

SPECIAL CHARTER COMMISSION
TO REVIEW THE DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI

PLANNING AND WORK SCHEDULE

TABLE OF CONTENTS

1. CALENDAR
2. QUESTIONS PREPARED BY JOHN HIRASHIMA
3. QUESTIONS PREPARED BY MILTON HOWELL
4. QUESTIONS PREPARED BY PAUL R. MANCINI
5. STATE WATER CODE SUMMARY
6. STUDY PREPARED BY SRI INTERNATIONAL
ENTITLED: MAUI'S DEVELOPMENT APPROVAL SYSTEM:
A STRATEGY FOR IMPROVEMENT

AUGUST/SEPTEMBER

(meetings: 8/12, 8/26 9/2, 9/9, 9/23, 9/30)

Data acquisition:

1. County officials:

Mayor 8/12
County Council 8/26
Managing Director
Board of Water Supply

2. Community:

professional organizations
community association
major land owners
individuals

3. Others:

DLNR - Tagomori 9/2
Nobriga
Cravalho
Maui Electric Co.
ASCC committees

4. Review of DWS finances and operations,
subcommittee of MacCluer, Kato, Muragama,
interview DWS auditor,
permit review committee - SR¹ report,
community master water plans,
SDWA compliance - Tom Arizumi DOH

5. Data acquisition from other counties
Subcommittee of Howell & Alcon
Mayors
Council Chairmen
Water Directors

OCTOBER

(meetings: 10/14, 10/28)

Compile date acquisition reports

County officials
Community
Other input
Finances and operations subcommittee report
Other counties committee reports

NOVEMBER

Deliberate on reports and organizations
Develop preliminary proposals
Complete public hearing proposals

DECEMBER

Public hearings by December 18th
Lahaina
Central Maui all in one week
Upcountry

Hana (daytime)

Molokai (over night)

JANUARY

Develop final report
Approval of report
Final items for ballot

FEBRUARY

Cushion

MARCH

All work must be complete,
Public relations thru November election.

QUESTIONS PREPARED BY JOHN HIRASHIMA

FINANCES

1. Should the enterprise accounting system continue?
2. Should it be modified?
3. Are G.O. bonds the best way to raise capital?
4. Are revenue bonds more appropriate?
5. Have water rate increases kept up with system needs?
6. Does the Department of Water Supply receive less in state grants because it is part of County administration versus being semi-atonomous?
7. Has the Department of Water Supply been able to undertake projects in a timely manner with money at hand?
8. Does the County Council review proposed budgets more thoroughly than the Board of Water Supply?

OPERATIONS

1. Are long range plans maintained and coordinated with County plans?
2. Should the Department of Water Supply be integral part of County permit sytem?
3. Have water sources been developed in timely manner to meet needs?
4. Why are there so many private water sytems such as Kaanapali, Kapalua, Kaluakoi, etc.?
5. Are existing systems being adequately maintained and improved where necessary?
6. Have we met the requirments of the SDWA in a reasonable manner?
7. Has drought management been effective?
8. Why has council not funded Department of Water Supply's request for master plan consultant?
9. Should the Dirctor be a registered engineer as in other counties?
10. How valid is the need to have Water Director as part of administration team?
11. Is mayoral appointment best system to attract and keep good directors?
12. Is Department of Water Supply technical staff adequate to carry out functions?

RULE MAKING

1. Is it appropriate to raise substantial revenues through rules?
2. Are rules being administered fairly and consistently?
3. Has the Department issued/modified rules in a timely manner?
4. Should County Council have any say in rule making process?
5. Is it appropriate that Director initiates rules?
6. Is there an adequate appeals process for disagreements in rule interpretations?
7. Does the Department of Water Supply have excessive leeway in demanding improvements of developers?
8. Do other counties have similar source assessment and storage assessment rules as we have?

BOARD OF WATER SUPPLY

1. Should the Board of Water Supply have meaningful input in establishment of rules?
2. Should the Board of Water Supply hire/terminate the Director?
3. Should the Board of Water Supply establish a water policy?
4. Should the Board of Water Supply have input in the budget process?
5. Should the Board of Water Supply as presently organized be abolished?
6. Would a sharing of power between the Board of Water Supply and administration cause excessive management problems by having two "bosses."
7. Are Board of Water Supply members accessible enough to the general public?

POLITICS/ACCOUNTABILITY

1. Are the Mayor and County Council members too election minded to make necessary decisions and long-term investments in a timely manner?
2. Is a semi-atonomous Board of Water Supply a political body?
3. Is a semi-atonomous Board of Water Supply subject to special interests as much as the administration and Council?
4. Are raising water rates and impositions of significant rules less likely to occur during election years? If so, does it matter?
5. Who should determine agricultural water rates?
6. Who should decide to undertake costly improvements to the up country water systems.

QUESTIONS PREPARED BY MILTON HOWELL

1. Who should originate the rules? the Director of the Water Department? the Mayor? the Water Board? or the County Council?
2. Who should be required to approve the rules and sign them before they have the force of law?
3. Who should enforce the rules?
4. Should rules made by the Water Board, the Director, and the Mayor be used to control development without the consultation and or approval of the Planning Commission and the Council?
5. Who should set water rates? the Director? the Water Board? the Mayor? or the Council?
6. Whose approval should be required before they have the effect of law?
7. Who should hire and terminate the services of the Director of the Water Department? the Mayor? the Water Board? the Mayor with the advice and consent of the Water Board?
8. Should the candidate for the position of Director of the Department have certain qualifications in order to be appointed?
9. Should the Water Board have any responsibility for determining the number of positions needed in the Department?

FINANCIAL

Should the Water Board be required to review and approve the proposed budget?

Should the Water Board have a budget for its expenses and for research?

ADMINISTRATIVE:

Should the Water Board have direct communication with the County Council or its Committees?

Should the Water Board be required to have physical liason with the appropriate Council Committees?

Should the Water Board be advised of the Agenda of appropriate council committees when matters in their jurisdiction are discussed.

PLANNING:

The 1987 State Water Code specifies that each County shall prepare water use and development plans. Should the Water Board be required to review and comment in writing on this report. Should they have input in its preparation?

COMPLAINTS

Should the Water Board be advised of all complaints made by the public?

Should they have ombudsman responsibilities?

Should they mediate and settle or recommend settlements?

QUESTIONS PREPARED BY PAUL R. MANCINI

ROLE OF WATER BOARD

Should the Water Board have the powers and responsibilities concerning:

- (a) the promulgation of rules and regulations?
- (b) the approval of the budget of the Water Department?
- (c) the management of the operations of the Water Department?
- (d) the hiring and firing of the director of the Department of Water Supply?
- (e) the planning and development of major water sources for the County of Maui?
- (f) the development and approval of a capital improvement program for the Department of Water Supply?
- (g) the issuance of revenue bonds from the Department of Water Supply.
- (h) the audit of the finances and operations of the Department of Water Supply?
- (i) the planning and development of a master water code for the County of Maui?
- (j) the Department's role on the Water Code for the State of Hawaii?

If the Water Board should have powers and responsibilities in these areas, what should these powers and responsibilities entail?

MAYOR

Should the Mayor of the County of Maui have powers and responsibilities concerning the following:

- (a) the promulgation of rules and regulations?
- (b) the approval of the budget of the Water Department?
- (c) the management of the operations of the Water Department?
- (d) the hiring and firing of the director of the Department of Water Supply?
- (e) the planning and development of major water sources for the County of Maui?
- (f) the development and approval of a capital improvement program on the Department of Water Supply?
- (g) the issuance of revenue bonds for the Department of Water Supply.
- (h) the audit of the finances and operations of the Department of Water Supply?
- (i) the planning and development of a master water code for the County of Maui?
- (j) the Department's role on the Water Code for the State of Hawaii?

COUNCIL

Should the Council of the County of Maui have powers and responsibilities concerning the following:

- (a) the promulgation of rules and regulations?
- (b) the approval of the budget of the Water Department?
- (c) the management of the operations of the Water Department?
- (d) the hiring and firing of the director of the Department of Water Supply?
- (e) the planning and development of major water sources for the County of Maui?
- (f) the development and approval of a capital improvement program for the Department of Water Supply?
- (g) the issuance of revenue bonds from the Department of Water Supply,
- (h) the audit of the finances and operations of the Department of Water Supply?
- (i) the planning and development of a master water code for the County of Maui?
- (j) the Department's role on the Water Code for the State of Hawaii?

DIRECTOR, DEPARTMENT OF WATER SUPPLY

Should the director of the Department of Water Supply have powers and responsibilities concerning the following:

- (a) the promulgation of rules and regulations?
- (b) the approval of the budget of the Water Department?
- (c) the management of the operations of the Water Department?
- (d) the hiring and firing of the director of the Department of Water Supply?
- (e) the planning and development of major water sources for the County of Maui?
- (f) the development and approval of a capital improvement program for the Department of Water Supply?
- (g) the issuance of revenue bonds from the Department of Water Supply.
- (h) the audit of the finances and operations of the Department of Water Supply?
- (i) the planning and development of a master water code for the County of Maui?
- (j) the Department's role on the Water Code for the State of Hawaii?

DEPARTMENT OF PLANNING

Should the Department of Planning of the County of Maui have powers and responsibilities concerning the following:

- (a) the planning and development of major water sources for the County of Maui?
- (b) the development and approval of a capital improvement program of the Department of Water Supply?
- (c) the planning and development of a master water code for the County of Maui?

OPERATIONAL ISSUES

Should the operations of the Department of Water Supply include matters relating to waste water systems?

Should the operations of the Department of Water Supply require the development of a master water code (see Stanford Research Institute Study)?

Should the operations of the Department of Water Supply involve discretionary authority concerning the requirements for on-site and off-site improvements? water storage? water source financing?

COUNTY AND FINANCING

Should the enterprise system of accounting be continued for the Department of Water Supply?

Should the Department of Water Supply maintain an autonomous status regarding its revenues, expenses for operations, capital improvements, maintenance, etc.?

STATE WATER CODE SUMMARY

1. When was the new State Water Code enacted and when will it take effect?

On May 29, 1987, Governor John Waihee signed into law House Bill No. 35, Act 45 relating to the State Water Code. This legislation culminated almost ten years of effort to implement the 1978 Constitutional Convention mandate to the Legislature to devise a statutory scheme to manage and regulate the water resources of the State. The Code takes effect on July 1, 1987.

2. What water resources are affected by the Code?

The jurisdiction of the new State Water Code is very broad, covering both surface and ground water.

"Water" or "waters of the State" means any and all water on or beneath the surface of the ground, including natural or artificial water courses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

"Surface water" means both contained surface water--that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes, reservoirs, and coastal waters subject to state jurisdiction--and diffused surface water--that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Ground water" means any water found beneath the surface of the earth, whether in perched supply, dike-confined, flowing, or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

"Stream" means any river, creek, slough, or natural water course in which water usually flows in a defined bed or channel. It is not essential that the flowing

be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the water course from being a stream.

Coastal waters and domestic uses of water (in certain respects) are not subject to the Code.

3. Which water resource users will be affected by the Code?

The Code seeks to reach almost all water resource users in the State with a definition of "person" which includes individuals, firms, associations, organizations, partnerships, business trusts, corporations, companies, the United States of America, the State of Hawaii, and all political subdivisions, municipalities, and public agencies thereof.

4. Who administers the Code and how will it be administered?

The general administration of the State Water Code will be carried out by a six-member commission on water resource management established within the Department of Land and Natural Resources (DLNR).

The chairperson of the DLNR will be a member and the chairperson of the Water Commission and the Director of Health serves as an ex-officio voting member. The remaining four members are appointed by the Governor (subject to confirmation by the Senate) from a list submitted by a nominating committee. The nominating committee will be composed of four members: two appointed by the Governor and one each by the President of the Senate and the Speaker of the House of Representatives.

Each of the four appointed members of the Commission is required to have substantial experience in the area of water resource management. The members of the Commission serve without compensation but are to be reimbursed for travel and other expenses.

The Commission has been given state-wide jurisdiction to hear any dispute regarding water resource protection, water permits and constitutionally protected water interests or where there is insufficient water to meet competing needs for water.

All proceedings before the Commission concerning the enforcement or application of any provision of the Code, any rule adopted pursuant to the Code, or the issuance, modification or revocation of any permit or license under the Code, are to be conducted in accordance with the provisions of the Hawaii Administrative Procedures Act. Hearings regarding particular water resources are to be conducted on the island where the water resources are located. The chairperson of the Commission may appoint hearings officers to hear and reach preliminary decisions on matters concerning the implementation or administration of the Code. Judicial review of the rules and orders of the Commission under the Code will also be governed by the Hawaii Administrative Procedures Act. Trial de novo is not allowed on review of Commission actions under the Code.

The Commission may enforce its rules and orders by suit for injunction or for damages or both. Any person who violates any provisions of the Code may be subject to a fine imposed by the Commission not exceeding \$1,000. For a continuing offense, each day during which the offense is committed will be considered a separate violation. The Code does not bar the right of any injured person to seek other legal or equitable relief against violators of the Code.

The Commission is also to adopt rules for processing citizens complaints about waste or pollution of water or any use of water made without a required permit.

The Code establishes a new position within DLNR of first deputy for water resource management who is to have experience in the area of water resources.

The Code also provides for a seven-member commission within the Legislative Reference Bureau which is to undertake a comprehensive review of the State Water Code and make recommendations for its improvement beginning five years after its enactment.

5. What must my client do now to comply with the Code?

Once administrative rules, procedures and forms have been adopted, water users must do the following:

1. Within one year from the effective date of the rules adopted to implement the Code, any person making use of water in any area of the State must file a declaration of the person's use with the Commission. The declaration must contain, among other things, information regarding the quantity of water used, the purpose or manner of the use, the time of taking water and the point of withdrawal or diversion of the water. If no declaration is filed, the Commission may determine the extent of the use. The Commission must act upon a declaration within six months after its filing and, upon the Commission determining that the declared use is a reasonable--beneficial use, the Commission shall issue a certificate describing the use. "Reasonable--beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest. The confirmed use must be recognized by the Commission in resolving claims relating to existing water rights and uses, including appurtenant rights, riparian and correlative uses.

b. Any person owning or operating a well must register the well with the Commission on a report which includes, among other things, information on the location, diameter and maximum capacity of the well; the name of the well driller who constructed the well; and the name of the pump installation contractor who installed the pump and pumping equipment. "Well" means an artificial excavation or opening into the ground, or an artificial enlargement of a natural opening by which ground water is drawn or is or may be used or can be made to be usable to supply reasonable and beneficial uses within the State. The Commission may deny the issuance of a water use permit in a designated water management area (see discussion in Section 7 below) until such time as an applicant registers all wells which the applicant owns or operates.

c. Any person owning or operating a stream diversion works must register the work with the Commission. "Stream diversion works" means any artificial or natural structure emplaced within the stream for the purpose of diverting stream water.

6. What future water projects or activities of my client will be affected by the Code?

Again, once administrative rules, procedures and forms have been adopted, these additional water activities of water users will be affected by the Code:

a. Any person wishing to construct a new well or to install pumps and pumping equipment must obtain appropriate permits from the Commission. Applications for these permits must include, among other things, information on the location, proposed depth, size and expected capacity of the well; the method of well construction; a description of the pump and pumping equipment to be installed; and the name and address of the person who will control and operate the well. Within 30 days after the completion of the well, the well driller and pump installation contractor must file a written report with the Commission.

b. When a well is abandoned, the owner must fill and seal the well in a manner approved by the Commission. Before abandonment, the owner must file a report with the Commission showing, among other things, the reason for the abandonment, a description of the work to be performed to effect the abandonment and the name and address of the well driller who will be employed to perform the work required for abandonment.

c. Any person wishing to construct or alter a stream diversion works (other than in the course of normal maintenance) must obtain a permit from the Commission. A written statement of completion must be filed with the Commission within 30 days after the completion of the construction or alteration.

d. Any owner of any stream diversion works wishing to abandon or remove it must first obtain a permit from the Commission to do so.

7. What is a "designated water management area" and how will it affect my client?

When the Commission reasonably determines, after conducting scientific investigations and research, that

the water resources of an area within the State are being threatened by existing or proposed withdrawals of water, the Commission may, after notice and public hearing, designate water management areas for the purposes of establishing administrative control over the withdrawals and diversions of ground and surface waters in the area to ensure reasonable-beneficial use of the water resources in the public interest. Except for the domestic consumption of water by individual users and the use of catchment systems to gather water, no person may make any withdrawal, diversion, impoundment or consumptive use of water in any designated water management area without first obtaining a permit from the Commission.

^{nscription} An applicant for a permit must establish that its proposed use of water:

- a. can be accommodated with the available water source;
- b. is a reasonable-beneficial use;
- c. will not interfere with any existing legal use of water;
- d. is consistent with the public interest;
- e. is consistent with state and county general plans and land use designations; and
- f. is consistent with county land use plans and policies.

Notice of each application must be published in a newspaper having general circulation within the affected area and the Commission must also send a copy of the notice to any person who has filed a written request for notification of any pending applications affecting a particular designated area and to the mayor and the water board of the affected county. The Commission must determine, after hearing, whether the conditions of the issuance of the permit described above have been met. If two or more applications which otherwise meet

the criteria for the permit issuance are pending for a quantity of water that is inadequate for both or all, or for any other reason conflict, the Commission must first seek to allocate the water in a manner so as to accommodate both applications if possible and, if mutual sharing is not possible, then the Commission must approve the application which best serves the public interest.

Existing uses at the time of designation must also obtain a permit, and the failure of the water user to apply for a permit to continue an existing use within a period of one year from the effective date of the designation of an area will, except for appurtenant rights, create a presumption of abandonment of the use requiring the user to apply for a permit if the user desires to revive the use. A permit to continue an existing use will be for a quantity of water not exceeding the quantity being consumed under the existing use and, where two or more existing uses of water will exceed the appropriate sustainable yield or instream flow standards established for the area, the Commission may determine the quantity of water that may be consumed and the conditions to be imposed on each existing use.

Permits are valid until the designation of the water management area is rescinded unless revoked or modified. Every 20 years the Commission is to conduct a comprehensive study of all permits issued under the Code to determine whether the conditions of such permits are being complied with.

A permittee may seek modification of any term of a permit but modifications which seek to change the use, the place of use, or to use a greater quantity of water must be made through the application process. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of the permit.

Permits may also be suspended or revoked by the Commission because of any materially false statements in the application or report required of the user; any willful violation of any condition of the permit; any

violation of any provision of the Code in general; or partial or total non-use, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more.

Permits may be transferred in whole or in part if the conditions of use of the permit remain the same and the Commission is informed of the transfer within 90 days. If the permittee fails to inform the department of the transfer, or if a transfer involves a change in any condition of the permit, the transfer is invalid and constitutes grounds for revoking the permit.

The Commission may, by rule, declare that a water shortage exists within all or part of a designated area when insufficient water is available to meet the requirements of the permit system or when conditions require a temporary reduction of total water use to protect water resources from serious harm and may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources from serious harm and to restore them to their previous condition.

8. What affect does the Code have upon existing Hawaii common or other law?

The Code specifically supercedes the McBryde decision to the extent that it requires the Commission to allow the holder of a use permit to transport and use surface and ground water beyond overlying land or outside the watershed from which it is taken if the Commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the state and counties.

The Code specifically preserves appurtenant rights and nothing in the Code is to be construed to deny the exercise of an appurtenant right by its holder at any time. However, the Code makes a permit for an appurtenant use subject to revocation for the same reasons as other permits (apparently including non-use), invalidates transfers of appurtenant rights if the Commission is not informed, and also subjects appurtenant rights to the water shortage provisions of the Code.

The Code also provides that the rights of native Hawaiians under the Hawaiian Homes Commission Act of 1920 and Chapter 175, dealing with the Molokai irrigation system, and the traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 may not be abridged or denied by the Code. Appurtenant water rights of kuleana and taro lands, along with the traditional and customary rights, are not to be diminished or extinguished by a failure to apply for or receive a permit under the Code.

9. What other aspects of the Code should my clients be made aware of?

a. Hawaii Water Plan. The Code provides for the preparation of a four-part Hawaii water plan including (1) a water resource protection plan which is to be prepared by the Commission, (2) water use and development plans for each county which are to be prepared by each separate county and adopted by ordinance, (3) a state water project plan which is to be prepared by the agency which has jurisdiction over such projects, and (4) a water quality plan which is to be prepared by the Department of Health. Except for the water quality plan, the Hawaii Water Plan and its constituent parts is to be adopted by the Commission no later than July 1, 1990.

b. Instream Use Protection. The Commission is to establish and administer a state-wide instream use protection program, including the establishment of instream flow standards on a stream-by-stream basis. Interim instream flow standards are to be adopted for Windward Oahu by July 31, 1987; East Maui and Kauai by December 31, 1987; Hawaii and Molokai by July 1, 1988; and West Maui and Leeward Oahu by December 31, 1988.

c. Water Quality. The Code provides that the Department of Health will administer the State's water quality control program.

d. Acquisition of Real Property. The Commission may also acquire real property and easements by purchase, gift, devise lease, eminent domain or otherwise for flood control, water management or water and water-related resource conservation.

STATE WATER CODE

Table of Contents

Part I - Administrative Structure

1. Short Title
2. Declaration of Policy
3. Definitions
4. Scope
5. General Powers and Duties
6. Deputy to the Chairperson of the Commission for Water Resources Management
7. Commission on Water Resource Management
8. Adoption of Rules Concerning Water Resources by the Commission
9. Proceedings before the Commission Concerning Water Resources
10. Dispute Resolution
11. Hearings Officers
12. Judicial Review of Rules and Orders of the Commission Concerning the Water Code
13. Citizen Complaints
14. Acquisition of Real Property
15. Penalties and Common Law Remedies
16. Severability

Part II - Reports of Water Use

26. Filing of Declaration
27. Issuance of Certificate

Part III - Hawaii Water Plan

31. Hawaii Water Plan
32. Coordination

Part IV - Regulation of Water Use

41. Designation of Water Management Area
42. Notice; Public Hearing Required
43. Investigations Required
44. Ground Water Criteria for Designation
45. Surface Water Criteria for Designation
46. Findings of Fact; Decision of Commission
47. Modifying and Rescinding Designated Areas
48. Permits Required
49. Conditions for a Permit
50. Existing Uses
51. Application for a Permit
52. Notice
53. Permit Issuance
54. Competing Applications
55. Duration of Permits
56. Review of Permits
57. Modification of Permit Terms
58. Revocation of Permits
59. Transfer of Permit
60. Contested Cases

61. Fees
62. Declaration of Water Shortage
63. Appurtenant Rights

Part V - Water Quality

66. Jurisdiction Over Water Quality
67. Exchange of Information
68. Water Quality Plan

Part VI - Instream Uses of Water

71. Protection of Instream Uses

Part VII - Wells

81. Definitions
82. Powers and Duties of the Commission
83. Registration of all Existing Wells
84. Permits for Well Construction and Pump Installation
85. Well Completion Report
86. Well Construction and Pump Installation Standards
87. Abandonment of Wells

Part VIII - Stream Diversion Works

91. Definition
92. Registration of Existing Stream Diversion Works
93. Permits for Construction or Alteration
94. Completion Report
95. Abandonment

Part IX - Native Hawaiian Water Rights

101. Native Hawaiian Water Rights

SRI International



MAUI'S DEVELOPMENT APPROVAL SYSTEM: A STRATEGY FOR IMPROVEMENT

Final Report

July 1982

By:

**Therese A. Freeman, Senior Urban Economist
Regulatory Analysis and Management Program
Public Policy Center**

**James O. Gollub, Senior Policy Analyst
Policy Options Program, Public Policy Center**

Prepared for:

**Maui Chamber of Commerce
P.O. Box 1677
Kanului, Maui
Hawaii 96732**

Attention: Ms. B. Lynn Britton

SRI Project No. 4339

Inconsistent and Discretionary Agency Review

The third major source of inefficiency in the review process is inconsistency and over-use of discretion in plan review. The County reviews subdivision and building plans to ensure the protection of public health, safety, and welfare, and that the proposed project is in accordance with community goals and objectives. The criteria for plan review vary by agency in the number of specific review steps (code requirements) and in the professional judgment involved.

For agencies such as the Fire Department and the Building, Planning, Electrical, and Plumbing Sections of LUCA, which have current codes and amendments against which plans can be checked, the review process should normally involve little discretionary decisionmaking. In each case, the plan reviewers should be using specific guidelines for review set forth in the Uniform Building Code and related codes, and amendments in their review process. Yet, in reviewing cases with the development community and LUCA staff, there seem to be many instances where the review process goes beyond the parameters of the basic code guidelines into areas of preference and qualitative distinction that are not included in the code materials. However, this was more often a problem before recent codes were adopted than it is at present.

In cases where a County code, instead of the national code, is used to review plans (e.g., the County has its own housing code that it uses in place of the national housing code), discrepancies between the codes may further confound applicants and delay the review process.

Agencies lacking codes, such as the Department of Water Supply and the Engineering Sections of LUCA (subdivisions), must rely on local or state standards, design manuals, and community master plans. Because such criteria are often vaguely defined, plan review may involve a significant degree of professional judgment. In some cases, the documents provide no guidance, or standards or planning documents may not be available. For example, no updated master plans for water and drainage exist.

Consequently, each applicant for a subdivision must work out an agreement for off-site improvements with the Department of Water Supply that adequately represents the County's view of the developer's responsibilities in sharing the costs of growth (water adequacy and drainage). While some developers would rather see these improvements paid through other means, such as improvement districts, most would be satisfied if they could ascertain in advance the type of improvements needed and work out an expeditious agreement to put them in.

Although it is not always possible to determine the actual cause of review delays, several examples of delays were presented to the consultants to illustrate problems purportedly attributable to discretionary actions. Four applications for permits were submitted that provide examples of delays in different sections of LUCA and related departments. In one case, in an application for a single structure, elapsed time for individual agencies ranged from 56 days to 370 days; the total elapsed time was 464 days for issuance of a permit. In another case, a permit for a building expansion required 749 days. A third case required 273 days for a subdivision and building permit for a single structure, with engineering and inspection accounting for the bulk of the time for review. An ongoing permit application for residential subdivision, where the water system, access road, and sewer system to the main connecting points have been completed, has required over 200 days, of which more than 100 elapsed while LUCA has been reviewing the plan.

These examples of slow review may be caused by many factors, ranging from the overload of staff (see next problem discussion), overly detailed review of plans and repeated requests for corrections, or failure of permit reviewers and developers and their consultants to expeditiously respond to comments and submit changed plans. However, a significant margin of discretion was observed in several review steps underway in different sections of LUCA and the Department of Water Supply. This discretionary margin may support the contention that the review process has not been designed in to limit the extent of review beyond code compliance.

personnel management constraints on the quality of system performance. These characteristics seem to result in uncertainty as to responsibilities and imbalances in staffing of activities in the review process that unavoidably lead to delays and perceived attitudinal problems among staff by system users.

The key issues here are:

- Insufficiently clear lines of authority for permit approval and process management across departments and between sections. Clear guidelines would result in more consistent and timely performance of review and inspection functions.
- Inadequately defined staff positions and consequent assignment of multiple responsibilities to individuals, which often results in lower efficiency in review procedures.
- Lack of developed job performance objectives that define quality and quantity expectations for employees.
- Insufficiently developed personnel training and lack of a career path structure that provides incentives for advancement through performance and skill development.

Clarifying Lines of Authority

The current development permit approval system is officially managed through the Land Use and Codes Administration (LUCA). LUCA was organized to coordinate permit approval, following passage of a state legislative mandate. Although the current system provides basic coordination of permit review, it has limited ability to manage permit review functions outside of those under direct control of LUCA. As a result, much coordination is by mutual agreement, where other agencies, such as the Department of Water Supply, are not obliged organizationally to report to the administrator of land use and codes, nor to the Director of Public Works.

Historically, the term coordination has been as limited as the organizational structure used to carry out coordinated activities. Consequently, for optimal coordination to occur, staff in each of the

Cooperating agencies and departments require a well-developed organizational reporting and responsibility mechanism. Without a structure defining lines of authority and responsibility, there is no way to actually manage coordination--resulting in unreliable review time frames in which the need for review, order of review procedures, and number of review steps are not clear. This is the case in Maui.

First, there is an absence of a direct reporting link between some departments and LUCA. Such a link is needed to ensure management of the process, as well as coordination. Whether reporting is carried out by having reviewers become officially responsible to LUCA, as opposed to their own departments, or through having their directors report to LUCA, the Director of Public Works, or the County Manager, such a management structure would improve current review processes--without jeopardizing the purposes of individual departments.

Second, there is a need for a more sophisticated operations management system. Such a system should provide managers (particularly LUCA and the Department of Public Works) with information about activities of staff in the system and status of work under way at any given time. As discussed earlier under "System Operations and Administration," a management information system would help address this problem.

Inadequately Defined Staff Positions

The review functions of County departments and sections involve a reasonably large number of individuals with different skills performing a wide variety of functions--ranging from plan review and inspection to negotiating off-site water agreements. Because the staff involved with the permit system is not overly large, many persons have come to perform multiple functions, and in some cases, have become the only person to cover certain responsibilities. This situation has evolved over time into a condition where there is not a clear definition of what individual responsibilities are. This may result in individual staff not making

The absence of a formal management information system (whether on paper or electron) results in a situation where managers often have insufficient information to effectively make policy decisions. Managers can ask staff how they are doing; or can track down an application, bond, or signed document; but they cannot, on a weekly basis, establish how staff have been occupied and in what ways they have been using their time. For managers to determine how the system should be changed, they need specific information. Without such information, progress towards an efficient, well-understood system will be slow.

A management information system should include the entire range of transactions that take place within the permit system--from the current list of required documents for different types of applications, to the location of a plan, bond, or number of requests for information by applicants at the permit counter. This type of system should enable the County to make optimal financial decisions concerning cost of permit processing, or to use permit information in development of capital investment plans or utility billing.

Conclusion

This analysis of the Maui permit system operations and management suggests that there are several types of current problems for which there are opportunities for improvement. These basic problems fall into three areas:

- . Technical review and inspection procedures
 - Submission and return of incomplete applications
 - Overlapping and redundant agency review
 - Inconsistent and discretionary agency review
 - Coordination problems in timing of inspections

- . Personnel management
 - Lack of developed job performance objectives that define quality and quantity expectations for employees
 - Insufficiently developed personnel training and lack of a career path structure that provides incentives for advancement and performance and skill development
- . Systems operations and administration
 - Understanding the application process
 - Knowing permit requirements for projects
 - Determining application status and location
 - Need for a management information system for quality control.

A fourth special issue that also has been identified in the context of the preceding analysis is the need for an updated and comprehensive set of water and drainage master plans to expedite development of improvement agreements.

The following section of this report describes the different types of recommended solutions that could be implemented to address the existing system problems.

inspections process. In addition, a formal system for "flagging" problems as soon as they occur, using preaddressed postcards, would help expedite follow-through on correction by applicants. If this approach is not acceptable, other options described below can be utilized.

(5) Develop an Expanded Review and Appeals Board

Recommendation--The development community will benefit from the recent adoption of more current codes and the accompanying Review and Appeals Board in Maui. There is, however, still a need for a board that addresses subdivision issues. Because subdivisions are frequently a step of the development process that is subject to disagreements during the review process, having a board that could review problems in a professional and objective manner would be helpful.

Implementation Requirements--An ordinance instituting an expanded role for the Review and Appeals Board would be required. This ordinance could either broaden the mission of the board and add members to cover subdivision issues, or convene a separate board. County Council support for this is essential. At the present time, support is good and this amendment of the current appeals system is highly feasible.

(6) Expand and Systematize Outside Plan Review

The County currently uses outside plan review on a limited basis. To address the issue of review speed, the County could adopt a more flexible outside review process in which an applicant could be randomly assigned a reviewer from a roster established by the Department of Public Works. When a prespecified number of applications are entered into the system, the County should automatically send the plans out for review. This would

*Little Plan
Review
all?*

Implementation Requirements--Developing and installing graphic displays is a short-term option that requires County Council permission to place displays in the designated locations and County or business community staff to design and prepare the displays.

Special Recommendation: Develop Detailed Updated Water and Drainage Master Plan for the Community

Recommendation--Distinct from the problems of review process where codes and checklists can be developed to render approval actions more consistent; independent from the problems of reporting authority and strengthening personnel performance; and separate from the need for a management information system to enable tracking system performance; is the need for technical data on water and drainage requirements for future development in the community.

While management and personnel issues are important to improve system performance, basic issues that have a reasonably concrete nature must be resolved if development approval is to be made more efficient. Consequently, a specific need of the County is to develop an updated County Water Master Plan and Drainage Master Plan that answer questions related to fundamental water management, source, and transmission requirements, for all areas of the Maui Community.

Previous efforts to develop this information have been partially successful. However, there remain key areas in the community where this information need still remains high and for which there will be a need for a special effort to provide needed data.

To provide the water and drainage information needed for Maui, a joint effort is proposed in which the Maui County, and State officials (Soils Conservation and Management, Highways and Transportation, and others) and local developers meet to develop the necessary engineering studies and

consider alternative modes of meeting capital improvement needs. Options including using voluntary loaned professional time on an engineering team, joint public and private funding, and petitioning for state funds for a study.

With adequately detailed studies completed, many of the long-lasting debates and negotiations over off-site improvements can be more easily resolved.

Implementation Requirements--Leadership from business and the County government is needed to start off the effort to complete these studies. The usual route of applying for a Federal grant has not succeeded very well at this point. Those who will benefit from the study (developers and the County) should each put up a share of the funds, volunteer professional time, and solicit state funds to complete the effort. Between local matching funds, loaned or below-market professional services, and other volunteered skills, the completion of the needed studies should become financially feasible. The development of the study may take as long as the decision about how to fund the effort: the less dependence on grants, the faster the action will be.

- . LUCA Administrator
- . All related department heads who would be involved in system management
- . MIS system expert working in a firm in the community volunteering time
- . Architect and design firm members who will help with graphic displays
- . User representatives who can help identify MIS services to applicants

Problem Solving Team 4: Develop Detailed Water and Drainage Master Plans

This special problem-solving team will focus specifically on the issue of the water and drainage systems and finding out how to provide the needed data that will ease development decisions and improvement agreements between the County and developers. The principal objective will be to:

- . Complete an updated water master plan and drainage master plan with all required supply and management, capital transmission, and related information for all areas of the community.

Team members for this problem-solving activity should include the following individuals and groups:

- . Director of Public Works
- . All public works staff
- . Department of Water Supply staff
- . Planning Department staff
- . County council members
- . Representatives of development firms
- . Representatives of engineering firms, particularly potential volunteers to help complete or organize the study

- Representatives of contractors who can help with the study activities
- Representatives of State agencies (soil, water, transportation) who have responsibilities for the water and drainage areas.

When the individual problem-solving teams have been convened--possibly with members of the Executive Committee participating in different teams--and a manager has been designated for each team, the process of determining which options to implement can begin. Members of these problem-solving teams have an extremely important role, because the outcome of their actions should include the implementation of selected changes. Each member should be aware that he/she is being asked to take responsibility for acting, or bringing actions about, in addition to collaborating with other problem-solving team members in specifying choices for action.

Step 3: Problem-Solving Teams Negotiate Recommended System Improvements and Present Action Agreements to the Partnership

Briefing

Each of the problem-solving teams will be briefed on their team's objectives by the public-private partnership members when they join the group. When the individual teams have been convened, their manager should start them on a process of reviewing the feasibility of the key options recommended.

Negotiation

In some cases there will be easy agreement that a recommended option should be implemented. In such a case negotiation can proceed to work out the details of implementation. In other cases, there will not be a consensus. The object of the negotiations process is to let the business

CHAPTER 11
DEPARTMENT OF WATER SUPPLY

Section 8-11.1. Organization. There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff.

Section 8-11.2. Functions of the Department.

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems.

3. The department shall implement the county's general plan and community plans in the administration of its affairs. There shall be a long-range plan of the department which shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

Section 8.11.3. Board of Water Supply. The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The planning director and the director of the department of public works shall be non-voting ex-officio members of the board.

Section 8.11.4. Powers, Duties and Functions. The board of water supply shall:

1. Appoint, evaluate and remove the director of the department of water supply and fix the director's salary.

2. Have the authority to create and abolish positions;

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water; such rules and regulations shall be adopted as provided under § 8.11.8 below;

4. Adopt an annual operating and capital budget;

5. Have the authority to issue revenue bonds under the name of the board of water supply;

6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply;

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.5. Director of Water Supply. The director of the department of water supply shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or his deputy shall be a registered engineer.

Section 8.11.6. Powers, Duties and Functions. The director shall:

1. Recommend rules and regulations for the adoption of the board;

2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county;

3. Prepare and implement long range capital improvement plans which have been adopted by the board;

4. Appoint a deputy director;

5. Prepare an annual operating and capital budget for the board's review and adoption;

6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.7. Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

Section 8.11.8. Approval of Rules. The adoption, amendment and repeal of all rules adopted pursuant to Subsection 8.11.4(3) shall be subject to the approval of the mayor. Upon approval by the mayor the proposed rule shall be submitted to the council. Within forty-five (45) days of receipt of a proposed rule, the council may by a two-thirds (2/3) vote of its entire membership disapprove the rule by resolution; in which case the rule shall have no force or effect.

TRANSITION PROVISIONS FOR AMENDED CHAPTER 11

1. If the voters of the County of Maui approve the proposed charter amendment, the charter amendment shall take full effect on January 1, 1989.

2. Existing Laws and Conflicting Laws. All laws, ordinances, resolutions and rules enforced at the time the amended chapter 11 takes full effect, and not in conflict or inconsistent with the amended chapter 11, are hereby continued in force until repealed, amended or superceded by proper authority. All laws which are

inconsistent with the amended chapter 11 shall be superceded by the provisions of the amended chapter 11 at its effective date. All laws relating to or affecting the county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when the amended chapter 11 takes full effect are repealed to the extent that they are inconsistent with or interfere with the effective operation of the amended chapter 11.