

**WATER RESOURCES COMMITTEE**  
Council of the County of Maui

**MINUTES**

**September 9, 2011**

**Lanai Community Center, Social Hall**

**CONVENE:** 2:34 p.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair  
Councilmember Gladys C. Baisa (out 3:58 p.m., in 4:01 p.m., out 5:02 p.m.)  
Councilmember Robert Carroll (out 4:35 p.m., in 4:44 p.m.)  
Councilmember Elle Cochran (out 4:48 p.m., in 4:51 p.m.)  
Councilmember G. Riki Hokama (out 4:58 p.m.)  
Councilmember Mike B. White (out 4:58 p.m., in 5:01 p.m.)

NON-VOTING MEMBERS:

Councilmember Donald G. Couch, Jr. (out 4:58 p.m.)

**EXCUSED:** VOTING MEMBERS:

Councilmember Joseph Pontanilla, Vice-Chair

**STAFF:**

Michael Geers, Legislative Analyst  
Yvette Bouthillier, Committee Secretary

Morris Haole, Executive Assistant to Councilmember Carroll  
Denise Fernandez, Council Aide, Lanai Council Office

**ADMIN.:**

Dave Taylor, Director, Department of Water Supply  
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation  
Counsel

**OTHERS:**

Steven Bumbar, Managing Director, Castle & Cooke, LLC  
John Stubbart, Director of Utilities, Castle & Cooke, LLC  
Butch Gima, Lanai Water Advisory Committee  
Gerald Rabaino, ILW Local 142  
Pat Reilly  
Ron McOmber  
Sally Kaye, Lanai Water Advisory Committee  
John Ornellas, Lanai Planning Commission  
Christine Costales, Lanai Native Species Recovery Program  
Charley Ice, Hydrologic Planner, State Commission on Water Resource  
Management

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Lenore Nakama Ohye, Hydrologic Planning Program Manager, State Commission  
on Water Resource Management  
Brian Plunkett, Conservation Manager, Castle & Cooke Resorts, LLC  
Others (10)

---

CHAIR VICTORINO: . . .(*gavel*). . . The Water Use and. . .the Water Use [*sic*] Committee meeting on Lanai for September 9, 2011 will come to order. We have quorum present today; and if I may, I would like to ask the representative from Lanai, Mr. G. Riki Hokama, if he would introduce the Members and do me that honor, please.

COUNCILMEMBER HOKAMA: Thank you, Chairman. This afternoon we have for the Committee, Chairman Victorino, Committee Members White from Haiku-Paia-Makawao. We have from West Maui Committee Member Cochran. We are appreciative of having a non-voting Member but still a colleague on the Council from South Maui, Mr. Couch. From East Maui, we have Committee Member Mr. Carroll; and from Upcountry Kula, we have Committee Member, Ms. Baisa. And so, Chairman, we have six of your seven Members here and Mr. Couch joining the Committee this afternoon. Thank you.

CHAIR VICTORINO: Thank you very much. And excused today is the Vice-Chair of the Committee and the Vice-Chair of the Council, Joseph Pontanilla, and also the Chair of the Council who is also a non-voting Member, who intended to come, was unable at the last minute, that is Danny Mateo.

From the Department of Corporation Counsel, we have Deputy Corporation Counsel, Mr. Edward Kushi, Jr. Thank you. And from the Administration representing the, the Water Supply, Department of Water Supply, the Director, David Taylor.

MR. TAYLOR: Good afternoon.

CHAIR VICTORINO: Thank you. And our Committee Staff, Mr. Mike Geers, our Legislative Analyst, and Yvette Bouthillier, our Committee Secretary. And I wanna thank them because they came over awfully early this morning to set everything up, because I was told that Expeditions when it comes to freight you can only bring it on the first boat. After that they don't allow it. So I wanna thank Yvette and Mike for coming over awful early this morning to set this all up. Thank you very, very much.

Today, we have just one item. We have WR-4, the Draft Lanai Water Use and Development Plan. We're going to accept public testimony, but I have agreed before we do that, with the Committee's approval, to have a ten minute. . .or at

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

least ten-minute presentation, no more than ten-minute presentation by the Lanai. . .by Castle & Cooke on the Plan, then the Department of Water Supply, and then finally the LWAC that, you know, that was the Committee that put the plan together, or who assisted in putting the plan together. So with no objections, may I endeavor these groups to give at least a ten-minute presentation for clarification?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very much. So with no further ado, at this point--and then we'll do public testimony after that, okay--but at this point, I'd like to call on Castle & Cooke to give their presentation, followed by the Department of Water Supply, and then LWAC. So if you'd give your name and your, your position and, and, and committee so that the Committee knows who you are and what you...and what position you have.

MR. BUMBAR: Chair Victorino and the Members of the Water Resources Committee, welcome to Lanai. I am Steve Bumbar, President of Castle & Cooke Resorts and the Lanai Water Company.

Castle & Cooke is in support of the Maui Director's draft of the Water Use and Development Plan and the direction the plan outlines. This plan will facilitate our long-range planning and guide us as we balance demand and resources for appropriate allocation of water and land uses.

Castel & Cooke is in favor of moving the Director's draft of the Water Use and Development Plan forward to the County Council for adoption as an ordinance. Thank you.

CHAIR VICTORINO: Thank you. Is there someone else that . . . *(inaudible)*. . . go over the plan itself? . . . *(Inaudible)*. . .

MR. STUBBART: Um...not per se. We had a statement that we had prepared and I'd like to read mine also at this time.

CHAIR VICTORINO: You may. Go ahead.

MR. STUBBART: Thank you. I'm John Stubbart, Director of Utilities for Lanai Water Company and also a member of the Lanai Water Advisory Committee. We support the Maui Department of Water Supply Director's draft of the Lanai Water Use and Development Plan which is critical to the Water Company's ability to service customers and support the community's long-term water future.

The intent of the plan is to identify resources, demands, and the priority to meet those demands, and this is what the plan accomplishes as contemplated by the

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

State Water Code. The Plan is consistent with how it treats other private water systems in the County, and the Lanai Water Company is in favor of moving the Director's draft of the Water Use and Development Plan forward to full County Council for adoption as an ordinance. Thank you.

CHAIR VICTORINO: Any questions at this time? Seeing none, at this time, I'd like to call on the Director of the Department of Water Supply, Mr. David Taylor. And, Mr. Taylor, if you'd like to give your opening comments and what you plan...what you brought up.

MR. TAYLOR: Thank you, Mr. Chair, and, and thank you for having us on Lanai today. On February 25<sup>th</sup>, the Department of Water Supply delivered to the County Council the Director's draft of the Lanai Water Use and Development Plan. This included a number of formatting changes from the draft that was passed out of the Lanai Water...Advisory Committee and from the Board of Water Supply. We made some reformatting changes in order to put the document into a format that we felt was consistent with State law and also with the other planning type documents that exist within the County of Maui such as the community plan, zoning ordinance, et cetera. Mostly what we did is acknowledged the hard work and all of the information that went into the document, keeping that in, and also at the same time recognizing that some of the regulatory language was not quite appropriate for this document when looked at in the framework of various authorities between State and, and, and County entities. So what we, what we tried to do is keep all the information so it wasn't lost, and yet put it into a format that was more consistent with the other Water Use and Development plans and with the use of this document in relation to the other planning documents such as the General Plan, the Lanai Community Plan, et cetera. So that's what you have in front of you and we...obviously we certainly, you know, recommend, you know, passage of, of our draft. Thank you.

CHAIR VICTORINO: Thank you very much. And then the last group will be the LWAC, and Butch will speak on their behalf. Butch?

MR. GIMA: Good afternoon, thank you for. . .thank you all for being here. We appreciate having these proceedings on island since it affects our community and our water system.

I'm not sure how familiar your Committee is with LWAC and, and our water system. The LWAC started way back in 1992 when Riki's dad pointed out a discrepancy down at the Manele Project District, and ever since then the LWAC has been meeting, initially under the Council auspices. Then it went to CWRM, Commission on Water Resource Management, then back to the Department of Water Supply and the Board of Water Supply. We have. . .we usually meet about once a month, and on this specific plan, we have been working on it since 1996. And we've put in a lot of time and, and energy, and we appreciate you coming

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

here and recognizing all the hard work that we've put in here. One thing that we do want obviously is to...for the Council to adopt this Plan by ordinance in and of itself. We also want the Council to adopt by ordinance institutionalizing Lanai Water Advisory Committee.

Now Castle has not agreed to that in our LWAC discussions. However, the latest representatives of Castle & Cooke, Clay Rumbaoa and, and John Stubbart, who I think have had the longest tenure on our LWAC because over the last 20...19 years, we've had a high turnover of Castle & Cooke staff on our committee. But they've been here the longest and I think we've had the best working relationship unfortunately until Dave sent that letter several months ago, and when he sent that letter to LWAC, Castle & Cooke stopped coming.

Anyway, long story short, we want LWAC to be institutionalized and more importantly the process, because we feel that Lanai residents, Castle & Cooke, know our island best. We know our water best and we, we can make the most informed decision about our water with the support of Council and Department of Water Supply.

If you don't have a process set up and if you don't institutionalize LWAC, it's almost gonna be. . .because it's a private water system, it's almost gonna be like a fox guarding the henhouse. Without LWAC, then who will guard the chicken coop? Who will ensure that unaccounted for water decreases? Right now it's 28 percent of the system is unaccounted for water. Who's gonna ensure compliance with the Plan? I don't think Council will. They're not gonna be doing that on a regular basis. I don't think the Department of Water Supply will. And it's by virtue of the fact that you guys are on a different island. You're no different than Department of Education, Public Safety. When you guys are off on another island, you just don't have the...you just out of sight, out of...we're...we are out of sight, out of mind. And that's why it's important to have a locally-based, home-ruled organization overseeing this water system. If it was a public water system, I don't think we'd be having this discussion, but because it's a private water system, that's why we want to ensure that there's that accountability. We have to make sure that there's wellhead protection accountability, watershed protection, ensuring that whatever conservation targets are in the Plan that they're adhered to. We want to make sure that there is someone or some entity looking at the possibility of decreasing water levels and the need to take action. We need to look at chloride levels which are secondary standards for potability. And last, we, we want to look at potential trends that may warrant designation of our water system. I don't think any of the Maui-based individuals, let alone departments, will do that. And we, as Lanaians, want to take on that responsibility. We want to ensure that we are good stewards of, of this, of this public resource. So without institutionalizing the process of LWAC, again who's gonna guard the chicken coop?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Now Castle...I'm surprised Castle has made a short presentation and, and, and that they agreed with, with, with the Plan which is good because hopefully it, it'll sail through. In, in prior written and verbal testimony, they've felt that this Plan is too conservative, and I agree it is conservative. And I think County Department of Water, Water Supply made it conservative for several reasons. One, we have only one aquifer. We're the only island that has one aquifer. Of that one aquifer, we have two subaquifers. And of those two, a disproportionate amount of the water is being pumped out of the Leeward Aquifer. We have no surface water, no streams, no rivers to tap into. We have a diminished recharge area up on the Hale and on the Windward side of the Hale. The Norfolk pines are losing all their branches and their leaves so they can no longer capture the fog drip like they did when it was initially planted, you know, back in the '20s and the '30s. Right now, the design of the water system does not provide the redundancy that is, is needed in any type of water, water system. And lastly, there's a disproportionate amount of water going down to the Manele project district. Anywhere from 67 to 75 percent of water pumped daily is going down to the Manele project district. It is for those type of reasons that this Plan is conservative in nature and it's for those reasons why we need a LWAC here on island to monitor and implement this Plan. We need a plan and a mechanism to implement it and we feel that the LWAC is a vehicle to do that. I'll stop right there. Thank you.

CHAIR VICTORINO: Thank you. Any questions? Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Aloha, Mr. Gima, thank you for being here. And I'm just curious what your thoughts are in the LWAC becoming, you know, by ordinance and sort of this official institution like you're, you're wanting it to be. Do you see the difference between the, the makeup today as an advisory-type committee and, and instituting it into our sorta system especially when Sunshine Law will come into play then?

MR. GIMA: Yes. David and I have had a discussion about that and, and you're right. I mean if it becomes an official body, yeah, Sunshine Laws will apply and it will require funding, and whether it comes out of Department of Water Supply or a line item from the Council, yeah, that, that's going to need to happen because Department of Water of Supply does not get any revenue from this private water system. You know, in terms of the composition of, of the LWAC, I, I don't see any problem with it remaining the same with two from Castle & Cooke, two from Lanaians for Sensible Growth, a representative from the Lanai Planning Commission, our Council member, and then three at large.

Now the main, the main thing is we want when any application comes before the Planning Department--like how they send out the packets to Fire Department, DLNR, Department of Health, and so on--we'd like them to send that to LWAC. LWAC would then review the, the packet and see if it complies with the Water Use and Development Plan and then make a recommendation back to the

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Planning Department on whether we, we approve, disapprove, whether it's in compliance, not in compliance, or whether any conditions are, are, are warranted. That, that's what we're looking at, but there, there needs to be a system and, and not depend on someone in a department to make sure that residents review it. Because in the past, all these years, pretty much Ellen Kraftsow has, has brought it to LWAC and said, okay, this is, this is on the table, we need to make a recommendation. And she did it just because she was Ellen. But it, it was not institutionalized where it became a, a procedure or protocol, and that, that's we're wanting.

COUNCILMEMBER COCHRAN: Okay. Thank you.

COUNCILMEMBER BAISA: . . .*(Inaudible)*. . . Working? Good. You mentioned that, that you wanted us to do a couple of things today. One was to adopt the Plan by ordinance and that you wanna institutionalize the LWAC. Would you be willing to...or how...what is your feeling if we were to adopt the ordinance and not follow through with the institutionalization of the LWAC? Would you still support the Plan?

MR. GIMA: Conceptually I would, but I would tell you, poho. Because for, for the reasons I had stated earlier. You, you, you have a plan and who's gonna guard the chicken coop? Who's going to ensure implementation and monitoring?

COUNCILMEMBER BAISA: So you feel that it's really important that we do both things?

MR. GIMA: Most definitely.

COUNCILMEMBER BAISA: Okay, thank you. Just want to be very clear. Thank you.

MR. GIMA: Thanks.

CHAIR VICTORINO: Mr. Couch.

COUNCILMEMBER COUCH: Thank you. You mentioned watershed issues including the Norfolk pines. Is somebody working on that right now to try and resurrect the pines or whatever it takes to get the watershed going back?

MR. GIMA: Oh, yes. Castle & Cooke has been working probably for the last, oh, I'd have to say, six, seven, eight years with the...there's a watershed partnership and but basically Castle & Cooke has been doing all the legwork to fence off the area so we can get the deer and the mouflon out and restore, you know, the native plants. So it can, it can hold the water when it rains or when the fog drip comes down. Without, without it, all that stuff runs down, it can't seep into the, into the aquifer.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Any other questions for the testifier? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, thank you, Chair. Just want to follow up on that fencing project. And where is that? Do, do you know?

MR. GIMA: I'd have to yield to Castle & Cooke because there are like three phases and they can best tell you which phase is complete, what percent of the second or third phase it's in, and how much money they're spending and need.

COUNCILMEMBER COCHRAN: Okay, thank you.

CHAIR VICTORINO: Any other questions? Seeing none, thank you, Butch, very much.

MR. GIMA: Okay. Thanks, Mike.

CHAIR VICTORINO: Okay. So at this time, I will now go into public testimony. Each testifier will be given three minutes to testify, one minute to conclude. We will be only discussing the matter at hand. Please, at this time, if you have any cell phones or noise makers, put 'em on silent mode or turn them off. And also when you come up, please identify yourself and if you represent any particular group. First one I have is Gerald Rabaino followed by Pat Reilly.

**...BEGIN PUBLIC TESTIMONY...**

MR. RABAINO: Aloha no. Welcome to Lanai, Council, Mr. Chair. I'm Gerald G. Rabaino, resident of Lanai, registered voter, taxpayer. I'm also representing the ILWU on, on another issue.

But regarding the issue...I only had time to read what you guys had distribute here, yeah. So I've been highlighting certain area, but I'm going to...my issue regarding what is the estimated water use for resort development proposal sites. Last week, they had a town meeting which I could not have attend because I have a split shift. As Steve Bumbar mentioned to me this week, how come you weren't at the meeting? I said, well I gotta pay my mortgage, I gotta come work. Okay. But usually I'm at the community meetings when my schedule permits me to. But I want to share this with you is that the water usage, yeah, last month or several months ago, the tank up here behind the city, it took 16 days to replenish that 500 million gallons and they were trying to find the leak in Lanai City 'cause the sprinklers were running. Okay. So if I'm looking at that and it took 16 days to replenish that and the generator's running, what if the other water well at Palawai is also drained? How many hours would that be running to replenish that tank? So we do need some kind of policing, enforcing on this island. And, Mr. Carroll, as I e-mailed you the last time, and talked to Riki on some occasion, that I support LWAC to a certain degree. But we need LWAC because of



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Goro Hokama that was instrumental in making sure that there was a committee to oversight and watch the usage and the monitoring of our water.

Okay. My second question is one of the water wells is running dry and not pumping enough water. Where is the water going to come from? From other non-potable wells? If one...if we have one well that's currently--and I believe that's Well 4 if I read correctly and did some of my research--that, that one is kind of dry. So we have other wells that we depend on. How much of those non-potable or brackish water is filtered to replace potable water? Okay. This is not my territory of water specialty. Okay. But this is what I hear because I work at public areas and Mr. Councilman Victorino and Riki and all you folks know that. People do vent verbally, but they don't want to come out as you can see in this kind of public scenario.

MR. GEERS: Three minutes.

MR. RABAINO: Okay. The next question is, it is understood--and this is way back and grandfathered I hope it still is, is still enacted--it is understood that the old policy when cutting down one pine tree that two pine trees will be planted to replace the one pine tree that was cut down. This is basically to make sure that the trees, the amount of trees sustain the rainfall that has been coming to Lanai. For you folks, when pineapple was, it rained normally. Pineapple's no longer here. Our rain has been out of sequence irregardless of whether it's La Nina or Na Lina or La Nina. Okay. So when we go up Lanai Hale the road is not wet, it's dry.

CHAIR VICTORINO: Mr. Rabaino, can you address us? . . .*(inaudible)*. . .

MR. RABAINO: Oh, sorry. Okay. So anyway --

CHAIR VICTORINO: Thank you.

MR. RABAINO: --but, you know, we need to increase our forestry in order to encourage rain clouds to recharge and replenish our water wells. With all these development coming into play, we need, we need to protect and we need someone besides the Company to monitor and enforce these things. So it is very important that LWAC does exist, okay, and someone to watch what the Committee does because--I know I'm going over my time--because management has changed. The Water Department has changed three management from the time I remember and maybe others . . .*(inaudible)*. . . so the history along there gets lost. We, the old timers and the ones before me, can see that change. And hopefully it doesn't happens too much. But we care about our water system. Okay. Thank you for this opportunity to speak. There's other stuff I would like to talk about, but I can wait until later on. Mahalo.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Thank you, thank you, Mr. Rabaino. Questions for Mr. Rabaino?  
Seeing none, thank you.

MR. RABAINO: You're welcome.

CHAIR VICTORINO: Next testifier is Pat Reilly followed by Steve Bumbar.

MR. REILLY: I always have trouble with this thing. I'm a little short, but you know.

COUNCIL MEMBERS: . . .*(Laughter)*. . .

MR. REILLY: Aloha, Chair Victorino, Councilman Hokama, Members. My name is Pat Reilly, formally Fairfax Reilly at 468 Ahakea. I'm testifying as an individual.

I think you need to put this in context. According to the present February 25<sup>th</sup> draft, Lanai A is one of the most fragile aquifers in the islands. We are...our water system is fragile and critical and can be marginal. For those of you that, that noticed in the draft that if everything that is entitled is built out, we don't have enough water. I'm going to say that again. Of all the properties on Lanai that Castle & Cooke has that is entitled for a build out, and there are many more that's not entitled yet, and I assume that means entitled to water also, there's not enough water. The report says that.

Secondly, last Tuesday...and I'm, I really appreciate everybody being here. We have the Corporation here, we have the Commission on Water Resource Management here, you have a great opportunity to ask some questions. Last Tuesday, Mr. Bumbar, in a community meeting, indicated he'd been meeting with Council members talking about the future of Lanai. Last August, Mr. Murdock was here expressing his frustration with his revenues on Lanai. It can be confirmed today or not, but I walked away the impression that this island is for sale. The ultimate question to you, to me, for us, for all of us, what are the guarantees that this Corporation or any successor corporation is going to invest in the water system to ensure that the aquifer and all the components of Mr. Taylor's draft are actually implemented?

And we kick it around at the Blue Ginger, I am not sure where the authority lies. And all due respect to Mr. Taylor's draft, I'm really in favor of the 2010 draft that Mrs. Kraftsow, that Ms. Kraftsow did because it had, to me, had teeth in it. I really recommend that the LWAC in one way or another be institutionalized. It, it is the only way we can have a consistent history. And this document, the 2010 document and the 2011 document, is a miracle to me. We will never get this much data on water on Lanai again.

MR. GEERS: Three minutes.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. REILLY: So please, institutionalize LWAC. Now I know the 2011 draft is before you, but I don't like it, I like the 2010 draft better. It has more teeth to it. I would also say that LWAC and the Lanai Planning Commission should, must receive every potential permit application whether it's in the SMA or otherwise because it has to do with water. There is no one consistent body that's going to monitor that. And I agree with Mr. Gima, I don't think the Department of Water Supply--this is a private water system--is going to monitor it; I'm not sure if CWRM has the facilities to monitor it. It's gotta be here, it's gotta be here. And Riki's dad, I've sat through many meetings, I've never been on LWAC, but I've sat through 20 years of meetings. I have been here 33 years. That was the whole reason for it starting. Monitor, it's not to disband it after the Plan is developed, but to monitor the implementation of the Plan. Thank you very much.

CHAIR VICTORINO: Thank you. Any questions for the testifier? Seeing none, and we will, Mr. Stubbart and...I'm sorry, I forgot the...Mr. Bumbar already have spoken so I will go on to Mr. Ron McOmber. Sorry, Ron. And followed by Sally Kaye.

MR. McOMBER: Good afternoon, welcome to Lanai. Appreciate you coming. You heard from me about three weeks ago. And said how important...did you do the little bit of homework I asked you to do and look at the history of how long we've been doing this? It is really important to understand that. Butch gave a very good presentation. We are the only ones that can look out for our water 'cause your Water Director's not going to do it and I don't blame him, I wouldn't want it. He's got enough problems of his own on Maui.

But when we received that letter from the Water Director...you know, it was funny about the letter, too 'cause the letter came to us individually, not cc'd to all LWAC members. And each one of us thought that we were being kicked off this thing individually. And when we finally got together, we realized that wasn't the intent, but it was kind of scary at the time. And that was the only bad thing about that letter, you should have just told LWAC. But to summarily dismiss us after we've been working on this for eons, and what really started this is we asked for designation, LSG asked for designation of this water system. And that's when we brought the Water Commission in and they said they didn't have the personnel or they didn't know what the water system was like at that time, and they could not grant that. So we were given the second best thing to do was they would come every October and they would look at the water situation, and they instituted a monthly water report which we were getting reports from Castle & Cooke. The problem with that is we don't know if those numbers are right or not 'cause they're putting it together so we have to go by those numbers. Even with their numbers it has holes in it.

One of you mentioned about the fencing. The fencing was part of the original Water Use and Development Plan to get that ungueness [*sic*] out of the watershed. It's estimated right now that there's still 30 percent of the original fence which

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

should have been done five years ago, folks, is not completed. It still got deer in it, it still got problems in it. And, and Castle & Cooke has not come forward with the money to do that. If it wasn't for the people doing the bird sanctuaries up there, a lot of this stuff would not be taken care of 'cause they got it from other funds, from other people to do some of the work. So that fence should have been done five years ago.

We have a new well that just was installed. Now this is why LWAC is important. A new well has been dug, and I understand it has been pumped and tested. We have no idea what the chlorides are of that, what the temperature of that is, what is the pumping capacity, we don't know. 'Cause they're not going to tell us because they have been told that we're not an, an organization that's legal. Please make us...we're the only ones that when building permits come up or permits...we're going green, folks. Everybody knows they're going to try to do biofuels on Lanai. Where are they going to get the water to start the biofuels?

MR. GEERS: Three minutes.

MR. McOMBER: Okay. And if they do that, I don't think they know that they don't have any water for that. And we're the ones that know, we watch it. The main thing is we need to be institutionalized. And we appreciate and have you do this. If you need us to come over there Tuesday, we'll come over and give you the same song and dance. It's, it's really important to Lanai. Thank you very much for being here, I appreciate it.

CHAIR VICTORINO: Thank you, Mr. McOmber. Any questions for Mr. McOmber? Any voting Members first? Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. Thank you, Mr. McOmber, and thank you for coming to Maui, too, that time. I'm pointing out the fencing question, too. But I'm just curious that letter that was sent to LWAC individually to your groups, was it telling you to disband or was it just telling you that it wasn't supportive of you folks wanting the institutionalizing of the group?

MR. McOMBER: No, it didn't say that. What it basically said is, thank you for your hard work, you're no longer...it's no longer needed. LWAC is no longer needed in this capacity, the way I, I took it, the way I personally took it. Now if it was meant some other way, I don't know. But basically, as of now, now that it's gone before the County, we no longer are a functioning body. And I, I was really upset about that 'cause we put 15-20 years. Some of us put longer than that in, in this organization doing this for the community. And to meet every, every month and then have all at once the Company just stop talking to us. They just don't talk to us, period. But that's what it felt like to me. And I don't know what the intent from the Director was, but that's what it sounded like to me, and all the rest of us that got the letter had the same feeling, I think.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COCHRAN: A follow-up, Chair?

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER COCHRAN: Thank you. So, Mr. McOmber, are you saying that you don't feel that you folks in this body cannot continue to be a voice and to be representative of this island? And, you know, testifying at Council level, CWRM level, wherever.

MR. McOMBER: No, I feel that we can. That's why we've continued meeting with or without the Company showing up. We have continued meeting and talking about situations 'cause we hear lots of stuff in town that are going on and, and we talk amongst ourselves. But we, officially, we don't have anybody that we can ask questions officially from the Water Department 'cause they don't show up. But, no, I don't think that, we in our own minds, are not disbanded as far as we're concerned. Thank you.

CHAIR VICTORINO: Mr. Couch.

COUNCILMEMBER COUCH: Ms. Baisa wants to ask a question.

CHAIR VICTORINO: Oh, I'm sorry. I didn't see you, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Thank you very much. Quick question for you, Chair, on procedure.

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: Will we have the opportunity to question any of the previous speakers from the Company later or is that for another meeting when we do more...

CHAIR VICTORINO: They're available so they can be called up. And I've told them that they may be called up after --

COUNCILMEMBER BAISA: After testimony?

CHAIR VICTORINO: --following testimony, yes.

COUNCILMEMBER BAISA: Okay, thank you very much.

CHAIR VICTORINO: Mr. Couch.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COUCH: Thank you. First of all, thank you to all the members of the LWAC for doing what they've been doing for so many years. Mr. McOmber, how do you envision the LWAC continuing, is it a monthly meeting, quarterly meeting? And what kind of things would you discuss if, if the Plan is finalized, then you're gonna be, as Mr. Gima said, the, the, the watch guards. But if there's nothing going on, are you still gonna meet, and then are you gonna require staff from, from, from the Administration, and, and also --

MR. McOMBER: Well...

COUNCILMEMBER COUCH: --how do you anticipate it being funded?

MR. McOMBER: I think the anticipation would be that if major, if major permits come out. Let's say they, Castle & Cooke changes their operation and they're gonna move a bunch of homes, instead of building at Manele they're gonna build 'em Koele and there's already designated water for each area. We have to see are we going to subtract water or appropriated for that...we probably won't have to meet every month.

COUNCILMEMBER COUCH: So as a as needed basis kind of thing?

MR. McOMBER: As need, as need. We would like to be as the agency when the Health Department, the Police Department, all the other departments when they go for permitted process, that we'd be notified about the projects that are coming up so we're not blindsided by it.

COUNCILMEMBER COUCH: Okay. And one last question. How do you anticipate it being funded if we did something like that? Because it is a private water system so I don't know that we can...

MR. McOMBER: Well what I would ask is that you would let us know by letter, like all the other agencies that this is going on and then we could be alerted to it, then we can, we can have a meeting and talk about it and talk with the Company and see what their intentions are.

COUNCILMEMBER COUCH: Okay, thank you.

MR. McOMBER: It wouldn't be anybody else but the Company unless somebody is sold...the land is sold to somebody else which is a possibility also.

COUNCILMEMBER COUCH: Okay, thank you.

MR. McOMBER: Thank you.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Thank you. Any other questions? Seeing none, our next testifier...thank you, Mr. McOmber.

MR. McOMBER: Thank you.

CHAIR VICTORINO: Our next testifier is Sally Kaye followed by John Ornellas.

MS. KAYE: Aloha, thank you for coming. I'm not going to testify, I'm gonna ask a couple questions. One is predicated on a couple of years of service on the LWAC where representatives from the Water Company and Castle & Cooke were adamantly opposed to the Plan, and now today for some reason that has changed. So my question to you is, I understand that this is a reformatting so that the executive summary is now much shorter in the bulk of it, but all the, all the supplementing and supporting documentation is still there. Is that correct?

CHAIR VICTORINO: That is correct.

MS. KAYE: Okay.

CHAIR VICTORINO: That is my understanding.

MS. KAYE: Right. So how...if this plan is adopted as it's formatted now, how will the supporting documentation be used? Is anybody...

CHAIR VICTORINO: Mr. Taylor? Mr. Taylor, would you like to explain? Because you put this format and as I understand it's all in appendices so it's, it's all institutionalized, but go ahead and explain.

MR. TAYLOR: Thank you, Mr. Chair. And I may, I may need Mr. Kushi to help with the, the legal issues on this. My understanding has always been that the Water Use and Development Plan, once adopted, is still a guide. It's not...the details in there are not a law. So again I was very concerned that there was all these words: shall, shall not, et cetera. 'Cause my understanding from Corporation Counsel was even if it was adopted, those weren't really enforceable as laws, so that I thought it was gonna be very, very confusing. That people said, "Hey, it says shall", but, but people are treating it as a guide. So my goal was to keep the information, but make it very, very clear that there is no shall and shall not, it's, it's informational for guidance purposes. So that's why we reformatted it, put things in the appendix, but my, again, my understanding from Corporation Counsel is that this entire document is a guide and not a, a, a regulatory shall, shall not type of document.

MS. KAYE: Is that consistent with other plans for other areas?

MR. TAYLOR: Yes.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MS. KAYE: You don't, you don't enforce...there's no enforceability to any other plans for the public water systems that you oversee?

MR. TAYLOR: In the Water Use and Development Plans, that's correct. They are not regulatory documents, they are guidance documents. And so whether...so, so we felt that clarifications we made in the reformatting made that clear. So it's all information, but it makes it very clear to everybody that no one will misinterpret it as, as a regulatory language.

MS. KAYE: Okay.

MR. TAYLOR: So that was our intention. And again if, if there's anything I said incorrect, you know, Mr. Kushi can correct that.

CHAIR VICTORINO: Well I'll ask Mr. Kushi if there's any clarification that you'd like to make. If you don't mind, Ms. Kaye?

MS. KAYE: No.

CHAIR VICTORINO: Since you're asking the questions --

MS. KAYE: Please.

CHAIR VICTORINO: --we'll, we'll try to get the correct answers. Mr. Kushi?

MR. KUSHI: ...*(Inaudible)*...

CHAIR VICTORINO: Okay. So you heard, the Director's correct?

MS. KAYE: Right. So then just a follow up. If it was another plan that it was a public water system and somebody came forward...

CHAIR VICTORINO: Ma'am, you know what, I, I'm going to stop you here. I allowed you ask one question --

MS. KAYE: Okay.

CHAIR VICTORINO: --I'm not going to let you going on and asking a lot of questions.

MS. KAYE: Okay.

CHAIR VICTORINO: Let's give your testimony and then at, at a later point the Members can ask questions ...*(inaudible)*...



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MS. KAYE: Okay then --

CHAIR VICTORINO: Okay, thank you.

MS. KAYE: --I would, I would just suggest that the question be asked, "Why the change of heart?" To, to respond to the question of what LWAC would do, I believe Mr. Couch asked that question. We've, we've always sort of seen it as two tracks. One would be because the Board of Water Supply can review and comment on projects. In Maui, we don't have...we would be the Board of Water Supply in an advisory capacity for permits and projects that came forward. The second track is, is more...does not, it's not a cost item. We volunteer our time, we show up, and we had a standing agenda. We would review the periodic water report and the figures on it, we would...if there were questions on the potable and the non-potable system, we would discuss them, hopefully the, the water purveyor would be there to answer some of the questions. We would review the status of the Water Use Development Plan, and, and that was it. So the, the track that would be once a month or twice a month was not a cost item.

CHAIR VICTORINO: Any, any questions for the testifier? Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And aloha, Sally, nice to see you. For me personally, I feel like the questions that you're asking, and it goes along with a lot of the other testifiers before you, that really should be addressed to the Company. As the County, and this not being our County water system, it's a private system and it's the Company's system. So I'm feeling like my County hands are sorta tied on a lot of this stuff, but definitely...and by all means wonderful that Lanaians wanna be the eyes and ears on the ground here to relay any information you see or hear to us, but in the end it's not really we...you know what I mean. So it's CWRM, the State entities more so, so again following up on what Mr. Taylor and Mr. Kushi are, are alluding to, this document is a guide basically and not effect and force of law in the end also. But, you know, I, I completely appreciate you folks taking your time and energy to, you know, put your heart and soul into this.

MS. KAYE: Well that's the conundrum. It's, it's a private purveying system, the water is yours and the water is mine.

CHAIR VICTORINO: Thank you, Ms. Kaye. Next testifier is John Ornellas followed by Christine--I can't read the last name, I'm sorry--Costales. Is that, oh, okay, thank you. Go ahead, Mr. Ornellas.

MR. ORNELLAS: Aloha. Good afternoon, Mr. Chair and Members. Nice to see you all here on Lanai again. You know, we were talking about the trees up there. I recently took, in 2010, a class on, on the...for tour guides for this island. And Kepa Maly, who is the Executive Director for, he used when we talked about the

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

trees up on the mountain. Evidently back in the day, we always used a 55 inches of moisture up on the, up on the Hale, that's average rainfall or average moisture on there and Kepa said that in a, in a past, in past studies, especially from the University of Hawaii, they said that 35 inches of that comes from, comes from our pine trees. And they're Cook Island pine trees, not Norfolk Island pine trees. So those trees up there are very, very important. We will not be able to survive on this island if those trees are not there, period.

I do support the Lanai water...the, the, the Water Plan for Lanai, but I do support strongly the 2010 draft. Now after just listening to talking about this being a guide, again, you know, how, how can you...how can anybody...how, how can any entity that has jurisdiction over this water system, where's the teeth if it's just a guide? I can stay home and watch the TV Guide. You know, it doesn't mean nothing to anybody. This will be another 700 pages that can sit up on a shelf someplace and nobody would really care. So what would, what would happen if...for instance, here's a, here's a good thing that I thought of was in a, in a Water Use and Development Plan they allot 500,000 gallons, half a million gallons of water towards agriculture on this island, it's allotted. Now just recently in early January, Harry Saunders, President of Castle & Cooke, added another 250,000 gallons of water as part of the benefits package for the windmills. Of course it hasn't happened yet, but he's added another 250,000 gallons. So that now is 750,000 gallons per day for agriculture. If you read it, if you guys read the Plan, if they build out now, they don't have enough water for 500,000 gallons. So, you know, there, there's no, there's no sense of ownership of this, of this Plan.

LWAC...I am the Lanai Planning Commission member on LWAC. So the Lanai Planning Commission has...sits in on, on the LWAC Committee. It is difficult...I read the Plan. I didn't have nothing to do over a weekend so I read it. But I can guarantee you that the rest of the members on the Lanai Planning Commission has not read it.

MR. GEERS: Three minutes.

MR. ORNELLAS: So when water issues come before the Lanai Planning Commission or if questions are asked, there's no, there's really nobody there to say, "Well that's wrong", "This is right", "This is what the Plan says", "This is not what the Plan says". And if there's no teeth to the Plan, then anybody can say whatever they want and get away with it because nobody's gonna, nobody's gonna hold you accountable to that Plan. Are we still...does the County of Maui still have the ordinance "Show Me the Water"? Well why don't you let LWAC here on Lanai ask that question, "Show me the water?" Let the Lanai Planning Commission be part of the permitting process and let them ask the, the question. Once LWAC says, show me the water and it happens, then the Lanai Planning Commission says well if LWAC is okay with it then we should be okay with it. Who does have jurisdiction over the water? I mean ad nauseam when you guys

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

had that, that meeting over on Maui, you guys couldn't decide who had jurisdiction over our water. Is it the County or is it the State? Has that been, has that been ever...has anybody ever answered the question? Says, "I'm responsible for the water system on Lanai". I don't think the County or the State has done that, have they? I'm asking the question, you can answer.

CHAIR VICTORINO: I'll answer it this way. I have addressed a letter to the Attorney General and we have representatives from the Water Commission here today. So we'll get answers.

MR. ORNELLAS: Okay, good. Good. And it's very important that, that we institutionalize the LWAC here on Lanai 'cause if we're gonna look out...if we're gonna spend 20 years working on this, on this Plan, you, you would think that we have a vested interest and we wanna be that person that raises the hand and says, "Hey, we do wanna take this, this on and we wanna be the, the, the group that does it". So that's all I got.

CHAIR VICTORINO: Thank you, Mr. Ornellas. Questions for Mr. Ornellas? Go ahead, Ms. Cochran.

MR. ORNELLAS: Ladies first, right, Don?

COUNCILMEMBER COCHRAN: Thank you, Chair. Thank you, Mr. Ornellas. And I'm just curious, how many...are there some Lanai Planning Commission members that are also in LWAC?

MR. ORNELLAS: I am --

COUNCILMEMBER COCHRAN: ...*(inaudible)*...

MR. ORNELLAS: --I am the, the member of LWAC, but we have a, a backup and that's Mr. David Green. So there's actually really two, but I sit in all the meetings and if I can't attend I notify Mr. Green, and Mr. Green will then show up in my, in my place.

COUNCILMEMBER COCHRAN: And a follow-up question about the trees you mentioned. That have direct relation to the fog drip that does --

MR. ORNELLAS: Yes.

COUNCILMEMBER COCHRAN: --you know, add to the watershed and the --

MR. ORNELLAS: Yes.

COUNCILMEMBER COCHRAN: --the resource there?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. ORNELLAS: I can, I don't know if you've been in, in these kind of situations in other, especially on Maui and stuff if you go up into the valleys and stuff. But if you walk, if you walk through the trees up the Monroe Trail, and it's foggy, by the time you get a hundred yards up, up the trail, you'd be soaking wet. And that's, I mean people need to do that and feel that to get to realize how important those trees are to this island.

COUNCILMEMBER COCHRAN: Thank you, Mr. Ornellas.

CHAIR VICTORINO: Mr. Couch.

COUNCILMEMBER COUCH: Thank you. Mr. Ornellas, since you're a member of the Lanai Planning Commission, and, and I don't know if this is a kosher thing or not, but it might be possible since the Lanai Planning Commission deals with permits and whatnot is to make the LWAC a subcommittee. Just form a subcommittee from the Lanai Planning Commission and, and go from there. And I don't know if that's a legal possibility or not but that's thinking outside the box and maybe you might be able to get something that way.

MR. ORNELLAS: At our last meeting on the Lanai Planning Commission, this was brought up because I give an update on the LWAC on the Water Committee as part of the, the agenda item for the Lanai Planning Commission. The, the County of Maui Planning Department does not want to deal with anything to do with this water. They would rather just let Mr. Taylor take it over and, and let him handle this stuff because the Planning Department doesn't wanna get involved.

It was...when I ask questions about having the water people from Castle & Cooke, John Stubbart and Clay Rumbaoa, who show up at most of the meetings, you know, it was basically can you please, would you please give us an update. There is no force where it's saying that every, every...there's no...there's nobody saying that you have to show up at the, at the Planning Commission meeting to give an update on all the wells, what's happening, and that kind of stuff. There's...it's please come. So I'm pretty sure that the next meeting John's not gonna show up 'cause he doesn't want ask...be asked all these questions. But John's a nice guy and he'll probably show up and we'll, we'll take that.

But LWAC is a...you will have people that will come and then LWAC would be part of the County either, either a, a board or a advisory capacity. And they would be staffed, they would need funding because I think in the, in the televised meeting that I saw Mr. Taylor says, "Well, you know, you would need to fund that." And we would hope because we pay property taxes, too, here on Lanai and, and we should be able to get something for our island as far as when it comes to a, to a LWAC Committee. You know, it's just, it's, it's that important to us. It's, it's that important to us.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Thank you. Any other questions for Mr. Ornellas? Ms. Baisa.

COUNCILMEMBER BAISA: John, thank you for your testimony. Maybe you can help me as we go, move ahead here. We have some very important legal issues to discuss with Corporation Counsel. And I'm interested in your, your impression or what you feel. There was a letter that apparently was sent to the LWAC members and you got one.

MR. ORNELLAS: Yes, I did.

COUNCILMEMBER BAISA: Your impression from receiving that letter was--and I am trying to ferret out 'cause I've never seen the letter--did it essentially give you the impression that now that the Plan was in a draft form, your work was done and so you were being dismantled?

MR. ORNELLAS: That's the way I took it, yes.

COUNCILMEMBER BAISA: Okay, I just wanted to be very clear about what you thought when you got it.

MR. ORNELLAS: Now that's basically what Mr. Taylor said.

COUNCILMEMBER BAISA: Okay, thank you very much.

MR. ORNELLAS: That we were, we were history, we were done.

COUNCILMEMBER BAISA: Okay, thank you. I'll follow up with others later. Thank you.

MR. ORNELLAS: Thank you. Thank you.

CHAIR VICTORINO: Any other questions? Seeing none, thank you, Mr. Ornellas.

MR. ORNELLAS: Thank you.

CHAIR VICTORINO: Christine Costales.

MS. COSTALES: That's my name.

CHAIR VICTORINO: Okay. Sorry.

MS. COSTALES: Good afternoon, Chairman. Thank you, Council members. I'm Christine Costales and I'm with the Lanai Native Species Recovery Program. In 2006, I started working with Maui Nui Seabird Recovery Project to learn about

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

the `ua`u or the Hawaiian petrel on Lana`ihale. We found the second largest colony of these endangered seabirds, the largest is on Haleakala. We started addressing the threats to these birds and have realized that the biggest threat to the seabirds is the destruction of their breeding habitat by the invasive of alien plants, especially strawberry guava. This invasion is also threatening the productivity of the Lana`ihale ecosystem in terms of its ability to recharge the aquifer we depend on for our domestic and business water needs. We have built the Lanai Native Species Recovery Program to respond to the needs of our island, its watershed, and the plants and animals which are crucial to its ability to fulfill our water needs. We also strive to ensure the perpetuation of cultural resources essential to our Hawaiian tradition.

The Lanai Water Use and Development Plan was drafted with the concerted efforts of the Lanai community, Castle & Cooke, and the County Department of Water Supply. The Lanai Water Advisory Committee, or LWAC, was comprised of dedicated community members who worked diligently with Department of Water Supply staff to come up with the Plan as submitted before the current Water Director modified the document. We understand that there are some issues with, with the Plan but the community believes that the document as originally submitted to the Department is good and should be adopted by the Council.

In addition, we are dismayed that the current Water Director has chosen to seek the dissolution of the LWAC. The concept with this committee was to have continuing community participation in the implementation of the Plan. Please continue this committee so we can continue to participate in a process of equitable distributing our scarce water resources on Lanai.

The Lana`ihale watershed is in crisis. Castle & Cooke is seeking funding to complete the watershed protection fence and remove deer and mouflon from the watershed. Lanai Native Species Recovery Program seeks funding to continue to address the invasion of alien weed species. We see the Water Use and Development Plan as a viable document to use when seeking funding for our efforts. It identifies the scope of the issues which need to be addressed. It provides the County Council with a platform from which to evaluate proposals for addressing the needs of providing water for the people of Lanai. We believe that the County should be a partner in our ongoing community-based efforts to ensure that we will have dependable, high-quality water for now and for our children and their children long into the future. Thank you.

CHAIR VICTORINO: Thank you. Questions for the testifier? Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. Hi, Christine, nice to see you. Thank you for all your hard work with the seabirds. And are you folks...sorry I didn't catch the fencing part. It's kind of stuck on my brain right now. Are you folks involved with working with that?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MS. COSTALES: No, no. Castle & Cooke is responsible to complete the fencing.

COUNCILMEMBER COCHRAN: Okay. It's just I mean and, and it's of utmost importance to build this.

MS. COSTALES: Yes. We...and the importance of removing the ungulates out of there. We actually do removing of invasive species. We've got grant fundings from OHA for a chipper, wood chipper and we get volunteers to help us clear the site. So we had funding for the mitigation for the first three acres, that's already gone. And we're still continuing to clear another three acres. So it's all volunteer work from now and I only have three staff members.

COUNCILMEMBER COCHRAN: Are you making headway with the waiawi?

MS. COSTALES: It's a lot of work. We're also...we're going into herbiciding and trying to find a way to, you know, basal bark or cut and, and, you know, shoot the waiawi. And that's probably going to happen in about two more months. Yeah.

COUNCILMEMBER COCHRAN: Thanks for all your hard work.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none, thank you.

MS. COSTALES: Thank you.

CHAIR VICTORINO: Ms. Costales was the last person to sign up for testimony. I will allow anyone who hasn't testified, who wishes to testify, to come up and you can sign up afterwards.

MR. McOMBER: ...*(Inaudible)*...

CHAIR VICTORINO: No, Mr. McOمبر, good try, but nope. Good try. Seeing none, with the Committee's approval, I will close public testimony at this time. Thank you very much.

COUNCIL MEMBERS: No objections.

**...END OF PUBLIC TESTIMONY...**

**ITEM NO. 4: DRAFT LANAI WATER USE AND DEVELOPMENT PLAN**  
(C.C. No. 11-86)

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Today we are considering the Water Use and Development Plan for Lanai. Sections 174(C)-31, Part 3 of the Hawaii Revised Statutes (Hawaii Water Plan) requires that each County prepare a water use and development plan and to adopt this plan by ordinance.

Secondly, your Committee, your Water Resources Committee has met on this item on June 28 and again on July 12<sup>th</sup>. The Council had 180 days from the receipt of the proposed updates to pass and the proposed update by ordinance. Unfortunately it wasn't able to accomplish this so a deadline of August 21<sup>st</sup>, I mean August 24<sup>th</sup>, excuse me, was extended. You submitted a resolution which was adopted by the Council to, to extend the limitation placed on the Lanai Plan.

We are now in the point today where this public meeting was to give the Lanaians an opportunity and for the Council members to ask questions of the various entities and especially the Company because the Company had prepared this Plan. Also present is Charley Ice. He's here from the State Water Commission if I'm correct. Charley, back there. And who, who else is with you, Charley?

MR. ICE: . . .*(Inaudible)*. . .

CHAIR VICTORINO: Lenore Nakama, our Planning Director from the State. There's been some questions so I'm going to turn...first, before I call you up, Charley, I'm going to ask Mr. Kushi, I'd like some clarification. We received a letter as of July 11, 2011, and I would like you to make it clear to the Council members here our limitation and jurisdiction on this matter, because this is really the first and probably the only entire system that is privatized. I mean even when we go to West Maui, we have a combination of private versus...and public. So, Mr. Kushi, I would like you to quick give the Council...the Committee, I should say, an overview and so that if they have specific questions on this area, I will let you ask 'em at this time. Mr. Kushi?

MR. KUSHI: Hi, Mr. Chair, Members of the Council. You're referring to my July 11, 2012 [*sic*] memo back to you --

CHAIR VICTORINO: Yes, July 11, 2011. Yes, thank you.

MR. KUSHI: --regarding Lanai Island Water Use and Development Plan. Should be in your Council binders.

CHAIR VICTORINO: Yes.

MR. KUSHI: I responded to your question, may I please request that you provide written guidance regarding the legal boundaries, parameters, and role of the Council with regard to private water systems within the County of Maui. So that question was kind of broadly phrased, but I, I intended...the intent was to apply to Lanai.



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Okay. Basically I, I responded by saying this, that it's nothing we could find neither in the Maui County Charter, the County Code, nor any prior rule or regulation of the Department of Water Supply giving authority for the Department to manage, control, or maintain private water systems not owned by the County. That's point one.

Secondly, as far as the Water Use and Development Plan, the Council...the County through this Council and the, and the Department is mandated by State law to come out with these Water Use and Development Plans. And you have a separate chapter in your Maui County Code setting forth the procedures, and you're right in the midst of doing this for the Lanai Plan. As, as far as what the...the Council has the final authority to accept, modify, deny, or, or do whatever in terms of a water use and development plan. The Department has chosen to do it in sections because their system on Maui is divided into various districts.

As you know, the fact is, Lanai is a separate island and the Department does not have any facilities here. We run the wastewater plant for the majority of the island, but as far as the water system, it is totally private. We don't own any of the facilities, we don't own any of the lands where the water is withdrawn, and neither do we own the lands that the water is provided to. So as far as jurisdiction by the Department, by the County, by the Council as a whole, there is none in terms of telling the private company...water company what to do, what not to do, or how to do it. However, when it comes to water, everybody knows the public trust doctrine and there's gotta be somebody in control of our water resources whether it'd be privately controlled, owned, withdrawn, et cetera. Since we do not maintain any of the facilities that draw these waters, I would, I would opine that we are not the public trustee of such systems at this point in time. However, any water withdrawn from the Lanai aquifers, to my knowledge, needs a State permit from CWRM. That being the case, and the State may say otherwise, I would opine that the State Commission or Department is the public trustee. Now that being said, the State has yet to designate this aquifer. They maybe in the future, I believe they would set certain limits, but that's another topic for another day.

Okay. In terms of what your role is, in terms of the Water Use and Development Plan for Lanai as well as the other areas, discussion was had as far as what these plans, what are these plans for. Your ordinance specifically states that these plans shall serve as a primary guide to the Council, to the Department, and all other agencies of the County: Planning Commission, Public Works, et cetera, in approving or recommending to other agencies the, the use or commitment of water resources in the County. It doesn't say private, public, et cetera. Okay.

And two, in using public funds to develop water resources to make existing or future, projected future demands on the public system, Department system as set

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

forth in the plan. So you have two, two basic areas where you can use this Plan as a primary guide. The Plan itself is adopted by ordinance. Ordinances are laws. However, in the ordinance itself, if it says it's a primary guide, you gotta go and use it as a primary guide. There has this big discussion about whether the General Plan is law or not. It is law because it's adopted by ordinance, but the Plan itself says it shall serve as a primary guide. So you gotta get over that hump. Okay.

So that being said, Mr. Chair, I can imagine if you...once this body adopts the Plan whatever plan you, you decide to, again we would hesitate to advise you to tell the private water company, "fix your pump", "do this", "do that", because you have no jurisdiction. Okay. Stay out of it. However, when they come before this body or the Planning Commission for a Land Use permit where water is needed, look to the Plan.

CHAIR VICTORINO: Thank you, Mr. Kushi. I mean I hope everybody is as perfectly clear as I am right now. I mean the Mississippi is a lot clearer when you swim across it than this. But thank you, Mr. Kushi. I know you tried to answer this as accurately as possible. I will give each Member an opportunity if they would like to ask Mr. Kushi a question, and then I'll call on Mr. Ice to come up and maybe give us some clarification from the State side. So, Ms. Baisa, would you like to ask a question?

COUNCILMEMBER BAISA: Thank you very much. I think I'm in the mud with you. But I, I tried very, very carefully to listen to Mr. Kushi, who I know is trying very, very hard to give us guidance. But it's still kind of murky. And my, the question that I'll, I'll ask you is more specific, because, you know, guides and how you use it and how you don't use, and the cautions that we've been given in regards to the legal intricacies of this get too deep so I'll try to stick to something more easy to talk about. We've been asked today to institutionalize the Lanai Water folks. They'd like to be, you know, some kind of permanent body even though they've been notified that, you know, they're, as far as the Water Department's position, they've finished their task, they're pau. Legally, what ramifications that that have...would that have on us if we were to try to do an ordinance or some kind of action to do that?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Mr. Chair, Member Baisa, other Commissioners...I mean Council members, let me give you some background as far as the LWAC, Lanai Water Advisory Committee. It was formed in 1999 through a Board of Water Supply resolution. At that time, the Board was semi-autonomous. And basically, I'll just read it to you, their function and their duty and their responsibilities. The purpose and the intent of the LWAC is to provide public input and involvement during the development of the Lanai Water Use and Development Plan and to monitor the Lanai Water Use and Development Plan implementation, et cetera. So, so

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

contrary to what testimony may have, I don't believe they're done. Once the Plan is adopted, and it's taken them --

UNIDENTIFIED SPEAKER: . . .*(Inaudible)*. . .

MR. KUSHI: --whatever yeah, yeah. But once it's adopted, their task per this resolution is to monitor the implementation. So whatever everybody says, you know, I don't think they're done per this resolution. Now, that being said, the Board has changed its functions. The Board of Water of Supply's solely advisory right now. They could turn around--and I'm, I'm not saying that they will--turn around and dissolve the Board by a further resolution. Basically says that this...it basically says that the, the Board shall continue until further dissolved by resolution. Now again it's a board-created committee. What they've asked you in this Plan before you is to, to institutionalize via an ordinance. Okay. I would suggest you cannot do that by adopting this Plan. You need to have a separate hearing to adopt a different ordinance to create a Countywide or County-established committee, subcommittee, whatever you wanna call them. I looked at the proposed ordinance, it not only covers Lanai, it seems to establish water advisory committees for each district. Okay. So it goes beyond that. Not only that, the composition as far as the appointment and the approval and authority is, is, is nowhere set forth. I mean usual, usual committees you have the Mayor appoint, you guys review and approve. Nothing is said here. If you want the Board to, to continue to do it, with the Board as just an advisory committee right now, that's up to you. But again, I think more discussion is needed and I would suggest you, you tackle that issue later in a separate proceeding. It can run concurrently with this, that's fine and well, but by adopting the Plan we would say you don't adopt an ordinance. There needs to have a second full, final reading, et cetera. Okay.

COUNCILMEMBER BAISA: Thank you. That makes it fairly clear, not really clear, but, you know, clearer. So this reference to the LWAC is a part of the Plan when we adopt the Plan, they're part of it?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: It's a recommendation contained in the Plan to, to adopt a separate ordinance.

COUNCILMEMBER BAISA: Correct. So if we, we adopt the Plan, then we would have to follow through with a separate ordinance. It doesn't automatically happen with the adoption of the Plan.

MR. KUSHI: Right. And it's a guideline. Okay.

COUNCILMEMBER BAISA: Oh, okay.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. KUSHI: You may, you may not. Again...

COUNCILMEMBER BAISA: Okay. Thank you very much.

CHAIR VICTORINO: Thank you, Ms. Baisa. Mr. Hokama?

COUNCILMEMBER HOKAMA: My question, Chairman, for Mr. Kushi is on what he briefed the Committee on earlier regarding the jurisdictional concerns of this document. In your July 11<sup>th</sup> memorandum to Mr. Victorino, Chair Victorino, you state a portion whereby your advice and recommendation was due from a successful challenge in the Molokai properties' private water system case, I guess it was. Was that settled in a judicial arena whereby a judicial decision was made to affirm this position, or was it just a settlement position of all parties agreeing to a negotiated position, Mr. Kushi?

MR. KUSHI: As I recall, it's on appeal currently. The Department of Health just issued an order and it basically became moot because the company went back. But the, the...we appealed that order to the Circuit Court, I believe it was Honolulu Circuit Court, and we prevailed. Be it the Honolulu or Maui Circuit Court and the judge basically said that the State cannot force you to take it over. Then the State has appealed that order. So it's not resolved yet.

COUNCILMEMBER HOKAMA: Okay. But as we...if I may follow up, Chairman, please.

CHAIR VICTORINO: Okay, go ahead.

COUNCILMEMBER HOKAMA: Okay. And it's either Mr. Taylor or Mr. Kushi. But as we understand it, the key State jurisdictional areas that have responsibility over potable water is Commission on Water Resource Management, Department of Health, and I guess for certain uses or permitted uses on conservation land would be Department of Land and Natural Resources. Is that a good understanding of this Committee's part this afternoon of State jurisdiction over potable water?

MR. TAYLOR: Thank you, Member Hokama. I would add the Public Utility Commission to that list. So basically in the State of Hawaii, the State Water Commission is...is really the steward of all the public water. Whether you're a public entity or private, they decide is it okay to run this pump, is your salinity too high, et cetera. So whether it's a public system or private system, the State Water Commission has authority over that. Whether you're a public system or private system, the State Department of Health has authority over are you following Federal and State laws about safe drinking water. For public systems, like the four counties, the Council handles rates and fees. For private systems, the Public Utilities Commission does. So whether it's a public system or a private system, the primary authority over what you can and can't do is always the Water

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

Commission and the Department of Health. So I think there, there was some discussion earlier from some of the, the, the testifiers wondering who has the teeth. Well the Department of Health has the teeth, the State Water Commission has the teeth, and the PUC has the teeth in, in a private system as of this.

COUNCILMEMBER HOKAMA: Regardless of a public or private system...last question, Chairman.

CHAIR VICTORINO: . . .*(Inaudible)*. . .

COUNCILMEMBER HOKAMA: The responsibility of sampling and collecting, sampling, and verifying whether or not the, the water is...meets safety guidelines or has potential contamination issues, is conducted by who, the water entity, the Department of Health, a, a third-party vendor that specializes in this type of chemical analysis? Would you know, Mr. Taylor?

MR. TAYLOR: I, I don't know how the private companies do it. I do know that under Safe Drinking Water Act, as a public utility, our staff does that sampling and we report to these entities. Whether or not in smaller private groups that's outsourced or done internally, I do not know and I don't know exactly how that's done with private systems.

COUNCILMEMBER HOKAMA: Okay. And then for the Committee, all water systems in the County regardless of ownership public or private is required to report to the State, but not necessarily to the County? Is that a correct understanding of the...for the Committee?

MR. TAYLOR: My understanding is that the Federal Safe Drinking Water Act says that any water system that serves 25 or more customers is considered a public system, not publicly-owned, but a public system which falls under the rules of the EPA and Department of Health. So anyone operating a public system, whether that be a public entity such as us or a private entity such as Castle & Cooke, is regulated the same way by the State Department of Health, Safe Drinking Water Branch.

COUNCILMEMBER HOKAMA: Thank you, Director. Mr. Kushi, you have a addendum?

MR. KUSHI: Yeah.

CHAIR VICTORINO: Go ahead.

MR. KUSHI: Mr. Chair, Mr. Hokama --

CHAIR VICTORINO: Yeah, go ahead.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. KUSHI: --offhand I don't know what the Maui County Code section is, but it's either in Title 14 or maybe Title 2. But several years back, Member Michelle Anderson passed an ordinance, I mean, basically saying for all systems, whatever you need to report to the State, the County should get a copy.

COUNCILMEMBER HOKAMA: Correct.

MR. KUSHI: And I, I remember that, so in that sense, we're entitled to at least documentation.

CHAIR VICTORINO: And if you guys all remember each month we get the monthly Water Source --

COUNCILMEMBER HOKAMA: Yeah, I know.

CHAIR VICTORINO: --report, yeah.

COUNCILMEMBER HOKAMA: We, we, we, we read that report. Yeah. Thank you, Chairman.

CHAIR VICTORINO: Yeah. So, so that's what, what you're referring to and we all get that from the various entities throughout the County. Mr. Carroll?

COUNCILMEMBER CARROLL: Actually, my question was that last question over there, because I was familiar with that when we were Land Use in a prior life and we were discussing up Pukalani, one of the projects up there, and that was about the reporting which I am glad is still in place. I would just like to say, thank you. We've gone over this...at least I've been involved in this for a long time even before I was on the Council, and I really appreciate the Department and Mr. Kushi clarifying for everybody exactly where we stand and I appreciate that, thank you.

CHAIR VICTORINO: Thank you, Mr. Carroll. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. Yeah, thank you, Mr. Kushi, for your comments. I think most of my questions are probably towards Mr. Ice, 'cause I'm just sorta curious about the non-committal to designating the aquifer here.

CHAIR VICTORINO: Okay, if it is for Mr. Ice --

COUNCILMEMBER COCHRAN: So but I'm curious...

CHAIR VICTORINO: --let's get the questions for our Department and our Corporation Counsel, then I can call Mr. Ice up. Okay, please.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COCHRAN: But, yeah, but I'm just wondering if that can be addressed by our...if it has any bearing on what maybe Mr. Kushi mentions in his letter here to us. Does it relate at all? By this particular private system not being a State designated aquifer, where do, where do we, the County fall into play? I mean where, where's our jurisdiction lines? You know, I'm just curious how that works.

MR. KUSHI: Well I mean in essence, Member Cochran, I guess I can say...I'll have to say I don't know because we're in limbo. Because, you know, it's a private...it's private land, we have no facilities, it's not designated, we don't control the, the level. What you control is a public health safety welfare issue. The fact that that's the only aquifer on the island, you know, there needs to be some kind of County oversight at this point in time. I see no authority for it though. And I --

CHAIR VICTORINO: Mr. White?

MR. KUSHI: --wish the State would take it over.

CHAIR VICTORINO: Okay, you, you have some comment, Mr. Taylor?

MR. TAYLOR: Just one clarification because I think I heard something in Member Cochran's question. Whether or not an aquifer is designated, just because it's not designated, doesn't mean that the State Water Commission has no involvement. Anyone drilling a water well in the State of Hawaii has to make an application to the State Water Commission and has to have that approved. So just because...designation is, is a higher level of, of oversight that the State Water Commission does, but just because it's not designated doesn't mean that the State Water Commission doesn't have to review and approve any kind of well permits and any, any operations in those areas. So I, I just wanted to clarify that that they...these wells even though not designated, still have to have permits from the State Water Commission. And I'm sure when Mr. Ice talks, you know, he can clarify that, but I, I think that needs to be clear.

UNIDENTIFIED SPEAKER: Thank you.

CHAIR VICTORINO: Mr. White?

COUNCILMEMBER WHITE: No questions.

CHAIR VICTORINO: No questions. Thank you. So if the Committee would allow me, I'd like to call on Mr. Charley Ice. And I want to thank you very much for taking time to be here today. You know, it's very important that you clarify some of the questions that were asked. So, Mr. Ice?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. ICE: Aloha mai. Thank you very much, Council members, for coming over here and getting us all together for this important point in this discussion. I'm not sure how much I can contribute to some very good answers that we've had, and I may call up my, my companion here, Lenore Ohye, who is our...the Branch Manager for our Planning Branch. I work with the, the Groundwater Branch and my kuleana is Maui County islands, yeah, Maui, Molokai, Lanai.

I guess I'll start from the point that where I would pick up on your question, Ms. Cochran. As Dave was pointing out, even without designation, our responsibilities are to be sure that wells are drilled properly and are managed properly. And I think we're quite satisfied in this case that everything is moving along well. We know, of course, that there are always issues with any purveyor and so we try to stay on top of all of those things. We work cooperatively and we're pretty comfortable with that. Designation simply means that in addition to getting permits for drilling and pumping, that you also need to have a Water Use Permit which means that the Commission will decide whether it is a reasonable and beneficial use that's being proposed. And they may decide that the allocation that is being received for that particular use is appropriate or make some adjustment to that, and those decisions are all made in a public forum.

CHAIR VICTORINO: Well I'll start with questions and I'll go right back to Mr. Hokama and come across Ms. Baisa, who's not with us right now, but go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you for being here, Mr. Ice. And I know you've spent years on assisting the Committee to come up with a proposal for the Council this afternoon. But you've heard our legal advisor give us his comments regarding our...the County's jurisdiction on a private system that provides a public service. Would you agree with, with his comments on how you see the jurisdictional lines being drawn up whereby at this point in time, the private system that provides a public purpose such as Lanai is more under the...has more regulatory control by the State than the County?

MR. ICE: I think the division is really...well I think that the responsibilities are divided. When it comes to the water, water quality, it is the Department of Health. When it comes to the proper maintenance of wells and, and operation that would be coming from us. The actual use since it's not a designated area would be the responsibility of the Planning Department in the County to determine what are the proper uses within the County. The Water Use and Development Plan as envisioned as I understand it, is intended to give the Commission guidance when issues of conflict come before the Commission. And, and our responsibility as staff is try to frame these things, given the kinds of conversations that you have had within the County exercising your home-rule responsibilities, to flush out what are the values, priorities, and those kinds of things so that we have a little bit more guidance as to what would be an appropriate kind of decision to make. But,



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

you know, prior to things coming to us, a lot of this work has been done because the Planning Department has been involved, you know, making those kind of appropriate decisions.

COUNCILMEMBER HOKAMA: One, one thing I wanted to ask you, Mr. Ice, is that...and I appreciate your response to my first question, but it is within the purview of your commissioners and your agency to adjust...to be able to adjust one of the concerns with our one aquifer with its two subzones that you've heard Mr. Gima explain--I thought quite well--the issue of sustainable yield?

MR. ICE: Yes, that's correct.

COUNCILMEMBER HOKAMA: Is that your purview and your jurisdiction?

MR. ICE: It is.

COUNCILMEMBER HOKAMA: Okay. So with that control, because you can control the, the, the key number of sustainable yield, everything else then flows from the number that you tell people like us in our decision-making rules what the aquifer can and cannot support. Wouldn't that be accurate?

MR. ICE: I think that's a fair statement. I would like to point out though that Lanai being a high-level aquifer, all of the potable water and in fact the brackish water that's being used is from a high-level aquifer. Meaning that possibly more important than the sustainable yield which is an overall picture--assuming that something were homogenous and you could put your straw in and draw out whatever was there--that you actually have compartments that are sealed off by dike compartments and so on. Each of the wells falls within a compartment whose safe yield is perhaps unknown, except for the fact that when you draw it down, when you pump, then you will see it recover after you stop pumping. And so we know that there's a, a kind of a sustainable level of use for that well. And then if you look at all of the wells in the system, that's the best way to regulate that, and that's how the Lanai Company does it.

COUNCILMEMBER HOKAMA: Okay. I'm done with this portion. I'll leave it to Ms. Baisa. Chairman, thank you.

CHAIR VICTORINO: Thanks. Ms. Baisa, you have questions directly for the State, Mr. Ice?

COUNCILMEMBER BAISA: Thank you very much, Chair, but essentially my question was answered by what Mr. Hokama's question. My questions have been with my little bit of unease about the legality of what we're doing and the ramifications of it. 'Cause I'm concerned about the warnings that we received about the position that we should be careful about in terms of in light of the Molokai situation. So

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

that's where I've been concerned. And these...this is not where I have questions. I have more, but about other areas, thank you.

CHAIR VICTORINO: Okay, thank you. Mr. Carroll?

COUNCILMEMBER CARROLL: . . .*(Inaudible)*. . .

CHAIR VICTORINO: Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Mr. Ice, for addressing my first line of questioning. I'm curious if I got the number right. Well 15, I think they were asking for that, has that been permitted or has --

MR. ICE: It has.

COUNCILMEMBER COCHRAN: --is that...it's, it's there? It's being in service?

MR. ICE: It's been permitted. I think we have not yet seen the final well completion reports which are done at the end of each phase, well construction and pump installation. It's at that point that we would issue a certificate of completion, assuming that it looks like everything is working well at that location.

COUNCILMEMBER COCHRAN: And is there a, a timeline on when that would occur at this point?

MR. ICE: I would have to refresh myself, but I believe it's, it's coming up very soon. I believe they've almost completed their, their work in Well 15. So we would expect to see the completion reports fairly soon.

COUNCILMEMBER COCHRAN: Like months, end of the year, something maybe? But \_\_\_\_\_.

MR. ICE: Well it's, you know, the contracting is done by, by the Company and so we're not familiar with their timeline.

COUNCILMEMBER COCHRAN: And so is this where a final sustainable yield number will be, will be out on it or is that already been determined?

MR. ICE: We won't have a sustainable yield on an individual well. What we will notice is what an optimum pumping rate is.

COUNCILMEMBER COCHRAN: Okay. That's all, thank you.

CHAIR VICTORINO: Mr., Mr. White?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER WHITE: Thank you, Mr. Chair. Thanks for coming all the way over. You had mentioned the allocation and it sounded like the Water Commission gets involved in the allocation between uses. One of the testifiers mentioned the...that they were concerned about the allocation from one area to another. Can you clarify for me whether you get involved in area-to-area allocations or whether it's just between different uses?

MR. ICE: Well it would just be between different uses, because under the Code, once an area is designated, it is specifically allowed to overcome what otherwise is a common law prohibition against moving water from a watershed to another location. And in the case of groundwater, I'm not sure how that would apply since we sort of considered Lanai to be more or less one watershed.

COUNCILMEMBER WHITE: Right. Okay, thank you. Thank you, Chair.

CHAIR VICTORINO: Thank you. I, I have one question for you, Charley. I mean, you know, and again thank you for being here. In all of this and maybe Ms. Ohye can be more specific, our passing this Plan by ordinance, once we send it to you, and your review, if it is not accepted, what happens then? 'Cause this is a private system, I know what the County has to do, but this is a private system so we approve it, we send it to you, and you say--or whomever the entity is through the Water Commission--says, "no, no we don't want this, this doesn't work, send it back". What do we do at this point? What do we do at that point, I should say.

MR. ICE: I'm sure the Commission would be happy to enlighten you with rather specific complaints that they have.

CHAIR VICTORINO: I hope so.

MR. ICE: Yeah. So I, I don't want to presume upon their purview on this point. I guess in a general sense --

CHAIR VICTORINO: Yes.

MR. ICE: --we would like to see if there are some shortcomings to have them addressed by more or less the same process unless the County decides that it feels like a different process is in order.

CHAIR VICTORINO: So if you saw that there was some shortcomings to this system and you gave it back to us, would we then have the "authority" to go back to the Company and say, "hey, these are the shortcomings you gotta correct 'em?" Because we're using your mandate to us to go back to them. Am I correct in my statement?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. ICE: Let's try to be clear that when you're talking about the system, you know, we are not going to be messing with the, the, the purveyor's water system.

CHAIR VICTORINO: Okay.

MR. ICE: We're not micromanaging their system.

CHAIR VICTORINO: Right.

MR. ICE: We are trying to protect the resource and we will try to do that by making some specifications as to what would be the appropriate pumpage from this location or another location. And if there were designation, we might also want to weigh in on what we thought was a reasonable and beneficial use in this or that place.

CHAIR VICTORINO: And that's what I was trying to get to, and I apologize for using the word system because to me it's all one, one, one component. Because if you say we have to correct some deficiencies, what I'm trying to ascertain because I understand in the County system that I can go back to Mr. Taylor and say, "Mr. Taylor, Water Resource, I mean Water Commission said this has to be done", boom, and we... but then if I come back and I go back to --

MR. ICE: Okay.

CHAIR VICTORINO: --the Lanai Company --

MR. ICE: Right.

CHAIR VICTORINO: --do we have that same authority?

MR. ICE: Let me back up a little bit.

CHAIR VICTORINO: Okay.

MR. ICE: I guess, I think we do look at this as a guide because if conflicts come to us, we're gonna have to try to sort it out. We're sort of the court of last resort. We like to have the counties sort out as much of that as possible beforehand which is what the purpose of this Plan is. If we find that there are some things that are not necessarily the clearest or the best possible guide, they will make some kind of decision possibly because an issue has come before them. If an issue comes before them, they will make a decision based on the best available information and their own wisdom and the kind of testimony that you provide.

CHAIR VICTORINO: Okay.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. ICE: So something will happen if an issue comes before the Commission. If, if we're not completely happy with the, the Plan, it's possible that the County can go back and try to make amends and do something that they...it feels will address those.

CHAIR VICTORINO: Okay. And, you know, I'm just trying to get a jurisdictional take on the Plan, because I was also told by your staff that we have to have all of the Plans accepted as one plan for the County of Maui. Am I correct?

MR. ICE: Well I think that's the way the Code states it.

CHAIR VICTORINO: Yeah. So in other words, we bring everything in, you folks approve it or disapprove it or whatever, and at that point in time, if it's approved, okay --

MR. ICE: Right, right.

CHAIR VICTORINO: --then we're okay.

MR. ICE: Right.

CHAIR VICTORINO: If it's disapproved, then the pieces that are disapproved or have to be, like you say, changed or corrected or whatever --

MR. ICE: Right.

CHAIR VICTORINO: --comes back and we have to work on it.

MR. ICE: Right.

CHAIR VICTORINO: So I just want to make sure that as a private system, that we have that, you know, jurisdiction to say, "by the way, Castle & Cooke, State Water Commission said this doesn't pass" or "this doesn't work", or "you gotta pump less here", whatever. And they've gotta comply with that because it's coming from you to us, and you're the governing entity.

MR. ICE: Okay. The citizens on Lanai are represented by you and so you are sort of the, the first court, right.

CHAIR VICTORINO: Okay.

MR. ICE: So if there are things that, that need to be addressed from the County level from your home-ruled purview then we would expect to defer to you as much as possible on those kind of things. The presumption is that every island is kind of different. Sections of islands are kind of different. And so we would expect that

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

to be reflected in the Plan, and the fact that there is just one purveyor on this island is just one of the features.

CHAIR VICTORINO: Okay, Charley, thank you. I, I, I just wanted everybody in the room to have that understanding on what this Plan if foresay it went as a package to the Water Commission, that was the entity that was for some reason had a shortcoming and you said, “no, we can’t accept the whole package because of this” and we can come back and make corrections for that particular part. Understanding ours is, is not that difficult, but private purveyors might be a little bit more difficult. So that’s what I was trying to clarification, Charley.

MR. ICE: Right. I, I think that in the case of Maui County, it’s probably more complex than, than anywhere else just for that reason. So again I would have to defer to the ultimate decision of the Commission and how they view this, but I guess my experience is that they are pretty reasonable and they would look at this in the most expeditious and effective manner.

CHAIR VICTORINO: Okay. And then as far as the LWAC issue, that’s something that we’d, we’d have to take up at a separate entity, but I know of something that, you know, could be at a good advisory to all of us.

MR. ICE: I think we feel that it’s a valuable tool. It helps us understand what’s going on.

CHAIR VICTORINO: Thank you, Charley. I’d like to call Ms. Ohye up if I may --

UNIDENTIFIED SPEAKER: Mr. Chair?

CHAIR VICTORINO: --because she came all the way over here. No questions at this time. I want Ms. Ohye to finish and then you can ask questions. Okay. Thank you. Ms. Ohye? And then, Charley, hang on ‘cause Don wants...Don still has a few questions.

MS. OHYE: Good afternoon.

CHAIR VICTORINO: Go ahead.

MS. OHYE: Oh. Is there a specific question?

CHAIR VICTORINO: Now why don’t you introduce yourself and your specific position. I apologize, I just put you on the spot, saying, “go ahead”, right.

MS. OHYE: I’m the Hydrologic Program Manager for the Commission. So I’m overseeing the Water Use and Development Plan adoptions.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Okay. Questions for this young lady? Mr. Hokama.

COUNCILMEMBER HOKAMA: Maybe you're the right person for us this afternoon. So you've heard some of the concerns from our community through its testimony; you've heard some of the concerns from the Committee Members; and you heard our Chair mention that if there's components that maybe the Commission may have issues with, it might be sent back to the County for additional review. Why wouldn't you go to your sister State regulatory agencies and have the regulatory entities with regulatory powers require a utility to perform what they have within their regulatory parameters to perform?

MS. OHYE: I don't think that we're restricting any of the other State agencies from doing their regulatory oversight. I'm, I'm sorry I don't understand the question.

COUNCILMEMBER HOKAMA: See, I don't like to do the State's job, okay. We had enough of our own job to do for the County. So if there's issues that potentially may be coming, my point is why don't you allow your regulatory State agencies, force the utility to provide the requirements that may be of a concern to the Commission instead of sending it back to the County?

MS. OHYE: Well as, as I'm looking at the Lanai Plan, I think, you know, I've, I've looked at the, the revised draft. I think it meets the statutory requirements for adoption as well as I think it meets the framework recommendations. As staff, if it came to us, subject of course to the County adopting it by ordinance first and of course our public, required public hearing, barring any other testimony to the, to the opposite, we would be recommending the Commission adopt it. And there's just one thing I did want to clarify that I thought I heard, the...that the whole County with all its different regional plans--Molokai being one, Lanai being one, and I know Maui island is doing updates by region--doesn't have to come to the Commission all at one time. You can come to us regionally. They've already set the precedent on Oahu with the Honolulu Board of Water Supply, where we've adopted two of the eight planning regions. They've adopted it by ordinance and the Commission has formally adopted it. So I guess I'm not clear, you know, why another component might hold up this particular island plan from being adopted by the Commission. I don't think that that's a bar right now.

COUNCILMEMBER HOKAMA: Can you tell us what the Commission's rule, if any, was regarding that Molokai private system issue? So if, you know, if you have a response that may inform this Committee better so that we can make a better informed decision regarding this consideration before us today.

MS. OHYE: Can you clarify what your concern was with the Molokai situation?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER HOKAMA: What was your, your Department...your, your Commission's role in, in...regarding that water issue on that private system that provided --

MS. OHYE: I see.

COUNCILMEMBER HOKAMA: --potable water to West Molokai?

MS. OHYE: We were adjudicating a water use permit for that system based on the designation that occurred back in the early '90s. We were in a contested case hearing over the water use permit because the island was designated a water management area. That hasn't occurred anywhere on this island, no designation water management area. But that's what the proceeding was, it was a contested case hearing on the water use permit allocation. And in the midst of the appeal, the, the permittee wanted to, you know, walk away. And so right now, you know, we're awaiting the PUC decision on, on the service. And then when they identify a new entity who has to continue the water service, that entity has to take up the water use permit again.

COUNCILMEMBER HOKAMA: There was an adjustment in water rates to our Molokai constituents. That was a departmental, administrative decision?

MS. OHYE: The Water Commission doesn't have anything to do with the rates.

COUNCILMEMBER HOKAMA: Okay, so that was from the PUC --

MS. OHYE: Yeah, I, I believe...

COUNCILMEMBER HOKAMA: --or State Department of Health that told Molokai people, "you're gonna pay more for your water now because we're now running the water system on your behalf"?

MS. OHYE: Yeah, I'm, I'm really not sure about the rate thing. The Water Commission has absolutely no jurisdiction over water rates.

COUNCILMEMBER HOKAMA: Again I appreciate your coming...I, I need to also be able to have our community informed of the potential consequences should certain scenarios play out, and one of it is we're gonna pay a lot more for our drinking water. Thank you, Chairman.

CHAIR VICTORINO: Thank you. And, you know, anyone needs to take a break 'cause we are intending to conclude by 5:00 or 5:30, because we have the 6:45 boat to catch so we're gonna continue going. So if you need to take a break, then by all means please do, you know. Ms. Ohye, I do have one question for you. Well more of a statement because your...well not your predecessor, the former Deputy



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

of the Water Resource, I mean the Water State...State Water Commission, when I met with her in Honolulu back in November at the HWWA Conference, she specifically told me and then the former Director of the Water Department that it was all or nothing. And that was the ruling that I got from the State when I asked this specific question. So you're telling me so that everybody hears this correctly, that if like we have the Central Water Use and Development Plan completed--right, Mr. Taylor?--so tomorrow you send it to her, they review it, they accept it, that's done.

MS. OHYE: Yeah, we'd...I guess we wait for it to go through your ordinance adoption process --

CHAIR VICTORINO: Yeah.

MS. OHYE: --and then...

CHAIR VICTORINO: So we can take it as ordinance now --

MS. OHYE: Yeah.

CHAIR VICTORINO: --because I wasn't...I was going take everything, get it all done, and send you as a big package. You've changed my mind now.

MS. OHYE: Oh, you don't have to do that.

CHAIR VICTORINO: Oh, thank you very much.

MS. OHYE: No, no. You can, you can do it in--

CHAIR VICTORINO: I'm gonna change that one real quick.

MS. OHYE: --especially on the island of Lanai --

CHAIR VICTORINO: Yes.

MS. OHYE: --because it is just one water system, it, it's no problem to move forward and advance the rest of, of the other...the rest of the County...the rest of Maui County. With regard to Maui island, there is some interconnection between the water systems, so if you want to do a regional adoption by water system district, then the only concern is that you try to address any regional --

CHAIR VICTORINO: Connection.

MS. OHYE: --connection issues. And Honolulu Board of Water Supply has an islandwide, integrated system.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

CHAIR VICTORINO: Yeah.

MS. OHYE: They did do that to the satisfaction of the Commission. So the Commission did adopt regional plans even though those regional plans hinged on the next region --

CHAIR VICTORINO: Right.

MS. OHYE: --because they were connected, but they put in enough I guess advance planning for those other regions and enough long-range planning for those regions so that the Commission had a comfort level. So, yeah, to be clear you do not have to wait for the rest of the County Plans to be done...and, and there's a timing thing, too. 'Cause it takes time to do these plans. And so right now the data's current. And the data is, is good if you...as you...it's a moving target because the...one of the, one of the I guess one of the complexities of the Water Use Development Plan is so much consistency. It has to be consistent with the General Plan, consistent with the Community Plans, consistent with Zoning. The longer you wait, the, the less consistencies there will be because things are always getting updated. So I would not...you would not need to wait for everything to be done.

CHAIR VICTORINO: Well thank you and since the last time we have an approved Water Use and Development Plan was 1990,--it's even longer than we've been working on Lanai--I think, hey, something...it's good to hear. Mr. Carroll? Ms. Baisa?

COUNCILMEMBER BAISA: Not for her.

CHAIR VICTORINO: Not for her. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you for being here. I'm just kinda going through some minutes of the past of LWAC and, and it sorta, you know, brings up concerns about CWRM and other entities, but I'm curious about if CWRM...I'm trying to understand this periodic water reports. Are these done for you folks? The Company needs to provide these reports for you in regards to their wells and...

MS. OHYE: It's, it's a Statewide law that all...everyone who withdraws groundwater or diverts surface water is to report monthly water use reports to us.

COUNCILMEMBER COCHRAN: It's a monthly.

MS. OHYE: It's a monthly thing. That, that's a State requirement. The, the, the administrative rules require that.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COCHRAN: 'Cause I saw in here also discussion about 28 days versus monthly and I think there was some concern, but...

MS. OHYE: Yeah, I mean ideally it would be, you know, not, not everybody reports every month, every thirty days like from January 1<sup>st</sup> to January 31<sup>st</sup>, although that would make administering the system a lot easier for us. But we recognize that people read the meters at different times, so we are moving towards a, a new database system that will help to prorate and, and rectify those, those changes in dates. But for the most part as long as we get a monthly report, and it doesn't have to be for the full month, it can be for, you know, sometimes there's overlap like the...they'll go, you know, the 5<sup>th</sup> to the 5<sup>th</sup> or something like that or they'll do 28 days one month and 32 days the next month. We've been accepting that.

COUNCILMEMBER COCHRAN: Okay. And I'm trying to understand the section about trigger for distribution of withdrawal projects. Do you know what that means? Does that --

MS. OHYE: That's not familiar to me.

COUNCILMEMBER COCHRAN: --pertain to these reports? 'Cause they put like a type of a certain amount of draw would trigger this type of I guess reporting. So is it --

MS. OHYE: Not familiar.

COUNCILMEMBER COCHRAN: --just an ongoing...I mean if you have a well you need to do this report regardless of...?

MS. OHYE: Yes.

COUNCILMEMBER COCHRAN: Okay.

MS. OHYE: Yes.

COUNCILMEMBER COCHRAN: Okay, thank you.

MS. OHYE: We don't have Statewide compliance, but we have very good data for the island of Lanai.

COUNCILMEMBER COCHRAN: Okay, good. Good to hear.

CHAIR VICTORINO: Mr. White?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER WHITE: . . .*(Inaudible)*. . . Thank you. I think I know the answer to this question, but there were testifiers that were concerned that the Plan's teeth were being at least filed down considerably. And so my question for you is do you have plans from any other water...private water systems that have greater teeth than what you see in the plans that are being... that you've reviewed thus far for the Lanai Water Use?

MS. OHYE: Well from the Commission's perspective, I can't talk for the County and how you will use the Plan or what, you know, authority you'll have to enforce anything on it, but the Commission will use it as a guideline. It's not, it's not a regulatory document, it's a, it's a long-range guide.

COUNCILMEMBER WHITE: No, I understand that this, this one's not. I'm just asking the question whether or not the, the Water Use Plans that are submitted on behalf of or by other private water systems have any greater teeth to them than the, the Plan that we're submitting.

MS. OHYE: To date, not for the Commission, no.

COUNCILMEMBER WHITE: Okay, so it is consistent with the other plans --

MS. OHYE: It's, it's consistent.

COUNCILMEMBER WHITE: --and with the, the statutory requirements?

MS. OHYE: Yes, yes.

COUNCILMEMBER WHITE: Okay. And my other question is--there are many other areas that are serviced by private water systems--is there, is there another area in which there's an equivalent of LWAC serving in a informal capacity or in a codified capacity?

MS. OHYE: We have, we do have working groups, for example, the island of...on the island of the Big Island in the Kona area, because that is another area of a lot of growth and, and a lot of potential concern about the water resources. There are several working groups that have been meeting informally, and the Commission staff does monitor those.

COUNCILMEMBER WHITE: And, and how are those working?

MS. OHYE: Right now it's, it's good, I mean it's...people are getting to the table, they're discussing things instead of fighting over things or litigating over things and so we support that.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER WHITE: And do those working groups provide testimony to the Planning Commissions in their area?

MS. OHYE: I'm not familiar with that.

COUNCILMEMBER WHITE: Okay. But as far as you know, there's no codified working group?

MS. OHYE: To my knowledge, no.

COUNCILMEMBER WHITE: Okay. Mr. Kushi, do you know of any that are in place by ordinance?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Not offhand, Member White, not offhand.

COUNCILMEMBER WHITE: Okay, thank you. Thank you very much.

CHAIR VICTORINO: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I, I think you may have answered my question, but I...let me ask it directly. You have approved or you, you don't have any issues with the Plan as it is now and that when we pass it as ordinance, you're okay with it, is that right?

MS. OHYE: It, it's...we've analyzed it, it meets the statutory requirements and the...and it incorporates framework recommendation. So...and it does have a strategy for meeting long-range demands and that's the, the basic of objective of the Water Use and Development Plan.

COUNCILMEMBER COUCH: Okay. And just to reiterate, you use it as a guideline. You don't know how we...it would be effective on our side.

MS. OHYE: Right, I'll defer to your own attorney for that.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR VICTORINO: Thank you, Ms. Ohye. Any other questions?

COUNCILMEMBER HOKAMA: Chair, may I have one more question?

CHAIR VICTORINO: Yes, one more question, go ahead.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER HOKAMA: This is more regarding the Plan specifically, Ms. Ohye, if you can give comment or if, Mr. Ice. You know, we have working numbers whereby we using 6 million gallons of the total sustainable yield, and more or less it's been divided equally to the two subzones. And there's a point in, in the proposed, updated Plan of the 90 percent as the trigger --

MS. OHYE: Yes.

COUNCILMEMBER HOKAMA: --for designation, review, and consideration.

MS. OHYE: Right.

COUNCILMEMBER HOKAMA: You know, for a small system like ours here which is 6 million, 90 percent is 5.4 and so we got 600,000 gallons to play with more or less compared to maybe a system that has 100 million gallons and they still got millions of gallons to have some flexibility on decisions and, and ability to address certain pressing issues. Is this 90 percent still a smart percentage number regarding the Lanai aquifer?

MS. OHYE: Well it's...that's a statutory, a statutory-based percentage. Some counties have chosen to be more conservative because of the uncertainties in sustainable yield. They chose to plan for a lower number and have more of a cushion, and that's certainly an option.

COUNCILMEMBER HOKAMA: Okay. So that's within each local, regional area to make some...to be able to make a different recommendation --

MS. OHYE: Right.

COUNCILMEMBER HOKAMA: --than the statutory requirements?

MS. OHYE: Right. Well basically what I'm, I'm, I'm understanding your question is right now the 90 percent of sustainable yield is a, is a statutory thing and it's...the sustainable yield is established in the...by the State in the Water Source Protection Plan. If counties would choose to use a more conservative number for long-range planning purposes, that's fine. We just want to make sure that you're not planning to go over that number. That's an upper limit for us, but you can certainly go anywhere within that.

COUNCILMEMBER HOKAMA: And the...and your Department and the Commission you believe is still comfortable with the 6 million gallon sustainable yield number to be used as a basis for this updated proposal?

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MS. OHYE: Yes. We just did a review and update of the Water Source Protection Plan in 2008 and the Commission adopted the same number. However, what Charley did talk about was the compartmentalized nature --

COUNCILMEMBER HOKAMA: Right.

MS. OHYE: --of the, of the aquifer here and so that is something that's a little...needs to be watched a little more closely than where, where you have a great, large aquifer like Pearl Harbor with a lot of storage in it. So that is, that is a concern.

COUNCILMEMBER HOKAMA: Okay. And thank you for giving me that entryway: You said it deserved watching. Who is gonna do the watching?

MS. OHYE: The Commission does through the required Water Use reports as well as the Company gives us water levels and chloride information so we're monitoring that. And certainly any other entity that chooses to be involved in that, but the Commission is looking at the reports.

COUNCILMEMBER HOKAMA: Okay. Well thank you very much for your responses. Thank you, Chairman.

CHAIR VICTORINO: Thank you. At this time, Mr. Ice, Mr. Couch had some questions for you.

COUNCILMEMBER COUCH: Actually, she answered his question.

CHAIR VICTORINO: Oh, okay.

COUNCILMEMBER COUCH: I do have a question of Mr. Taylor or Mr. Kushi when it's time.

CHAIR VICTORINO: When, when we get to that point. Okay, thank you. I'd like to...because I know they have to take off, I'd like to offer one more opportunity for Ms. Ohye or Mr. Ice, if you have any specific questions for them so that I, I can release them. And I thank you guys very much for coming. Any questions? Okay, go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: I think maybe Mr. Ice can. Does your Department or your Commission still want to...be a participant at the Lanai Water Advisory Committee level? Because you are part of the current membership in a sense of like a maybe an ex-official type, but you participate with that Committee, so I think it would be helpful to us to understand if the Commission would still like to be considered as part of that potential consideration.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. ICE: I guess the answer would be yes because it's a good communications forum. We've been unable to travel as much as we would like to go to all of the meetings, so we've tried to, to spotlight where the, the major issues are going to be on the agenda and we would like to be able to participate if possible, sure.

CHAIR VICTORINO: Thank you. Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. Thank you, Mr. Ice. Before you leave, just curious are you folks the entity that sorta enforces to make sure, you know, I guess best management practices are being performed, you know, as in protecting watershed, as in making sure sustainable yields continue, and things of that nature?

MR. ICE: Yes, I think we do have that overall purview. Of course there are other agencies involved as our partners – Department of Forestry and so on.

COUNCILMEMBER COCHRAN: Okay, thank you.

CHAIR VICTORINO: Thank you. Any other questions? Seeing none. Thank you Mr. Ice and Ms. Ohye for being here. And let's give them a big hand for taking the time and coming and helping us today. Thank you. . . .(Applause). . . Okay. Now I will go and ask questions from the Department. And, Mr. Couch, you had a specific question for the Department?

COUNCILMEMBER COUCH: I know Mr. Kushi mentioned things that we could...or he intimated that we can use the, the Plan as a kind of a hammer if they don't...if they want some permits. Is that what you were saying, Mr. Kushi, sort of?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Well don't use words like that, hammer...

COUNCILMEMBER COUCH: Yeah, I know.

MR. KUSHI: But what, what I said was using the Plan as a guide in, in, in, in recommending allocation of water resources be it private or public. So I can see the scenario where someone from Lanai comes in and asks for a, a Land Use Permit or a rezoning or what have you. And you ask 'em, "Where are you gonna get the water from?" You know the answer. And they say, "well are you...what about the, the conditions of this Plan, are you complying with that?" Et cetera, et cetera.

COUNCILMEMBER COUCH: Gotcha.

MR. KUSHI: So that's the...what I had tried to say.



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COUCH: Okay. And, Mr. Taylor...oh, sorry.

MR. KUSHI: Member Victorino?

CHAIR VICTORINO: Yes.

MR. KUSHI: I looking up Councilman White's questions --

CHAIR VICTORINO: Yes.

MR. KUSHI: --offhand I, I, I know of maybe three committees, codified committees: Hana Advisory Committee, Grants Review Committee, Urban Design Review Board. These are all codified boards or commissions which don't make decisions on their own, but they're accessory to decision-making bodies: the Planning Commission, this body on the Grants Review, and, and, and the other planning commissions.

CHAIR VICTORINO: Thank you for that clarification. Mr. Couch.

COUNCILMEMBER COUCH: A follow-up to Mr. Taylor on that same question is, how do you--I mean this doesn't appear to have a lot of teeth according to some of the testifiers--how would you use this Plan to possibly provide teeth?

MR. TAYLOR: First of all, I, I don't think it would be the Department of Water Supply that would be using the Plan. Frankly I think it would be the Planning Department that would be using the Plan. Because what happens every time the Council or the Planning Commission gets a project in front of them? There's always a Planning Department Staff Report that looks at traffic, and parks, and, you know, issues of lifestyle, and economics, and, and water. The Council and the Planning staff would use this document, saying here's an application for an SMA, here's an application for a Change in Zoning. They're gonna look at this document and say, "well they're gonna use 92 percent of all the water that's left in this aquifer. Do we think that's a good use or is that way too much? Shall we save it for other things?" So when the Council or the Planning Commission, as the actual body that makes decisions, is gonna say, "should we approve this project, should we condition it, should be downsize it?" That's the teeth. This is information that's gonna feed the, the bodies that make the decisions. And the teeth is gonna be in zoning conditions, zoning ordinances, the community plan, you know, et cetera, urban growth boundaries, that kind of thing. So I, I think if you look at all of the other issues besides water, you know, traffic, and parks, and, and socio-economic issues, there are I'll say analogous reports to this that have all kinds of information that gets used by the Council, by the public, and especially by the Planning staff who do these complete analysis of projects from every angle. And I think that's the intention of this, or at least that's I see the best use

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

of this information is it gets used and, and filtered with that other information to come up with, you know, the final decision of should we move forward with this project or not, or add conditions or not? So I think the teeth are always going to be there because at the end of the day you folks have to approve or condition any kind of project. So I think this information is meant to help you and help...and especially I'm going to really focus on the Planning staff planners who write these reports and analyze this. So I would foresee this being used in that methodology and the teeth would be by, you know, mostly by the Council in zoning, conditions, et cetera.

CHAIR VICTORINO: Other questions? Mr. Hokama.

COUNCILMEMBER HOKAMA: You know, I can see that to be the case, Director, for new applications, but on this island, we have two major project districts the Council has already approved, Phase II, Phase III, it's either gonna be the Lanai Planning Commission or an administrative review and approval. So the Council's out of it already. Yeah, so when you mentioned about Council's teeth and Council's authority, what other things you, you believe us to be able to regulate or, or make decisions as it pertains to some of these water issues today on things that has already been approved?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: Clearly if the Council's already finished their approval process, then the Council would have to look at somehow, you know, I think the Lanai Community Plan is next on the list from the Planning Department. So what are the Community Plan designations going to be for different areas? That's something that the Council is very specifically going to, to draft. So this information I think is going to be critical for the Council making land use decisions that you're going to put into the, into the Lanai Community Plan. I mean that's one example right there, because you still need, you know, community plan consistency with, with whatever you're, you're going to do.

COUNCILMEMBER HOKAMA: Uh-huh, uh-huh. Thank you.

CHAIR VICTORINO: Other questions? Ms. Baisa.

COUNCILMEMBER BAISA: We're ready to go here. I don't want to beat this death because it's already been stated that we'll be taking it up at another opportunity, but the Plan that we are being asked to approve does include the reference to the LWAC. And I've, since the beginning of the meeting, been supplied with a copy of the letter that was sent to the LWAC members dated March 10, 2011. And this letter does say that it refers to the Board of Water Supply Resolution that was passed in 1999, and it's very clear what they are to do and it also talks about monitoring the Lanai Water Use and Development Plan implementation. It also

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

says this resolution says in consultation with the Committee the Director shall determine the meeting dates of LWAC. It's kind of interesting because it...as it goes on, it says you may meet, but not as official members of LWAC. It also says that the Department may schedule additional LWAC meetings in the future depending on the Council's action on the draft plan. So, to me, it's kind of contradictory, it's kinda says thank you, goodbye, and then it does say that the Director in consultation with the Committee shall determine the meeting dates. So I'm kinda confused and I think the people that are on this committee are confused. They're not really sure as to how they gonna give input to the Director in determining dates when they're not meeting anymore. So I'd just like Director Taylor to try and answer that. And I also wanted to ask Mr. Gima, who already testified, was he the Chair of the Committee?

CHAIR VICTORINO: I'm not sure.

COUNCILMEMBER BAISA: Was he the Chair of the Committee?

CHAIR VICTORINO: Butch were you, were...Mr. Gima were you the Chair?

COUNCILMEMBER BAISA: So I'd like to get his impression, and then I'd like to hear from Mr. Taylor how we're gonna solve this. It appears that they, they will be part of determining future meetings, but if they're not official or meeting, how do they do that is my concern.

CHAIR VICTORINO: Well I think one of the things I'm going to answer right off for Mr. Taylor, is I think Mr. Taylor in his interpretation may have jumped the gun on that one. And basically from everything I've read, you know, until the Plan is approved, you know, they would have to stay in existence. They would not, you know, be, be completed with their job on monitoring the Plan until it was completely approved. Is that not correct, Mr. Taylor?

MR. TAYLOR: That's what the, the, the resolution says --

CHAIR VICTORINO: Yes.

MR. TAYLOR: --and, and I agree with that.

CHAIR VICTORINO: Okay.

MR. TAYLOR: And as, as Member Baisa said, the letter I wrote didn't say, you know, we're disbanding you or we're never going to see you again. It said, right now we're not scheduling any meetings. And, and let me publicly apologize if I accidentally offended anyone on the LWAC because that was not my intention. My concern when this came about, and, and I started getting e-mails that there were LWAC meetings, was first of all Sunshine Law. There were, there weren't

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

agendas, there was no one staffing the meetings, there weren't minutes being taken, and I was concerned...and documents were being drafted saying, you know, here's what happened at an LWAC meeting, and I became concerned. I talked to Staff about sort of the, the integrity of the process about meetings being held being called LWAC meetings that weren't following sort of the rules we all know about, about Sunshine Law. So I was very concerned and we couldn't staff them and we didn't really have, you know, any ability to see that that was happening. So my big concern was the integrity of the program, to keep, basically to keep them out of trouble. So let me just say I mean that was really the purpose of it is we all agree that public, community input and discussion on issues they know about is great. We all think that's a good idea. I think that the meeting is great, they know about the issues. I was just very concerned about whether or not them calling themselves LWAC and generating documents, when it wasn't going through, you know, these kind of County processes, was going to jeopardize the integrity of the, of the program.

COUNCILMEMBER BAISA: I understand your response, but my question was, if we're going to decide on future meetings with the committee, and the committee is not meeting, how is that going to be done?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: I think, I think Staff...how Staff was setting those up was when there was something to talk about, you know, e-mails would go out and I think Staff was just communicating and saying, you know, was this a good day? And I, I think the LWAC was having standard meetings on certain time periods, you know, I think they were meeting at, at sort of regular intervals, and some of our Staff knew when that was.

COUNCILMEMBER BAISA: I think there's a miscommunication here. I don't think that, you know, it's clear what you intended, what the people perceived, and I think it's really important that the LWAC still feel that they're able and obviously that, you know, if they're not having official meetings then everything that goes on is gonna be unofficial. Maybe that's...maybe you should at least have one last meeting with them doing...and, and discuss this so that they feel that, you know, they've been able to provide information or things that, you know, understanding. I, I just feel uncomfortable with how they feel about how everything was ended, and yet what the letter says is you're going to be continued to be a part of the decision-making when I tell you. So I just...I'm uncomfortable with that. You know, this is a very important community and I sometimes really feel their angst at feeling like, you know, they're not being part of a decision. And if that's all it takes is to get with them and make them understand at some point, we're gonna meet or you're gonna meet as far as this implementation goes, then maybe it's something we should do. I don't, you know, I'm not allowed to tell you how to

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

do your job. But it's just a discomfort that I have with how they feel. I'd like to resolve it.

MR. TAYLOR: We appreciate that and we agree. And, and we agree that we're a little confused, too, frankly. The discussion you've heard today about who's responsible for what is also a big part of this. Let's just say, for example, that the LWAC meets and they have these list of concerns or actions they want to take and they give that us as a Department. Think about what you've heard today, I can send it to CWRM, I can send it to DOH, that's all I can do. Having us in the middle also creates this dilemma that they think we have some sort of authority when the only thing we can do is listen to them, take notes, and forward it to one of the State agencies who has any authority. And I think that's something that the Council should think about is what exactly would you want the Department of Water Supply having to do with LWAC when all we can do is pass it to somebody else? So that's another concern of we're not exactly sure what the expectation is of us about what our role is of watching over the implementation when again we, we don't really have any role in that process. So I think that's something to think about as these discussions go on.

COUNCILMEMBER BAISA: I totally appreciate your position. I have been totally confused about what our role is and what we should do and what we shouldn't do. You know, we've had legal issues raised and all of this has come up so I totally understand. Chair, if you don't mind, I'd like to allow Mr. Gima to make a brief comment. Or you prefer not to, that's okay.

CHAIR VICTORINO: Not to. No. No, thank you. Sit down, Mr. Gima, I will call you up at a later point. Okay.

COUNCILMEMBER BAISA: Thank you very much, Mr. Taylor.

CHAIR VICTORINO: Thank you. And, and, and just so that there's, there's a straight answer to the question as far as LWAC, the determination has been made and I'm listening to what I've...and read the, the ordinance, LWAC's still is in existence, there has never been any time to this point of dissolving them, like Ms. Baisa said. Made a bad communication and he's apologized.

And I have also whenever LWAC has called, or Mr. Gima or whoever had come to see me, I've always taken their advice. In fact was Mr. Gima who wanted this format set up where each, each group would have a chance to present their part. Is that correct, Mr. Gima? Okay. So I've taken it very seriously also to make sure that LWAC, and the Company, and all the entities, State, as well as our people, and the Corporation Counsel was represented. So, you the people of Lanai, heard firsthand, not on TV, not on the newspaper, not via whatever other form, except live and upfront. Okay. So I made that effort today to make sure all

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

of these entities so that you'd be perfectly clear that we first and foremost is gonna make a decision on the Plan.

The other aspect of this is LWAC and that will be a separate entity which I will hopefully bring forward and push to have made as a advisory committee, but then I...I'm not the one that makes that final decision, it would be the Committee at large, yeah. So just so that the people of Lanai understand that throughout the process, LWAC has always been involved. I have never...and neither I think any of the Committee members here said you're not...we don't want to hear what you have to say. Okay. And you're a part of it until the very end. Now, Mr. Gima, I will allow you to say what you'd like to say.

MR. GIMA: Thank you, Gladys. Thank you, Mike. I, I agree with Dave. After LWAC received the letter, we sent the letter to Dave, and I subsequently when I went over to Maui, I went in and we talked story. I understand his position, and the whole issue of the Sunshine Law, having minutes, I don't think anybody on LWAC disagrees, disagrees with that. Correct me if I'm wrong, other LWAC members, I think Ellen Kraftsow did get an opinion from Corp. Counsel saying that based on how we were formed, that we...I think we're in, in some type of advisory role where we didn't have to abide by the Sunshine Law, because there was a time where we had to make sure we were posting our meetings, that we, that we had an agenda, which we've always had, we have a standing agenda item, Sally Kaye mentioned the standing agenda items. So even, even though we did get the letter from the Department of Water Supply, we continued to meet and we meet on the last Friday of each month, we've done that for years.

And let me tell you, please don't punt on this issue. LWAC works and let me give you an example, several years ago, Castle & Cooke wanted to add second swimming pool down at Manele Bay Hotel. And true to form, they brought the issue to the LWAC first as part of our standing agenda item which is asking if there are any upcoming applications having to do with water. And so they brought it to the LWAC, we discussed it, and it was an informal setting, it's not a matter of having only three minutes to talk about it. We bantered back and forth, we looked at what agreements we had in terms of allocation and, and how, how water is supposed to be used. And the LWAC was, was satisfied with how Castle & Cooke was proceeding with this application. Consequently, when it finally went before the Planning Commission, it sailed through because the Planning Commission said, "oh, LWAC reviewed it, they, they feel it's appropriate", and it sails through. So that is an example of how LWAC has worked and can work, and that's why we're advocating for this process.

When you, when you worried about teeth and whether the State's gonna do it, the County, like John was raising up his hand before, we are willing to be the teeth, not so much in force, but to know the issues and so that if we have to bring it to the Department of Water Supply, or if we have to bring it to CWRM, that we, we

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

will do that. And, and Dave is right, they don't have the regulatory, statutory responsibility over the water system here. All along, when we advocated for institutionalizing the LWAC process is exactly what he said, application goes to the Planning Department, they send out all the packets, everybody comments and one of which we would like LWAC to comment and say, "yes, they're in compliance with the Water Use and Development Plan" or "they're not", or "here are some conditions we would like to see". Then the Planning Department, as Dave said, prepares their Staff report, goes to the Planning Commission, and they then can make a decision on the application. That's what, that's what we're looking for.

The Planning Commission in and of itself will not...does not have enough information nor institutional history about our water, to make an informed decision about our water. That's why they depend on the LWAC, and that's what we'd like you guys to do, to recognize that we have the institutional history and the knowledge to make the appropriate decisions about our water on our island. Don't punt. It's right in your face that we are willing to take that responsibility. We are the best to make the decision because we know, we have the, the working relationships amongst the residents on this committee. Charley guys may have lot of the technical expertise, but they're on Oahu. Unless we bring it to their attention, they're, they're not gonna be on a daily basis checking out the water levels in Wells 1, 9, and 14. But you can be damn sure we're talking about it either at Blue Ginger or, or at the, at the LWAC meetings. Don't punt, don't punt because it has worked and it can work. I'll stop there.

CHAIR VICTORINO: I was hoping you'd stop there 'cause I think we got the point. Thank you. You got the point then. Thank you very much, Butch.

MR. GIMA: Alright.

CHAIR VICTORINO: Okay, thank you.

MR. GIMA: Thank you.

MR. McOMBER: . . .*(Inaudible)*. . .

CHAIR VICTORINO: McOmbler, you're getting out of hand again. Anyhow, at this point, we're a little after 5 o'clock and I think we've covered these issues with all parties concerned, and the people of Lanai had an opportunity to hear what's going on. We will be meeting on September 13<sup>th</sup>, next week Tuesday, to make...and to discuss and make a decision on the acceptance of the Lanai Water Use and Development Plan. Okay, and that's what we're gonna be doing.

As far as the other entity, as far as LWAC is concerned, I will work with whomever to make sure we can do something in regards to monitoring and

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

making them an entity as part of this whole system. Okay. So that's my assurance to the people of Lanai. The Council will help me with that, and we will make sure that you will be a part of the process in the future as we have been in the past. Any questions? Seeing none, I'm going to adjourn the meeting with...oh, excuse me. Without any objections, the Chair would like to defer this matter.

COUNCIL MEMBERS: No objections.

**ACTION: DEFER pending further discussion.**

CHAIR VICTORINO: Thank you. So being that this, this will be deferred to the July, I mean the September 13, 2001 [*sic*] Water Resource Committee Meeting, I'm going to adjourn this public meeting at 5:05...no, three minutes after 5 o'clock. Meeting is adjourned and thank you. What...yes?

UNIDENTIFIED SPEAKER: ...(*inaudible*)... all of a sudden.

CHAIR VICTORINO: Wait, hold on, hold on.

COUNCILMEMBER COCHRAN: Sorry, Chair. I just...I thought we were gonna have opportunity to question the Company or that's...

CHAIR VICTORINO: Well...

COUNCILMEMBER COCHRAN: No. No, I was just...I mean I was waiting we did CWRM, and, and...

CHAIR VICTORINO: ...(*Inaudible*)... Okay, Company, John, would you come up? Ms. Cochran has a few questions and let's keep it, you know, as quickly as possible. Yeah?

COUNCILMEMBER HOKAMA: I need to be excused for a State reapportionment meeting.

CHAIR VICTORINO: Yeah, I understand that is also happening. You can go ahead. Michael, where, where you going? 'Cause if you leave, I won't have quorum.

UNIDENTIFIED SPEAKER: ...(*Inaudible*)...

CHAIR VICTORINO: Oh, yeah, okay, I do have four. Okay, go ahead. Go ahead, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. Nice to see you, Mr. Stubbart, is it?



**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

MR. STUBBART: Yes.

COUNCILMEMBER COCHRAN: Missed you at our last Water Use and Development Meeting on Maui. Anyways, there's quite a bit of concerns I probably would want to forward you some, some questioning. But as I'm looking through all the past minutes of LWAC and, and stuff, there's, you know, questions in regards to habitat conservation plan, fog drip study, so lot of things I don't know if any of these have been provided or completed as in...so I don't know if I need to go through the laundry list of...

MR. STUBBART: I can try throw some numbers.

COUNCILMEMBER COCHRAN: Oh, okay.

MR. STUBBART: That's just some things that --

COUNCILMEMBER COCHRAN: Okay. Yeah, yeah, I don't need the details of them --

MR. STUBBART: --that are important...

COUNCILMEMBER COCHRAN: --but if perhaps I can confer with your Company down the road to --

MR. STUBBART: Absolutely.

COUNCILMEMBER COCHRAN: --get maybe some of these?

MR. STUBBART: Absolutely.

COUNCILMEMBER COCHRAN: Wonderful. And also just curious, I know the Lanai Forest and Watershed Partnership was signed many years ago and where is that, is it in play, is it doing work at this point?

MR. STUBBART: Yes, it is. And it's...there...they've had a --

COUNCILMEMBER COCHRAN: MOU assigned \_\_\_\_\_.

MR. STUBBART: As far as I understand, I was...I'm not part...I wasn't part of that at the time...I'm going to be. Brian Plunkett, who is our Conservation Manager and does all the conservation activities in the Hale and throughout the island...they had an issue with structure, they took a little hiatus, they just recently met on structure and membership of that, and looking at funding and participation. And I know that they were just setting up another meeting that's coming up soon to discuss the organizational issues.

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

COUNCILMEMBER COCHRAN: And, and does that group address the fencing project, too?

MR. STUBBART: That's in there, yes. Yes. There's about four miles left and the estimated cost is about \$1 million; and in our budgets, we're looking for funding. But--and it's not in my specific budget as a utility--but in the conservation budget, we are trying to plan that money so that we can make it happen regardless. It's a very important issue.

COUNCILMEMBER COCHRAN: Right. I think it's, for me anyways, at the top of my mind for importance due to its...the creation of all water that trickles down to everything.

MR. STUBBART: And as the utility water guy, I'm a absolute proponent of getting that done. Oh --

COUNCILMEMBER COCHRAN: Thank you.

MR. STUBBART: --here's Brian Plunkett.

COUNCILMEMBER COCHRAN: Oh, aloha.

MR. PLUNKETT: May I?

CHAIR VICTORINO: Go ahead, Brian.

MR. PLUNKETT: Yeah, I'm the Conservation Manager in charge of protecting the watershed.

CHAIR VICTORINO: Why don't you introduce yourself so that we can --

MR. PLUNKETT: Yes.

CHAIR VICTORINO: --put it on record.

MR. PLUNKETT: Okay. My name is Brian Plunkett, I'm the Conservation Manager for Castle & Cooke, and I'm in charge of running the Watershed Protection Program for Lanai and we're part of the Lanai Forest and Watershed Partnership, part of HAWP. So was there a specific question that you'd like answered?

COUNCILMEMBER COCHRAN: Well I guess it was just generally. I'm, I'm really concerned about the fencing going up and if there's a partnership with controlling the waiawi which is, you know, impacting the watershed and the, you know, possible extinction of the birds and things of that nature. I know Ms. Costales

**WATER RESOURCES COMMITTEE**  
**Council of the County of Maui**

**September 9, 2011**

---

does an awesome job, but again she shared her concerns about funding, too, and, and things. So just want to hear, you know, the, the, the collaboration hopefully between you folks and other entities up there.

MR. PLUNKETT: Yeah, the watershed is eleven members, Maui County, U.S. Fish and Wildlife, DOFAW, and we're all trying to get the biological control released on Lanai, but, you know, we just...all we can do is lobby and push for it, but there's other things that beyond our control. But as far as the controlling the, the guava and Chris Costales, Jay Penniman's group are trying their, their best up there, but again everything is funding and because of the lack of funding, you only can do so much. And there, there is in the Watershed Partnership meetings, there is a discussion on whether to build more fence or to eradicate ungulates. So there's a overall consensus that we need to build a fence, but there's a difference of opinion of what is more important, building the fence or eradicating ungulates in the completed increment. So these, these are the kind of discussions that come up, but the most important thing is lack of funding.

CHAIR VICTORINO: Okay, excuse me. In the audience, please, I'm gonna ask you folks not to have a conversation because it is very difficult, the acoustics is really hard. Mr. McOmber, if you would, you need to take the conversation outside so we can hear what's going on, please. Thank you, sir.

COUNCILMEMBER COCHRAN: Thank you, Chair and thank you, Mr. Plunkett. If you don't mind also if I can stay in contact with you also.

MR. PLUNKETT: Sure --

COUNCILMEMBER COCHRAN: Thank you.

MR. PLUNKETT: --no problem.

CHAIR VICTORINO: Any other questions for the Company at this time? No, okay. So seeing that, no more questions. The meeting of the Water Use and...Water Use Committee...Water Resources Committee of September 9, 2011 is now adjourned. ...*(gavel)*...

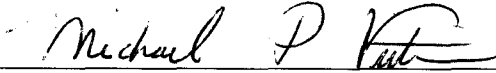
**ADJOURN:** 5:03 p.m.

**WATER RESOURCES COMMITTEE**  
Council of the County of Maui

September 9, 2011

---

APPROVED:



---

MICHAEL P. VICTORINO, Chair  
Water Resources Committee

wr:min:110909-Lanai:ry

Transcribed by: Raynette Yap

**WATER RESOURCES COMMITTEE  
Council of the County of Maui**


**September 9, 2011**

---

CERTIFICATE

I, Raynette Yap, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 23rd day of September, 2011, in Kihei, Hawaii



---

Raynette Yap