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3 MAUI COUNTY BOARD OF ETHICS
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6 Regular Meeting
7 Wednesday, January 8, 2014
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14 Held at the Planning Conference Room, Kalana Pakui
15 Building, 200 S. High Street, Wailuku, Maui, Hawaii, commencing
16 at 11:32 a.m.
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23 REPORTED BY:
24 Cammie Gillett
25 Registered Professional Reporter
Hawaii Certified Shorthand Reporter #438

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1 ATTENDANCE
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3 BOARD MEMBERS PRESENT:
4 Michael Westfall, Chair
5 Randol Leach, Vice Chair
6 Sydney Kikuchi, Member
7 Norman Franco, Member
8 Lois Prey, Member
9 Lilah Inaba, Member
10 Abel Kahoohanohano, Jr., Member
11 Herman Nascimento, Member
12 Lei Fagan, Member
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15 STAFF PRESENT:
16 Linden Joesting, Deputy Corporation Counsel
17 Angela Andrade, Executive Secretary
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1 (Wednesday January 8, 2014)
2 * * *
3 CHAIR WESTFALL: Are we ready to get started?
4 Everybody is here, great. We'll go ahead and call to order the
5 Maui County Board of Ethics meeting for Wednesday, January 8,
6 2014. I have a little bit of a cold, so hopefully I can make
7 it through, and I'll try not to breathe on any of you.
8 Welcome our new Board Member, Lei Fagan. Welcome, Lei.
9 You want to say a few words.
10 MEMBER FAGAN: I'm Lei Fagan. I'm a teacher at Makawao
11 Elementary School. I've been there about 14 years, and I live
12 in Haiku. I'm a member of the Lions Club Kahului.
13 MEMBER FRANCO: Are you related to the Fagans in
14 Hana --
15 MEMBER FAGAN: My husband's a Fagan. No, I'm not
16 related to the Fagans.
17 CHAIR WESTFALL: Okay. Item 3, Review and Approval of
18 November 13, 2013 Minutes. Do I have a motion to approve those
19 minutes?
20 VICE CHAIR LEACH: So moved.
21 CHAIR WESTFALL: Second?
22 MEMBER PREY: Second.
23 CHAIR WESTFALL: All those in favor, signify by saying
24 "aye".
25 (Round of "ayes".)

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1 CHAIR WESTFALL: Any opposition?
2 Seeing none, those are approved.
3 Do we have any Public Testimony today?
4 MS. ANDRADE: We do we have Rosemary Robbins.
5 CHAIR WESTFALL: So why don't we start with that.
6 So, Ms. Robbins, if you want to go ahead.
7 MS. ROBBINS: Aloha, everybody. Thank you for serving
8 on this body. I'm Rosemary Robbins. I'm a concerned citizen.
9 I've worked with the EPA when we were dealing with the water
10 issues Upcountry back in the early part of the 2000, so I have
11 a background of experience in that. I live Upcountry. One of
12 the definitions of the Hawaiian -- is high desert. If you take
13 a ride up there and take a look at all the cactus that
14 surrounds Omaopio --
15 MS. ANDRADE: Rosemary, can you speak into the
16 microphone.
17 MS. ROBBINS: I don't think it's on -- okay. Rosemary
18 Robbins. Thank you for having me. Thank you for serving on
19 this.
20 I have a little background with the water with a number
21 of water directors over the years, including who you have this
22 morning. And on your paper this morning on your agenda, Item
23 Number 6(e), as in Elizabeth, the Director of Water Supply
24 representing some other areas, perhaps two other areas of which
25 he has land in that other area. So I have some concerns about

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1 this.

2 One of the things that we need to be very careful of is

3 having any appearances of conflict of interest. And when the

4 citizens voted in November of '12, two of the issues that they

5 voted on supporting, one was an increase in the County's

6 responsibility for environmental protection and sustainability.

7 And the recommendation was that the Director of the Department

8 of Environmental Management should be handling that. I kind of

9 saw maybe a questionable problem with the Department of Water

10 Director dealing with that. So before you make any decisions,

11 just be aware that that was -- so that was Number 8 in the

12 election.

13 And then also Number 10, acknowledging our heritage.

14 The preamble currently at that time does not make reference of

15 our community's unique heritage in the fact that the County

16 includes four main islands, and this proposal would correct

17 that oversight. So they want to make sure that pono is what's

18 really driving us. And we've had some conflicts up there in

19 the population at large that too much stuff is done for

20 political expediency, and sometimes giving second assurance to

21 the pono end of things. So those are the people in the

22 community. And then based on that, the Charter in the County

23 of Maui got into the Department of Water Supply -- starting on

24 page 30. Everybody has, I hope, this and has read it and maybe

25 rereads it before you make a decision on what you're doing. So

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1 So just recognizing there are all these other people,

2 all these other times and decisions all the redecisions that

3 come out of there is something that you will have a real

4 opportunity to be able to not have that -- ongoing.

5 So I'm very much in favor of the fact that you people

6 do the kind of work that you do. I know it can't be easy.

7 Paperwork goes on forever. I'm well aware of that. And

8 remember that the State Constitution. I came to Hawaii

9 teaching three years after Hawaii become a state, and I was

10 over on windward Oahu teaching over there then in all -- at

11 that time. And it's very clear that water belongs to all and

12 is not owned by any individuals. So when you take a look at

13 the fact that Wailuku Water Company is using water and, in some

14 cases, selling it after cycling it off, that's going to be

15 another lawsuit in a hurry if we're not careful on that.

16 So just to make sure that when you do go over those

17 this morning that there are factual backgrounds on here that

18 Dave has put in, the Water Director has put in on that. I

19 hadn't seen that phrased that way until it came along in this.

20 And I did this get this -- does everybody have that? It's the

21 November 22, 2013, request that the Water Director made -- oh,

22 good. Because I went to find that out, it was the only piece

23 that was in the folder, the binder for your committee. So I

24 read it and reread it. And I wanted to just come and hear

25 whatever it is you're going to be doing today.

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1 those pages, 30 and 31, talk about responsibilities of people.

2 And then I stopped into the library the day before

3 yesterday and went over the Water Code that I thought -- pieces

4 that I thought might relate to this today. And I ran them off.

5 So that's the State Water Code, after we talked about our local

6 here. And it's very specific that, indeed, it's up to the

7 State Water Use Commission that determines some of the

8 representation with decision-makers and purveyors of whatever

9 it is that has been decided upon. So you don't need to read

10 that now, but just to let you know it is there. The Water Code

11 is there. It's been updated since 2011. And one more time, I

12 don't want Dave getting caught in the middle of that or your

13 getting caught in the middle of that, where we're bypassing the

14 fact that it's the State Water Use Commission.

15 And remember the four streams down here; Waihee, Waiehu

16 and Iao, and then on over to Waikapu. And eventually that had

17 to end up going to the State Supreme Court in order to get a

18 let's take a look at this and what's happening. And the

19 Supreme Court of the State of Hawaii sent that back to --

20 remanded it back to here. And we lost all sorts of time and

21 money in terms of going through what we did in that amount of

22 time. I really think that amount of time could have been spent

23 instead of rehashing and rehashing. And we're going into

24 another rehashing again. It's coming up in March, when the

25 State is going to hear this again.

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1 So, again, thank you very much for serving on that.

2 CHAIR WESTFALL: Do any Members have any questions of

3 the testifier?

4 Seeing none -- I'm sorry. Norman.

5 MEMBER FRANCO: -- Country Estates?

6 MS. ROBBINS: Say it again.

7 MEMBER FRANCO: This affects the water system? The way

8 I understand, the Director of Water Supply's advisory opinion

9 is ownership interest in the Wailuku Country Estates.

10 MS. ROBBINS: He has that. And he's the Water

11 Director --

12 CHAIR WESTFALL: He's up next. So if you have any

13 questions --

14 MEMBER FRANCO: Oh, okay.

15 CHAIR WESTFALL: Anyone else? Linden, our Corporation

16 Counsel has a few questions.

17 MS. JOESTING: Thank you for coming to talk today.

18 MS. ROBBINS: Sure.

19 MS. JOESTING: I was wondering, you're concerned about

20 an appearance of conflict?

21 MS. ROBBINS: Uh-huh.

22 MS. JOESTING: Are you aware there's no

23 actual -- anything in the Code of Ethics or the Charter about

24 an appearance of a conflict versus an actual conflict --

25 MS. ROBBINS: No. Actually, there is in here.

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1 MS. JOESTING: -- so that you can correct me if I'm
2 wrong.
3 MS. ROBBINS: It's at the end of a paragraph on one of
4 the 56 pages of this. It's not going to come probably right
5 away. And it's on your time, I don't want to do that.
6 MS. JOESTING: Certainly. If you don't know it
7 offhand, we can talk after. Was there any other concern that
8 you have besides an appearance of conflict?
9 MS. ROBBINS: No. Well, I'm out there in the
10 community, and people -- in all of the County Council meetings.
11 They're all on Akaku. So people I don't know call me out of
12 the phone book, "Are you the same lady who" -- you know,
13 there's not a lot of old wrinkled redheads running around. I'm
14 joking. But when those calls come in, and their concern -- one
15 of the things that's on this request, the Water Director
16 mentions that he has a water meter for the land that he owns
17 here in Wailuku.
18 And loads of people from multigenerations Upcountry are
19 wondering if they never saw the water meter -- I don't have a
20 water. So I'm speaking from what I heard. They don't have a
21 water meter; that this was not available for people to see.
22 And then they discovered that somebody who is not from here,
23 from many generations past, have been on this wait list for all
24 those generations past, and how come somebody who has been less
25 time here has a water meter. I don't have an answer for that.

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1 I'm glad Dave is here, he can probably answer that.
2 I think it's a valid question. It's an issue for them.
3 It's an issue for the seniors and their planning as to how
4 they're going to use and asset the land they have available.
5 They can't get a water meter on that in order to have their
6 grandchildren stay on Maui and be able to grow up here. So --
7 I don't have any kids here either. Elsewhere, but not here.
8 So none of this is personal on my part.
9 And also Dave has written in here that he has -- he's
10 using ag water, he doesn't have any buildings on his land, but
11 he's growing crops. I didn't know anything about that. And so
12 I refer to people to come down. You can see that all of them
13 aren't here today. They're terrified of coming before a group.
14 Tough, okay. I have yet to have anybody bite me when I come to
15 any of these meetings. Everybody is always nice.
16 So just to let you know there are concerns out there.
17 And one of them -- and you're going through. I'll see if I can
18 go through and find that paragraph in there.
19 MS. JOESTING: Okay, thank you.
20 MS. ROBBINS: Aloha.
21 CHAIR WESTFALL: Any more questions?
22 MS. JOESTING: No.
23 CHAIR WESTFALL: Anyone else have any questions?
24 All right, thank you.
25 MS. ROBBINS: You're welcome.

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1 CHAIR WESTFALL: Members, what I'm going to ask for now
2 is a motion to waive our rules so that we can bring Agenda Item
3 6(e) up, which is Dave Taylor, since he's here. And then we
4 can get him on his way.
5 So do I have a motion to waive the rules as far as the
6 Agenda?
7 MEMBER KIKUCHI: So moved.
8 CHAIR WESTFALL: Second?
9 MEMBER PREY: Second.
10 CHAIR WESTFALL: All those in favor, say "aye".
11 (Round of "ayes".)
12 CHAIR WESTFALL: Any opposition?
13 Seeing none, we'll go ahead and take Item 6, New
14 Business (e), "Dave Taylor, Director of Department Water Supply
15 requests an advisory opinion as to whether his ownership
16 interest in the Wailuku Country Estates conflicts with his
17 proposed representation of the Department of Water Supply
18 before the Commission on Water Resource Management. Wailuku
19 Country Estates has an interest in the proceeding, but may not
20 be a party to the same proceeding, Item 14A-01."
21 What we'll do is have Mr. Taylor come up and give us
22 some sort of background, and I'll open it up for questions.
23 We'll start with Norman and go around. Again, what we want to
24 try to hash out here is the elements and how they relate to the
25 Code of Ethics.

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1 So, Mr. Taylor, thank you for coming.
2 MR. TAYLOR: Thank you.
3 CHAIR WESTFALL: Let me start -- I'm sorry.
4 For the record, I did ask Mr. Taylor if he wanted this
5 to be in Executive Session, which is his pleasure, and he has
6 indicated that he's fine with this being in Open Session. So
7 we will go ahead and continue in Open Session.
8 MR. TAYLOR: Thank you, Chair Westfall. And thank you,
9 Commission Members, for the opportunity to come here today. I
10 tried to make my written request as detailed as possible so you
11 could review it. I'll just summarize some of the main points.
12 I am David Taylor, the Director of Water Supply. And I
13 own a lot in Wailuku Country Estates, an agricultural and
14 residential subdivision in Wailuku. There are roughly -- I
15 think there's 184 lots, right around there. I own one of them.
16 In Wailuku Country Estates, we are served by County Department
17 of Water Supply water. We all have water meters. That's only
18 for domestic use. Exterior use -- for any kind of landscaping
19 outside hose uses, et cetera -- comes from agricultural water
20 meters. So everyone has County water and everyone has private
21 agricultural water. The private agricultural water comes from
22 Iao Stream through a Wailuku Water Company ditch that is
23 delivered to a homeowner association owned irrigation system
24 that distributes the water around the community. So we each
25 have two water meters.

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1 I am not a member of the Board of Wailuku Country
 2 Estates. I don't currently own a home there. There is no
 3 structure on my property. I am leasing that property to some
 4 gentlemen who farm on it. At the same time, the County
 5 Department of Water Supply, which I am the Director, we supply
 6 water -- the Central Maui water system supplies water to
 7 Wailuku, Kahului, out to Waihee, all the way to Kihei, Makena,
 8 out to Paia. So all of that is one water system. There's
 9 about -- somewhere around 25 million gallons a day of water is
 10 produced, including about 1.7 million gallons that come from a
 11 surface water treatment plant right up here at the fork in the
 12 road where you go to Iao Valley or Wailuku Heights, there's a
 13 big tank there. There's a water treatment plant. That water
 14 also comes from Iao Stream through a different ditch.
 15 So this is called surface water. It comes from a
 16 stream. Some of that water goes -- a bunch of that water goes
 17 to different ditches. Some of it goes all the way to HC&S.
 18 The Department of Water Supply takes some. All sorts of
 19 individual users use it. And some of that water goes to
 20 Wailuku Country Estates. So that's kind of the big picture of
 21 where all that water goes.
 22 The State Water Commission has a process going on right
 23 now to decide how much of Iao Stream, along with some other
 24 streams in the area, stays in the stream; how much is allowed
 25 to come out of the stream for off-stream uses. Those

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1 off-stream uses include the Department of Water Supply's plant,
 2 HC&S use, and Wailuku Country Estates, among others. So
 3 there's this ongoing procedure, a process where the State Water
 4 Commission made some rulings about who gets how much water.
 5 Some of the participants didn't like those rulings. It went to
 6 the Supreme Court. There was a ruling from the Supreme Court.
 7 It sent it back to the Water Commission. This is likely to go
 8 on like that. So Wailuku Country Estates is a party to this
 9 effort, so is the County of Maui Department of Water Supply.
 10 My request is to represent, as Director of Water
 11 Supply, the County of Maui in these procedures. And that's why
 12 I'm here, to make sure that approval is given by the Ethics
 13 Commission. The ownership of this was disclosed on my last
 14 couple of years of disclosure documents that have been on file
 15 with this committee. I have no special relationship with
 16 Wailuku Country Estates any more or less than any of the
 17 others. I'm not a board member. Like I said, we all have
 18 county water and we all have agricultural water. So for that
 19 reason, I don't see any conflict of interest.
 20 In fact, this latest proceeding at the State Water
 21 Commission, Wailuku Country Estates isn't even a party. But
 22 because they are in the whole mix of who gets how much water, I
 23 just wanted to be very public about this and come to this
 24 Commission. So I know it's very complicated. Sorry for going
 25 through it again. I know perhaps what I wrote was even

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1 complicated. The whole situation is very complicated, which is
 2 why it's been going on for so long. So with that, I'll be more
 3 than happy to answer any questions.
 4 CHAIR WESTFALL: Okay. So let's start with Norman.
 5 MEMBER FRANCO: You're going to be representing the
 6 County in these proceedings?
 7 MR. TAYLOR: Yes.
 8 MEMBER FRANCO: And this is the State Water Commission?
 9 MR. TAYLOR: Yes, that's correct.
 10 MEMBER FRANCO: Are you planning to verify or notify
 11 people that you have this ownership as one of the Country
 12 Estate property owners?
 13 MR. TAYLOR: That is what I'm doing here today.
 14 MEMBER FRANCO: No. But when you make your
 15 presentation, are you going to be representing the County or as
 16 an owner of the property there that would be affected by the
 17 ruling?
 18 MR. TAYLOR: I would only be representing the County.
 19 I have no involvement at all with how Wailuku Country
 20 Estates -- as an entity, I know they hired an attorney, they
 21 filed water use applications. I don't know who that attorney
 22 was. I had no involvement in that, and I have no intention of
 23 working with them to represent them in any way.
 24 MEMBER FRANCO: So you're not involved in any way,
 25 shape or form with Wailuku Country Estates?

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1 MR. TAYLOR: I'm an owner, as I said. I pay my monthly
 2 homeowner association dues. I pay my monthly agricultural
 3 water bill. And I haven't even been to a homeowner's
 4 association meeting in a number of years. I usually just fill
 5 out the proxy form so they can have their votes about who's on
 6 the board. I haven't had any management involvement, but I am
 7 an owner.
 8 MEMBER FRANCO: What kind of benefit would Wailuku
 9 Country Estates have on a decision made by the State Water
 10 Commission?
 11 MR. TAYLOR: Well, for example, a simple way to look at
 12 this is the water that's in Iao Stream up above the State
 13 park -- just imagine that much water. Essentially, what the
 14 Water Commission is doing is they're making a pie chart about
 15 who gets how much of that; how much stays in the stream; how
 16 much goes to the Department of Water Supply Plant; how much
 17 goes to Wailuku Country Estates; how much might go to HC&S;
 18 appurtenant users; cultural users; et cetera. Because the pie
 19 is only so big. Anyone who gets any amount for Person A can't
 20 go to Entity B. So, again, we are all in this together. But
 21 the way it works, we're not -- the Department of Water Supply
 22 is not in a legal action against Wailuku Country Estates.
 23 We're all just applicants.
 24 CHAIR WESTFALL: Okay. Sydney?
 25 MEMBER KIKUCHI: I don't have any questions.

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1 CHAIR WESTFALL: Abel?
 2 MEMBER KAHOOHANO HANO: Yeah, just one. Just so I'm
 3 sure I know where you talking about, is this the two-acre lots?
 4 MR. TAYLOR: Yes, across --
 5 MEMBER KAHOOHANO HANO: That's all I got.
 6 CHAIR WESTFALL: I'll come back to you once we get the
 7 Members.
 8 VICE CHAIR LEACH: Yeah, I got a couple questions.
 9 When did you purchase your lot there?
 10 MR. TAYLOR: I purchased that originally. I was one of
 11 the original purchasers. I don't remember how long ago it was.
 12 They hadn't even cut down the trees yet or made roads. It was
 13 maybe ten years ago. I don't even remember how long it was.
 14 VICE CHAIR LEACH: How did the water meter process work
 15 in that purchase? Did they come with the lot, or did you have
 16 apply for a water meter after you purchased the lot?
 17 MR. TAYLOR: We had to apply afterwards, but -- you
 18 know, the testifier alluded to something having to do the
 19 Upcountry water list. The Upcountry water system is not
 20 physically connected to the down country water system. So this
 21 list and people who have been waiting, that has nothing to do
 22 with Central Maui. If you come in today to get a water meter
 23 for a single lot, we will give you a water meter today if you
 24 meet the physical infrastructure requirements. So there's
 25 never been a list or moratorium on the Central Maui water.

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1 So once those lots were subdivided, we simply had to --
 2 as any other single lot owner could come in and make an
 3 application for a water meter and pay our money and get one.
 4 VICE CHAIR LEACH: So a worst-case scenario -- I'm
 5 trying to get a picture. If WCA, their water got turned off
 6 from the Iao water, what would happened? You would have the
 7 use of County water?
 8 MR. TAYLOR: No, because way back when -- and I was not
 9 with the Department at the time -- the agreement for the
 10 subdivision of Wailuku Country Estates was such that County
 11 water could only be used for domestic purposes because the
 12 system there doesn't have enough water to supply enough for
 13 two-acre agricultural products, agricultural use. So basically
 14 if all that water was lost, essentially there would be no
 15 agricultural water and the land would just be whatever it was,
 16 you know, with the limited rainfall that's there.
 17 VICE CHAIR LEACH: But you could use the County water
 18 for landscaping, but not for agricultural?
 19 MR. TAYLOR: No, landscaping is considered
 20 agricultural.
 21 VICE CHAIR LEACH: Just inside the house?
 22 MR. TAYLOR: Just inside, that's correct.
 23 VICE CHAIR LEACH: Thank you.
 24 MEMBER FAGAN: My questions were answered.
 25 CHAIR WESTFALL: Lois?

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1 MEMBER PREY: No.
 2 CHAIR WESTFALL: Any other questions?
 3 MEMBER FRANCO: I have one question.
 4 CHAIR WESTFALL: I'm sorry, Norman.
 5 MEMBER FRANCO: You know, the water that's coming in
 6 for agricultural purpose, you said you have a separate meter
 7 for that?
 8 MR. TAYLOR: That is correct.
 9 MEMBER FRANCO: Who pays for the usage of that water to
 10 that meter?
 11 MR. TAYLOR: Each lot owner paid. So --
 12 MEMBER FRANCO: -- the Wailuku Water Company?
 13 MR. TAYLOR: How it works is there's a master agreement
 14 between Wailuku Country Estates and Wailuku Water Company. So
 15 there are -- my understanding, because I get two bills, there
 16 are two entities tied to Wailuku Country Estates; the
 17 homeowner's association and the Wailuku Country Estates Water
 18 Company, or something like that.
 19 So we get -- so Wailuku Country Estates Water Company,
 20 or Water Cooperative, or whatever it's called, has an agreement
 21 with Wailuku Water Company to supply a certain amount of water.
 22 Each resident -- I think my number is right. I think we get
 23 240,000 gallons of use every three months. And for that, we
 24 pay into -- we write a check for, I think it's \$100 a month. I
 25 could be wrong on these numbers because I don't look at it

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1 every month. And so the system from the ditch has pipes, has a
 2 pump, has pipelines all through the subdivision. That's all
 3 owned by the homeowners. And so we pay in this \$100 a month to
 4 manage that system. So that meter is owned by the Wailuku
 5 Country Estates Homeowner's Association irrigation portion.
 6 And that's the meter for the irrigation company.
 7 The water ultimately comes from Wailuku Water Company,
 8 and that water ultimately came from the stream. I know that's
 9 correct.
 10 MEMBER FRANCO: Another question. Who are the
 11 competing people on this whole situation? You mentioned the
 12 County and then Wailuku -- you have farmers and other people
 13 affected by the allocation of water from the stream?
 14 MR. TAYLOR: That's correct. The ongoing case at the
 15 State Water Commission has a number of users. It has the
 16 Department of Water Supply, HC&S, and/or A&B, Wailuku Water
 17 Company. And there's a whole bunch of people who are claiming
 18 either appurtenant or riparian rights, people who have been
 19 using water or have cultural priority. These kinds of things.
 20 So this is the whole case that's going through the State Water
 21 Commission. So the State Water Commission has to decide how
 22 much to give to everyone.
 23 MEMBER FRANCO: So you, as a representative of County
 24 of Maui, what's the County of Maui's position in the allocation
 25 of water?

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1 MR. TAYLOR: The County of Maui has, literally on
2 Friday, sent our brief to the State Water Commission. They're
3 probably getting it in the mail today. I'm uncomfortable
4 saying what our position is, other than it's going to become
5 public as soon as that becomes a public document.

6 MEMBER FRANCO: And the water that you're trying to get
7 from the stream for the County of Maui will be used only for
8 agricultural purposes or for domestic?

9 MR. TAYLOR: No. The County of Maui uses Iao Stream
10 water -- right now, about 1.7 million gallons a day comes out
11 of Iao stream just above the nature center; goes through a
12 ditch system; goes to a treatment plant, as I mentioned, right
13 at the fork of the road. That water is put into our general
14 system, which can come here, it can go all the way to Kihei.
15 It's used for domestic purposes. And that overall water system
16 also serves the other Wailuku Country Estates domestic meters.

17 So this is, again, where I was saying I don't think
18 there's a conflict because Wailuku Country Estates needs the
19 County to have enough water to supply them as well. So as a
20 homeowner, as a water director, my needs are identical
21 basically.

22 CHAIR WESTFALL: Any other Members have questions?
23 Linden, do you have questions?

24 MS. JOESTING: I really don't have a question. It's
25 just I did look at your financial disclosure statement, and the

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1 property is listed on it. I just want to let the Board Members
2 know that.

3 MR. TAYLOR: Thank you.

4 MEMBER KAHOOHANO HANO: You pay a separate rate for the
5 two meters?

6 MR. TAYLOR: Yes. The irrigation meter has nothing to
7 do with the County. And that's basically -- you know, 182 or
8 184 owners established that irrigation company to run that
9 system. So it's not for profit.

10 MEMBER KAHOOHANO HANO: So you pay that money to that
11 homeowner's association?

12 MR. TAYLOR: That's correct.

13 MEMBER KAHOOHANO HANO: Okay, thank you.

14 CHAIR WESTFALL: Any other questions?

15 Okay. What we're going to do now is, more or less,
16 deliberate. Hopefully, we'll come up to some conclusion, and
17 we'll give you a call later today. You can stick around if you
18 want.

19 MR. TAYLOR: I'll be hear and listen. And if you have
20 any more questions, I'll be happy to answer them. Thank you.

21 CHAIR WESTFALL: Okay, thank you.

22 Okay. Members, any comment or thoughts? Why don't I
23 do the same. Herman.

24 MS. ANDRADE: Norman.

25 CHAIR WESTFALL: Norman. What am I saying? Norman.

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1 MEMBER FRANCO: I would say there's no conflict there
2 because he's representing the County. And it looks like the
3 County has similar goals and objectives here with the Wailuku
4 Country Estates. He's not an active member of that
5 association, Wailuku Country Estates. I don't see if we have a
6 problem.

7 CHAIR WESTFALL: You know, I'm going to back up here.
8 I'm going to let Linden make some comments from the legal
9 perspective, and we'll go back.

10 MS. JOESTING: I'd actually, since it's from your
11 lawyer to you, as my client, I'd like to do that in Executive
12 Session.

13 CHAIR WESTFALL: Okay.

14 MS. JOESTING: So if you can move for an Executive
15 Session in order to consult with your attorney.

16 CHAIR WESTFALL: Okay. So I need a motion to go in
17 Executive Session. This would go under -- I'm not going to say
18 this right.

19 Hawaii Revised Statutes 92-5(4), which is to consult
20 with the Board's attorney on questions and issues pertaining to
21 the Board's powers, duties, privileges, immunities and
22 liabilities. Do I have a motion?

23 MEMBER KAHOOHANO HANO: So moved.

24 MEMBER PREY: Second.

25 CHAIR WESTFALL: Any opposition?

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1 Seeing none, we will go into Executive Session. So
2 I'll ask the audience if they can go outside for a little
3 while.

4 (Recessed into Executive Session.)

5 CHAIR WESTFALL: Okay. We're going back to Regular
6 Business, Item 5. Old business, Financial Disclosure Item (a),
7 none. Communication, Item (b), none. (C), "Review of draft
8 advisory opinion on request by County Building Inspector
9 Michael Ichimaru on whether he may have a condominium and
10 residential remodeling business in Maui County while working
11 for the Department of Public Works as a Building Inspector,
12 Item 13A-03."

13 Does anyone have comments or discussion on this? And
14 I'm going to tell you to hold off. If we do, then we need to
15 go into Executive Session. If not, we can just sign it and
16 move on.

17 VICE CHAIR LEACH: Yeah, I have a comment.

18 CHAIR WESTFALL: That's fine.

19 So I need a motion to go into Executive Session again.

20 MEMBER NASCIMENTO: So moved.

21 MEMBER FRANCO: Second.

22 CHAIR WESTFALL: All those in favor, signify by saying
23 "aye".

24 (Round of "ayes".)

25 CHAIR WESTFALL: Any opposition? Seeing none.

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1 (Recessed into Executive Session.)
 2 CHAIR WESTFALL: I don't know if we needed to let the
 3 visitor know.
 4 MS. JOESTING: We can do that.
 5 CHAIR WESTFALL: Just in case she's still out there.
 6 MS. JOESTING: We'll see.
 7 CHAIR WESTFALL: Okay. We're on Item 6, New Business,
 8 Lobbyist Registration, Joe Tanaka.
 9 Do I have a motion to acknowledge receipt of that?
 10 MEMBER INABA: So moved.
 11 MEMBER PREY: Second.
 12 CHAIR WESTFALL: Any discussion?
 13 Seeing none. All those in favor of acknowledging
 14 receipt of Mr. Tanaka's lobbyist registration, signify by
 15 saying "aye".
 16 (Round of "ayes".)
 17 CHAIR WESTFALL: All those opposed?
 18 Seeing none, that's acknowledged.
 19 New Business, Item 6(d), "Discussion of a proposed" --
 20 and, Mr. White, I'll acknowledge his presence just in time.
 21 "Discussion of a proposed Charter Amendment to add a 'Fair and
 22 Equal Treatment' provision, similar to the provisions in other
 23 County Charters."
 24 As you recall from the last meeting, we took a look at
 25 all the other Charters, and the only section that we note that

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1 Maui doesn't have is a section called "Fair and Equal
 2 Treatment." And we asked Linden if she can do a little
 3 research to give us some background on what that intent is and
 4 what it entails. I'll turn it over to Linden.
 5 MS. JOESTING: I'm going to bounce the ball back,
 6 actually, because Mike did all the different research,
 7 comparing it with all the different counties. You did an
 8 extensive review of all the different counties and their ethics
 9 division.
 10 CHAIR WESTFALL: Oh, so back to me?
 11 MS. JOESTING: Yeah, back to you.
 12 CHAIR WESTFALL: Well, again, the only section that we
 13 don't have is something called "Fair and Equal Treatment." And
 14 it seems that in Honolulu that would encompass things such as
 15 nepotism and hiring and things of that nature. And in
 16 Honolulu -- and I wasn't prepared to talk about this, but I'll
 17 go ahead.
 18 In Honolulu they have some additional provisions within
 19 their human resource section on nepotism, which is a little
 20 more explicit. So I'm not sure if that needs to be included in
 21 ours. But all the other counties have something called "Fair
 22 and Equal Treatment." We're the only ones that don't. And
 23 it's basically two sentences -- I don't have the language.
 24 Maybe you have it?
 25 Okay. So this is taking right verbatim from Honolulu.

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1 "Elected or appointed officials or employees should not use
 2 their official positions to secure or grant special
 3 consideration, treatment, advantage, privilege or exemption to
 4 themselves or any person beyond which that is available to
 5 every other person."
 6 So the question that we have is this would be a Charter
 7 change, which means it has to go to the election. And that
 8 would be in November. So if the Board feels this is something
 9 that we want to add to the Code of Ethics, then we need to work
 10 through Mr. White's office, or some other Council's office, I
 11 assume, in a process to get this heard before the County
 12 Council. Then if they approve it, it goes to the voters. It
 13 adds another element that we don't currently have.
 14 Do you have any --
 15 MS. JOESTING: I don't have anything further. You
 16 might have testimony from the public I'd indulge.
 17 CHAIR WESTFALL: Mr. Hashimoto, does Mr. White want to
 18 say anything?
 19 MR. WHITE: Thank you for the opportunity. I was just
 20 here to listen to the comments.
 21 CHAIR WESTFALL: Sure.
 22 MR. WHITE: As I said previously, I'm more than happy
 23 to work with the Board to come up with a Charter Amendment to
 24 provide that kind of language, mostly because I feel that it's
 25 critical that we hold our Government officials to a very high

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1 standard. And I realize that there are challenges with the
 2 term "nepotism." And I appreciate the research that you've
 3 done and you've come up with some very good points.
 4 I'm also interested in working with you on enhancing
 5 penalties for wrongdoings from an ethic's standpoint. Because
 6 I realize that you are somewhat limited in your abilities to
 7 weed out any significant -- I hate to use the word
 8 "punishment," but I guess that's close enough. But to put it
 9 in perspective, one of the -- I think I shared it with the
 10 Board last time I was there.
 11 What started me down this path was the realization that
 12 in one department, the department head had hired two sons. And
 13 so I just decided, well, let's find out what that amounts to.
 14 If I hand one of my kids a \$50,000 a year job, they're going to
 15 be in it, County average, maybe 20, 25 years, what does that
 16 benefit to my family? And it's between \$2 million and \$2.5
 17 million that I'm handing to one of my kids. So if you look at
 18 a penalty for that being \$1,000 fine, I think that's something
 19 that would probably not detour anyone.
 20 So you all deal with these things a lot more often than
 21 we do, so I look to your guidance and your suggestions. And
 22 I'm happy to help with whatever Charter Amendments might be
 23 appropriate. And I'm also willing -- if you don't feel that it
 24 should be a Charter Amendment for the penalties, then I'm more
 25 than happy to work with you in doing a Code Amendment to

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1 provide a little more of a range of penalties, if you feel
2 that's appropriate.
3 CHAIR WESTFALL: Sure. And for Members and Mr. White,
4 I think we concluded that from a Charter standpoint, this was
5 the only thing that's, more or less, missing. Surely, we could
6 rephrase the Code and whatnot, but that's a long haul to get it
7 through the election. So this is what we thought we could bite
8 off.
9 As far as enforcement and fines and whatnot, there's
10 already provisions in the Code. The language is a little
11 awkward. So that's something we thought we could come back and
12 address later, since that's something that needs Council
13 approval. Cleaning up language, essentially. So that's kind
14 of the thought process.
15 MR. WHITE: Good. As I said, we're open to helping at
16 whatever level you feel is appropriate.
17 CHAIR WESTFALL: Thank you.
18 Any Members have any questions of Mr. White, Councilman
19 White?
20 MEMBER FRANCO: I have a question. Do you have any
21 rough draft of the proposed amendment to the Charter as to the
22 wording?
23 MR. WHITE: Well, we had presented it based on the
24 nepotism wording. But I think Chair Westfall's perspective is
25 a very good one. So I'm really looking to you all.

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1 CHAIR WESTFALL: I think what we found, looking at
2 other jurisdictions -- and I'm not the attorney here, but just
3 my own reading.
4 MR. WHITE: Nor am I, by the way.
5 CHAIR WESTFALL: The language that Honolulu is using,
6 which I found in many other jurisdictions, is more broader than
7 just saying the word "nepotism." And then they allow the
8 advisory opinions, and that type of thing, to sort of hash out
9 the actual interpretation of that. So this gives us a broader
10 language, if you will.
11 MR. WHITE: Right. Yeah, I totally agree.
12 CHAIR WESTFALL: So our proposal here from our
13 Commission at this point is to probably go forward with the
14 language that Honolulu has. And the reality is, if you look at
15 all the Charters in the counties, they're all very similar;
16 have the same provisions; a word here or there may be
17 different. So this is probably safe to go with this.
18 So our next step would be if the Board wants to go
19 through with this, then I think I'd probably schedule a meeting
20 with you folks and see how we start working to get it through
21 the Legislative process.
22 MR. WHITE: Got it. I don't remember -- what is the
23 deadline that we have to have it by, is it March? That seems a
24 little quick. So we need to at least get it into the process
25 by March.

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1 CHAIR WESTFALL: Yeah. And I think that's why we
2 wanted to keep this kind of simple. And I'm using the word
3 simple because we don't want to get into -- there's other ways
4 of addressing the detail, if you want.
5 So, Members, are we comfortable going forward with
6 this? Is there a consensus here?
7 Okay. I'm asked to take a vote here. So do I have a
8 motion to go forward with the "Fair and Equal Treatment"
9 provisions -- let me rephrase this, I'm sorry.
10 Do I have a motion to go forward with working towards a
11 "Fair and Equal Treatment" provision for the Code of Ethics by
12 way of the Legislative process?
13 MEMBER FRANCO: Yep, so moved.
14 MEMBER PREY: I second.
15 CHAIR WESTFALL: All those in favor, signify by saying
16 "aye".
17 (Round of "ayes".)
18 CHAIR WESTFALL: Any opposition?
19 Seeing none. So we'll work and I'll send you guys an
20 e-mail, and we'll go from there.
21 MR. WHITE: Thank you very much.
22 CHAIR WESTFALL: Item 7, Announcements. None.
23 Our next meeting is -- I'm sorry.
24 MS. JOESTING: This is just for signature.
25 CHAIR WESTFALL: Yeah, you want to just double check

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1 it.
2 We've got a document going around for signature. If
3 there's no changes on it, then we can just sign it. But, if
4 not, we'll need to go into Executive Session. I'll have my
5 able Vice Chairman here proofread it.
6 And thank you for getting it back down to us so
7 quickly.
8 MEMBER PREY: I have a question for Angela.
9 Angela, I notice you've got February 12th for the next
10 meeting. Isn't that Lincoln's Birthday? Does that affect --
11 is the County closed on that day?
12 MS. ANDRADE: That's a Wednesday. Right?
13 MEMBER PREY: Yeah, it's Lincoln's Birthday.
14 MS. ANDRADE: President Day is usually on a Monday.
15 MEMBER PREY: Okay.
16 MS. ANDRADE: Yeah, I don't have a calendar in front of
17 me. I know it's always on Wednesday.
18 MEMBER PREY: All right, so no conflict. Okay, thank
19 you.
20 CHAIR WESTFALL: Okay. Next meeting is Wednesday,
21 February 12th, 2014. Do I have a motion to adjourn the
22 meeting?
23 MEMBER FRANCO: Move.
24 CHAIR WESTFALL: Second?
25 MEMBER PREY: Second.

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1 CHAIR WESTFALL: All those in favor, signify by saying
2 "aye".
3 (Round of "ayes".)
4 CHAIR WESTFALL: No opposition?
5 Seeing none, we'll see you next month.
6 MEMBER FRANCO: Thank you very much.
7 (Meeting adjourned 12:25 p.m.)
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1 CERTIFICATION
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7 I, CAMMIE GILLETT, a Registered Professional Reporter,
8 Certified Shorthand Reporter for the State of Hawaii #438, do
9 hereby that the foregoing pages comprise a full, true and
10 correct transcript of the proceedings had in connection with
11 the above-entitled matter.
12
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14
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18 Dated this 27th day of January 2014.
19 
20 _____
21 Cammie Gillett
22 Registered Professional Reporter
23 Hawaii Certified Shorthand Reporter #438
24
25

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