WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

June 24, 2009

Council Chamber

CONVENE: 9:33 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Danny A. Mateo
Councilmember Michael J. Molina

NON-VOTING MEMBERS:
Councilmember Wayne K. Nishiki

EXCUSED: Councilmember Sol P. Kahoʻolahala
Councilmember Bill Kauakea Medeiros

STAFF: Kimberly Willenbrink, Legislative Analyst
Tammy M. Frias, Committee Secretary
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Jeffrey Eng, Director, Department of Water Supply
Eric Yamashige, Deputy Director, Department of Water Supply
Ellen Kraftsow, Planning Program Manager, Water Resources and Planning Division, Department of Water Supply (Item No. 4)
Herb Chang, Engineering Program Manager, Engineering Division, Department of Water Supply (Item No. 1(2))
Ralph Nagamine, Administrator, Development Services Administration Division, Department of Public Works (Item No. 1(2))
Edward S. Kushi, Jr., Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Item No. 4: Carl Freedman, Haiku Design & Analysis
Item No. 1(2): David DeLeon, Government Affairs Director, Realtors Association of Maui
Tom Welch
Additional attendees (5)

PRESS: Harry Eagar, The Maui News
CHAIR VICTORINO: ...(gavel)... Good morning. The Water Use and Development Committee will come to order. This morning we have six of our Members present at this time, and we will try to conclude by 11:15 because some Members have commitments at another meeting. So I will try my best to get done by 11:15 because if we lose two Members, we would fall below...well, I think we'd still have bare quorum, but we would, we'd be kind of hurting. So anyhow, I'd like to introduce the Voting Members that are present this morning. First of all, our Committee Vice-Chair, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Our Council Chair, Mr. Danny Mateo.

COUNCILMEMBER MATEO: Good morning, Chair.

CHAIR VICTORINO: Our Council Vice-Chair, Michael Molina.

COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR VICTORINO: And also present is Member Gladys Baisa.

COUNCILMEMBER BAISA: Good morning.

CHAIR VICTORINO: Thank you for being here. And the Committee Chair, myself, Mike Victorino. At this time excused is Member William Medeiros and also, I guess, coming in a little bit late will be Member Sol Kaho'ohalahala.

From the Administration this morning, we have present Mr. Jeff Eng, the Director from the, the Water, Department of Water Supply. Also present is the Deputy, Mr. Eric Yamashige. From the Corp. Counsel, we have Mr. Ed Kushi. Later joining us will be Ralph Nagamine, Administrator for Developmental Service for the Department of Public Works. Also present today and will be giving us an update on the Water Use and Development Plan is Mr. Carl Freedman from Haiku Design and Analyst, who is the consultant for the Water Use and Development Plan. Also, we have present is our Legislative Analyst Kim Willenbrink and our Committee Secretary Tammy Frias.

So I thank everyone for being here. I know this is a special meeting, and I do apologize that last week I was up at the AWWA Conference in San Diego, which was very enlightening, and I will be sharing some information with all the Members when I'm able to put the packet together.

Background this morning, ladies and gentlemen, we have three items to discuss. First item for an update will be WR-4, Water Use and Development Plan, which we have a PowerPoint. We
also have...oh, thank you. I apologize. Let me step back one, and I do apologize. We have our esteemed South Maui Member, who is a Non-Voting Member, Mr. Wayne Nishiki.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR VICTORINO: Mr. Nishiki, my apologies for missing you. Okay. Again, going back to the items to be discussed. First I said WR-4, then we have WR-1(2), Water Supply Rules, the codification of rules and regulation of the Department of Water Supply as related to definitions; and WR-1(5), Water Supply Rules relating to subdivision water system requirements.

At this time, I would like to open up public testimony. We have a couple of testifiers at this time. And each testifier would be limited to three minutes with a minute to conclude. Please state your name and who you're representing, if yourself. Also, I would ask everyone in the room, including our Members, if they would put their cell phones on either vibrate or silent so that we will be able to keep decorum in this Chambers.

So with no objections, ladies and gentlemen, I will start public testimony. First of all, I'd like to call up, relating to WR-1;2 [sic], Mr. Dave DeLeon, and he is speaking on behalf of the Realtors Association of Maui. Mr. DeLeon?

...BEGIN PUBLIC TESTIMONY...

MR. DeLEON: Aloha and good morning, Dave DeLeon, Government Affairs Director, Realtors Association of Maui, representing the 1,400 licensed realtors in Maui County. I'm here today about...to talk about an abuse of power and about how, how to make it stop. The abuse of power, or what I would like to consider as extortion by policy, has been going on in the generation...for a whole generation or longer in the Department of Water Supply, and that is when somebody comes into...needing a permit in front of the Department, the Department will take these people through the ringer.

If somebody wanted to add a bedroom to their house, they find themselves facing $100,000 worth of improvements, waterlines, hydrants, the works, totally out of proportion to what's being required, what, what is being asked for. We have seen this with the CPRs, the condominiums, we've seen them with the B&Bs just lately where the Department...whenever you get into the Department's gunsights, you need their approval on a permit, and especially if you're Upcountry, you're going to pay out the nose. We've known this and we've condoned it over the years because this has been kind of lost in the rules of the Department. Well, the thing is right now, those rules are open in front of you and what the Department has been doing over this generation of time, probably going back to Elmer, is basically now since 19...2002, under your authority, and that authority is open in front you in the form of the rules.

So what, what I'm suggesting in language, in the language that's before you, and this is in DeLeonese not legalese, so you might need to have your attorneys to, to work it, but what I'm
suggesting is a new section in the rules that says: The Limitation of Powers. And, specifically, that would be when somebody comes in for an action of any sort, mainly a permit; building permit, B&B permit, any kind of action, if there is no extra demand on the service as a result of that action, then the Department may not...is not allowed to require new meters, meter upgrades, or system improvements. If there is additional demand on the service, then the requirements that the Department makes must be proportional. And you say, well, how can they do that? Well, they can have a, a system fee, or system upgrade fee, or something like that that would be proportional to the actual demand.

So if the person is doing $100,000 worth of improvement on their house, they won’t have to do $100,000 worth of concurrent water improvements, like, typically, and we all know the stories, the three miles of 8-inch pipe and the water, and the water hydrant. It’s time to make the abuse stop and this is your opportunity. It’s open in front of you right now. Thank you.

CHAIR VICTORINO: Thank you, Mr. DeLeon. Any questions from the Voting Members, first of all? Seeing none, any other Member have any questions for Mr. DeLeon? Seeing none, thank you, Mr. DeLeon.

MR. DeLEON: Thank you.

CHAIR VICTORINO: Next testifier is Mr. Tom Welch, and he’s speaking on behalf of himself. Mr. Welch?

MR. WELCH: Thank you, Mr. Chairman. Good morning, Members. I’m Tom Welch. I’m speaking not for a particular client, except I’d like to say that I’m speaking for small property, a lot of small property owners, many of whom I represent. I agree with Mr. DeLeon’s testimony in principle, and I’d like to elaborate a little bit on it.

The reason this has come up in this way is that at the end of the session, the last time we testified on this, some testimony by Herb Chang redefined the, the, the debate here between...he changed it, I think, from a discussion of language and the definition of subdivision in the rules to a, to essentially what is a policy decision, which, which was surprising and was, was fairly important. And I’d like to address that policy point.

Going back to subdivision, a couple of things. When you subdivide a piece of property and you fall under subdivision, two or three things happen when you’re with the Water Department. Number one, you have to have a new water...you have to have a separate water meter for each lot, or each parcel, or each building; or, number two, you have to upgrade fire flow to your, to, in the neighborhood if it is substandard, often costing, you know, hundreds of thousands or even more dollars. There is three things that we have been talking about that trigger or could trigger subdivision that we’re trying to clarify. Number one, is condominium conversions; number two, is easements for access; and, number three, is consolidations and resubdivisions where no new developable lots are created.
So if you have a property owner that has two houses on his property, small property owner, who wants to give an easement to a neighbor to use part of his driveway that happens to...or the neighbor’s driveway that happens to cross his land, and he comes in for a permit and the Water Department gets a hold of it, under the language that has been discussed he would have to upgrade the fire flow in order to enable that to happen, or if he’s going to change the boundary line, they want to readjust the boundary line to add a little bit more land to his neighbor, no new development, developable lots are created, and it triggers that. And, and, thirdly, he wants to convert to condominium so he can sell one of his houses or, or give, give something to his kids so that he can get, so that they can get their independent financing and so forth.

Those kinds of things should not be subdivisions, and they should be specifically excluded from the definition of subdivision just in...but I think Mr. Chang made it clear that they want...that he wants that if, if somebody wants to convert to condominium, no new houses or anything, no new development, no new demand on the water system, that that triggers the obligation to upgrade fire flow or otherwise meet subdivision requirements. And we just don’t think that’s fair and a lot of small property owners don’t either, and there’s been a lot of testimony to that effect before this Board the first, in the first session when this came up. Thank you.

CHAIR VICTORINO: Okay. Thank you, Mr. Welch. Questions for the testifier? Anyone have any questions? Seeing none, thank you, Mr. Welch.

MR. WELCH: Thank you.

CHAIR VICTORINO: That was our last signed up testifier. I will give anyone in the audience an opportunity to come forward, to sign up, and to give public testimony. Seeing no one rushing to the podium, I will, with no objections, close public testimony for today’s meeting.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

. . . END OF PUBLIC TESTIMONY . . .

ITEM NO. 4: WATER USE AND DEVELOPMENT PLAN (C.C. No. 05-38)

CHAIR VICTORINO: Okay. First item we will have, as I stated earlier, will be WR-4, Water Use and Development Plan. We will ask for a three-minute recess so that we can lower the screen and get prepared for the PowerPoint that’s going to be presented by Mr. Freedman. I would ask all questions be held till after we’re completed, and then we can go ahead and ask questions. I remind everybody that we are just having an update, and so this will really mean that if you have really a substantial or substantive question that you want answered, then I would ask you to put it in writing, forward it to, to, to me or to Ms. Willenbrink so that we can forward it to
Mr. Freedman and the Department. Okay. So this meeting will stand in recess until 9:48.

(gavel)...  

RECESS: 9:45 a.m.  

RECONVENE: 9:48 a.m.  

CHAIR VICTORINO: ... (gavel) ... The Water Use and Development, I mean, excuse me, the Water Resource Committee will reconvene. At this time, we will have a PowerPoint presentation by Mr. Carl Freedman on our Water Use and Development Plan. And, Mr. Freedman, are you ready to go?

Note: Computer-generated presentation.

MR. FREEDMAN: Yes, I have to push some button on the projector here. I don’t want to try and hit the wrong one.

CHAIR VICTORINO: Okay.

MR. FREEDMAN: So, just a second here. All right. Today I was asked to do a short status report, so I’m not going to get into too much of the substance of the plans themselves. In March, I did do a presentation that included an outline of the Central and Upcountry Final Candidate Strategies drafts and got into a fair amount of detail. So today I’m going to go over, briefly, a review of the review and approval process, and then an overview of each district process status, where we are with each of the individual districts.

Now, we’re kind of turning a corner on the whole Water Use and Development Plan process because so far we’ve been preparing the plans, we’ve had a lot of meetings with the Water Advisory Committees for each district, and I’ve done updates to the Council, and to the Board of Water Supply, and the Commission on Water Resource Management. But now we’re ready to go and start the approval process. So I wanted to go over that, and, and what I’m going to present is a little bit of a surprise to me. I mean this is not going to happen the way I thought it was going to happen and the way I’ve been saying it’s going to happen. So I’ll explain that in a minute.

In general, we’ve been following the Commission on Water Resource Management framework on updating the State Water Plan, and in part of that they require a project description which we presented to the Council and to the State Water Commission several years ago. And so, in accordance with that project description we’ve been proceeding district by district on the Water Use Development Plans with separate district Water Advisory Committees. We’ve been giving quarterly updates to the Council and to the Board of Water Supply, and milestone progress reports to the State Water Commission. And then now going forward, what is contemplated in the project description is that we’re going to do our approvals district-by-district, and then at a later point have some reconciliations of the inter-district issues where things may...where one
district plan may affect another, and then some final amendment of the Water Use and Development Plan by the Council and the Commission.

Now, more recently, like as of last week, when we were working out all the details, we realized that this process has a little segue to it. In accordance with the County Code, the update to the Water Use and Development Plan will be an amendment to the existing Water Use and Development Plan, and the process that's outlined in the Code is that the Department would transmit a proposed plan amendment to the Board of Water Supply, the Board of Water Supply would hold public hearings, and then would, after those hearings would make recommendations about any amendments to the proposed amendment, and make those recommendations transmit those to the Council, and then the Council must act on the proposed amendment within 45 days. So that's an existing ordinance in the County Code. And what I've been telling people is what we've all been thinking is that the next step actually is for the Council to take this up, and I have reported that to everybody repeatedly, but that's not correct. It has to go through this other, other process.

And then the next stage, and it's not exactly clear because we'd have to work this out with the State Water Commission, is that the plan, whether it's district-by-district or at the end, would be presented to the Commission on Water Resource Management for incorporation into the Hawaii Water Plan, to the State Water Plan.

So the, the, the way we're going to proceed is that the first district is going to be the Central District and that report has been ready for a while. The most recent update to that was just transmitted to the Council, to this Committee which incorporates some, some changes that were suggested by the Water Advisory Committee and by the Board of Water Supply, but basically that report is very similar to what you've had in your folders for a while. And the next step would be to transmit that to the Board of Water Supply to schedule some public hearings. So that's the new part of the status report is the, the process it's going to go through with the Board of Water Supply prior to coming to you. I, I actually thought that right about now we would actually be taking this up with the Council and that's what I've been telling people prior to what we learned last week. There is the amendment if we needed to discuss it. And on the handouts I've put the language in 14.02 for you all. On the back of, the back page of the handouts has that in case you want to look at that.

So to move on, then I want to give you kind of a status report on each of the districts, where we are. We've been following the State framework and this chart, which I keep, I don't know if it's ever been legible, but it kind of shows that there's a flow chart to the, to the framework that we've been following and upfront in general, for each district, we would meet with the Water Advisory Committee and set some objectives and how we're going to evaluate the plan in the end, you know, the question being what would a good plan do? We've developed a demand forecast to figure out how much water is going to be needed in each district. We've made an assessment of all the different possible supply side, you know, water production options, or conservation options and characterized all those, and then we've gone through a process that goes kind of...it's an iterative process where we look at different strategies and which are
sequences of these different options to figure out what are the best, what’s the best plan basically, and then we evaluate those and go back, and then look at the institutional feasibility and come up with final recommendations.

So basically for Central and Upcountry we’re down here and for the other districts we’re still in this process going here, and I have that kind of plotted out, you know, of those...the demand forecasts and setting the objectives, identifying the resource options, the candidate strategies. What we call the final strategies are the ones we’re looking at in more detail, and then final reviews. So kind of on a scale of one to three “x”s, I don’t know exactly how to characterize the final reviews because actually there’s going to be several stages of the final review as you just heard, but basically Central is ready to go. Upcountry and Lanai are kind of waiting in the wings, and then the East Maui, West Maui, and Molokai are in process and following up. Lanai, there’s a draft plan under review by the Lanai Water Advisory Committee. The final draft is being completed. There’s some outstanding issues that are being discussed.

Central, as I said, there’s an updated draft dated June 17th, which should...I don’t know if it’s in your folders, but it was forwarded to, to the Water Resources Committee, and the next steps would be transmittal to the Board of Water Supply for review and scheduling of public hearings. And right after this meeting I’m going to send a letter out to the Central District Water Advisory Committee kind of advising you, advising them of what I’m just relating now about the process to go through the Board of Water Supply. I wanted to hold off on the letter until I had, you know, heard what, what had to be said about that at this meeting.

Upcountry District, the report’s drafted, and we’ve had review by the Department of Water Supply and the Department wants me to do some further analysis, which I’m in the process of doing. One of the things is looking at the impacts of the reliability of water from the Kamole Water Treatment Plant from the amendments to the interim instream flow standards on the East Maui streams. That water source uses the Wailoa Ditch and the releases to the streams that feed that ditch, of course, they’re going to have impacts on the Department of Water Supply’s source. So I’m doing some technical analysis of that and that’s going to be incorporated into the draft. And also I’ve been asked to do some more...you know, just some more discussion of uncertainties and contingency planning. So the next steps there would be to incorporate the additional analysis and right now we’re hoping to get that out to Water Advisory Committee sometime in July, and then transmit that sometime in July. That depends a little on, you know, where this analysis goes.

West Maui District, we’ve had three Water Advisory Committee meetings. The status of that right now is that the economic model’s being refined to, to reflect the, some work we’re having done by other consultants updating the design on the Mahinahina Water Treatment Plant. And so, the ball’s in my court there doing more analysis of that system.

Molokai, we’ve had seven Water Advisory Committee meetings. This was after a whole series of meetings that they had for the Water Commission. So the next step there is really for me to give them a draft. We’ve talked about pretty much the whole gamut of all the different elements
in the water plan there, including integrating some of the systems. On Molokai...in both Molokai and West Maui we have a number of water purveyors. So the Department of Water Supply is only one of several purveyors who supply water. So on Molokai one of the things we’re looking at is the option of integrating some of the different systems with one another, which is kind of another level of complexity there, but that’s where the analysis is, and the next step would be for me to present them a draft for review.

East Maui, we’ve had two meetings, one out in Keanae and one in Hana. We discussed the planning objectives and the issues. As you know there are some, there’s some definite pre-existing conflicts and contested issues there regarding the diversion of stream water and impacts of new wells. And water...when we did those meetings, it was very dry, and we heard some...a lot of testimony from people about, you know, acute water shortage conditions there. One of the things we heard, especially in Hana, was kind of a plan, you’re going to bring us another plan? We keep having these plans. You know, we’ve got this plan and that plan and nobody’s ever doing anything with these plans. So we’ve gone back, and we’ve gone through the prior plans to try and identify what recommendations have been made in prior plans to try to bring those forward. The next steps there, I think we’re going to meet individually with stakeholders especially because it’s such a diverse geographic place. We’re going to try and tour around the island to meet with various people rather than having people all come to one spot, meet on people kind of one-on-one to get more, more specific input, and then to try and put together a draft plan for comment to go back out. And keeping it short, that’s it until we have questions.

CHAIR VICTORINO: Thank you, Mr. Freedman. And what I’ll do is recess the meeting for three minutes, and we’ll reconvene at exactly 10:04. . .(gavel). . .

RECESS: 10:01 a.m.

RECONVENE: 10:04 a.m.

CHAIR VICTORINO: . . .(gavel) . . . The meeting of the Water Resource Committee will reconvene. Thank you, Mr. Freedman, for that update. We are very appreciative, and it’s been a while since we had an update, so I think we’ve come a long way. And I think you also made a very important point that we all discovered when we met, that the process that we are walking along we found some flaws in it, and so we want to make sure we get it done correctly.

I did pass out to each Member the 14.02.040 amendment that refers to this. And so, if there’s any specific questions, you have that in front of you. You can ask, I guess, Mr. Kushi if you have any specific questions on that issue. I’ll open the floor up for some quick...and...some questions, but again I ask you to keep it very, you know, open, in general because, again, this was just an update and that was the whole plan with this. We will be sending this forward to the Board of Water Supply for them to have public hearings and hopefully get the mana’o of our communities, yeah, especially for the Central Maui, Central Maui water system, yeah. So any
COUNCILMEMBER BAISA: Thank you very much. I’m willing to defer to the Vice-Chair.

CHAIR VICTORINO: Okay. Vice-Chair Pontanilla then.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Carl, for the update. You know, you show all of the different districts in regards to the Water Use Development Plan and what’s going to happen. By any chance, do, do you have any timelines in regards to, you know, when this thing’s going to hit the Board of Water Supply, you know, looking at milestone dates so that, you know, we don’t lose sight?

MR. FREEDMAN: Yeah. I think the idea with the...is to take the Central draft and to get that going as soon as possible and perhaps the Chair or the Director can give some more specifics, but I think the idea is to get that to the Board of Water Supply as soon as possible, so they can schedule the public meetings as soon as possible, so they can get the recommendations there, and I don’t, I don’t know how long that’s going to take. But I think the idea then is to get the Central draft processed and run that through as quickly as we can. One of the values of doing that is that...I mean I, I don’t have a sense as a consultant of how many changes are going to be necessary in the format or, you know, the content, or what types of things that are in there.

So I’m really hoping to learn from that process to make all the rest of the drafts the most efficient, but I’m going to proceed to work on everything just to keep, keep it so that the review process is ready to go with a draft at all times to move as fast as it can go. So as far as months, maybe somebody here knows better how long it takes to schedule those meetings and things like that.

VICE-CHAIR PONTANILLA: Thank you. And, and one of the reasons why I asked this question and very important for this Council is that whenever we approve, like say the Central Maui, then, you know, we’re going to have some budget implications in trying to meet some of those objectives. So ...(end of tape, Side 1A)... just that going forward, you know, how much it’s going to cost the County and, and, you know, how do we budget for any improvements that we do.

And the other issue that I had and, hopefully, once we come to some decision is that we all talk about affordable housing for all of the districts, and some of the affordable housing that I see for Central Maui going have to rely on County resources. So, you know, I’ll wait for that information and...as well as, you know, how soon the Department can schedule this meetings. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. I have a more generic question that probably relates to Corp. Counsel. I’m looking at this application of the plan section that you
handed out to us, and it’s a statement that says the plan shall serve as a guideline to the Council, the Department, and all other agencies of the County, and it gives the instances. You know, the word guideline bothers me because what is the interpretation of guideline? What kind of strength does it have? What kind of weight does it have? And if it’s just a guideline, then who has the ultimate authority to make the decision?

CHAIR VICTORINO: Ms. Baisa, you would like Corp. Counsel to answer that?

COUNCILMEMBER BAISA: Yes, please.

CHAIR VICTORINO: Mr. Kushi, would you be able to address Ms. Baisa’s question?

MR. KUSHI: Mr. Chair, I’ll try.

CHAIR VICTORINO: Thank you.

MR. KUSHI: Again, it is...it says what it says. It’s a guideline. I recall getting into this discussion as far as what does a guideline mean in terms of community plans, general plans, et cetera. Again, this, this Water Use and Development Plan is a plan adopted by ordinance. So...and any amendments to the plan is...are also adopted by ordinance. So, again, unless you give me a specific example, I hesitate to say that whatever the plan says is, is set in stone.

COUNCILMEMBER BAISA: And if it’s not set in stone, then who has the decision-making power?

MR. KUSHI: You do, of course.

COUNCILMEMBER BAISA: Let me tell you what--

MR. KUSHI: You know, not to say of course, but, you know, this plan is like a community plan, so all applications for, land use applications come to this body, and you need some guidelines to make your decision. So this is what this plan is, the intent of this plan is. Again, if you deviate from what the plan says or, or if you deviate from what the plan, as you have adopted, there may be a problem. But, again, the language as, as, as stated is, is a guideline. So I won’t give you a definite yes or no. I can give you a maybe, you know, but without specific instances I hesitate to, to give you a call right now.

COUNCILMEMBER BAISA: The reason I asked the question is because we have long history of rules, laws, ordinances, and all kinds of things that were regarded as guidelines, and then decisions are made, and then we find out that maybe it wasn’t a guideline, it was more like in the idea of the General Plan. You know, what is it, and what impact does it have in decision-making and giving so much discretion? You know, if it’s really a law, and we’re passing a law, and it has to be amended by law and whatever, then the word guideline is confusing. I think that’s where we run into all this trouble about, you know, who ultimately makes the decision and where does the buck stop. So that’s the reason why I asked about it because, you know, we’re spending a whole lot of
time and money on creating a plan and if it’s simply a guideline, then, oh, well, we’ll look at this, but then we’ll do what we want, then it kind of loses some cachet for me. Thank you.

CHAIR VICTORINO: Thank you, Ms. Baisa. Chair Mateo?

COUNCILMEMBER MATEO: Thank you, Mr. Chairman. And perhaps we don’t need the Department to respond at this time, they can do it later, because I’m going to go back to Member Pontanilla’s question regarding timetables. I think, I think that’s an important factor that we need to know since 45 days doesn’t give us a hill of beans to really take a look at, at plans that has taken several years, you know, to put together in terms of stability on water use. And in addition to that, I guess I’ll, I’ll…I think one of our problems is the 45 days taking into consideration the depth of information that we will be reviewing. I think we also need to understand what the extension process of 45 days may, may entail as well.

And for Mr. Freedman, the Upcountry District status report, it is already listed on the final stage, but you are now engaged in searching for additional information that may or may not affect the final results of your study. So I don’t know what we’re doing with a final stage report when virtually these new additions will create perhaps a change in what you’ve already, you know, gathered at this point. So if we are, in fact, moving towards the approval process, I think some kind of a calendar from the Department’s projections may help us because this Committee, with 45 days, will most likely be engaged in discussion a hell of a lot more frequently trying to, you know, get the plan itself, you know, moved to a position of either approval or denial. Thank you, Mr. Chair.

CHAIR VICTORINO: Well, thank you, and, and, and, let me, let me add at this point that we chosen the Central Maui system as, and let me put in a simple manner, our test case. You know, we’re going to use that to see how this all pans out, first in the public hearing process and the 45 days. And I realize 45 days, considering the way meetings are scheduled, is cutting it extremely close, if not almost impossible. And if I’m correct, Mr. Kushi, you can correct me if I am wrong, if the thing is not approved as recommended by us in 45 days, then the plan stands disapproved. Am I correct, Mr. Kushi, or am I wrong in that statement?

MR. KUSHI: Mr. Chair, that’s what the ordinance says, specifically the last sentence of 14.02.040(B) as in boy.

CHAIR VICTORINO: Yeah. So I mean, at this point, this is the, the process that’s been set forth to us. So I would like us to let Mr. Freedman move on…move on to the Board of Water Supply, get them the public hearings, which we all know will also take time to schedule. I am hopeful…this is the timetable that I discussed with the Department last week was 90 days coming back to us. In other words, three months. That may be unrealistic. I’m not sure, but I’m going to ask the Board of Water Supply if they can adhere to that, that request. That’s all I can do is request, yeah. So with that in mind, ladies and gentlemen, any other questions? Mr. Nishiki?
COUNCILMEMBER NISHIKI: Carl, we’ve got six districts. So am I hearing that we’re going to go, because the Central District is now completed, we’re going to take this out to public hearing, just the Central District report? And similarly, you’re going to do each district also in that way?

MR. FREEDMAN: Yes, basically that’s what the ordinance says we’re doing. We’re going to do Central first as a frontrunner. And then what happens with the others...I mean I don’t know...you know, we can transmit the, the district plans as they’re completed, you know, what...as soon as they’re done, and they can, you can have those, and then how the timing works with the Board of Water Supply and the approval process, I guess we’re going to find out how it works. I don’t know how it works. We don’t...I mean we haven’t done it yet.

So the, the good news, I guess, is that as each district is done, that can be sent to the Council and can be amended, it can become an amendment district-by-district. So you don’t have to wait until the end of the whole process to start seeing the plans actually be adopted or amended into the existing plan. But the fact that we’re now aware it has to go through this other process is disappointing because of the speed of things. It basically means we have kind of three public process review thing. One, that we’ve been going through with the Water Advisory Committees, and then there’s going to be a public process with the public meetings with the Board of Water Supply and then, once again, when it, when it comes here.

COUNCILMEMBER NISHIKI: So this 108-page document that was given to us on March 4th is the Central Maui District report? 

MR. FREEDMAN: Yeah. Well, actually it’s been updated. There’s another June 17th draft which is very similar to that with some changes made that was transmitted to, to the, this Committee; is that right? Yeah. So I don’t know if you have it in your binders yet, but that was transmitted recently.

COUNCILMEMBER NISHIKI: And then, Junior, by ordinance each district must conduct a public hearing, and who is to conduct this public hearing?

MR. KUSHI: Mr. Chair. Member Nishiki, by --

CHAIR VICTORINO: Go ahead.

MR. KUSHI: --by, by the terms of the ordinance, Chapter 14.02, the Board of Water Supply conducts the public hearings. As far as to public hearings on what, as each of the various districts, the plans are coming up, are ready to be reviewed, it would go district-by-district. The alternative would be, again, because the, the, the process is not clearly stated, the alternative would be is to wait until all of the district plans are ready to go--and who knows when that’s going to happen--and then have, have various public hearings throughout the County, and then submit the entire plan for the entire County to this body for action within 45 days. So that’s the alternative. The way the Department and your Chair has chosen a course is to...since Central is ready, go and take the amendment to the existing plan for the Central District only and work that through.
COUNCILMEMBER NISHIKI: Okay, and, and, and my understanding or my question would be until the entire six districts have had a public hearing, the Water Use and Development Plan cannot be adopted in segments? So we’d have to wait for the entire process of public hearings before the Council can adopt a Water Use and Development Plan?

MR. KUSHI: No, the scenario would be, example, if we proceed with the essential plan only, you would adopt, you would pass...if adopted, you would pass an ordinance amending the current plan as to the Central District only. So if you have six districts, you have six ordinances, six amendments. Now, after that’s all done, then we would have to go to the State Water Commission because I don’t think the State would take it piecemeal.

COUNCILMEMBER NISHIKI: Okay, and, and so, despite that we may pass the Central, that in essence cannot be a law that we can start following?

MR. KUSHI: Well, if you pass an ordinance amending the existing plan as to the Central Maui District, it is, it is...the amendment would be the existing guideline. Now, again, Mr. Chair, to clarify and respond to Mr. Nishiki’s question more fully and also to clarify Member Baisa’s question --

CHAIR VICTORINO: Go ahead.

MR. KUSHI: --the, whether this is a guideline or not, again, it, the ordinance says it shall serve as a guideline to the Council, to the Department, and all other agencies of the County. Now, specifically, in approving a recommendation or recommending to other agencies the use or commitment of water resources and in using public funds to develop water resources, so I was kind of glibbing your answer or responding saying, you know, when a zoning issue comes up. No, this is solely about water resources. Now, again, if a zoning project comes up, you would have to ask where they’re going to get their water resource from, and this plan will serve as the guideline. And if the Department is spending funds or allocating resources for new water resources, they will look to this plan.

COUNCILMEMBER NISHIKI: Yeah. Well, my, my question, Junior, has to be with if we become more specific, like, say, Carl, the five candidate strategies as to where the County should embark on whether it be water conservation, recycling water, Na Wai Eha, brackish desalinization--

CHAIR VICTORINO: Mr. Nishiki, I’m, I’m going to interrupt you, please, and forgive me, I, I, I would prefer not getting into that. The strategies and the Water Use and Development Plan will have to incorporate a lot of these things, and the reason I have chosen to go district-by-district, first of all, each district has tremendous differences in water needs and water sources, okay, and that’s all part of what you’re referring to right now. And so, I, I would prefer not getting into a long dissertation about it. We will do each group as it comes up. Corp. Counsel has assured me that if we do it that way, approve that, that’s an amendment to the plan, so that portion of the plan would be amended to take into all these considerations. And so that as we go through each
separate district and their needs, and their particular differences, all of this would be a part of that strategic plan.

So I, I assure you this is not just, this is just an update to get this so that we all understand the process for which we’re going to, to, to proceed. The reason I’m proceeding in this way is because it’s in the County Code, and I feel that if we follow the County Code, there is less chance of litigation somewhere down the road that we deviated and did something differently. And that to me is very important because once we work hard on something, I don’t want to go to court because we didn’t do it the right way, the way it was prescribed in our County Code. So are we clear with that? And, and that’s all, you know, I’m trying to do at this point.

COUNCILMEMBER NISHIKI: Why I’m, why I’m saying this, if people were listening, is Joe brought up about budget and, and funding, you know. And so, if we get a strategy in here that’s more specific saying, hey, the direction we’re going to take because of the cost, and it’s more achievable right now, is conservation and reuse. And that’s all I’m saying.

CHAIR VICTORINO: Yeah, I--

COUNCILMEMBER NISHIKI: And, and, and so that way when budget time comes and we’re discussing this with Jeff or whomever in the Central Maui area, then we can so again put money where we think we’re going to get the quickest action of how we’re going to deal with water, and that’s all I’m saying. And I think that’s--

CHAIR VICTORINO: And, and you and I--

COUNCILMEMBER NISHIKI: --why it’s important.

CHAIR VICTORINO: --and I think you and I are both on the same track, just in a different position. What I’m saying is exactly to get the budget we need the strategy completed, we need that portion done so that we have a clear definitive track to run on. And I think that’s...you’re saying the same thing I’m saying and, and the problem is the timetable and that’s where the challenge comes up. No one’s sure, and this really, the first candidate is the Central Maui Water System. This will be our test case to find out how long this process will take. Now, maybe in other districts it may be quicker, maybe they’ll be smaller, or maybe even longer because more challenges. In like, for example, the Upcountry system connected with the east water...East Maui water system, as you well know, there’s, there’s all kinds of situations there. But I’m going to try to keep it first one step, and then this way we at least have some kind of timetable, and I’m hoping--

COUNCILMEMBER NISHIKI: Yeah, my, my only concern is that we give Carl a priority on where we want to see each district...which one we want number one, two, three, four. Seems like he’s done Central and to me that’s real important.

CHAIR VICTORINO: Right.
COUNCILMEMBER NISHIKI: But, you know, right now he's going to go and try to finish off, I think anyway, and I don't know, I don't know who's giving him the orders, the next one would be the Upcountry. Is that what you see as the next sequence of a district that's going to be dealt with?

MR. FREEDMAN: Yeah, that decision was made a while ago to go with Central and Upcountry first, and then with the other three districts following that. And, and, you know, I can be responsive to any, you know, I'm willing to be as flexible as possible to do whatever we can to make it move quicker. For example, it does...things do have to go through a process through the Board of Water Supply review, but I don't think that would prevent us from having some updates or workshops. I mean whatever is okay with everybody else, you know, to get everybody up to speed, I think we can go on.

The, there's some interesting timetable. I mean the Upcountry draft is pretty much drafted, and it is going to have to incorporate some new information about the instream flow standards and...but I'm still thinking that we're within a month or two, at the most, of having that draft ready to go, and then the other districts, you know, should be ready within the next several months after that. But I...you know, I'm reluctant to wait until we get all the districts completely done --

COUNCILMEMBER NISHIKI: Me too.

MR. FREEDMAN: --because then I don't want to have to do them all over again if we find out that they have to be done differently. It, it seems most efficient to kind of move...you know, like you say there's a lot of meat here and there's a lot of substance, and if we just focus...if we, if we were going to look at everything all at once, we'd have to break it up district-by-district or something just to understand it.

So I think what the Chair is suggesting makes sense to me, and I just wanted to express willingness to, you know, do...you know, my contract says to give you quarterly updates, but we can go way beyond that if you want. If you want more information quicker, whatever the Department is willing to have me do I'm certainly willing to follow up with that.

CHAIR NISHIKI: Well, the...Mr. Chairman, if I may?

CHAIR VICTORINO: Yes. Yes.

COUNCILMEMBER NISHIKI: The only reason why I'm concerned, Carl, if you got yourself going in five different directions rather than focusing right now on Central Maui, you know, then we're not going to see what we want. I don't know; is that true? If you're dealing with all these other things you're not going to be able to focus in on Central Maui and move in this direction. I think right now you said, well, I didn't know that we've got to go out to public hearing, and it's got to go to the Water Board.
MR. FREEDMAN: Well, Central Maui is pretty much ready to go. I mean my, my, what I have to do in terms of actual time requirements now it would seem is, you know, follow-through with the Board of Water Supply, give them what they need for their review process, and then when it comes back to you...go through that, but I mean that’s not taking a lot of my time. And I’m using my time to process the other districts, yes, but it’s not going to slow down Central, my working on other things.

COUNCILMEMBER NISHIKI: Okay.

CHAIR VICTORINO: Thank you, Mr. Nishiki. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. So, Carl, you said that the Central Maui is ready to go and once that’s submitted to the Board of Water Supply for their review, then it comes back to this body for action, that’s what I’m hearing. You know, like Mr. Nishiki had said, you know, by setting those priorities you take Central Maui first, then Upcountry, then Lanai. You know, I believe in that process. That way we don’t hold up anything in regards to all of the plans that is being developed by you. You know, Chairman, I, I just wait for, for when we take time to, to review the Central Maui Plan so that...you know, like you say it’s a test case, and, and I don’t know if you’re going to schedule another meeting prior to Central Maui Plan going to the Board of Water Supply.

CHAIR VICTORINO: It’s possible, and I, I don’t have a problem with that. But, again, the reason it’s going back to the Water Supply because the County Code says they must get it and conduct the public hearing.

VICE-CHAIR PONTANILLA: Yeah, I understand that. I understand.

CHAIR VICTORINO: And, and they already reviewed this. Actually, they reviewed this plan and...right, Mr. Freedman, they have had this plan in their hands already?

MR. FREEDMAN: Yeah, we gave a presentation to them in March, and then they had, at a follow-up they scheduled it on their agenda for discussion, and the Board of Water Supply members had an opportunity to comment, give us some comments. Some of those are incorporated in this update, but we did not realize, at that point, that there was a requirement for a public hearings process. It’s unfortunate because we probably could have been doing all of that already, you know, on that same timetable.

VICE-CHAIR PONTANILLA: Okay. Thank you. And I leave it up to you, Chairman, if we should review the Central District Water Use and Development Plan prior to going to the Board of Water Supply. You know, I’ll just leave it up to you. Thank you.

CHAIR VICTORINO: Thank, thank you, and I will make sure that, first of all, the latest update, the June 17th update will be distributed to all of you, and I apologize, I thought that was in your binders, but I was told it’s not. There’s not many changes, but I mean I think you should have
the latest update, and I apologize for that, first of all. Secondly, I will, with the, you know, with the Members’ approval, meet with the Water Board next month to kind of discuss this timetable that I’ve set forth and ask them for their indulgence. And if they’re willing to, along with the Department, to try to get this done and back to us in 90 days and maybe an update in the interim, if it becomes necessary to make sure you guys are up to, up-to-date as far as what is transpiring.

So I will do my best to make this plan as accessible and as easy as possible for the Members so that...because I know when it gets back to us, it’s going to be a lot of stuff. And so, I, I, I’m just, I just want to...you all understand that I’m trying to make this process as simple, but following the letter of the law or at least following what has been put in our Charter so that no one can come back to us later and say, hey, you didn’t follow the Charter, and we’ve all been in that predicament, haven’t we, or at least been told we didn’t do something right.

So if not...if there’s any other questions, and I would ask any Member to please forward them to myself or Kim Willenbrink, and we will pass it on to the Department and Mr. Freedman. Mr. Freedman, I’d like to thank you very much for being here today and for the update, and we will be talking in the very near future. Members, if there is nothing else too, I would like to defer this matter if there’s no objections with the Committee.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very, very much.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: SK, BM).

ACTION: DEFER pending further discussion.

ITEM NO. 1(2): WATER SUPPLY RULES (DEFINITIONS) (C.C. Nos. 05-46, 06-228, and C.R. 09-33)

CHAIR VICTORINO: Okay. Moving right along for our second item today. In your binders under WR-1(2), please turn to correspondence dated May 27, 2009, from the Committee Chair, transmitting a revised proposed bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI, MAUI COUNTY CODE, RELATING TO WATER. Now, Members, if you recall that on our Committee meeting on February 12, 2009, this body voted, recommendation of the passage of this bill; however, prior to the March 20, 2009 Council meeting I met with several residents, as they have been here at these meetings, who had some concerns on the definition of subdivision. Because of that, at the Council meeting I recommended the Committee report be referred back to the Committee for further consideration.

We will continue to discuss today the revised definition to be read as follows, and you have that in your binder, again, dated March 27, 2009.

CHAIR VICTORINO: I’m sorry?

MS. FRIAS: May 27.

CHAIR VICTORINO: May 27. Oh, I’m sorry, I apologize, May 27, 2009. Is everyone on that page? Okay. I will wait a moment to make sure everybody’s on that page. Again, the correspondence dated May 27, 2009, from myself, referring to Water Supply Rules, WR-1(2). I just don’t want to start if everybody’s…okay, yeah. And in the DSA report they were, they were given all of this, right? Okay.

If you all remember, we asked for comments from both the Water, Department of Water Supply and the Department of Public Works. If you will, you were all passed out a correspondence dated June 24, 2009, from the Mayor to myself, with the responses from the Department of Public Works. And today we have here the Administrator, Ralph Nagamine, who is present. We can ask Ralph to come up and also speak on this. Also, here today from the Department of Water Supply and, and for some further comments is the Chief Engineer, Mr. Herb Chang. Thank you, Mr. Chang, for being here. So if, Mr. Nagamine, you’d like to join us upfront here? If, if at this point, Mr. Eng, would you like to give us an update and kind of help us get started with this discussion in regards to WR…WR-1(2)?

MR. ENG: Thank you, Mr. Chairman. Good morning, Committee Members. Unfortunately, I was on vacation the last time you met on this issue, and we have had a number of internal discussions to resolve the, the definition. And, yeah, I’d like to just proceed with a discussion on this. I think we have a position that we can discuss at a certain point in time, but if you’d like to go ahead and proceed with the discussions and comments on the . . .(end of tape, Side 1B). . . I’d appreciate that.

CHAIR VICTORINO: Okay. Thank you, Mr. Eng. And, Mr. Nagamine, the last time your Director was here, unfortunately, he had stated he had no time to, to review these items, but subsequently we did find some, some review. But maybe you’d like to give your comments, and then we can get into discussion. Mr. Nagamine, please?

MR. NAGAMINE: Thank you. We really didn’t have any comments regarding the definition that was submitted to us; however, we did note that there is a requirement that access easements be subject to subdivision, to the subdivision ordinance. And we thought that you could probably delete that requirement because several years back our Director, at that time, had informed us of a State of Hawaii Supreme Court case where they deemed that access easements were not subdivisions. So that particular trigger can be taken out of the definition.

CHAIR VICTORINO: Okay. Thank you, Mr. Nagamine, appreciate that. At this time, I’ll open the floor to questions for whichever Department you may have specific questions on in regards to this definition of subdivision. And if you have any recommendations, we will, we can discuss those recommendations also. So, at this time, I’ll open up the floor for questions for both
Mr. Nagamine and Mr. Chang, if you’re readily available up there. Okay. Questions for the departments? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. This morning we had a testifier, actually it was Tom Welch, and he commented on our definition of subdivision and when these requirements would kick in. I’d be interested in the Department’s response to Mr. Welch’s testimony.

CHAIR VICTORINO: Which Department would you…or both departments?

COUNCILMEMBER BAISA: Well, whoever feels that they would like to answer the question. Definitely, I’d like to hear from Mr. Nagamine, and I’d also like to hear from Mr. Eng.

CHAIR VICTORINO: Okay. I’ll start with you, Mr. Eng, because I know you were here. Maybe, Mr. Nagamine, you can chime in afterwards and see, you know, okay. Go ahead, Mr. Eng.

MR. ENG: Thank you, Mr. Chairman. Good morning, Member Baisa.

COUNCILMEMBER BAISA: Good morning.

MR. ENG: Yeah, in regard to the definition for subdivision, Public Works and the Department of Water Supply, we are in agreement and consistent with the basic definition that particularly for the construction of four or more dwelling units, that would trigger subdivision requirements. Okay. And I’m not quite clear what Public Works, how they treat condominium property regimes. We have…I think in the last Committee meeting, our Department took the position that, that condominium projects, PUDs, all of them should be treated as, as subdivisions, and I think that’s probably where the issue really lies right now. How do we treat CPRs and PUDs? Is that my understanding?

COUNCILMEMBER BAISA: Should I, should I proceed with Mr. Eng?

CHAIR VICTORINO: Yes, go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: Okay. Mr. Welch’s contention was that he did not feel that just doing a paper transaction of subdividing a piece of property, you know, so that, like, if you were condominiumizing it so that there would be two owners instead of one or cutting out a piece so that one goes to your kids and you keep the rest, but you’re not actually doing anything more. You’re just, you know, doing the paperwork so you know whose line belongs to who. He didn’t feel that that actually should require or, or, at that point, that the subdivision water requirements should kick in, because there’s no additional strain on the water system or, or no, no more need on the water system. Is that your understanding?

MR. ENG: Thank you, Member Baisa. Yeah, not every condominiumization of a property has water impacts.
COUNCILMEMBER BAISA: Right.

MR. ENG: However, some...many of them do, you know, and the concern has been always...the Department’s concern are those impacts, potential impacts to the existing water system. And, you know, by going through the condominium process it could be viewed by some and not everyone, obviously, that it could be just a way to bypass our existing water system improvements. And that really has always been the Department concern, is that over the many years the way the rules and the policies have been established there have been certain waivers and exemptions given to, basically, for residential units.

You know, the Department has an exemption from fire flow requirements for the first two dwellings on a lot or parcel. Even if you look at the definition of subdivision, you know, subdivision improvements are not triggered until the fourth dwelling is, is, is, comes in for a building permit. So those...over the years what’s happened and, and, again, our concern is that are we continuing this process of waivers and exemptions that continue to support, in some areas, a deficient water system. So that’s always been the Department’s concern. You know, should we stop this? You know, where do we stop it? And, and it’s actually in your hands to decide, but we’re only making our recommendations.

So you understand Mr. Welch and others of, of the same interests that...and at times we have to look at things on a case-by-case basis. I think we can look at this definition today, and I think we can come to a resolution as long as we have some parameters on these PUDs and condominium projects of, you know, where do we draw the line.

Now, Upcountry is unique too because of the water meter priority list. You know, the number of dwellings that can be constructed on a particular lot or parcel is pretty much going to be limited anyway by the capacity of the, the existing water meter. You know, but I just want to make sure you understand that in other areas where we are still able to issue water meters, you know, there may be some loopholes around the subdivision improvement requirements that you may want to consider.

COUNCILMEMBER BAISA: On the other hand, we had a suggested amendment from Mr. DeLeon, and it essentially, in my opinion, says that you wouldn’t, you know, impose these water development requirements until such time as there would be developments that were relevant to, you know, the change. And I’m wondering if this...what your take is on his recommendation?

MR. ENG: And that is...if I may ask, that is his written testimony that he provided?

COUNCILMEMBER BAISA: Yes. Yes.

MR. ENG: You know, it seems like, and these particularly are applicable to more residential projects many times in our outlying rural areas, and unfortunately a lot of those areas the existing water system is deficient relative to appropriate water system standards. And generally what we find in
the Department is that the deficiency lies in improper fire flow protection. Again, we believe...the Department believes that it’s their duty to do all they can to make sure that our residents have adequate fire flow protection, and that’s where we’re usually criticized, you know, is that...do we have the right to make that call. Again, we believe that’s our duty and that’s why we want to try to establish the best...or comply with the water system standards.

I guess our concern is, you know, particularly in these rural areas, you know, we see more and more different uses of those properties and knowingly of the deficient water system standards, we want to take the position and recommend the appropriate improvements. Again, you know, all we can do is make the recommendation to this body and give you the best amount of information. We don’t like to impose unnecessary improvement requirements. I don’t think we do. You know, I think we have a reason if it’s...if an area is being used for residential, we would like to see appropriate fire flow requirements of 1,000 gallons per minute. But just for your information, we are working...as we work on these codification of the rules, we are working toward transferring much of the fire flow reviews and responsibilities for building permits to the Fire Department. And as you may know, they do have currently a separate set of guidelines that they follow. They follow the Uniform Fire Code.

And so, many...so a lot of the things that I’m bringing up today may become moot in a short period of time. You know, but I just want to throw this out here that, to you folks, that we...the Department does have some concerns.

COUNCILMEMBER BAISA: Thank you for your answer. I don’t think that the issue is what...is about whether or not we should have adequate fire flow requirements. I think everybody agrees that we all want to be as safe as we can be and protect our families. Heaven knows we’ve seen enough trouble with fire recently to make one nervous as things dry up. But the other side of this, as you know, Mr. Eng, because you’ve sat here with us through many painful meetings and listened to Upcountry residents come in, and particularly I have a great soft spot in my heart for the long-term families who are property owners Upcountry who really want to subdivide, if you want to call it that, they want to divide up, they want to give a piece of their property to their kids. And many of them may not have any intention of doing anything with it right now because of a lack of water meters, or because of a lack of money, or whatever it is, but they simply want to divide it up so that should something happen, you know, the paperwork is handled. And they do not have the money immediately to do these water system improvements.

And I think those are the folks that we want to be mindful of when we create laws because, you know, they are long-term residents, they are taxpayers, they are people who built this community, and I think that they, they deserve some kind of consideration. So in making these rules I just want us to keep that in mind, understanding...we, we definitely understand your requirement to take care of our water needs, but, you know, we’re doing a not very good job of that Upcountry anyway because there are many water needs that are not met. But if we’re going to define when these things kick in and what kicks in, I want us to be aware of trying not to put too heavy a burden on our families. Thank you.
CHAIR VICTORINO: Thank you, Ms. Baisa. Any other discussion from the Members? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. I just want a clarification from Mr. Nagamine. I didn’t catch all what he said...that the sentence, easements for roadway or access purposes shall be construed as subdivided land. And is...I don’t know if I heard right, but is the Department okay by removing that?

MR. NAGAMINE: Yes, that would be our suggestion is to delete that sentence.

VICE-CHAIR PONTANILLA: Okay. Fine. Thank you. Thank you, Chairman.

CHAIR VICTORINO: And I think something, that would be one of my recommendations when we get to that point, to remove that. Yes, Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Under the definition temporary, temporary meter, can the Department tell us why the importance of, of limiting it to less than one year because the County’s use of the word temporary goes way beyond a year.


COUNCILMEMBER MATEO: And would it not be better just to omit the reference to that duration and still accomplish the same objective as the proposal?

CHAIR VICTORINO: Mr. Eng, would you like to call upon Mr. Chang?

MR. ENG: Yes.

CHAIR VICTORINO: Okay. Go ahead, Mr. Chang.

MR. CHANG: Good morning. If I understand the question correctly, why do we have the one-year period in the ordinance? The reason why...the best case situation is in a situation where a contractor is completed with his job, sometimes he keeps the meter and he uses it for other projects; where we’d like to have, whenever a meter, temporary meter is issued, it’s specifically for a particular construction project.

COUNCILMEMBER MATEO: Okay.

MR. CHANG: Because we have a lot of these meters that actually have been there for many, many years, and we’d like to get rid of (inaudible due to interruption)---

COUNCILMEMBER MATEO: Other than construction purposes, are there residential areas that also have temporary meters based on their hookups to laterals?
MR. CHANG: It's a rarity. We do have a few, but the majority, 95 percent, is all for construction purposes.

COUNCILMEMBER MATEO: So some of the units Upcountry with limited meters, and they have a cottage and they have tapped on to their own meter, that is not considered a temporary meter?

MR. CHANG: No, if they have separate, privately owned meter beyond...between the County meter and the homes, it's a separate, private type of a meter which we don't really have any jurisdiction over.

COUNCILMEMBER MATEO: Okay. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah, thank you.

CHAIR VICTORINO: Wait. Wait, hang on. Let, let me ask Mr. Molina first --

VICE-CHAIR PONTANILLA: Oh, okay.

CHAIR VICTORINO: --because he had his hand up. I apologize. Mr. Molina, go ahead.

COUNCILMEMBER MOLINA: Thank you, Chair. My question was for Mr. Nagamine, but I don’t know if he’s, if he’s available.

CHAIR VICTORINO: Oh, no, he’s right up there. He’s...

COUNCILMEMBER MOLINA: Okay.

CHAIR VICTORINO: Why don’t you just stay up there and that way we can, I think we need everybody just to be here.

VICE-CHAIR PONTANILLA: Chairman, mine was for Mr. Chang and similar to his question.

CHAIR VICTORINO: Okay. Yeah, thank you. I think we need to keep everybody up here. Okay. This is, this is, this is interesting. Okay. Since...if you don’t mind, Mr. Molina...

COUNCILMEMBER MOLINA: No. No problem, I’ll yield.

CHAIR VICTORINO: Could you yield to Mr. Pontanilla since we’re following the same train of thought for that, and then we’ll go right to you after that?

COUNCILMEMBER MOLINA: No problem.
CHAIR VICTORINO: Mr. Pontanilla, go ahead.

VICE-CHAIR PONTANILLA: Thank you. Mr. Chang, in regards to the temporary meter on the service lateral side where a contractor comes in, requests for a temporary meter during the construction phase, is that temporary meter becomes...well, the lateral that service that residence become for that particular residence? In other words, once the construction is completed that water service that contractor was using on the temporary meter, does it become for that particular resident once they submit their application?

MR. CHANG: In the situation...normally, when the contractor requests a temporary meter, it’s on the...usually it’s a meter that’s hooked up to a fire hydrant, but occasionally we do have a temporary meter that’s actually within the meter box for a residential property. In those, in those instances the temporary meter would be cancelled and when the permanent resident moves in, he would be applying for the permanent meter. So they’d be able to transition.

VICE-CHAIR PONTANILLA: Okay. So in the case of Upcountry is it like an automatic transition from temporary contractor use to resident...residential use?

MR. CHANG: In those rare occasions if there is a temporary meter...when one tries to get it permanent, we would have to make sure that, you know, either you’re on the priority list and there is a meter available for that particular property or...you know, we’d have to check that it doesn’t violate the Water Meter Issuance Rule for the Upcountry.

VICE-CHAIR PONTANILLA: So the temporary meter wouldn’t be issued if the person that’s going to reside in that new residence is not on the priority list?

MR. CHANG: Yes, that would make sense. If we...if someone were to ask and we would ask, you know, temporary, then what happens afterwards? We probably try to cut it off right at that point to avoid any more problems.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Mr. Nagamine, just following up on the June 24, 2009 response letter from Director Arakawa with regards to the language. You know, it mentions, as stated in this memorandum, the County of Maui shall no longer require subdivision approval for access easements which are created outside of a subdivision application. Is there any...and the Department is, again, recommending that the portion of the proposed definition be deleted. Is there any alternate language that you folks want included in there or just as is...that’s it, just take it out and everything is fine?

MR. NAGAMINE: No, that, that sentence can be deleted in its entirety and not replaced at all.
COUNCILMEMBER MOLINA: Okay. Again, then this was based on the court case that, I guess, *Clog Holdings v. Bailey* back in 2000?

MR. NAGAMINE: That’s correct.

COUNCILMEMBER MOLINA: Okay. That’s why I was just wondering if there was anything else you would want us to consider to substitute for that language that you want deleted. Okay. Thank you, Chair.

CHAIR VICTORINO: Thank you, Mr. Molina. Further questions for the departments? Mr. Nishiki?

COUNCILMEMBER NISHIKI: I don’t know who, who will answer this question but, Jeff, you brought up fire flow, and then you said that perhaps this is going to be moot. Right now in the process does the Fire Department have any part in an approval?

MR. ENG: Thank you, Member Nishiki. The Fire Department...generally, the Fire Department and the, and the Water Department are consistent. There are times, because we use different guidelines, where we differ and, and that’s why we’re trying to clear this up. In order to be consistent we do want them to have for basically building permit, fire reviews, that they will be handling that so there isn’t any inconsistency in the County. So, yeah, it’s...yeah, so that’s why we’re encouraging that. For subdivisions, initial planning on subdivisions, that will still come to the Department because we will help, help to work with the developer on designing and reviewing their overall waterlines and system. But the Fire Department, basically they want...they basically have the same fire flow requirements as us, and you will see that as we look, look into our, into our various sections of our rules.

COUNCILMEMBER NISHIKI: Okay. And, and so, unless the fire flow requirements are met, what occurs if they cannot be met?

MR. ENG: Well, at the worse extreme then they cannot proceed with their...or get their building permit. You know, the, the Fire Department and even for ourselves we can look at, you know, the types of building materials. In the case of the Fire Department, you know, they will require sprinklers, fire sprinklers installed and at some point down the road it will be a requirement for all residential, is what we hear from the Fire Department. So, generally, there are some recommendations made to the developer and, hopefully, they can bring down the fire requirements, but even with all those, and they cannot succeed, then they may not be able to construct their project.

COUNCILMEMBER NISHIKI: How does one...if they cannot be met, what do they have to do to make it meet that requirement?

MR. ENG: Well, the worse case scenario is they would have to improve the waterlines. Generally, they would have to increase the waterlines serving their property in order that there is adequate fire flow to their property.
COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Thank you. Further questions on this particular item? Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. If I could ask the Water Director, Director Eng. Good morning, Mr. Eng.

MR. ENG: Good morning.

COUNCILMEMBER MOLINA: Just a quick question in terms of policy. When you have a homeowner, people subdivide then they're asked to do improvements in the neighborhood, for example, they have to upgrade the waterline, put a fire hydrant, how is it determined that—you know, we've had cases where, you know, citizens will come to us and say, you know, they don't feel it's fair that they have to bear the, the cost of, say, adding that additional fire hydrant or upgrading the waterlines. In general, how is that determined in terms of policy from the Department? It's just on a case-by-case basis or...you know, for example, if you have a family that's, I don't want to say financially strapped, but, you know, with limited resources, how, how does the Department work that type of scenario out?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Yeah. Well, generally that is probably the foremost problem we see and, and, you know, long-term residents living in the areas that do have substandard waterlines meet with the Department, and that's the toughest thing to advise them is there are significant water system improvements. And as you folks all know, that really holds them back from going forward.

COUNCILMEMBER MOLINA: Because, you know, the rest of the neighborhood will benefit from the improvement that somebody had to pay the, the additional 20, $30,000. So, I guess we're trying to figure out how can that expense be shared since everyone else will be benefiting from it?

MR. ENG: Well, thank you, Mr. Molina. We do have, the Department does have a waterline extension, basically, a refund in which we do assist the party that puts in the waterline improvement to the extent of 50 percent of the cost of that waterline will be refunded over a period of time, I believe it's five years, to the developer. Sometimes that can help, help them in that, sometimes it's not enough, but there is a waterline extension refund that we do offer.

COUNCILMEMBER MOLINA: I see. Okay. Thank you. Thank you, Chair.

CHAIR VICTORINO: Thank you. Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Yes, just a quick follow-up on that last statement. Who gives the money back? Is it people who then join later or is it the Department?
MR. ENG: It's the Department. So we budget every year for about $500,000 for main line extension refunds.

COUNCILMEMBER BAISA: So if you're the first one, you're, you're out of luck. I mean you're going to be the one to have to pay the 50 percent.

MR. ENG: Uh-huh.

COUNCILMEMBER BAISA: Okay. Thank you.

CHAIR VICTORINO: Thank you. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: So when does the Department...say that you need a second meter? Like say a guy that want to build, you know, want to add to his home to provide for his son or daughter and, and going two stories. When does the Department require any homeowner that want to do additional construction on their piece of property, you know, prior to telling them improvements need to be required?

MR. ENG: Member Pontanilla, in the case of an expansion project and even let's say an ohana, you know, we'll request to look at what we call water calc.'s, determine the water calc.'s by looking at the number of fixture units and determining if the existing meter has the capacity to handle all the additional new fixture units. And, you know, for some of these projects, you know, they may have to tweak their existing number of fixture units, especially like if they want to build an ohana. If they're exceeding the capacity of their meter based on the proposed fixture units, they may have to remove an existing fixture unit from, let's say, the primary dwelling in order to, to, to fall within the capacity of the existing meter. Then only if they cannot do that, then they will have to either get a meter upgrade, and generally that's what we would do. We would try to provide them with a larger meter. Unfortunately, as you know for Upcountry if they need a meter upgrade, they would go onto the priority list.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Any other questions? Mr., Mr. Molina, excuse me?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. Not so much a question, but more of a request. You know, we heard testimony from Mr. DeLeon, I guess, representing the realtors and there was some pretty strong language in there, you know, extortion, abuse, and then a suggestion to, I guess, implement some type of language under limitation of powers. If maybe we could get in writing a response back from Corp. Counsel with regards to this proposal.

CHAIR VICTORINO: That was my plan, Mr. Molina. Thank you.

COUNCILMEMBER MOLINA: Thank you.
CHAIR VICTORINO: I will take that up as a separate issue, but now we'll have Corp. Counsel look into that matter and respond to, to those allegations, if you want to use, for a lack of a better term, yeah.

COUNCILMEMBER MOLINA: Thank you.

CHAIR VICTORINO: But thank you for reminding me. Ms. Willenbrink, yeah, please. Any other discussion on the item itself? Seeing none, then what I would like to...first of all, is with what Mr. Nagamine has informed us, I would like to ask if someone would make an amendment to delete on Page 3, starting on line, starting where it says “Easements for roadway and access purposes shall be construed as subdivided land.”, I would like to recommend that language be removed.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that that sentence beginning with easements, and let me read the sentence, “Easements for roadway or access purposes shall be construed as subdivided land.”--

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Hang on a second. Go ahead, Ms. Willenbrink, I’m sorry.

MS. WILLENBRINK: There’s no need for a motion.

CHAIR VICTORINO: No need for a motion?

MS. WILLENBRINK: No.

CHAIR VICTORINO: We can remove that?

MS. WILLENBRINK: That’s correct.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: Fine.

CHAIR VICTORINO: We can remove it.

VICE-CHAIR PONTANILLA: Make it easy. Thank you.

CHAIR VICTORINO: It’s so nice of her to tell us that. Okay. Thank you. Okay. So my proposal would now eliminate that sentence in its entirety, starting from “Easements for roadway and access purposes shall be construed as subdivided land.”. We will remove that; is that correct, Ms. Willenbrink? Okay. And that was the only one...we had the temporary meter issue. Does
anyone want to...were you satisfied with the answer the Department gave you as far as temporary meters are concerned?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR VICTORINO: Okay. Well, I don't see any other changes. Yes, Ms. Willenbrink, go ahead.

MS. WILLENBRINK: Did you want to discuss Mr. Chang's amendment from last meeting?

CHAIR VICTORINO: And that was the proposal for what, if I may...

MS. WILLENBRINK: The period after units and the capital “P”?

CHAIR VICTORINO: Oh, that is correct. If you go down three lines and the line would start, on the same page, Page 3, and you go down three lines and it says: “result, or be divided into four or more dwelling units, including planned developments”, Mr. Chang had recommended a period after “four or more dwellings”, and deleting “including”, and starting with a capital “Planned developments pursuant to Chapter 19.32...(end of tape, Side 2A)... So it would be on the same page, Page 3. We were just looking at three lines down. So it would be the third line down, and it says: “result, or to be divided into four or more dwelling units”. Right now it has a comma. The recommendation from this Chair is to...or the recommendation from the Department, and I agree, is to put a period after “units”, strike “including”, with a capital “Planned”, starting a new sentence. “Planned developments pursuant to Chapter 19.32 of this code, condominium projects established”, et cetera. Are we clear with that substantive change? And I think, Mr. Chang, that was your recommendation; wasn’t that correct?

MR. CHANG: Yes.

CHAIR VICTORINO: Okay. So I'm adhering to the Department's recommendation. I think it's a good one. So I'd like to incorporate that. Any questions with that substantive change?

VICE-CHAIR PONTANILLA: No.

CHAIR VICTORINO: Okay. Seeing none, and I think that was it, Ms. Willenbrink, as far as any changes, this Chair would like to recommend the passage for, on, for first reading the revised proposed entitled bill, A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.04--01 I should say, excuse me--14.01, MAUI COUNTY CODE RELATING TO WATER, and the filing of Committee Report 09-33.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER MATEO: Second.
CHAIR VICTORINO: It’s been moved by Vice-Chair Pontanilla and seconded by Chair Mateo. Any further discussion on the issue? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Yes, Chair. I’m trying to, to, you know, get in my mind --

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: --what will be the impact of this response that we’re requesting in regards to the communication from the realtors if we pass this out of Committee today?

CHAIR VICTORINO: Well, first of all, I don’t think it will have much bearing in what we’re deciding on today, and we will ask for a Corporate Counsel, Corp. Counsel response to those questions that were brought up, and we will have further opportunities as we move through the codifications to bring some of those issues to light. So I’m fairly confident that this will just codify these rules, and as far as the rest is concerned, we will not...I mean I will make sure that this is not discontinued. In other words, we will continue the discussion on this matter.

COUNCILMEMBER BAISA: I just want to be sure that we are paying close attention to the testimony that this Committee receives --

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: --and that we take it seriously, because it doesn’t make sense to rush something out of here, and then have to bring it back again because we need to fix something.

CHAIR VICTORINO: I thank you for that. Yes, thank you for that concern. I appreciate that.

MR. KUSHI: Yes, and I apologize in advance, but, again, what, what you’ve done here in this motion, and, and I want to be specific so we’re all on the same page, is you’ve adopted Mr. Chang’s revisions which are in your binder, I guess the second to the last page. On the bottom it says received at the June 2nd, ’09 WR meeting (Herb Chang). But, but by doing so, when I read this now, PUDs, planned unit developments and condominium projects, regardless of the number, will be considered subdivisions. But aside from that, that unless requested by the developer, they don’t need their own separate water meter. But this, to my recollection, is not what the Public Works Department is...DSA is considered subdivisions. Now, you have Mr. Nagamine before you. I beg you to ask him and get clarification on this.

CHAIR VICTORINO: Mr. Nagamine, would you like to clarify DSA’s, how they treat condominiums, and how they also treat consolidation and other issues of that matter?

MR. NAGAMINE: Deputy Corporation Counsel Kushi is correct. The, the definition that you are reviewing today is different than the definition in Title 18. The Title 18 definition does not have that last language relative to planned developments and condominium projects.
CHAIR VICTORINO: Okay. I’ll call for a quick recess, subject to the Chair. . .(gavel). . .

RECESS: 11:15 a.m.

RECONVENE: 11:20 a.m.

CHAIR VICTORINO: . .(gavel). . . The Resource, Water Resource Committee will reconvene. After some discussion with the departments, both Public Works and Water, let me clarify so that we are clear, and I apologize on what has happened and let me be very clear in what, what I’m recommending.

So, first, the, the easement and roadways access purpose shall be construed as subdivision, yes, we want that eliminated. The next part will remain the same. In other words, reading from the third line down, resulted or…”result, or be divided into four or more units, including planned developments pursuant to Chapter 19.32 of this code, condominium projects established pursuant to the Hawaii Revised Statutes”. According to Mr. Nagamine, this will keep concurrency with Public Works; is that correct, Mr. Nagamine?

MR. NAGAMINE: That’s correct, our threshold is four or more.

CHAIR VICTORINO: Thank you. And, Mr. Chang, this is acceptable with you and the Department as far as this particular statute is concerned?

MR. CHANG: To keep the departments, Public Works and Water Departments consistent, I think that’s the goal.

CHAIR VICTORINO: Okay. So are we okay with this now? So that is what I will bring forward as the recommendation. So if we could entertain a motion--

MS. FRIAS: We have a motion.

COUNCIL MEMBERS: We have a motion.

CHAIR VICTORINO: Oh, we have a motion? But now do I have to correct that motion? I just want to make sure I get it right. I apologize. Ms. Willenbrink --

COUNCILMEMBER MOLINA: Restate, Mr. Chair?

CHAIR VICTORINO: --could you restate the...

MS. FRIAS: The revisions.

CHAIR VICTORINO: …the revisions, please?
MS. WILLENBRINK: Yes, Chair. How about if I just briefly read the definition?

CHAIR VICTORINO: That’s fine.

MS. WILLENBRINK: “‘Subdivision’ means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or in the future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels, and includes the process of consolidation and resubdivision, and, when appropriate to the context, shall relate to the process of subdividing land.” We will be striking the next sentence and continuing. “The term also includes the construction of a building or group of buildings, other than a hotel, on a single lot, parcel, or site which will contain, result, or be divided into four or more dwelling units, including planned developments pursuant to chapter 19.32 of this code, condominium projects established pursuant to Hawaii Revised Statutes, or other forms of development, provided, that unless requested by the developer, condominium projects shall not be required to install separate water meters for each condominium unit.”

CHAIR VICTORINO: Thank you. Are we clear on that? Okay. Seeing no further discussion, I will call for the question. All those in favor of the motion, please signify by saying “aye”.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed. Let the record show five ayes; two excused, Members Medeiros and Kaho‘ohalahala. Thank you, ladies and gentlemen.

VOTE: AYES: Councilmembers Baisa, Mateo, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: Councilmembers Kaho‘ohalahala and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised proposed bill, and FILING of committee report.
ITEM NO. 1(5): WATER SUPPLY RULES (SUBDIVISION WATER SYSTEM REQUIREMENTS)  
(C.C. Nos. 05-46, 06-228, and C.R. 09-33)

CHAIR VICTORINO: We have one more item, but with the Committee’s permission I will defer this item to our next meeting because I would like to be sensitive to the Members who must leave. So if there’s no objections, may I defer WR-1;5 [sic], defer that to our next meeting?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: SK, BM).

ACTION: DEFER (no discussion).

CHAIR VICTORINO: Thank you. Ladies and gentlemen, thank you so very much, and I apologize for the confusion. In my zealousness to get this right, I almost confused myself. Ladies and gentlemen, I would like to thank all of you for being here and this meeting of the Water Resource Committee is now adjourned. . .(gavel). . .

ADJOURN: 11:24 a.m.

APPROVED:

[Signature]

MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:090624
CERTIFICATE

I, Jessica Cahill, 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 this 13th day of July, 2009, in Wailuku, Hawaii.

[Signature]
Jessica Cahill