

July 24, 2012

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MEMO TO: Mike Victorino, Chair
and Members of the Water Resource Committee

OFFICE OF THE
COUNTY COUNCIL

F R O M: Danny A. Mateo
Council Chair



SUBJECT: **DIRECT REFERRAL RELATING TO ESTABLISHMENT OF THE
LANAI WATER ADVISORY COMMITTEE (WR-16)**

This document pertains to a matter that has already been referred to your Committee. I received the document on behalf of the Council, and I am forwarding it to your Committee in accordance with the authority granted by Rule 6(A) of the Rules of the Council.

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Attachment

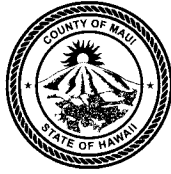
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ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



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COUNTY OF MAUI

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DEPARTMENT OF PLANNING OFFICE OF THE MAYOR

July 23, 2012

OFFICE OF THE
COUNTY COUNCIL
2012 JUL 23 PM 2:23
RECEIVED
OFFICE OF THE
COUNTY CLERK

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Danny A. Mateo, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL



Mayor Date 7/23/12

Dear Chair Mateo and Members:

**SUBJECT: RESOLUTION NO. 12-30 REFERRING TO THE LANAI
PLANNING COMMISSION A PROPOSED BILL TO ESTABLISH
A LANAI WATER ADVISORY COMMITTEE (RFC 2012/0050)**

The Department of Planning (Department) received Resolution No. 12-30 on March 28, 2012. The Department facilitated the review of the draft Bill for an Ordinance Amending Title 2, Maui County Code, to establish a Lanai Water Advisory Committee (LWAC), through the Lanai Planning Commission (Commission) on June 20, 2012.

The Commission could not come to an agreement on comments as a whole. Because of this, the Commission decided to have each member make their own comments and to send this list of comments to the Maui County Council (Council) for your review and consideration. The following is a list of the Commissioner's individual comments:

COMMENTS AND RECOMMENDATIONS:

Commissioner Green

1. The Ordinance as written is too broad as it relates to the LWAC's functions and duties. There is not enough structure in the Ordinance;
2. It seems that the LWAC wants to monitor the Lanai Water Company at all times, rather than just concentrating on matters within the authority of the Commission;
3. The Commission should decide the details of the LWAC and the Ordinance establishing the LWAC, not the Council (*Commissioner Castillo made this same comment*);

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Honorable Alan M. Arakawa, Mayor
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4. Meeting dates and frequency are not defined. The Commission should decide the scope and authority of the LWAC and when the LWAC meets, not the Council;
5. Feels it is inappropriate for a Council Member to be a member of the LWAC;

Commissioner Ornellas

6. In the draft Ordinance, Section B, the LWAC should have seven (7) members and the Commission should make the decision on who to appoint to the LWAC;
7. Section B.1 should read that only the Director of the Lanai water utility company should be a member of the LWAC, not just any member or representative from the Company;
8. All members of the LWAC must be current residents of Lanai;
9. In Section B, the Lanai Council Member should be a voting member of the LWAC, not an ex-officio non-voting member of the LWAC;
10. The LWAC should meet as needed and decided by the LWAC, at the LWAC's discretion;

Commissioner Lopez

11. The LWAC shall always remain advisory only and the Commission shall maintain authority for making decisions related to water usage;
12. The LWAC shall meet when necessary, but should meet at a minimum quarterly;
13. Feels that five (5) members are adequate;

Chair Rabaino

14. All voting members of the LWAC shall reside and be registered to vote on Lanai; and
15. Any written comments from the LWAC shall be transmitted to the Commission at least two (2) weeks prior to a Commission meeting.

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Attached for your review are the following documents:

- A. Staff Report of the Commission;
- B. Public Testimony from Butch Gima, dated June 18, 2012;
- C. Public Testimony from Fairfax A. Reilly, dated June 20, 2012;
- D. Public Testimony from John Stubbart, on behalf of Lanai Water Company, Inc.; and
- E. Draft Regular Meeting Minutes of the June 20, 2012 Commission meeting.

Thank you for your attention to this matter. Should further clarification be necessary, please contact Staff Planner Joseph Prutch at Ext. 7512.

Sincerely,



WILLIAM SPENCE
Planning Director

Attachments

xc: Clayton I. Yoshida, Planning Program Administrator (PDF)
Joseph M. Prutch, Staff Planner (PDF)
Lanai Planning Commission Members

WRS:JMP:nt

Project File
General File

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ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 20, 2012

MEMORANDUM

TO: Mr. Gerald Rabaino, Chair
and Members of the Lanai Planning Commission

FROM: William Spence, Planning Director *W.S.*

SUBJECT: REFERRING TO THE LANAI PLANNING COMMISSION A COUNTY COUNCIL PROPOSED BILL TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE (RFC 2012/0050)

DESCRIPTION OF THE PROJECT

The Maui County Council adopted Resolution No. 12-30 (**Exhibit 1**) on March 16, 2012 by unanimous vote to refer to the Lanai Planning Commission (Commission) a proposed bill to establish a Lanai Water Advisory Committee (LWAC). The Council is considering the establishment of the LWAC to monitor the implementation of the Lanai Island Water Use and Development Plan (Plan), enacted on October 25, 2011, and to advise the Commission on related matters. The Council requests the Commission to transmit recommendations to the Council as expeditiously as possible.

The proposed bill would amend Chapter 2.28 of the Maui County Code by adding a new section to be designated as Section 2.28.070 Lanai Water Advisory Committee. The verbiage of the proposed new section is shown in Exhibit 1. In summary, the LWAC would consist of five (5) voting members appointed by the Mayor with approval of the Council, establish terms and operation of the LWAC and dictate the powers, duties and functions of the Committee. The LWAC would be an advisory board to the Commission.

ANALYSIS

The Board of Water Supply, County of Maui (Board) provided comments on the proposed bill on May 25, 2012 (**Exhibit 2**). The Board strongly recommends that the Council not establish a LWAC because there already exist adequate regulatory authority over private water systems and land use issues. The Board believes this additional bureaucratic layer is unnecessary. Minutes from the Board meeting of April 26, 2012, are attached (**Exhibit 2A**).

The County's Department of Water Supply is not taking any position on this proposed bill as they have no public water system on Lanai. A water advisory group was originally formed during the drafting of the Plan. The group wants to remain involved to monitor the implementation of the Plan. Only the Director of Water Supply can schedule meetings with this

Mr. Gerald Rabaino, Chair
and Members of the Lanai Planning Commission
June 20, 2012
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group, but no meetings have been scheduled during Mayor Arakawa's administration because the Department of Water Supply has nothing to run by the advisory group.

To send four (4) staff members (planner, director or deputy director, corporation counsel and secretary) to Lanai for a LWAC meeting would cost the county approximately \$2,410.

Private charter (airplane) to Lanai:	\$2,100
Shuttle and Rental car for the day:	\$ 195
Per Diem:	\$ 85
Airport parking:	\$ 40
Total cost:	\$2,410

Staff time and possible overtime costs would add to this total cost.

Planning staff does not have the expertise to provide feedback to water resource issues and questions. Staff believes that a water advisory board could be better served by the County Department of Water Supply, who would have greater expertise in water resource management. However, the Board of Water Supply recommended against the creation of such an advisory committee.

It is not known when the meetings would occur, be it once a month like the Commission meetings or only as needed. If a LWAC were established, staff believes it would be best to conduct the meetings on the same date of the Commission meetings so that staff time and cost could be used more efficiently and cost effectively.

The Council adopted Resolution 12-30 on March 16, 2012. Minutes from that meeting are included in **Exhibit 3**. At the meeting, one testifier spoke in opposition to the proposed bill questioning its legal basis and appropriateness. Councilmember Hokama spoke of the reasons for this bill and the creation of a LWAC. Councilmember Cochran questioned Corporation Counsel about the legal concerns brought up by the testifier. Councilmember Victorino realized there was still a lot of legwork but thought this was a positive step. He looks forward to reading the comments and responses from the Commission. The Councilmembers voted unanimously to adopt the resolution and forward the resolution to your Commission for your input.

TESTIMONY

As of June 6, 2012, the Planning Department has received no letters or comments on this resolution.

CONCLUSION

The Planning Department does not believe the creation of this LWAC is necessary at this time because of the additional costs associated with staffing another board and because the Department lacks the expertise on water resource management. The creation of a LWAC could

Mr. Gerald Rabaino, Chair
and Members of the Lanai Planning Commission
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result in other water advisory committees being formed in areas where there are private water companies. The Board of Water Supply also believes that a LWAC is unnecessary.

RECOMMENDATION

Staff requests that the Commission provide comments that will be forwarded to the Council by the Department.

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Resolution

No. 12-30

REFERRING TO THE LANAI PLANNING COMMISSION
A PROPOSED BILL TO ESTABLISH A
LANAI WATER ADVISORY COMMITTEE

WHEREAS, the plan entitled, "Lana'i Island Water Use and Development Plan, February 25, 2011, DWS Amended Draft" ("Plan") was enacted on October 25, 2011 (Ordinance 3885); and

WHEREAS, the Council is considering a proposed bill to establish a Lanai Water Advisory Committee to monitor the implementation of the Plan and to advise the Lanai Planning Commission on related matters; and

WHEREAS, the Council would like to consider comments and recommendations from the Lanai Planning Commission prior to further deliberation of the proposed bill; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE", a copy of which is attached hereto as Exhibit "A" and made a part hereof, to the Lanai Planning Commission; and
2. That it respectfully requests the Lanai Planning Commission to transmit recommendations to the Council as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Director of Water Supply, the Chair of the Board of Water Supply, and the Lanai Planning Commission.

paf:kcw:12-015c

EXHIBIT 1

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO
ESTABLISH A LANAI WATER ADVISORY COMMITTEE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 2.28, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“2.28.070 Lanai water advisory committee. A. There is established a Lanai water advisory committee to the Lanai planning commission. Each member of the committee shall be a resident of the island of Lanai.

B. The committee shall consist of five voting members appointed by the mayor with the approval of the council as follows:

1. One member from the Lanai water utility company regulated by the State public utilities commission;
2. One member from a nonprofit community organization;
3. One member from the business community;
4. One member from a labor union representing workers from the private sector on Lanai; and
5. One Lanai resident representing the community-at large.

The council member that is a resident of Lanai pursuant to section 3-1, revised charter of the county of Maui, (1983) as amended, shall be an ex-officio non-voting member of the committee.

C. Terms and operation of the Lanai water advisory committee shall be pursuant to section 13-2, revised charter of the county of Maui, (1983) as amended, except for the following:

1. Of the five members initially appointed, two shall serve for a term of five years; one shall serve for at term of four years; one shall serve for a term of three years, and one shall serve for a term of two years.
2. The committee chair and vice chair shall be selected by a majority vote of the committee for a term not to exceed one year, and shall be rotated annually among other voting committee members.

D. The powers, duties, and functions of the committee shall be as follows:

1. Monitor implementation of the adopted Lanai water use and development plan.
2. Advise the Lanai planning commission on related matters.”

EXHIBIT “A”

SECTION 2. Chapter 2.40, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“2.40.220 Lanai water advisory committee. There is established a Lanai water advisory committee to the Lanai planning commission which shall consist of five members appointed by the mayor with the approval of the council. (See section 2.28.070 of this code.)”

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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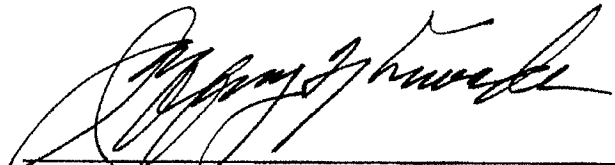
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 12-30** was adopted by the Council of the County of Maui, State of Hawaii, on the 16th day of March, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK



**BOARD OF WATER SUPPLY
COUNTY OF MAUI**

200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
TELEPHONE (808) 270-7816 • FAX (808) 270-7951 • www.mauewater.org

May 25, 2012

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Danny Mateo, Chair
and Members of the Maui County Council
200 S. High Street
Wailuku, Hawaii 96793

Dear Chair Mateo and Members:

**SUBJECT: RESOLUTION 12-30, REFERRING TO THE LANA'I PLANNING
COMMISSION - A PROPOSED BILL TO ESTABLISH A LANA'I
WATER ADVISORY COMMITTEE**

Thank you for allowing the Board of Water Supply to comment on the County Council's RESOLUTION 12-30, REFERRING TO THE LANA'I PLANNING COMMISSION - A PROPOSED BILL TO ESTABLISH A LANA'I WATER ADVISORY COMMITTEE.

This resolution was discussed at our meeting of April 26, 2012 and the Board strongly recommends to the council that they DO NOT establish a Lana'i Water Advisory Committee. Because there already exists adequate regulatory authority over private water systems and land use issues, we believe that this additional bureaucratic layer is unnecessary. Additionally, we believe that this could set a precedent for similar boards on Maui and Molokai.

"By Water All Things Find Life"

Printed on recycled paper

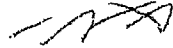
EXHIBIT

2

Honorable Alan M. Arakawa
For Transmittal to
Honorable Danny Mateo
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It is our hope that the council members consider our recommendation in their discussion on this matter.

Sincerely,



KEVIN BOTEILHO
Chair

KB/ghh

xc: Dave Taylor, Director of Water Supply
Clayton Yoshida, Planning Program Administrator
Joseph Prutch, Planner V

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR MEETING
MINUTES OF APRIL 26, 2012

The regular meeting of the Maui County Board of Water Supply was held at the Department of Liquor Control office conference room, 2145 Kaohu Street, Room 105, Wailuku, Maui, on Thursday, April 26, 2012.

CALL TO ORDER

The meeting was called to order by Chair Kevin Boteilho at 9:00 a.m.

ATTENDANCE

Members present: Kevin Boteilho, Chair
John W. Hoxie, Jr., Vice Chair
Patricia Eason
Donald Gerbig
Robert Joslin
William Kamai
James Rust
Michael Suzuki
Ted Yamamura

Staff present: Dave Taylor, Director
Paul Meyer, Deputy Director
James Giroux, Deputy Corporation Counsel
Gaye Hayashida, Commission Support Clerk

Others: Mary Blaine Johnston, Deputy Corporation Counsel
John Stubbart, Director of Utilities, Castle & Cooke

ANNOUNCEMENTS

Introduction of New Board Members, Robert Joslin and Michael Suzuki

Chair Boteilho introduced the two new Board of Water Supply Members, Robert Joslin and Michael Suzuki.

Member Joslin whose office is at the Wailuku Promenade, has lived in Wailuku for 27 - 28 years. He has developed properties in Wailuku and holds 19 categories of Hawaii contractor's licenses. Currently, he is the public insurance adjuster in the State of Hawaii.

Member Suzuki, born and raised on Maui, has lived all his life here except when he served in the military. He has two grown sons and a granddaughter who live here also.

Member Suzuki has been in the plumbing business for 30 years and retired from Dorvin Leis after 22 years. Currently he is an apprentice training instructor and also a trainer for the journeyman plumbing license renewal.

At this time Chair Boteilho introduced himself to the new members and asked the other board members to say something about themselves also.

Ted Yamamura's Appointment to the State Commission on Water Resource Management

Chair Boteilho congratulated Member Ted Yamamura for being confirmed to the state Commission on Water Resource Management. He also noted that Member Yamamura has submitted his letter of resignation to the mayor and a copy was given to the Board of Water Supply.

The board then presented Member Yamamura with a lei and gave him a round of applause.

APPROVAL OF MINUTES

Chair Boteilho asked for approval of the minutes of March 22, 2012.

Motion: Member Rust moved to approve the minutes of March 22, 2012.

Second: Vice Chair Hoxie

Discussion: None.

Vote: Unanimous. Motion passed. The minutes of March 22, 2012 has been approved.

TESTIMONY FROM THE PUBLIC

John Stubbart, Director of Utilities, Castle & Cooke, read from his written testimony on the matter of County Council Resolution No. 12-30, a proposed bill to establish a Lana'i Water Advisory Committee to monitor the implementation of the Lana'i Water Use and Development Plan and to advise the Lana'i Planning Commission.

His written testimony, entitled Expressing Concerns Regarding the Formation of Water Advisory Committees, has been made a part of these minutes.

Member Kamai asked Mr. Stubbart to stay for the board's discussion regarding this matter that is scheduled later in the meeting.

Mr. Stubbart agreed to stay.

ARPEALS

Appeal No. 11-01, an appeal by David and Patricia Chevalier. Stipulation To Reschedule Hearing on 1) Motion to Dismiss Appeal, and 2) Hearing on Appeal

Deputy Corporation Counsel Mary Blaine Johnston submitted a Stipulation To Reschedule Hearing on 1) Motion to Dismiss Appeal, and 2) Hearing on Appeal. The stipulation has been signed by Deputy Corporation Counsel Johnston and Jack Naiditch, attorney for the appellants David and Patricia Chevalier. They are in agreement to have this matter moved to the May 24, 2012 meeting. The stipulation requires the signature of the board chair.

Motion: Vice Chair Hoxie moved to defer this matter to May 24, 2012

Second: Member Kamai

Discussion: Member Rust asked Ms. Johnston what her feelings are on this; should this be continued or should the board make a decision on this appeal?

Ms. Johnston replied that the stipulation asks to postpone the consideration by the board on the appeal. The County has filed a motion to dismiss the appeal and if the board decides to grant that motion then the board will not have to hear the appeal at all. So, the board may want to set the Motion to Dismiss first and rule on that. If the board denies the Motion to Dismiss then at the next hearing the board will hear the appeal. If the board dismisses it then it is done.

Member Yamamura stated that the board hasn't heard from the appellants.

Ms. Johnston explained that their attorney filed an Opposition to the Motion to Dismiss the Appeal. The board has information on the motion to dismiss from both sides but has not heard the issues of the appeal itself from either side.

Member Yamamura suggested that they stay with this motion and afford the appellants an opportunity to speak before this board.

Vote: Unanimous. Motion passed. The matter of the Motion to Dismiss Appeal has been deferred to May 24, 2012.

Ms. Johnston stated for clarification that what the board has done is approve the stipulation to reschedule and the 2 issues still remain. Chair Boteilho signed the

~~Stipulation to Reschedule Hearing on 1) Motion to Dismiss Appeal, and 2) Hearing on Appeal.~~

~~Ms. Johnston notified the Board that Member Joslin and his wife were former clients of hers many years ago. She has disclosed this to Mr. Naiditch and he indicated that he has no objections to Member Joslin hearing this case.~~

~~Member Joslin stated that he has no problem with this.~~

~~Mr. Giroux explained that if the opposing party is uncomfortable with that then they can raise their objections as long as they're put on notice that that's the relationship; otherwise there's no ethical issue as far as Member Joslin being on the Board.~~

UNFINISHED BUSINESS

~~None.~~

OTHER BUSINESS

Discussion and possible action on Council's Resolution No. 12-30 (BWS COM 12-02) proposing a bill establishing a Lanai Water Advisory Committee to advise the Lanai Planning Commission

Director Taylor stated that he has no recommendation for the board but he felt he could provide some background on this matter.

Member Kamai asked what actions can the Board take?

Mr. Giroux replied that there is a Council resolution on this and the action from the board would be more of a comment on whether the Board agrees with this or not and then Council would look at it as advisory (sic).

Director Taylor concurred. He explained that the Council is looking for the Board's recommendation, if any.

In the State of Hawaii there are 3 state agencies that regulate water systems; the Department of Health's (DOH) Safe Drinking Water Branch (SDWB), the Department of Land and Natural Resources' Commission on Water Resource Management (CWRM) and the Department of Budget and Finance's Public Utility Commission (PUC). The PUC regulates private systems, ie. systems that are not run by the County. The SDWB regulates water quality issues and the CWRM regulates water quantity. The County Department of Water Supply (DWS) is not a regulatory agency but a water utility and is under the regulatory authority of the DOH and the CWRM. The DWS does not fall under the PUC control; our County Council has that control.

Castle & Cooke has a private water utility that is under the state DOH, CWRM and PUC. Kaanapali, Kapalua and Molokai Ranch have their own private water systems

that fall under these regulatory agencies. Everyone is under the DOH and CWRM but private systems are also under the PUC. The DWS is on the same level as these private utilities.

State law says that each county shall make an island Water Use and Development Plan (WUDP) and Maui County was tasked with developing the Lana'i WUDP which came through this board. Although the Board approved the plan as is, the department reformatted the plan taking out all the "shalls" and "shall nots" and making it an informational document which was then sent to the Council. And at the Council's public meeting on Lana'i they approved the reformatted proposed draft. Now the ~~State Land Use Commission~~ ^{State Land Commission} will decide whether to accept the Council's draft or not at their June ^{on Water Resource Management} meeting on Lana'i.

During the development of this plan there was the Lana'i Water Advisory Committee (LWAC) which represented the community and gave their input on this plan. A number of these members told the Council that they want continued involvement overseeing the implementation of the Lana'i WUDP.

Director Taylor told the Council that it was inappropriate for LWAC to exist under DWS because the department has no regulatory authority over Castle and Cooke's water utility. If LWAC reported to him, all he can do with their recommendations is to pass it on to the PUC, DOH or to CWRM; he cannot give it value or take action.

It is his opinion that the purpose of the Lana'i WUDP is to assist the planners and policymakers, ie. the Lana'i Planning Commission, the Council for zoning and even the state Land Use Commission. If LWAC exists at all it should be under the Planning Department because this is where the information will be utilized for future decisions. Or it could be under the State DOH, PUC or CWRM though the Council has no authority to link LWAC to a state agency. So if they exists at all, the right place for them is somewhere under the Planning Commission as a "recommendation" agency, the same way that the County's Urban Design Review Board is a "recommendation" agency to the County ~~Planning Commission~~ ^{planning commissions}.

So based on this, Council Member Hokama came up with this proposed language and submitted it to the Council. And now the Council is going through the process of getting input from the Planning Commission and this Board.

In conclusion, the Director stated that the Department has taken no position on this matter.

Member Kamai asked if it was legal for a private water system to be beholden to an advisory committee under the jurisdiction of the Planning Commission?

Director Taylor said that this ordinance doesn't establish LWAC as having any authority other than to advise the Lana'i Planning Commission on water issues. So they wouldn't have any authority other than they will be recognized as knowledgeable in the field of water to advise the Lana'i Planning Commission.

Member Kamai wanted to know if one submitted their application to change zoning, land use or SMA regarding water to the Lana'i Planning Commission, does it then get sent to the advisory committee.

The Director replied that each planning commission makes their own rules. So between them and whatever state laws govern that and the Planning Department's administrative rules, they would define those procedures. An ordinance would not usually define those procedures; it just establishes the advisory committee.

Member Rust felt that it was appropriate for the citizens of that island to have a voice and this advisory committee would be that voice and asked the Director for his thoughts on this.

Director Taylor replied that this will ultimately be the Council's decision and the Council is asking for the Board's advice and recommendation this issue. And he doesn't feel it is appropriate for him to lead the Board one way or the other. He just wants to give the facts and issues to this Board so the members can discuss this among themselves.

Member Gerbig stated that is another "layer" of approval along with the Lana'i Planning Commission, and if this is established wouldn't this set a precedent for every other private water company to have an advisory committee?

Mr. Giroux replied that this would be a non-chartered committee, established by ordinance. The Maui Planning Commission has the Hana Advisory and the Urban Design Review which it delegates some public hearing tasks and yes, it is creating another layer. As far as legality, section D which covers the powers, duties and functions of this committee, states that it's first function is to monitor the implementation of the Lana'i WUDP. This requires them to only collect information as they have no power or authority.

The second one is to advise the Lana'i Planning Commission on related matters which would be water. They can only tell the planning commission whether or not the entitlements that they are reviewing would be in line or not with the Lana'i WUDP. The way this proposed ordinance is written the LWAC is purely advisory.

The Director added that to be clear, no one is suggesting a Lana'i Water Company Advisory Committee. It is a Lana'i Island Water Advisory Committee.

In referring to Mr. Stubbart written testimony, Item #8, Member Rust pointed out that it says it "is superfluous and unnecessary and will promote only delay and conflict." He asked the rest of the Board if it is or is not appropriate to have this advisory board. If the Council is asking for the Board's input then they should give it to them.

Member Kamai asked Mr. Stubbart if there are any rules or guidelines for documentation that the company has to share with any of the agencies now.

Mr. Stubbart replied that in the handout there is a chart, the Periodic Water Report, that is done every 28 days and it is sent to the members of the LWAC, CWRM, DOH and they also post it in places around Lana'i City for public general information. This report gives information on the pumpage from each well, where it is distributed to, the water quality, and the water levels.

Member Gerbig asked Mr. Stubbart, what agency follows through with his company to see that it is implemented. Is it the Water Commission?

Mr. Stubbart replied that that is the question, who is the responsible party? If a permit comes before the planning commission would they ask this advisory committee to give feedback on it? He noted that he will be sitting on this very committee.

Member Gerbig asked Director Taylor if the WUDP is the guideline for development, would the Planning Commission verify that it met the qualifications of the plan?

Director Taylor explained that the WUDP is not an ordinance, it's not a law. It's an informational document. There is nothing in the WUDP that says "shall" or "must" because the department took them out. It is an informational guide that may be ignored or may be used by the boards or agencies who have authority.

Member Suzuki stated that this water advisory committee is pretty redundant because the County already looks at the same requirements. The Planning Commission would look at the water issues and then you have this committee looking at the same thing. Isn't that what we're talking about?

Vice Chair Hoxie said that Director's Taylor explanation about who regulates what is very clear. This would set a very bad precedent for private water systems and the incentive for the Lana'i Water Company is to watch the Lana'i WUDP and perform on that plan. He believes that this is a duplication of effort that's already underway and he does not support it.

Motion: Vice Chair Hoxie moved to not support this proposed ordinance

Second: Member Kamai

Discussion: Director Taylor said that this requires a letter to the Council which staff will write but they need something more such as "I move that the following language be included in our response."

Vice Chair Hoxie stated that they can discuss it more. He added that there are enough regulatory rules in place.

Member Gerbig stated that in this proposed regulation monitoring of the development plan doesn't say anything.

And to advise the Planning Commission on related matters is so broad brush that it would be never ending.

Vice Chair Hoxie added that this sets a bad precedent for formation of other advisory committees related to private water systems.

Director Taylor recommended that the Board take a 10 minute recess and during this time he will work with staff and the chair to draft language and then the board could vote on it now. Then at the next meeting the Board can approve the letter.

Chair Boteilho agreed.

At this time a short recess was called by the chair.

When the meeting reconvened Ms. Hayashida read the draft of the Board's recommendation.

"The Board feels that because there already exist adequate regulatory authority over private water systems and land use issues, we believe the additional bureaucratic layer is unnecessary. Additionally, this could set a precedent for similar boards on Maui and Molokai."

Vice Chair Hoxie withdrew his motion and Member Kamai withdrew his second. Chair Boteilho stated that the original motion has been withdrawn.

Motion: Member Eason moved to accept the language as read by Ms. Hayashida

Second: Vice Chair Hoxie

Discussion: None.

Vote: 8 ayes, 0 nays, 1 abstain. Motion carried. This language will be incorporated into the Board's letter to the Council.

At the next meeting the Board will consider whether to appoint an investigative committee to give public testimony before the Council.

~~Receipt of Board Members request for agenda items to be placed on future agendas~~

- ~~1. Recommendation to the County Council regarding A Proposed Bill Establishing a Lana'i Water Advisory Committee To Advise the Lana'i Planning Commission. The Board will review their draft letter to the Council.~~

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

March 16, 2012

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, MARCH 16, 2012, BEGINNING AT 9:10 A.M., WITH CHAIR DENNIS A. MATEO PRESIDING.

CHAIR MATEO: Council of the County of Maui regular meeting of March 16, 2012 will come to order.

Mr. Clerk, may we have the roll call please.

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, ROBERT CARROLL, ELEANORA COCHRAN, DONALD G. COUCH JR., G. RIKI HOKAMA, MICHAEL P. VICTORINO, MICHAEL B. WHITE, VICE-CHAIR JOSEPH PONTANILLA, AND CHAIR DENNIS A. MATEO.

EXCUSED: NONE.

COUNTY CLERK JEFFREY KUWADA: Mr. Chairman, all nine Members of the Council are present.

CHAIR MATEO: Thank you. Members, this morning our colleague from Upcountry, Ms. Baisa, will be providing the opening remarks for us.

Ms. Baisa.

OPENING REMARKS

The opening remarks were offered by Councilmember Gladys C. Baisa.

MS. BECKY COLLINS (testifying on Committee Report No. 12-40):

Good morning, Chair Mateo and Councilmembers. My name is Becky Collins. I represent Stanford Carr Development and ATC Makena Holdings. I'm testifying today on item CR 12-40. I would like to thank you all and commend you all for continuing your hard work on this water availability ordinance.

I respectfully urge you to consider reinstating the language that Mr. Jencks spoke about at, at the very least that would allow the Director's interpretation that a large lot subdivision would be exempt. So my request is that you reinstate the language "such as, but not limited to" and delete the language "including", which returns the prior language. This, as I said, will allow for the inclusion of large lot subdivisions.

I know that you're heading into budget sessions shortly and hopefully you will work hard to fund some of the very wonderful projects that Director Taylor has proposed to help get more water into the system that, so that we can get more people back to work. I thank you for your time and I thank you for your consideration.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you, Ms. Collins.

Mr. Clerk.

COUNTY CLERK: John Stubbart. Mr. Stubbart will offer testimony on County Communication 12-57. He will be followed by Robert Glass.

MR. JOHN STUBBART (testifying on County Communication 12-57):

Thank you, Mr. Chair and the Councilmembers, Riki Hokama, for this and other Councilmembers, for this opportunity to provide testimony. Speaking to the County Communication No. 12-57.

Castle & Cooke questions the legal basis and appropriateness for the creation of a new citizen advisory committee for the oversight of/or implementation of the regulations or private water system. Please contemplate the following questions and ramifications. This will set a precedent for all districts, other utilities like wastewater, and businesses.

Will this add an additional review and approval to the planning process? Is this committee really needed? How will it function in matters pertaining to Planning

Commissions? What expertise and qualifications should the five members have? Which County department will support these committees with staffing and funding? Will this same type of committee be instituted in each district in Maui, in the State? Will other private water systems have advisory oversight? Is this additional oversight arbitrary and discriminatory to the Island of Lanai? Should the County step into private water company oversight? These are just some of the questions that we have concerns of.

Lanai Water Company is a private water company which operates Lanai water system. Lanai Water Company expresses serious concerns over the formation of an, of an advisory committee, as referenced in the County Communication No. 12-57, and respectfully suggest this matter be deferred to allow a full and careful consideration of legitimate, legitimate legal concerns.

The Lanai Water Use Development Plan was enacted by ordinance as a planning document intended to set forth guidelines for water use on Lanai. This planning document did not contemplate a community advisory committee for implementation of its guidelines, and Lanai Water Company questions the necessity, practical function, and the legal basis for creating an advisory committee for this planning document.

Castle & Cooke supported the addition of the Water Use Development Plan as it provides guidelines with reasonable expectations in existing regulations, functions, and expertise from Commission of Water Resource Management, State; Department of Health, the State; PUC; the Maui Department of Water Supply; that all provide sufficient oversight.

The new advisory committee appears to contemplate additional oversight, enforcement functions laid on top of government agencies, yet the Water Use Development Plan as intended to set forth guidelines not to mandate compliance.

CHAIR MATEO: Okay.

MR. STUBBART: I have some other tes--

CHAIR MATEO: One, one minute to conclude.

MR. STUBBART: So there is uncertainty with the committee, how it will function, how it will take these specific issues and relate them under any Land Use Commission or, or commission in, in, for each of the counties for any Planning Commission.

So finally, Castle & Cooke questions the legal basis and appropriateness of the committee and the oversight or implementation of the regulation of a private water company on Lanai. Thank you very much.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you very much, Mr. Stubbart.

MR. STUBBART: Thank you.

CHAIR MATEO: Mr. Clerk.

COUNTY CLERK: Robert Glass. Mr. Glass will offer testimony on County Communication 12-56. He will be followed by Victor Pellegrino.

MR. ROBERT GLASS (testifying on County Communication 12-56):

Good morning, Mr. Chair, Councilmembers. Thank you for your time today. My name is Robert Glass, as he mentioned and I'm a Member of Kahului Baptist Church which is located at 309 Puunene and I'm speaking in favor of the County Communication 12, No. 12-56.

Under the present zoning, if our church was destroyed by some unforeseen disaster, we would have to rebuild within a year. We could not fulfill this constraint. Also under the present zoning, as new construction is limited to the existing configuration of our facility, this zoning would change and would free us from such limitation. Therefore, I ask you please pass the County Communication, vote, No. 12-56. Thank you for your time.

CHAIR MATEO: Thank you. Members, is there a need to have any part of the testimony rephrased? Thank you very much, Mr. Glass.

Mr. Clerk.

COUNTY CLERK: Victor Pellegrino. Mr. Pellegrino will offer testimony on Committee Report 12-40. He will be followed by Henry Lindsey.

MR. VICTOR PELLEGRINO (testifying on Committee Report No. 12-40):

Good morning. My name is Victor Pellegrino and I'm a kalo farmer in Waikapu, a retired professor emeritus from Maui Community College. Mahalo for allowing me to speak today on this important water bill, the Maui County Water Availability Bill.

COUNCILMEMBER COCHRAN: It was already included.

CHAIR MATEO: Thank you. The Chair stands corrected. Mr. Pontanilla's original motion did include the filing of the communication. The Chair just did not hear the filing part of it. So the Chair stands corrected. Thank you, Mr. Clerk. My apologies, Mr. Pontanilla.

Mr. Clerk, we can move on.

COUNTY CLERK: For the record, RESOLUTION 12-29.

NO. 12-57 - G. RIKI HOKAMA, COUNCILMEMBER,
(dated March 9, 2012)

Transmitting a proposed resolution entitled "REFERRING TO THE LANAI PLANNING COMMISSION A PROPOSED BILL TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE" and informing of his intention to offer the following motions:

1. A motion to ADOPT the proposed resolution; and
2. A motion to FILE this communication.

CHAIR MATEO: Mr. Hokama.

COUNCILMEMBER HOKAMA:

CHAIRMAN, I MOVE THAT THE PROPOSED RESOLUTION ENTITLED "REFERRING TO THE LANAI PLANNING COMMISSION A PROPOSED BILL TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE" AND THE FILING OF COUNTY COMMUNICATION 12-57.

COUNCILMEMBER VICTORINO:

MR. CHAIR, I SECOND THE MOTION.

COUNCILMEMBER CARROLL: Second.

CHAIR MATEO: It's been moved by Mr. Pontanilla and second by Mr. Victorino to adopt the proposed resolution entitled "REFERRING TO THE LANAI PLANNING