXIE: Can we get an extension?
- 3 MEMBER GERBIG: Maybe probably December 27<sup>th</sup>.
- 4 CHAIR HOWDEN: I don't know if we really,  
5 really can. Anyway, might we vote on this?  
6 Ok. Kevin?
- 7 MEMBER BOTEILHO: Yes.
- 8 MEMBER GERBIG: Yes.
- 9 CHAIR HOWDEN: Don. Ted.
- 10 MEMBER YAMAMURA: Yes.
- 11 VICE CHAIR ROBINSON: Yes.
- 12 CHAIR HOWDEN: Ted? Yes.
- 13 MEMBER LESTER: Yes.
- 14 MEMBER MYERS: Yes.
- 15 MEMBER EASON: Aye.
- 16 CHAIR HOWDEN: Ok, so you guys wanna take a  
17 break...
- 18 VICE CHAIR ROBINSON: Yes.
- 19 CHAIR HOWDEN: Or do you want to end the...
- 20 MEMBER LESTER: Yes.
- 21 CHAIR HOWDEN: Meeting for now and...?
- 22 VICE CHAIR ROBINSON: No, let's take break and  
23 come back if we've got to 3:30.
- 24 CHAIR HOWDEN: Can everybody stick around for  
25 a little bit?
- 26 MEMBER HOXIE: Yeah, yeah.

1 VICE CHAIR ROBINSON: Yeah.

2 CHAIR HOWDEN: Another 1/2 hour, 45 minutes of  
3 this.

4 VICE CHAIR ROBINSON: Yeah, let's get more  
5 nit-picking.

6 CHAIR HOWDEN: Ok.  
7 (gavel)

8 CHAIR HOWDEN: Break time.  
9 (5-minute recess)

10 CHAIR HOWDEN: Ok, we're back in session. You  
11 know we may wanna address, I mean I know John  
12 is pretty uncomfortable and Ted and, but the  
13 broad stroke...

14 MEMBER GERBIG: Yeah.

15 CHAIR HOWDEN: Motion that...

16 MEMBER GERBIG: Ok, let me start it.

17 CHAIR HOWDEN: Ok.

18 MEMBER GERBIG: I got a list of things but I  
19 mean I'm just gonna read but don't, don't count  
20 these, some of these have been addressed. Ah,  
21 reservoir covers, I mean that's part of the  
22 conservation, we don't need that. Leak  
23 detection, that's, that's mentioned in here  
24 that, I don't know how specific but that's not  
25 you know the plans over, that's conservation  
26 again, really. That would...

1 VICE CHAIR ROBINSON: No, it's in the, in the..

2 MEMBER GERBIG: Huh?

3 VICE CHAIR ROBINSON: It's in there, the

4 Central..

5 MEMBER GERBIG: Yeah, it's in there, I know..

6 VICE CHAIR ROBINSON: It's in the Central plan

7 also.

8 MEMBER GERBIG: All these things are in there

9 but I don't know, they're, they're broad brush.

10 They've been addressed, watershed protection

11 been addressed by, well-head protection is,

12 talks all kinds of things but in, in well-head

13 protection is Chapter 6. Well-head protection

14 basically is a law that hasn't been written

15 yet. EPA has suggested, the State have

16 suggestions and I think even the County have

17 some well-head protection but all this stuff is

18 hanging fire out here that I don't think that

19 we should, I'm just saying, we should, it

20 should be addressed in here is not the place.

21 In other words a lot of these things I'm

22 mentioning here are addressed by other laws and

23 maybe we could make some general statement that

24 where these things are addressed by existing

25 laws or newly, you know, well-head is not there

26 but it's kinda there. But that will be



1 addressed by other laws and we should not be  
2 concerned with it in this plan. That's what  
3 I'm thinking, kinda a broad brush that we  
4 shouldn't be specific about it but it should  
5 be, these environmental things should be  
6 referred to existing laws or existing  
7 authority, maybe the Health Department, the  
8 Department of Agriculture, whoever. In fact,  
9 here's one potential contamination activities,  
10 that probably came out, I don't know where that  
11 was in, probably well-head protection by  
12 that'll be taken care of under well-head  
13 protection laws once it's in. And I think  
14 there's already some stuff in there already on  
15 well-head protection but anyway, various  
16 protection, cesspool and septic systems,  
17 household hazardous products, all that covered  
18 Department Health. Pesticide application,  
19 that's Department of Ag, Hazardous Waste  
20 Branch, you name it. Storage, pesticide  
21 storage all that is covered in existing laws.  
22 Golf course fertilization, pesticide  
23 applications, I think, I know pesticides on  
24 golf courses is covered. You know it's on the  
25 label, whatever's on the label.

26 CHAIR HOWDEN: But I, I think she's expressing

1 this more as a concern rather than trying to  
2 man...

3 MEMBER GERBIG: And some of 'em was pretty  
4 specific as I recall and I didn't want to get  
5 into it but...

6 CHAIR HOWDEN: No.

7 MEMBER GERBIG: I thought maybe a broad brush  
8 exist, or existing laws are in effect in other  
9 areas in there, those should be consulted prior  
10 to any, any adherence by the plan. You with  
11 me, Ed?

12 CHAIR HOWDEN: Yeah, I mean if we're gonna do  
13 broad brush...

14 MEMBER GERBIG: Yeah, that...

15 CHAIR HOWDEN: What I, what I would like to  
16 see that I think would make sense and that  
17 would maybe make more members feel more at ease  
18 with is that there are continuing and detailed  
19 concerns about aspects of the plan that we  
20 simply don't have the time to get into.

21 MEMBER GERBIG: Yeah.

22 CHAIR HOWDEN: And, and that's, that I think  
23 would be a broad, good broad brush. I mean we  
24 can argue about you know well-head protection...

25 MEMBER GERBIG: Yeah.

26 CHAIR HOWDEN: You know and pesticides and all

1 that kind of stuff. I, I, I think it's  
2 pointless to have a list when actually what we  
3 want to express is a generalized concern.

4 MEMBER GERBIG: That's right, that...

5 CHAIR HOWDEN: That's all...

6 MEMBER GERBIG: I agree.

7 CHAIR HOWDEN: And that's what I think we need  
8 to do to you know, so Ted doesn't feel bad is,  
9 is, is, is try to just say oh, ok, there are  
10 major concerns that you know there are numerous  
11 concerns about the plan and hopefully these  
12 will come up before council, you know in Water  
13 Resources, etcetera. But, but you know it gets  
14 overwhelming to try to deal with this in, in  
15 any, any real detail. God, Ellen spent what 15  
16 years or so working this plan, you know and,  
17 you know and it's still, parts of it are still  
18 confused and, and not understandable. So, how  
19 about just a broad brush.

20 MEMBER GERBIG: Ok, that's what I'm gonna  
21 make.

22 CHAIR HOWDEN: Ok. (laughing)

23 MEMBER GERBIG: Other issues within the plan  
24 concerning specific environmental contamination  
25 or, what's the other word, ah, ah, I'm thinking  
26 drinking water, flaw...

1 CHAIR HOWDEN: EPA?

2 MEMBER GERBIG: Environmental contamination  
3 issues of water regulations, I don't wanna be  
4 specific, any, any environmental protection  
5 regulations, permitting should be referred to  
6 the specific laws in effect rather than through  
7 the Lana'i Plan.

8 CHAIR HOWDEN: I think...

9 MEMBER GERBIG: There are some specific...

10 CHAIR HOWDEN: That's that, that's implicit; I  
11 don't think the, the Lana'i Plan is trying to,  
12 to litigate, or not litigate but, but  
13 legislate.

14 MEMBER GERBIG: Yeah, but I'm getting into the  
15 legislate, I'm just saying that some of the  
16 things that have been mentioned in here are  
17 pretty specific about you know, clean up around  
18 your well and all that; well that's, that's,  
19 that's gonna be covered in other laws,  
20 environmental laws. You can't spill oil on the  
21 ground; it's against the hazardous waste laws  
22 or which are under the Department of Health or  
23 whatever but I'm just saying refer to all of  
24 these other laws that are in existence for  
25 these specific concerns about the environment.  
26 I'm saying contamination but there's

1 contamination or water regulation should be  
2 referred to those specific laws. And when I  
3 say water regulations I'm talking about  
4 drinking water whatever that would cover the  
5 drinking water. There's some specific thing  
6 that, that I read in here about drinking water  
7 which they're already in the Safe Drinking  
8 Water Act in the Department of Health.

9 CHAIR HOWDEN: Yeah, I think that's implicit.  
10 I think that's simply a matter of course.

11 MEMBER GERBIG: Yeah, but I'm saying that she  
12 has mentioned things specifically in the plan  
13 that actually are may, I'm not gonna say, maybe  
14 different than what the law says or they may  
15 not be just enough but the law covers it, not  
16 the plan so this is in reference to saying that  
17 the, that any reference to or any, any concerns  
18 of environ, for environmental safety or  
19 contamination, pollution or whatever should be  
20 addressed by the specific laws dealing with  
21 that specific substance.

22 CHAIR HOWDEN: I, I, I can't imagine any of us  
23 would have a problem with that.

24 MEMBER GERBIG: I don't think, now I have to  
25 say that's the broad brush. We miss something  
26 in here that is specific, well, she said 2

1 parts per million and the state law is one, or  
2 something like that.

3 CHAIR HOWDEN: Yeah, sure.

4 MEMBER GERBIG: So that refers to the specific  
5 law on that substance, that's all.

6 CHAIR HOWDEN: Ted, how are you with that?

7 MEMBER GERBIG: I'm just throwing it out. No...

8 MEMBER YAMAMURA: What is the motion?

9 (laughter)

10 MEMBER GERBIG: No motion.

11 CHAIR HOWDEN: Oh, lord.

12 MEMBER GERBIG: No motion. Motion to adjourn.  
13 What'd I do (inaudible).

14 (laughter)

15 CHAIR HOWDEN: This is all for your benefit.

16 (laughter)

17 CHAIR HOWDEN: I'm gonna be go home feeling  
18 good about this. John, John was gonna say  
19 something.

20 MEMBER YAMAMURA: Sorry.

21 MEMBER HOXIE: No.

22 CHAIR HOWDEN: Ok.

23 MEMBER GERBIG: I know where he's coming from.  
24 He's there already.

25 CHAIR HOWDEN: Ok.

26 MR. KUSHI: You know, Mr. Chair...

1 CHAIR HOWDEN: Please.

2 MR. KUSHI: If I may and maybe this will  
3 answer...

4 MEMBER GERBIG: Go ahead.

5 MR. KUSHI: Or address your concerns as well  
6 as Member Yamamura. What we're talking is  
7 Chapter 6, right? Water, Source Water  
8 Protection.

9 MEMBER YAMAMURA: Yeah.

10 MR. KUSHI: Maybe if, what I think you're  
11 saying is that to the extent, I mean, I mean,  
12 it's a great chapter, it's a dissertation and  
13 it's, and it's hopefully all factual and backed  
14 up by, by scientific data but what you wanna do  
15 with it, you know. So, in the context of the  
16 overall, end of the day, what are you gonna do  
17 with this plan? Maybe something to the effect,  
18 to the extent applicable, the references  
19 itemized in, I mean the, the, the items  
20 documented in Source Water, Chapter 6, Water  
21 Source Protection shall be, shall be utilized  
22 to the extent applicable in, in, in, in the  
23 ordinance, Chapter 14.02.030 when the council  
24 considers use of public, public funds; when the  
25 council considers use of commitment of water  
26 resources. Otherwise it just is what it is.

1 It just says, states facts, right? But you  
2 know, not to take it as gospel.  
3 MEMBER GERBIG: Yeah, that's what I...  
4 MR. KUSHI: Not to, to mandatory, ah, to  
5 mandate the owners of the land to do all of  
6 these things.  
7 MEMBER GERBIG: Yeah.  
8 MR. KUSHI: 'Cause they might not, they might  
9 not be applicable.  
10 MEMBER GERBIG: That's what I'm, that's what  
11 I'm saying but do we need anything? Should we  
12 say anything broad brush like I was talking  
13 about that, that all things in Chapter 6 should  
14 be all current laws pertaining to subject  
15 matter in Chapter 6 should refer to those laws.  
16 MR. KUSHI: Ok, again, whatever is in this  
17 plan is not law.  
18 MEMBER GERBIG: Ok.  
19 MR. KUSHI: It's a guide. It's a guide for  
20 the council.  
21 MEMBER GERBIG: Then no need.  
22 MR. KUSHI: But again, if, put it this way, if  
23 it's not in the plan then it's not part of a  
24 guide then council can't consider it. Remember  
25 our discussion about the Central Maui Plan? We  
26 ah, we wrestling about the Waiale Treatment



1 Plant. If that wasn't in the plan and the  
2 council wanted to fund that, that plan they  
3 have to go back and do another plan.

4 MEMBER GERBIG: Yeah, yeah.

5 MR. KUSHI: So I think the more inclusive, the  
6 more options you can have for them the better.  
7 So, like this Water Source Protection, to the  
8 extent applicable when the council considers  
9 use of the plan leave it in. And when, when  
10 they look at it if it conflicts with existing  
11 federal law then federal law prevails.

12 MEMBER GERBIG: So that's not necessary.  
13 Alright.

14 CHAIR HOWDEN: I don't think so but it's just,  
15 you know, we just wanna try to clear the air  
16 somehow, so.

17 MEMBER GERBIG: Ok.

18 CHAIR HOWDEN: John, anything? Ok.

19 MEMBER GERBIG: You got comment, John?

20 MEMBER HOXIE: What? No, no comment. The  
21 same comment.

22 (laughter)

23 CHAIR HOWDEN: Ok, is there anything else we  
24 want to try to address today?

25 VICE CHAIR ROBINSON: So, no motion from Don?

26 MEMBER GERBIG: No motion.

1 VICE CHAIR ROBINSON: Ok.

2 MEMBER GERBIG: He solved my...

3 VICE CHAIR ROBINSON: Solved the problem.

4 MEMBER GERBIG: That's the plan.

5 CHAIR HOWDEN: Ok.

6 VICE CHAIR ROBINSON: So, there, there were a  
7 couple of and I'm, I'm speaking for you Ted.  
8 Are you awake? (laughing) There were a couple  
9 of references that you made to appendix,  
10 appendices E, F, G, H, or E, F and H, that you  
11 felt that they go beyond the scope of the land,  
12 of the Water Use, the Lana'i Water Use  
13 Development Plan, to propose ordinances and I  
14 just wanted to maybe see if there can be a  
15 broad brush stroke about proposed ordinances  
16 and appendices.

17 MEMBER GERBIG: Everybody understand.

18 VICE CHAIR ROBINSON: Yeah.

19 MEMBER YAMAMURA: Actually I was just gonna  
20 see if I could recommend, ah, make a motion to  
21 recommend deleting all of the appendices that's  
22 not being ah...

23 MEMBER HOXIE: I second that motion.

24 CHAIR HOWDEN: We've already had a motion  
25 where we agreed to pass...

26 MEMBER GERBIG: No, yeah, we talked about it.

1 MEMBER HOXIE: Oh, ok.

2 CHAIR HOWDEN: No, I mean, the plan itself  
3 where we are forwarding the plan without any  
4 deletions.

5 MEMBER GERBIG: Yeah.

6 CHAIR HOWDEN: But we can, we can comment that  
7 you know, we, we're...

8 VICE CHAIR ROBINSON: We can recommend.

9 CHAIR HOWDEN: That we're concerned about this  
10 and that...

11 MEMBER YAMAMURA: Oh, yeah, we recommend.

12 VICE CHAIR ROBINSON: We can recommend.

13 CHAIR HOWDEN: But, but deletion is not an  
14 option at this point.

15 MEMBER GERBIG: So his motion is null and  
16 void.

17 MR. KUSHI: No.

18 CHAIR HOWDEN: Well...

19 MEMBER LESTER: No, re-word it.

20 MS. HAYASHIDA: The motion is to recommend to  
21 delete all,

22 MEMBER LESTER: Append, yeah.

23 MS. HAYASHIDA: The motion is to recommend to  
24 delete all appendices, is that correct?

25 CHAIR HOWDEN: Yeah, and we've already had a  
26 successful motion to pass the plan on as is.

- 1 MS. HAYASHIDA: With revisions.
- 2 VICE CHAIR ROBINSON: With revisions.
- 3 MEMBER LESTER: No, but we're making a  
4 recommendation. We're not saying...
- 5 VICE CHAIR ROBINSON: Yeah, so we could make a  
6 recommendation...
- 7 MS. HAYASHIDA: Recommendation to revise...
- 8 VICE CHAIR ROBINSON: As a revision, would be  
9 to delete appendices and I was saying deleting  
10 appendices that propose ordinances because they  
11 are beyond the scope of the Water Use  
12 Development Plan
- 13 MEMBER GERBIG: Can we, can we say that, Ed?  
14 Or should we...
- 15 MR. KUSHI: Yeah, I mean it's your  
16 recommendation...
- 17 MEMBER LESTER: We're to recommendation(sic),  
18 we're not deleting.
- 19 MR. KUSHI: And then the council will...
- 20 MEMBER GERBIG: John, did you say to delete?
- 21 MEMBER HOXIE: The motion was to delete all  
22 appendices.
- 23 MS. HAYASHIDA: The motion was to recommend to  
24 delete.
- 25 MEMBER HOXIE: Yeah.
- 26 MR. KUSHI: Yeah, recommend deletion.

1 MEMBER LESTER: Recommendation to delete.  
2 MS. HAYASHIDA: And then Phyllis wants to  
3 amend that to "appendices that propose  
4 ordinances..."  
5 VICE CHAIR ROBINSON: Ordinances, right.  
6 Because they are beyond the scope of the Water  
7 Use Development.  
8 MEMBER GERBIG: Well, the terminology is  
9 recommended..  
10 CHAIR HOWDEN: How are they beyond the scope?  
11 MEMBER HOXIE: We have a motion and a second.  
12 Now we have..  
13 VICE CHAIR ROBINSON: I don't know. I'm just  
14 talking for Ted.  
15 (laughter)  
16 CHAIR HOWDEN: Ahh, this is not (inaudible).  
17 (several people speaking at the same time)  
18 MEMBER GERBIG: Yeah, let's make the..  
19 VICE CHAIR ROBINSON: Yeah, maybe, maybe Ed  
20 can address that.  
21 CHAIR HOWDEN: Because the, this is what the  
22 Lanaiian, you know the, the, the Lanaiians for  
23 the water group there and the Sensible Growth  
24 people like that, wanted in the plan. You  
25 know, so you know if, if, if we have  
26 hesitations about really establishing by

1 ordinance the Lana'i water board, basically,  
2 that's one thing but I, I don't think we should  
3 recommend that it be deleted because it's part  
4 of their mana'o. It is part of what they saw  
5 would complete the plan. You know and then if  
6 we, if we feel it should be, you know if we  
7 have questions about that, that's all I mean.

8 VICE CHAIR ROBINSON: Ok.

9 CHAIR HOWDEN: It's different.

10 MEMBER GERBIG: Well, I think like what, get  
11 rid of the word "deletion". I think what  
12 Phyllis, I thought you said the first time was  
13 that that we, not recommend but either the  
14 appendices be evaluated on the basis of...

15 VICE CHAIR ROBINSON: Their appropriateness?

16 MEMBER GERBIG: Being an, not, in other words  
17 I thought they were automatically ordinances  
18 but they're not automatically...

19 CHAIR HOWDEN: No, no, no.

20 MEMBER GERBIG: So to bring the point out that  
21 the council is aware that these are potential  
22 ordinances and should be evaluated for, on that  
23 basis or something. They're suggested  
24 ordinances, right? Should be evaluated. How  
25 do you want to say it?

26 MR. KUSHI: Yeah, it's ordinance, ordinances E

1 through...

2 MEMBER GERBIG: But they're not ordinances as  
3 I was led to believe.

4 VICE CHAIR ROBINSON: H?

5 MR. KUSHI: E through H? Yeah.

6 CHAIR HOWDEN: Yeah, I mean hopefully they  
7 will be getting good legal advice next year.  
8 And you know, I think this would be pointed out  
9 to them but if you want to make a  
10 recommendation that these are potential  
11 ordinances...

12 MEMBER GERBIG: Yeah, I think that's, it  
13 brings it up that they'll be aware that they  
14 are there. Maybe it's coming down whatever.  
15 That they'll be aware of it.

16 CHAIR HOWDEN: Ok, anybody have the language  
17 for this motion.

18 MEMBER HOXIE: Well, we, we have a motion on  
19 the floor.

20 MS. HAYASHIDA: Motion, the first motion,  
21 yeah.

22 MEMBER GERBIG: Ok, what was motion again?

23 MEMBER YAMAMURA: So, it's very...

24 MS. HAYASHIDA: Delete all appendices.

25 MEMBER HOXIE: And I seconded it.

1 MS. HAYASHIDA: And Ted, ah, John second it.  
2 Then the discussion was that Phyllis change,  
3 amend that to include that these ordinances,  
4 delete ordinances as that they, they are, that  
5 proposed ordinances because they are beyond the  
6 scope of the Lana'i Water Use and Development  
7 and Protection Plan.

8 MEMBER YAMAMURA: But if you delete the  
9 appendices or if they follow our recommendation  
10 it will take care of that, that problem.

11 MEMBER HOXIE: So what was your amendment,  
12 Phyllis?

13 VICE CHAIR ROBINSON: Well, I was just  
14 suggesting that and I'm actually, after I heard  
15 what Michael said I'm, I'm wondering if, if the  
16 motion could perhaps draw attention to the  
17 appendices as proposed ordinances...

18 MEMBER GERBIG: Yeah.

19 VICE CHAIR ROBINSON: And that, that it, with  
20 the motion that draws attention on the part of  
21 the council 'cause those appendices might not  
22 be looked at all. So by we making a  
23 recommendation that they, they be aware that  
24 these appendices contain proposals for  
25 ordinances that means that they would be looked  
26 at. Now, you clarified that they're not



1 ordinances that we're asking the council to  
2 pass.

3 MEMBER GERBIG: Yeah.

4 VICE CHAIR ROBINSON: They're just proposed  
5 ordinances and, and I agree with Michael that  
6 they felt the, the, the folks on Lana'i felt  
7 they were important to be in, in the plan and I  
8 wanna acknowledge that too so.

9 CHAIR HOWDEN: Yeah, see I, I, I feel closer  
10 to where Don is but I don't know if Ted wants  
11 to...

12 MEMBER GERBIG: No, I, I, I'm with her. I  
13 feel that way. It's just to say something  
14 about it. That these are proposed, the word  
15 "proposed" that they be aware.

16 CHAIR HOWDEN: Well, no, Ted, you wanna keep  
17 your motion or...

18 MEMBER YAMAMURA: Yeah, I wanna keep it 'cause  
19 I don't think it's purview or the, or the  
20 author had any authority in even proposing  
21 draft ordinances. Why go there?

22 CHAIR HOWDEN: Well, she's reporting what the  
23 people on Lana'i...

24 MEMBER GERBIG: (inaudible) we can't change  
25 it.

26 CHAIR HOWDEN: Wanted.

1 MEMBER YAMAMURA: That's why you elect your,  
2 your council people. It goes beyond I think,  
3 really beyond the scope of work for a Water Use  
4 Development Plan...

5 CHAIR HOWDEN: Ok, why, why don't we call this  
6 question unless there's...

7 MEMBER HOXIE: I have a comment first, you  
8 know, I, I, I, you know I can understand having  
9 these here but they cover things that are not  
10 required by the Water Use and Development Plan.  
11 What, what species of plants to plant in your  
12 yard. You know, that doesn't belong in the  
13 Water Use and Development Plan. I just, it  
14 doesn't belong here, my opinion.

15 CHAIR HOWDEN: Well, are, are those mandatory,  
16 John? Or are they simply suggestions,  
17 guidelines?

18 MEMBER HOXIE: This is a Water Use Development  
19 Plan in my opinion. Doesn't belong in here.

20 CHAIR HOWDEN: Ok, why don't call the question  
21 then? See how the motion goes.

22 MS. HAYASHIDA: Ok, the, the motion on floor  
23 is, Ted is recommending to delete all  
24 appendices. He's not amending his motion. And  
25 it's been seconded by John.

26 CHAIR HOWDEN: Ok. So, why don't we start

1 with, John, may we start with you this time?  
2 MEMBER HOXIE: Yes.  
3 MEMBER EASON: To delete all...  
4 (no audible vote from Member Eason)  
5 MEMBER MYERS: No.  
6 MEMBER LESTER: No.  
7 CHAIR HOWDEN: No.  
8 VICE CHAIR ROBINSON: No.  
9 MEMBER YAMAMURA: Yes.  
10 MEMBER GERBIG: No.  
11 MEMBER BOTEILHO: Yes.  
12 CHAIR HOWDEN: Ok, so 6 to 3. Motion  
13 defeated. Don, can we have your motion? Do  
14 you wanna make your motion again?  
15 MEMBER GERBIG: On, do you want on the  
16 appendix?  
17 CHAIR HOWDEN: The, the recommend, the kind of  
18 you know alert to the council that..  
19 MEMBER GERBIG: Yeah, I think I would like,  
20 Phyllis had the wording, had a better wording I  
21 think. Put it on her.  
22 CHAIR HOWDEN: Ok. And this, this is your  
23 last one.  
24 VICE CHAIR ROBINSON: That we, we want to, we  
25 recom, we as, the board would like to recommend  
26 that the council be aware that there are

1 appendices that are proposed ordinances, and..  
2 MEMBER GERBIG: That's it really.  
3 VICE CHAIR ROBINSON: And that's it.  
4 MEMBER GERBIG: They, they should realize that  
5 there are appendix..  
6 CHAIR HOWDEN: Yeah, and then you could  
7 specify which ones.  
8 MEMBER GERBIG: Don't, yeah.  
9 CHAIR HOWDEN: In, in our recommendations to  
10 the council. I mean, E, F, G, I think it is  
11 but..  
12 MEMBER GERBIG: Suggested, did you say  
13 proposed or suggested?  
14 VICE CHAIR ROBINSON: It says proposed in  
15 Ted's language but maybe they're suggested?  
16 CHAIR HOWDEN: I think they're proposed.  
17 VICE CHAIR ROBINSON: They're proposed.  
18 CHAIR HOWDEN: They're proposed. Yeah. So  
19 second to Phyllis's motion? Is there a second?  
20 MS. HAYASHIDA: Can you re-state your motion?  
21 I'm sorry. That the, recommend that the  
22 council evaluate these appendices...?  
23 CHAIR HOWDEN: Be, be, be aware.  
24 MS. HAYASHIDA: Be aware.  
25 VICE CHAIR ROBINSON: Be aware that the, that  
26 appendices E...

- 1 MEMBER GERBIG: Maybe you wanna say...
- 2 MR. KUSHI: E, F...
- 3 VICE CHAIR ROBINSON: F...
- 4 MR. KUSHI: H.
- 5 VICE CHAIR ROBINSON: And H.
- 6 MEMBER GERBIG: You gonna go specific? Oh.
- 7 VICE CHAIR ROBINSON: Yeah. E, F and H.
- 8 'Cause G is a historical mechanism.
- 9 MR. KUSHI: Right, right.
- 10 VICE CHAIR ROBINSON: So that E, F and H...
- 11 MEMBER GERBIG: Are...
- 12 VICE CHAIR ROBINSON: Are proposed ordinances.
- 13 MEMBER GERBIG: Draft, draft.
- 14 VICE CHAIR ROBINSON: Proposed draft
- 15 ordinances.
- 16 CHAIR HOWDEN: Well, yeah, one of those words
- 17 but it's...Ok, do we have second?
- 18 MEMBER GERBIG: Second.
- 19 CHAIR HOWDEN: Ok. More discussion? Ok.
- 20 Kevin.
- 21 MEMBER BOTEILHO: Start (inaudible)
- 22 CHAIR HOWDEN: Start with John?
- 23 MEMBER HOXIE: What's the, what's the...
- 24 MEMBER GERBIG: Draft ordinance.
- 25 MEMBER HOXIE: What's the motion?
- 26 VICE CHAIR ROBINSON: Gaye is going to read

1 it.

2 MS. HAYASHIDA: That council be aware that  
3 appendices E, F and H are proposed draft  
4 ordinances. And I'm sorry, who made the  
5 second?

6 MEMBER HOXIE: E...

7 MEMBER LESTER: Don.

8 CHAIR HOWDEN: Don.

9 MS. HAYASHIDA: E, F and H.

10 MEMBER YAMAMURA: So wait, sorry.

11 CHAIR HOWDEN: Do you want that repeated  
12 again? You guys need it to be...

13 MEMBER HOXIE: Can I ask a question, please.

14 CHAIR HOWDEN: Yeah, of course.

15 MEMBER GERBIG: Hey, there's more than, more  
16 than E.

17 CHAIR HOWDEN: In terms of...

18 VICE CHAIR ROBINSON: That are ordinances?

19 MEMBER GERBIG: Yeah. Ah...the um...

20 MR. KUSHI: There's only 3.

21 MEMBER GERBIG: Where am I? B, B is the Water  
22 Conditions of Project Approval.

23 VICE CHAIR ROBINSON: D? Or E?

24 MEMBER GERBIG: Ordinances pertaining, oh, I  
25 guess they're in existence, I guess. I don't  
26 (inaudible). No, it says the ordinance.

1 Appendix B, Water Conditions of Project  
2 Approval, ordinances pertaining to Project  
3 District I, Manele, ordinance number 1578,  
4 1986, a bill for an ordinance relating to the  
5 standards for project district at Manele,  
6 Lana'i and the procedures.

7 VICE CHAIR ROBINSON: What, what appendix is  
8 that?

9 MEMBER GERBIG: B. B boy.

10 VICE CHAIR ROBINSON: B as in boy, ok. I'm  
11 looking at D.

12 MEMBER BOTEILHO: That's current.

13 MEMBER GERBIG: There's another one, C,  
14 Appendix C.

15 MEMBER BOTEILHO: That's a historic.

16 VICE CHAIR ROBINSON: No, these are, these are  
17 existing ordinances.

18 MEMBER GERBIG: Historical.

19 MEMBER GERBIG: Huh. Historical, oh, ok.

20 VICE CHAIR ROBINSON: Yeah, these are existing  
21 ordinances.

22 MEMBER GERBIG: Ok, no, right.

23 CHAIR HOWDEN: Ok.

24 MEMBER YAMAMURA: So, my question was, is the  
25 intent of this motion to alert the council that  
26 there is(sic) these proposed ordinances?

1 VICE CHAIR ROBINSON: Yes.  
2 MEMBER LESTER: Of course.  
3 MEMBER YAMAMURA: So you wanna make sure that  
4 they see it?  
5 VICE CHAIR ROBINSON: Uh huh.  
6 CHAIR HOWDEN: We want, we want to, yeah, we  
7 would like them to follow (inaudible).  
8 (several members speaking at the same time)  
9 MEMBER YAMAMURA: Ok, I just...  
10 MEMBER GERBIG: They see it. They see it  
11 that's all.  
12 CHAIR HOWDEN: Yeah, that we're flagging them  
13 essentially. Ok. Kevin? Or John?  
14 MEMBER HOXIE: No.  
15 CHAIR HOWDEN: No, John.  
16 MEMBER EASON: Yes.  
17 CHAIR HOWDEN: Yes. Kelli?  
18 MEMBER MYERS: Yes.  
19 CHAIR HOWDEN: What?  
20 MEMBER MYERS: Yes.  
21 CHAIR HOWDEN: Kui?  
22 MEMBER LESTER: Yes.  
23 CHAIR HOWDEN: Yes.  
24 VICE CHAIR ROBINSON: Yes.  
25 MEMBER YAMAMURA: No.  
26 MEMBER GERBIG: Yeah.



1 MEMBER BOTEILHO: No.

2 CHAIR HOWDEN: 6 to 3. Motion passes. Ok,  
3 can I call the meeting, I mean, are we, do you,  
4 guys wanna just keep going with this...

5 MEMBER LESTER: No.

6 VICE CHAIR ROBINSON: No, I gotta...

7 CHAIR HOWDEN: Torture?

8 MEMBER LESTER: No.

9 VICE CHAIR ROBINSON: I have to go.

10 CHAIR HOWDEN: Ok.

11 MS. HAYASHIDA: You gonna...

12 CHAIR HOWDEN: Are we in agreement? Meeting's  
13 closed.

14

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16 (The meeting adjourned at 3:28 p.m.)

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Prepared and submitted by:

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Gaye Hayashida  
Commission Support Clerk

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