CHAIR VICTORINO: ... (gavel) ... Good morning. The meeting of the Water Resources Committee will come to order. I’d like to welcome everyone to this morning’s meeting.

First of all, I’d like to introduce the voting Members that are here at this time. A few Members will be joining us a little bit later. First of all from the Upcountry area our up..., our Upcountry representative, Gladys Baisa. Good morning.

COUNCILMEMBER BAIASA: Good morning, Chair, and thank you.
CHAIR VICTORINO: And our Vice-Chair and also from the Paia side and Makawao side of Upcountry, Mr. Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Mr. Chair

CHAIR VICTORINO: Our representative from Lanai and our, Planning Chair, Mr. Sol P. Kaho‘ohalahala.

COUNCILMEMBER KAHO‘OHALAHALA: Good morning, Chair.

CHAIR VICTORINO: Good morning. A non-voting Member that is here this morning from South Maui, Mr. Wayne Nishiki.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR VICTORINO: Thank you for being here. And myself, the Chair Michael Victorino. Also present from the Administration this morning, we have our Director of the Water Supply, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: And representing Corp., Corp. Counsel is Mr. Edward Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Thank you. Good morning, gentlemen. Also our Committee Staff, our Legislative Analyst Ms. Kim Willenbrink and our Committee Secretary Tammy Frias.

CHAIR VICTORINO: Thank you all for being here this morning. We have two items this morning, one is WR-9, which restricts the use of potable water for golf courses; and our second item will be WR-4, Water Use and Development Plan--again, an update and continuous work on that plan.

What I’d like to do at this time is take public testimony, if there is no objections from the Committee.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. We have one testifier who’ll be testifying on WR-9. And this testifier is very well known to all of us. He’s what I call one of those experts in the water field--I would always consider him a good expert, Mr. John Duey. Good morning, Mr. Duey.

...BEGIN PUBLIC TESTIMONY...
MR. DUEY: Good morning, Chair Victorino, and thank you for that elaborate introduction; I don’t deserve that, but good morning, good morning, all you Council Members. I’m kind of out of breath. I was late getting here. The parking was kind of limited out there. I’m in favor, I’m not in favor of using any potable water for golf courses. I went back and looked up, I Googled 14, but it’s gonna change the 20.24, and it’s kind of hard to understand for me. But anyway, the bottom line is that potable water, in your definition there, it was saying potable was any surface water after it was treated, could not be used and I believe anything under 250--what is it--parts per million of chloride. But the bottom line is any water that could be used for potable use I don’t think should be used for a golf course. As to my, my knowledge right now, there aren’t any golf courses using potable water. They’re either surface water or most of us pump water, well water. So to make it very short--I know you haven’t seen me for a long time, I haven’t been here this year--but I am not in favor of using potable water, especially everybody knows what crisis we’re in as far as the water, for drinking water now. So it wouldn’t make any sense at all to use potable water for golf courses. So, thank you very much for listening to me this morning. I wish there was a whole line behind me, but nobody’s here. So...

CHAIR VICTORINO: Well, thank you, Mr. Duey, and yes, you have been missed this year and hopefully you’ll be coming back with some other items in the very near future.

MR. DUEY: I’ll try my best.

CHAIR VICTORINO: Alrighty [sic].

MR. DUEY: Aloha.

CHAIR VICTORINO: Any questions? One moment, Mr. Duey. Any questions from the Committee Members for Mr. Duey? Seeing none, thank you, Mr. Duey, and you have a good day now.

MR. DUEY: Aloha.

CHAIR VICTORINO: At this time, I’d like to recognize also our Budget Chair and Vice-Chair of the Committee, Mr. Joseph Pontanilla. Good morning, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Okay. Mr. Duey was the only testifier who signed up. Before I close public testimony, I will look out in the gallery and ask anyone who would like to give public testimony to approach the podium at this time. Seeing no mad rush--in fact seeing no one coming down--with the Committee’s approval and no objections, I will close public testimony on WR-9.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections? Thank you. At this time, I will leave public testimony for WR-4, the Water Use and Development Plan, I’ll leave that open. There may be someone, I was
informed, that may be a little bit late and would like to testify on that. So we’ll wait and see if any, if they show up and if they do, we’ll allow them some testimony on WR-4, if there’s no objections from the Committee.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

ITEM NO. 9:  RESTRICTIONS ON USE OF POTABLE WATER FOR GOLF COURSES
(C.C. No. 09-169)

CHAIR VICTORINO: Okay. So let me start by giving...and, and before I finish I would, I was also informed at this time that our Council Chair Mr. Mateo, Danny Mateo will be unable to join us today, so he’s excused, and we’re still awaiting Mr. Medeiros’ arrival, yeah? Let’s go and go with background information.

Before this Committee we have two different items. Item 1 is a revised proposed bill entitled “A BILL FOR AN ORDINANCE REPEALING CHAPTER 20.24 OF THE MAUI COUNTY CODE, AND AMENDING CHAPTER 14.08 OF THE MAUI COUNTY CODE, RELATING TO RESTRICTIONS ON USE OF POTABLE WATER FOR GOLF COURSES”. Members, if you can recall that back in 1991, the Council enacted Chapter 20.24, Maui County Code, to establish restrictions relating to use of potable water to irrigate golf courses. Then in 2006, the County Council reversed the, revised--I should say--the Chapter 14.08 for replacement of water-related matters. The revision proposed by this bill is to repeal Chapter 20.24 and insert the provisions into Chapter 14.08. This matter will assist the Water Resources Committee in continuing its effort to integrate all water-related policies into Title 14. So...that, that sums that up. What I would ask at this time--and before I do that, I would like to recognize Member Bill Medeiros in his attendance. Thank you, Bill.

COUNCILMEMBER MEDEIROS: Good morning, Chair.

CHAIR VICTORINO: Good morning. At this time, I would like to ask the Corporation Counsel, Mr. Kushi, if you would go...well, a quick overview on the matter of these revisions, and there were very few revisions, but if you can point out to the Committee any revisions to the present 20.24 and the incorporating into 14.08. Mr. Kushi?

MR. KUSHI: Mr. Chair, Members, from what I understand and, and have been going through is that it’s correct what you said that we have repealed this Chapter 20.24, which is in Chapter 20, Title 20 and then put a similar, if not identical, ordinance into Chapter, Title 14, Chapter...to be known as Chapter 14.08. There were some deletions from the existing Chapter to be repealed--minor in my mind, nonsubstantive changes. The only substantive change, if you would even call that, is
the definition of potable water. If the Members would look at the proposed bill under Section 14.08.020 under Definitions, potable water...the definitions is, is now several sentences, but in essence it, it covers the situation of where you have a source of potable water--and, again, potable water is defined as what the Department of Health would...Department of, State Department of Health standards as suitable for cooking or drinking purposes. The rest of the definition covers situations where you have a initial source of potable water, then for some, whatever reason, intentional or not, the developer then blends or mixes that source with nonpotable water source such as ditch water or, or any other nonpotable sources, and then uses that combined source on a golf course. So it would cover that situation in that any amount of potable water would be covered by this ordinance.

CHAIR VICTORINO: Just for the Members’ information, we are looking at the document dated August 10, 2009 and we’re looking at the second to the last page under 14.0...14.08.020, and if you look for the second page, this is what Mr. Kushi is referring to, what potable water means and it has the explanation as far as the Department of Health also blending, mixing or using potable water stored in ponds or reservoirs and then...or transmitting through ditches, through the ditch system and then being used for, it’s being said then at the point “Oh, it’s not potable water anymore, now we can use it for irrigation”. So this is to ensure no potable water can be diverted from the system into...in another means to make it nonpotable. Am I correct, Mr. Kushi, in saying that?

MR. KUSHI: That’s correct.

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

COUNCILMEMBER BAISA: Good morning, Chair. And, Mr. Kushi, thank you. Following up on this definition, just something comes into my mind when I read this definition where it says, water that was originally or met the standards established by the Department of Health as potable water, but then something happens and it’s not considered that anymore. Let’s take, for instance, the H’Poko Well...you know, we were using that, we were drinking from it, and then we decided that it wasn’t any good, good anymore so we closed it down. So if we were to open it could we use this for this purpose? That’s just an example.

CHAIR VICTORINO: Okay. Well, okay...I think Mr....I’ll let you answer it, Mr. Kushi, because I have my answer to that, but I’ll let you answer that. Go ahead, Mr. Kushi.

MR. KUSHI: Well, let me first say, H’Poko minus any of the H’Poko Wells 1 and 2, the Department of Health would serve, would establish, would certify as a potable water. So, therefore, you can’t use it on golf courses.
COUNCILMEMBER BAISA: So if...so even though there’s been some obvious conclu...agreement that it’s not usable for potable water. If the Department of Health says it is, then it is? I mean why did we turn off the wells if it was potable, is what I’m trying to figure out? I’m sorry, I’m coming into this a little late--I wasn’t here during that debate--but this, this is the kind of situation that arises when you look at definitions. Director Eng?

CHAIR VICTORINO: Yeah. Mr. Eng, could you, could you expound on that, please?

MR. ENG: Thank you, Mr. Chairman and Member Baisa. Yeah. I concur with Deputy Corporation Counsel Kushi, that H’Poko has been always classified and considered by the Department as potable water. You know, unfortunately, we do have that ordinance that we abide by. So that wouldn’t really be applicable to this definition, but I think the second part of the potable water definition is important in that and we could maybe even expand on it a little bit by, ’cause I like how it reads: a supply of water that at one time met the standards, you know. And we may even want to expand it to say that not only one time meets the standards, but could possibly meet the standards...should not be used for golf course irrigation.

COUNCILMEMBER BAISA: Can you think of a better example than what came to mind --

MR. ENG: Well...yeah.

COUNCILMEMBER BAISA: --for me?

MR. ENG: I’d love to give you an example, and what I’m looking at is, if it could even possibly meet standards. For instance, let’s say like a well on a golf course or nearby a golf course could with proper pumping meet potable water standards. In other wor...in other words, for one of the standards is chlorides. Chlorides is generally limited to 250 parts per million. It’s what they call a secondary standard so it’s not really enforceable. You can actually provide potable water at higher then 250 parts per million, and many people won’t even be able to detect the higher chlorides. But what if an operator of the well chooses to cause that well to become nonpotable by over pumping it, pumping it with a higher capacity pump? So you’re drawing in salt water and it might also become 400 parts per million and, therefore, they could say well, okay, it’s nonpotable. But this definition would prevent them from doing that. Possibly if you added a couple words saying, a supply of water that at one time met or could possibly meet the standards established by the Department of Health, then that would keep everyone operating there well, wells prudently and responsibly.

COUNCILMEMBER BAISA: Thank you very much for that. Now let’s, let me try another one. If there is this situation where somebody has a well and they’re using it and they’re saying it’s nonpotable and with this definition that we wanna do it could be made potable. Are there wells that will be affected by this, that could be affected by this so that some people will lose their source of whatever water they’re using on their golf course?

CHAIR VICTORINO: Mr. Eng?
MR. ENG: Thank you, Mr. Chair, Member Baisa. To my knowledge, generally the wells that are currently being utilized on the golf courses most likely were always originally intended to be used for irrigation. So I’m not aware of any potable well that was to say converted or changed for, for irrigation purposes. So this is really to prevent any future possibility of that happening.

COUNCILMEMBER BAISA: Thank you very much. I thought, I thought it was important that, you know, we look at the impacts so often we get so passionate about making laws, we gotta think about the impacts. Thank you.

MR. ENG: Thank you.

CHAIR VICTORINO: Well, I, I think I wanna add something at this point, you know, Mr. Eng, that you mentioned about the possibility of it or at one time a possibility of it being used for potable purposes. Many of the brackish water wells that are being used by many of the golf courses, if we spent enough money to clean it up and clean the water, treat the water, we could make them potable? Isn’t that true, if you’re willing to spend the money to do that?

MR. ENG: Yes, certainly there is technology to do that... (inaudible)...

CHAIR VICTORINO: Well, and see this is something that I, I think the bill itself does try to address that we’re not gonna do that, you know, that if you have brackish wells and that’s what you’ve been using or surface water, that, that would be dedicated to, to the golf course for their use. Not where for example, there’s wells here in, in the Waikapu area that we know can pump potable water that eventually will come on-line one day in the not too distant future. And when that comes on-line we can’t, the golf course cannot say oh, because it’s right next to us we’re gonna use it for irrigation purposes because it is potable water. Now the H-Hamakuapoko [sic] Wells situation has always been one of what is the, the usage of that, it has to be treated, it has to be cleaned up--right, Ms. Baisa? It has to be...also even to the point blended in with other water and then shipped Upcountry for drought purposes. That’s how we’ve done it for all these years.

COUNCILMEMBER BAISA: Mr. Chairman, if I might respond.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: I think it’s very relevant that we look at the suggested amendment that the Director has offered because that’s where I think the, you know, the details are. He’s suggesting an amendment to what we’re looking at...

CHAIR VICTORINO: And that amendment would I think cause more problems than we have. Exactly.

COUNCILMEMBER BAISA: So I think, I think we need to deal with that.

CHAIR VICTORINO: Yeah.
COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: And, and, and, and, that’s why I’m trying to address that amendment by saying if we insert that language, then we could create more problems for ourselves.

COUNCILMEMBER BAISA: Can we have that repeated so that we’re sure what it is or we don’t have it in writing or anywhere.

CHAIR VICTORINO: Go ahead, Mr. Eng.

MR. ENG: Thank you, Mr. Chairman. Okay. I don’t think that it would cause more problems. I think it would actually benefit the community because, again, well what I’m saying basically is, or recommending is, in this sentence: a supply of water that at one time met or could possibly meet the standards established by the Department of Health as potable water. So, therefore, if we think or if we know that a well can meet potable standards, it can’t be so, pump so hard to become nonpotable and, therefore, could possibly be utilized for a golf course. I think if we have a potable well, we want to use it for it’s most beneficial use, and that would be for potable reasons. So I think just inserting some of that language would prevent that from happening.

CHAIR VICTORINO: Mr. Kushi, because you’re the legal expert. Before I recognize anybody else...

MR. KUSHI: Mr. Chair?

CHAIR VICTORINO: Corp. Counsel, can you address that, that statement and what impact we would have? I just want it to be very clear.

MR. KUSHI: Yeah. Mr. Chair, with your permission --

CHAIR VICTORINO: Yes,

MR. KUSHI: --can you, can you take a two-minute recess.

CHAIR VICTORINO: Okay.

COUNCILMEMBER NISHIKI: Yeah, can we have that language, please.

CHAIR VICTORINO: Okay, wait one moment. No one calls out in this Committee. If you have a question specifically that you want something done, please ask. I do not allow people to yell out what they want. Am I clear with that, please? Okay. If you want...

COUNCILMEMBER NISHIKI: Can we have, please.

CHAIR VICTORINO: Be recognized, Mr. Nishiki, what was your request, please?
COUNCILMEMBER NISHIKI: What Mr. Eng suggested.

CHAIR VICTORINO: Okay. I will have Mr. Eng put it in writing so that we can get all the Members. This meeting will stand in recess for, I’ll give you 5 minutes. . . .

RECESS: 9:24 a.m.

RECONVENE: 9:35 a.m.

CHAIR VICTORINO: . . . (gavel). . . The meeting of the Water Resources Committee will reconvene. Thank you very much for allowing us this time to make some substantive changes and to address the questions that have been raised by Committee Members. Mr. Kushi, at this time would you like to read the change that we have inserted. And if Members have questions, then they can ask at that point. Mr. Kushi, please?

MR. KUSHI: Yes. Mr. Chair, I want to just read the entire definition.

CHAIR VICTORINO: Yes, please.

MR. KUSHI: Okay. It would now read, “potable water” means water that meets the standards established by the Department of Health as suitable for cooking or drinking purposes. A supply of water that at one time met the standards established by the Department of Health as potable water may not be used for golf course irrigation or other non-domestic uses, regardless of whether it is rendered nonpotable through such activities including, but not limited to, mixing or blending with any source of nonpotable water, storage in ponds or reservoirs, transmission through ditch systems, or--the new language--exceeding the established pump capacity for a ground water well.

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

COUNCILMEMBER BAISA: Thank you very much, Chair. I’m assuming that you all have discussed the possible amendment and that this was the decision because earlier we had different language suggested that said something about at one time met or could possibly meet. Was that when you made a decision to take that out?

CHAIR VICTORINO: That was never accepted. No, that was not an amendment. It was a suggestion that he had made --

COUNCILMEMBER BAISA: I see.

CHAIR VICTORINO: --and what I had said that at that point in time that would be too broad and too ambiguous because now any, right now present source that is maybe deemed the...at this time--what do you call that--brackish water.
COUNCILMEMBER BAISA: Right.

CHAIR VICTORINO: If you spend enough money you can make any brackish well potable.

COUNCILMEMBER BAISA: I agree. That was where I was trying to go.

CHAIR VICTORINO: And that’s were, that’s why this amendment takes that, and really what Mr. Eng was trying to establish is that someone does not use a potable well and just keep pumping and pumping until it gets to a point where salinity has risen and it becomes nonpotable and now they can use it for a golf course. So this will ensure we get the best of both worlds in this, this whole chapter as far as the rules are concerned.

COUNCILMEMBER BAISA: Okay. So we throw that away and we quit thinking about that, but now let’s talk about the last insertion.

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER BAISA: Or exceeding the established pump capacity for a groundwater well. So potable water would be water—so if the, the…say let’s, let’s look at the Kamole Treatment Plant and it has a finite amount of water that it can treat every day. So if the water exceeds or the available water exceeds that treatment, you know, level, is it potable or not potable?

CHAIR VICTORINO: Well, I, I think…let me answer that and then I’ll ask Mr. Eng to answer. I think this exceeding establish pumping capacity for groundwater wells. If I’m correct, Kamole is surface. Am I wrong, Mr. Eng?

MR. ENG: No, you’re correct.

CHAIR VICTORINO: It is, it is surface and surface water --

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: --was established earlier in this.

COUNCILMEMBER BAISA: Okay. All right, backup.

CHAIR VICTORINO: Okay. Thank you.

COUNCILMEMBER BAISA: Let’s…bad example, again.

CHAIR VICTORINO: Thank you.
COUNCILMEMBER BAISA: Let's find one that is a groundwater well and does this exist anywhere? Is there a groundwater well that exceeds the established pump capacity?

CHAIR VICTORINO: Mr. Eng, do you know of any?

MR. ENG: I don’t know any right off hand, but I’m certain there might be out there some, you know, some, you know, water purveyors that are not really responsible to be monitoring their chlorides and may be tweaking and changing their pump capacity or to keep that water quality good. So it could happen.

COUNCILMEMBER BAISA: The only thing I’m trying to find out here is, are there gonna be some unintended consequences of this restriction? That’s, that’s what I’m trying to do. I mean, I think it’s a great idea and I have no problem with it, but, you know, is it gonna affect somebody and then we’ll have them screaming that you did something to me?

CHAIR VICTORINO: Mr. Eng or Mr. Kushi, would you like to respond to that question?

MR. ENG: Thank you, Mr. Chairman. You know, I don’t think there will be any unintended consequences. I think the intent of this is to make certain that anyone is a responsible groundwater well operator and purveyors so that they aren’t doing anything intentional to destroy a good well. So I think the intent is good, I think the language that Deputy Corporation Counsel Kushi came up with is, is very good, and I think it meets the needs of this definition.

COUNCILMEMBER BAISA: Thank you very much.

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

VICE-CHAIR PONTANILLA: Thank you. Just a fast question for the Director -- exceeding the established pump capacity. So establishing the pump capacity is that the work of the Department whenever a person that want to do a potable well, you determine the pump capacity, the pump, the horsepower of the pump to draw this water?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman, Member Pontanilla. The pump capacity is, is determined by the Water Commission. So based on the pump tests that are provided by the developer to the Water Commission, they will determine what is the satisfactory pump capacity and pump size to put in.

VICE-CHAIR PONTANILLA: Thank you. So the pump size...in other words, what I’m looking for is that safety net where, you know, if I...you know, putting an oversized pump where you can, you know, pump that well to, to an area where suddenly you start pumping brackish water.

MR. ENG: Well, I think the Water Commission, if, if they’re doing their job correctly, you know, they will be very mindful of the proper pump capacity, and even if a well owner changes the pump,
they’re required to provide that information for the new pump or pump replacement to the Water Commission. I think what this gives us is that if we maybe have a suspicion that it’s say if there’s a new golf course coming in or a new source for irrigation for a golf course and we kind of question the quantity of water that’s coming out of this well, this gives us a basis for investigating to see if perhaps they have put in a pump of too great a capacity that could cause over pumping and possible destruction of the aquifer. So this gives us, you know, the tool that we need.

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

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Mr. Molina, followed by Mr. Medeiros. Go ahead, Mr. Molina?

COUNCILMEMBER MOLINA: Thank you Mr. Chair. Mr. Director, just following up on Member Pontanilla’s question, using an example, by you inserting this amendment or us, the Committee considering this amendment, if I could use the name of one particular well—and, Mr. Chair, if I do stray, you know—

CHAIR VICTORINO: I will let you know.

COUNCILMEMBER MOLINA: --please call it. Thank you.

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER MOLINA: Okay. For example, Pookela. How would a situation like with Pookela…you know, there were issues with the pump and the initial amount of water that was supposed to have come out of that well. How would this apply to a situation like that, you know, exceeding the established pump capacity?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you. Pookela probably isn’t the best example because its water quality is really, really good, has very, very low chlorides. Even when we’re running it at 24 hours full capacity, you know, the chlorides have remained very, very nominal.

COUNCILMEMBER MOLINA: Well if there’s another well that you could use.

MR. ENG: . . . ([Inaudible]) . . . a good example. But there are some out there in certain aquifers that are not as good sources that—you know, again, I, I believe that all water purveyors should be very prudent in how they operate their sources. We all have to be responsible for the aquifers. So in a way it will cause I think everyone again to be more mindful and responsible, and so I don’t think that there’s any unattended consequences that I know of. It will force people to be responsible purveyors.
COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Director, and, you know, and I, and I appreciate, you know, the added clarity to, to the amendment or to the...this, this particular chapter. So anyway, okay, I just want to make sure what, what we’re doing here is, you know, as, as the Director said will not result in any unintended consequences. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you, Mr. Molina. And that’s, that is my hope that whatever we come up with is as clean as possible. Can I guarantee any no, no in unintended consequences; unfortunately, I cannot guarantee you folks that, but let’s make it as clean as possible. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Director Eng, the question was asked about who establishes the pumping capacity and your response was the Water Commission. Now the permits for wells, isn’t that through the Department of Health?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman, Member Medeiros. There’s a couple of things going on when there’s a new source developed. One is the Water Commission and, you know, they are provided with the drilling logs, the pump tests, and through those tests...they basically determine the pump size or pump capacity. The other thing that is required by the well developer is working with the Department of Health and providing them with, them with an engineering report. Most of that report is, is focuses on water quality --

COUNCILMEMBER MEDEIROS: Right.

MR. ENG: --and there were other things too that the Department of Health now looks at and it is proper management of that source, proper financial capabilities of the well owner. Part of it is design location, but, yeah, you’re right, it’s...Department of Health rules mostly in water quality.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that clarification. So does the Department of Health require well owners to make frequent reports on the chlorides in their water and if they do, how often are those reports required?

MR. ENG: Okay. Member Medeiros, on as far as Department of Health’s requirements, there is some regular water quality tests that are required either on an annual, sometimes as frequently as a quarterly basis, sometimes every three to five years depending on the overall water quality issues with that particular source. But as far as chlorides, the Water Commission requires a monthly report on pumping quantity as well as chlorides. So they have records on chlorides. I don’t know how well they are as far as monitoring those records. We receive copies, the County, for our records and we have a chance to monitor water quality in terms of chlorides of the various other wells on this, in the County.

COUNCILMEMBER MEDEIROS: Okay. But the Department of Water Supply, your Department, you do tests on County facilities?
MR. ENG: Yes, we do.

COUNCILMEMBER MEDEIROS: You don’t do tests on private facilities?

MR. ENG: No, we do not.

COUNCILMEMBER MEDEIROS: Okay. So is there a partnership between the Water Commission and the Department of Health to be sure that these reports are corroborated between the two agencies as far as the quality of the water and the test?

MR. ENG: Member Medeiros, I, I’m not aware of any coordination between the two agencies. I’m sorry.

COUNCILMEMBER MEDEIROS: Okay. And then part of what I read was that—if I didn’t understand it correctly—but surface water, especially water coming through a ditch system, such as in East Maui or Na Wai Eha or the established ditch system throughout Wailuku, is that considered nonpotable water?

MR. ENG: Yes, it is nonpotable.

COUNCILMEMBER MEDEIROS: So it doesn’t become potable until it’s treated?

MR. ENG: That’s correct.

COUNCILMEMBER MEDEIROS: So that water can go to golf courses before it’s treated because it’s considered nonpotable?

MR. ENG: That’s correct.

COUNCILMEMBER MEDEIROS: And so that agreements are, is that done between the water purveyor and the private entity?

MR. ENG: As far as how that water can be utilized?

COUNCILMEMBER MEDEIROS: Yes, as nonpotable.

MR. ENG: Yeah. Well, again, for a golf course nonpotable water should be used.

COUNCILMEMBER MEDEIROS: Okay. So it’s considered nonpotable when it comes in a ditch before it’s treated?

MR. ENG: Uh-huh. That’s correct.
COUNCILMEMBER MEDEIROS: Okay. That helps me understand it better. Thank you, Director. Mahalo, Mr. Chairman.

UNIDENTIFIED SPEAKER: Chairman?

CHAIR VICTORINO: Thank you, Mr. Medeiros. One moment. Mr. Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Chair. In the, the language aside from the newly amended one, where it says that “at one time met the standards established by the Department of Health”, Director, is...are those standards changed from time to time?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman and Member Kaho‘ohalahala. The standards are rarely changed. They basically are primarily established by the EPA. Because the State of Hawaii has primacy, in other words they really take the role of the EPA in enforcing the regulations, they actually can have more stringent standards than the EPA and, in fact, on a couple of chemical contaminants they do have higher standards, such as DBCP, for instance. And so your question if they change, they can change from time to time, very infrequently do they change, but the State of Hawaii has the most current standards that we must comply with.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then on the proposed amendment, the language, I think I understand what you were trying to include here. I was just wondering if alteration would be another part to this, altering or exceeding because in my understanding of your concern here of how pumping or...changes the quality of water by either, you know, over pumping. So I’m just wondering if exceeding is the only term that you would use in terms of establishing that the water quality is being changed or any other alteration of that as well as exceeding. Okay. Would you consider that as another added kind of safety because it may not necessarily be exceeding that changes water quality, but some other method that might be altering. So I’m, I’m just asking the question.

MR. ENG: Yeah, yeah it’s...

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Yeah. Thank you. You know, I, I think the language that Deputy Corporation Counsel Kushi came up with provides what we need as far as intent of this definition because again in my mind is more the, really addressing the potential over pumping of a groundwater source. So, I think the language that he has added has...provides, you know, that clarity that we desire.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then there’s no, no other ways in which that might be--okay, we’re talking about pump capacity, yeah?
MR. ENG: Yeah. I think overall in this definition everything is pretty much covered. I mean, you know, one thing that could happen with the groundwater well that is potable is the potential mixing with surface water, but Mr. Kushi has that covered in regarding mixing. So, I think this definition is satisfactory.

COUNCILMEMBER KAHO‘OHALAHALA: And then, thank you for that and the only other question I have is because you, you raised that several times this morning about your concern that the water purveyor should be more prudent and responsible in their, you know, in their use of the aquifers. So, am I to understand then at this point there is no real responsibility or any regulation that would help other purveyors or private water purveyors in terms of maintaining quality, and you said you don’t even monitor them, you know.

MR. ENG: Right.

COUNCILMEMBER KAHO‘OHALAHALA: So, are we missing an opportunity now, then or are we needing to perhaps take a look in that area only because, again, you’ve stated that several times this morning.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Well, thank you for those thoughts.
Again in terms of water quality, the Department of Health is really on top of that, you know. They’re highly efficient, and they’ve got their water quality program and testing done...very well-managed and organized. As far as pumping and the possibility of over pumping, that is more the, the function and role of the Water Commission, and, and as I understand, that they are somewhat understaffed and under-budgeted. You know I, I’m not volunteering our Department to take on a role on this.


MR. ENG: Share me some bodies and money. I mean it could certainly be something down the road when times get better that, that we take on that kind of function...you know, in many, regards it makes a lot of sense. You know, we’re managing most of the water systems and aquifers and, and to expand our efforts is logical, but, but at this time unfortunately we can’t do that. You know our hands are really, really full, you know, we’re overfilled in fact right now. But that’s a thought to keep in mind, I think.

COUNCILMEMBER KAHO‘OHALAHALA: No, I only raised that question, one, is because I again...you’ve mentioned this often. The other is that...

MR. ENG: I’m sorry I did. . .(chuckle). . .

COUNCILMEMBER KAHO‘OHALAHALA: The other is that it is still a resource that we all are dependent upon, whether or not we’re private purveyors or your, your, you know, Board of Water
Supply, and we should at all times be very careful about what is the condition and the quality of our water no matter who is, who’s pumping it. So, so I think in that regard we should be involved in understanding what that is because ultimately when you say at some time down the road, some time down the road may not offer us any other recourse, you know, because we have not stayed on top of the monitoring of the quality irregardless of who’s pumping, you know. So, I just raise that as something that—and you said it’s the Water Commission that should be responsible for this and, and if and that they’re understaffed, you know. So that raises even more concerns I think we should have locally because we should be concerned --

MR. ENG: Uh-huh.

COUNCILMEMBER KAHO‘OHALAHALA: --here about what the condition and quality of our water is at all times.

MR. ENG: I totally agree with you and I, I think the efforts that, that we’re doing even in considering this ordinance, and, and I think how our Water Department operates and functions, I think for the community and for the County we, we do lead, we’re leaders by example. I think that’s why we, we have our concerns and we’re trying to address them and we, we are trying to have them to be applied to all, even the private water systems. So, I think we are in many ways taken on that role already, you know, in doing the best we can with that too.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Thank you, Chair.

CHAIR VICTORINO: Thank you. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Jeff or Junior maybe, I was reading 20.24 and then I was reading the new definition. Under 20.24, Junior, it says potable water means surface water which has been treated, satisfies standards set forth in Chapter 20 of the State Department of Health rules entitled, and then it...potable water systems, and then it goes all the way down to ending with Sections 141 and 143. So you’ve eliminated this by saying that Department of Health has suitable for cooking and drinking, that standards? Is that what meets everything there?

CHAIR VICTORINO: Mr. Kushi?

COUNCILMEMBER NISHIKI: Because it talks about maximum contaminant level goals, national secondary drinking water contaminants set forth in 40 C.F.R., Sections 141 and 142, and groundwater extracted at an acceptable rate containing less then 250 milligrams per liter chlorides which can be disinfected to satisfy standards set forth in Department of Health Rules Chapter 20 entitled “potable water systems” and maximum contaminant levels and national secondary drinking water contaminants set forth in 40 C.F.R. Sections 141, 143 (1990) version. So does that, what you have now for potable water definition include all of that, and should it be included?

MR. KUSHI: Mr. Chair, may I? Member --
CHAIR VICTORINO: Yes, go ahead.

MR. KUSHI: --Member Nishiki --

COUNCILMEMBER NISHIKI: Yeah.

MR. KUSHI: --yes, we did, we did eliminate all of that technical statements --

COUNCILMEMBER NISHIKI: Right.

MR. KUSHI: --for, for two reasons.

COUNCILMEMBER NISHIKI: Okay.

MR. KUSHI: One, the prev...previously in one of the bills that passed this body under title, under Chapter 14.01, there, there was a definition that this body adopted as potable water. It’s hard to find but anyway, that, that definition of potable water in that chapter basically is the same statement, definition as in this proposed bill: “potable water” means water that has been certified by the Department of Health as suitable for cooking or drinking purposes.

COUNCILMEMBER NISHIKI: Right.

MR. KUSHI: In your reference to Chapter 20.24, again, whatever that, those statements mean--and I’m not a scientist by any means--but the Department of Health takes into account those...the, the standards or definitions in Federal rules and regulations. But also we’ve had a situation pursuant to on, on the island of Lanai in their use of potable water, and those definitions came into dispute or the forefront in, on advice of our Deputy Corp. Counsel in the litigation side under the State Land Use Commission proceedings, which our Lanai member may, may know about, she advised to take out those definitions.

COUNCILMEMBER NISHIKI: Okay. That Lanai case was when they asked us because the golf, I don’t know, they were changing the grass and they were reseeding that they needed to use potable water? Was that the...

MR. KUSHI: I’m, I’m not sure what the exact circumstances, but I know there’s a high level aquifer and a lower level aquifer, and then there’s a use of the Manele and the Koele golf, Koele Golf Course, Koele Golf Course, and they need to report to the State Land Use Commission as to exactly what source and how much of what they’re using, and there was a dispute.

COUNCILMEMBER NISHIKI: Okay. So that’s the reason that was left out?

MR. KUSHI: Correct.
COUNCILMEMBER NISHIKI: Okay, and...

MR. KUSHI: Now, now again the, the...you have to understand that what you’re reviewing now may not apply to the Lanai situation at all because this involves only new grading or grubbing permits for new golf courses.

COUNCILMEMBER NISHIKI: Right. Okay, here’s a scenario that I, I kind of want to pursue in regards to nonpotable and potable when I think Mr. Medeiros said any surface water untreated, Jeff, is considered to be nonpotable water so, therefore, it can be used. If an existing river--I’ll take Iao River--and for a long time the plantation has diverted water through its ditch system. Now that ditch system, from what I understand anyway, and you may because you guys are probably involved in Na Wai Eha, but now that ditch system has been created and I don’t, I don’t know how far it extends--can someone use that ditch system to get that water and use it for irrigation of a golf course --

CHAIR VICTORINO: Mr. Eng or Mr. Kushi, whoever would like to pursue that?

COUNCILMEMBER NISHIKI: --you know?

MR. KUSHI: Yeah. Member Nishiki, my understanding is the answer to your question is currently, yes. In fact, Waikapu golf courses are both using, the both golf courses are using that water. As you know, the surface water in this area, Na Wai Eha, has been designated. The State Commission is now reviewing permits. Under the system of designation, any existing use has to come in for a permit to use it. New uses also have to come in for a permit to use, but as of now I believe until they issue these permits everything is status quo.

COUNCILMEMBER NISHIKI: Is status quo? Okay. Only because if there are more golf courses that may be using these diversions now, I was thought to believe that those diversions were mainly used for irrigation of agriculture, okay, and so I thought that the challenge was because a lot of these diversions are now using it for urbanization or whatever and saying that, you know, well, that’s how they’re doing it. And so the concern I, I thought--Jeff, you may know more about it--was the concern from native Hawaiians is that, that was not why the diversions were created, it was for agriculture. So, therefore, urban use...or from what I can understand is golf course also not allowed to use that diversions, or is it, that has...has that concern been addressed yet?

MR. ENG: Mr. Chairman?

CHAIR VICTORINO: Go ahead, Mr. Eng.

MR. ENG: Member Nishiki, you’re probably right, it hasn’t been addressed yet. If I can just expand on what Mr. Kushi explained. Again, before the Commission is the interim instream flow standards to be addressed first by the Water Commission. We do not know when that’s gonna be happening; apparently there’s been some delays. And then concurrently or shortly thereafter would be the review of the existing surface water permit applications, of which I believe the golf
courses that Mr. Kushi referenced has, has existing uses. So based on the decisions the Water Commission will determine if it is a reasonable and beneficial use of surface water. And you’re probably correct as far as your history of the ditches; they were initially intended for ag purposes. But as you probably know, we even from municipal purposes draw some water off of the Waikapu Ditch for our Iao Water Treatment Facility, and we average about 1.5 million gallons per day to serve our community. So there are multiple users and uses of that water now and it’s in the hands of the Water Commission to determine who will continue to be able to use, have those uses.

COUNCILMEMBER NISHIKI: Okay. So, so right now those waters that are being diverted are considered nonpotable --

MR. ENG: That is correct.

COUNCILMEMBER NISHIKI: --so that they would be falling under this definition? Junior?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: They, they would not be considered potable, so they could be used.

COUNCILMEMBER NISHIKI: Right. Okay, I’m done.

CHAIR VICTORINO: Thank you. Mr. Pontanilla, you had a question?

VICE-CHAIR PONTANILLA: Thank you. I think Member Nishiki touched on the question that I had. My only concern regarding the statement by the Director is in regards to testing of our waters if the State continue to do what they’re doing at this time in reducing their workforce. If it does affect the Department of Health, I’m sure, you know, Mr. Eng is gonna approach us in regards to we doing our own testing in the future. So just a caution. Thank you.

MR. ENG: If I may make a comment, Mr. Chairman.

CHAIR VICTORINO: Yes, go ahead, Mr. Eng.

MR. ENG: Member Pontanilla, we do a lot of our testing. We have our lab down at our baseyard. We do most of our bacteriological testing, we have been certified to do a lot of inorganic chemistries, and we’re even pursuing more certifications to doing other additional tests. So somewhere down the road we’re hoping to be pretty much self-sufficient in terms of testing for water quality and, and also in the end we will save a lot of money rather than using private laboratories. So, yeah, we’re trying to get there. Thank you.

VICE-CHAIR PONTANILLA: Thank you, Chair.
CHAIR VICTORINO: Thank you, Mr. Pontanilla. Any other questions pertaining to this subject matter? Mr. Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Well, I have a question that’s pret...that I’d like to ask about the, the bill itself.

CHAIR VICTORINO: It’s pertaining to the matter, go ahead.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Under the reclaimed water, Director, and when it says oxidized and disinfected, is it clear to all of us what, what those terms mean?

MR. ENG: Mem...

CHAIR VICTORINO: Go ahead, Mr. Eng.

MR. ENG: Mr. Chairman, thank you. Member Kaho‘ohalahala, well it’s clear to me; I don’t know if it’s clear to you folks. Oxidize is, is that the one term that might, you question?

COUNCILMEMBER KAHO‘OHALAHALA: No, I just wanna know that, you know, we use standard as another one in the previous --

MR. ENG: Uh-huh.

COUNCILMEMBER KAHO‘OHALAHALA: --section and that seems to be something that we all accept as defined. Okay, now we’re using these terms here, oxidized and disinfected, so I just wanna know that they’re also clear to whoever is reviewing this or reading this.

MR. ENG: Yes, I believe...it, it’s generally understood that treated water, wastewater we do it by...generally by aeration, it’s a microbiological process generally, so...and in the process it is being oxidized in order to treat wastewater and afterward it is, afterward it is disinfected. So I, I believe this definition is appropriate.

COUNCILMEMBER KAHO‘OHALAHALA: And then the methods of disinfection or is, is covered in the term?

MR. ENG: I think just using the term disinfected is appropriate. There are different methods, you know, chlorination, UV radiation, or other, other types of different disinfectants too. So, I think just keeping it at disinfected is appropriate.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Thank you, Chair.

CHAIR VICTORINO: Mr. Nishiki?
COUNCILMEMBER NISHIKI: Yeah. If there’s no objections, can I have Mr. Duey come down. I’m just concerned about...

CHAIR VICTORINO: There is an objection and I will not allow that at this time because we’re covering this matter, okay, Mr. Nishiki, and I want to keep on the matter at hand. Okay. And I don’t think this, at this time—we’re gonna talk surface water, at a later point we will be bringing that up by the way, that will be coming up at a later time. So I, I, I don’t see a reason for it, but you know what, I’ll ask the Committee. Do you guys see a reason for Mr. Duey to come down?

COUNCILMEMBER MEDEIROS: I don’t have an objection.

COUNCILMEMBER BAISA: No objection.

COUNCILMEMBER KAHO‘OHALAHALA: No objection.

CHAIR VICTORINO: That’s fine. Mr. Duey, would you mind?

MR. DUEY (from the audience): No, I don’t mind.

CHAIR VICTORINO: Thank you, Mr. Duey.

MR. DUEY: Good morning again. John Duey, Iao Valley.

CHAIR VICTORINO: Thank you, Mr. Duey.

COUNCILMEMBER NISHIKI: Thank you, John.

CHAIR VICTORINO: Keep your question to the matter at hand, Mr. Nishiki.

COUNCILMEMBER NISHIKI: We’re discussing potable water and its implications on what is now occurring, and you’ve heard Jeff Eng, you’ve heard the Corporation Counsel give us a definition of potable water. So any water that may be diverted from the stream to, to the puna... through the ditch systems is considered potable water. My concern is if that water that you have been concerned with, with the inability of the stream to stay alive because water doesn’t flow year round, and it could be because we’re diverting all this water now for whatever golf course or urban use or whatever, has that concern been your concern because this is called now, nonpotable water?

MR. DUEY: My understanding of this bill and my understanding at any ditch water would be nonpotable water, in other words you wouldn’t wanna drink the water. I have dranked [sic] the water out of the streams, but they say it’s not good for you to do that, but I have. So the use of nonpotable water for whatever purpose as stated now in the bill, that’s the law at this point. Our...as you know our, our--well, I don’t know how to answer your question, but could you rephrase it again a little more clearly and I’ll try to...
COUNCILMEMBER NISHIKI: Yeah. That water now, as you heard by Mr. Eng, it’s, it’s used and we’re using it for consumption because we’re cleaning it up.

MR. DUEY: Right, and making it, making potable water --

COUNCILMEMBER NISHIKI: To make it potable.

MR. DUEY: --making it potable.

COUNCILMEMBER NISHIKI: Okay. So, so that’s acceptable, but perhaps not acceptable if that water that is being div..., diverted now is killing the instream inhabitants and cause for concern because of the ecosystem now that probably has been raised by Na Wai Eha.

MR. DUEY: Well, yeah, that’s our whole issue is the instream use of...or actually off-stream use of water we wanna replace to the streams. So the more water that is removed from the streams and treated by whomever, including the County, it’s detrimental to the stream life. So, you know, whether...whatever, we’re just trying to get water back in the streams. So, I don’t know, kind of, kind of little bit confusing, I guess.

COUNCILMEMBER NISHIKI: No, it’s not confusing, it’s very clear. And, and it you just made it very simple and clear I think for all of us. Thank you.

MR. DUEY: Thank you.

CHAIR VICTORINO: Any other questions for Mr. Duey before I let him go? Thank you. Any other discussion on this particular area of the bill or any other part of this, this ordinance?

COUNCILMEMBER KAHOʻOHALAHALA: Question, Chair --

CHAIR VICTORINO: Yes.

COUNCILMEMBER KAHOʻOHALAHALA:: --to Corporation Counsel. This bill is, as you’ve stated, intended for new developments, for new golf courses, and so it does not in, impact at all on the current golf courses and its use of potable water then?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes, that was the intent of this bill as well as the same intent of the bill before.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. So we’re anticipating future use, but we are not, we’re not doing anything for current use then?

MR. KUSHI: No, this bill will not affect any golf course that was in operation before.
COUNCILMEMBER KAHOʻOHALAHALA: Okay. Okay. I just wanted that to be clarified. Thank you.

CHAIR VICTORINO: Thank you. Yes, Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Just one question under purpose. Maybe I’m getting carried away with words and definitions, but a golf course is defined as what, is it a business? Because if you look at under A., the Council finds that potable water must be limited to personal use in homes and businesses, and I just wanna ensure that, you know, someone don’t, that there’s no loophole that somebody can find and say, hey, you know we’re a business. But maybe I was just thinking if additional language might be needed after the word “businesses”, you know, say businesses that use less than a million gallons of water like your typical golf course can. Maybe if Corporation Counsel, Mr. Kushi, if you can comment on that, or is it just me? I don’t know.

CHAIR VICTORINO: Mr. Kushi?

COUNCILMEMBER MOLINA: Because I, I’ve never heard of golf courses being, you know, as nonprofits or whatever...but, but, you know, they’re in, they’re in business to make money. So just comments, again, from Corp. Counsel, Mr. Chair. Thank you.

CHAIR VICTORINO: Well, before Mr. Kushi gives his comment, I know of one golf course that is nonprofit. Go Waiehu, it’s nonprofit.


CHAIR VICTORINO: We subsidize it all the time. Thank you very much. I just wanted that pointed out. Go ahead, Mr. Kushi.

COUNCILMEMBER MOLINA: Okay.

MR. KUSHI: If I understand the question, Member Molina, is this bill was, this bill as well as the bill that was done in 1991 affected, was intended to affect only golf courses and the related non-domestic uses around a golf course, and non-domestic uses are defined in the bill. Situations where—I mean, I mean it’s, it’s limited to golf courses. It, it wouldn’t be limited to mini putt-putts, the one that you have at Maalaea. I don’t think it was intended to apply to that. If you, if you...if it’s your desire to expand it to any other business, then, then I believe it’s a substantive change, if I understand your question, Member Molina.

COUNCILMEMBER MOLINA: No, no it’s...I just want to ensure that any new applicant for a future golf course can’t use a loophole. Because looking at that purpose, personal use in homes and businesses, to ensure that they understand that this is...you know, even though a golf course is a business where, you know, we have language in there that can cover ourselves. I mean if this is
adequate, it’s adequate…I mean, you know, from a, from a legal standpoint. So, you know, I just wanna make sure any kind of legislation we get out is as tight as possible. I know there’s no perfect, nothing can ever be perfect, but as I was reading the purpose and trying to connect golf course and what is a golf course, you know, as the Chair pointed out, we have a nonprofit golf course, but all of our other courses they’re businesses and they’re in business to make money so, anyway…

MR. KUSHI: Member Molina, maybe just one clarification. How this bill would work as well as the previous bill, is that I would imagine if you have a new golf course and you don’t need a grading or grubbing permit, then you can do what you want. But usually golf courses would require a grading or grubbing permit and a building permit for their club house. So these restrictions apply at the time of the application for those types of permits and it, it requires the County Administration not to issue these permits if the golf course cannot prove that they’re using nonpotable water.

COUNCILMEMBER MOLINA: Uh-huh. Okay. Okay. I guess that, that…those would be the components that would ensure that no loopholes can be found with this. Okay. Thank you, Mr. Kushi. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you, Mr. Molina. Yes, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Kushi, just as little follow-up. When and if this becomes an ordinance and when it is approved the date it becomes effective, what happens to the application in the process, meaning that people have golf course applications that are already in the process or there are projects, development projects including golf course in the process of obtaining permits? How do you treat these applications through this ordinance?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes, upon the enactment of this ordinance it becomes effective, effective upon the effective, the date the ordinance becomes effective.

COUNCILMEMBER MEDEIROS: Correct.

MR. KUSHI: Up to that time, Chapter 20.24 is in effect, and any pending applications should be covered by Chapter 2.24 [sic], excuse me, and the restrictions I just mentioned to Member Molina are the same ones that are in place now. So there should be no applications for golf course permits using potable water.

COUNCILMEMBER MEDEIROS: Okay.

MR. KUSHI: Currently.
COUNCILMEMBER MEDEIROS: Okay, maybe a little more clarification. I can understand upon enactment of this ordinance there would be no new applications for golf courses. My question is what happens to the applications already in the process, does it end for them there or are they allowed to proceed for approval?

MR. KUSHI: They’re allowed to proceed if they use nonpotable water.

COUNCILMEMBER MEDEIROS: But when they started the application, they were allowed to use potable water? Is that correct?

MR. KUSHI: No, under the current existing ordinance.

COUNCILMEMBER MEDEIROS: They can’t use it already?

MR. KUSHI: Correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that clarification. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Any other questions?

VICE-CHAIR PONTANILLA: No, just a comment.

CHAIR VICTORINO: Yes, yes, Mr. Pontanilla, go ahead.

VICE-CHAIR PONTANILLA: Yeah, I just had a comment, and basically the comment is that, you know, we do have several golf courses in Central Maui, and I think we need to do a thorough study in regards to utilizing recycle water for these golf courses in Central Maui, and the issue there is are we willing to spend the millions of dollars to provide the nonpotable water, utilizing the recycle water to these golf courses and not use the ditch water which can also be disinfected for potable use. Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Any other discussion on the matter?

COUNCILMEMBER MOLINA: Recommendation.

CHAIR VICTORINO: Okay. The Chair will make his recommendation. Thank you very much, it has been an interesting morning. So much for--anyhow, if there’s no further discussion, I will entertain a motion on first reading the revised proposed bill entitled “A BILL FOR AN ORDINANCE REPEALING CHAPTER 20.24, MAUI COUNTY CODE, AND AMENDING CHAPTER 14.08, MAUI COUNTY CODE, RELATING TO THE RESTRICTIONS ON USE OF POTABLE WATER FOR GOLF COURSES”, and also the change that, the revised change that has been made, and the filing of County Communication 09-169.
VICE-CHAIR PONTANILLA: Mr. Chairman, I move that we move this bill forward "A BILL FOR AN ORDINANCE REPEALING CHAPTER 20.24, MAUI COUNTY CODE, AND AMENDING CHAPTER 14.08, MAUI COUNTY CODE, RELATING TO RESTRICTIONS ON USE OF POTABLE WATER FOR GOLF COURSES", and the amendment that was made this morning, as well as the filing of the communication.

CHAIR VICTORINO: Is there a second?

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

CHAIR VICTORINO: Thank you. It's been moved by Vice-Chair Pontanilla and seconded by Member Baisa. Any further discussion on this matter? Seeing none, all those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? Let the record say, show six ayes; no noes; and one excused, Chair Mateo.

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

NOES:  None.

EXC.:  Councilmember Mateo.

ABSENT:  None.

ABSTAIN:  None.

MOTION CARRIED

ACTION:  Recommending FIRST READING of revised bill, and FILING of communication.

CHAIR VICTORINO: Before we go into Water Use and Development Plan, I'll call for a ten-minute recess. I'll ask everyone to be back at exactly 10:35, if that's okay. This meeting stands in recess. . .(gavel). . .

RECESS:  10:25 a.m.

RECONVENE:  10:40 a.m.
CHAIR VICTORINO: . . . (gavel) . . . We will resume the meeting of the Water Resources Committee for August 18, 2009.

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

CHAIR VICTORINO: As I said earlier, I left public testimony open for WR-4, No. 4, and at this time seeing no one in the gallery, except Mr. Duey--would you like to say anything in that respect? Okay. So this is on our Water Use and Development Plan, and after you've completed your testimony, Mr. Duey, if you would sign up with Tammy there, I would appreciate it. Thank you for coming back, Mr. Duey.

...BEGIN PUBLIC TESTIMONY...

MR. DUEY: Yeah. Good morning again, John Duey, Iao Valley. Testifying on WR-14, rather, the Water Use and Development Plan. I was privileged to attend, I believe, 11 or 12 of the Central Maui meetings. I was very involved in this issue and some things that I wanted to get on the agenda sort of got on the agenda with the, with Mr. Freedman. I'll be looking forward to when it appears at the Council to be testifying about some issues in the Water Use and Development Plan that I think in 1990 when the last one was done, if I'm right. It's a, it's a State Law that should be updated. It's too way past due. I think it's been three or four years in the making; at this point it's an update. So I'll be looking forward to it appearing here before the Water, Water Resources Committee. Thank you very much for your allowing me to testify.

CHAIR VICTORINO: Yeah. Thank you, Mr. Duey. Any questions for Mr. Duey on WR-4, Water Use and Development Plan? Seeing none, thank you, thank you, Mr. Duey. Okay. Members, the second item--oh, at this time, with no objection, I'd like to close public testimony on WR-4, Water Use and Development Plan.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very much.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: If you guys would turn to correspondence dated August 11, 2009, from the Department of the Corporation Counsel, before you is the proposed bill, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE, RELATING TO THE WATER USE AND DEVELOPMENT PLAN". This bill amends 14.02, Maui County Code, to establish procedures for the Department of Water Supply to update the Water Use and Development Plan and to revise the procedures for amending the Water Use and Development Plan. The Staff has prepared the bill, which has been approved by Corporation Counsel. On your desk is a copy of the current 14.02 for your reference.
So let us begin...and at this time I will ask to take a quick recess so we can drop the screen, and once the screen has been dropped we will start and, Mr. Kushi, you will be doing the reading of the bill itself. Is that correct?

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

CHAIR VICTORINO: Thank you. Okay. This meeting stands in recess for two minutes so we can put down the screen. ... (gavel)...

RECESS: 10:45 a.m.

RECONVENE: 10:47 a.m.

CHAIR VICTORINO: ... (gavel) ... The meeting of the Water Recess, Resources Committee will reconvene. At this time, we have on the screen Chapter 14.02, which is the Water Use and Development Plan. At this time, I will ask Mr. Kushi from Corporation Counsel to read the bill and, and highlight the various changes that we are recommending. Mr. Kushi?

MR. KUSHI: Okay. Mr. Chair, what you have up before you is the proposed amendment, amendments to the existing Chapter 14.02, which was enacted in 2006. This discussion was initiated, I guess, a couple meetings ago when this body discussed the...Water Use and Development Plan amendment update situation and discovered that the existing chapter required this body to approve any amendments within, I believe, 90 days or 60 days, and therefore it was requested that we revise the chapter. What you have before you is, again, in brackets means they're deleted, underline is additions.

So beginning, the purpose remains the same, Sec...Subsection .010. Moving on to Subsection .020, Adoption of the plan, the amendment will now read: the Council adopted the plan by Ordinance No. 1948, and any update--strike “revision”--any update of the same pursuant to Section 14.02.040 of this chapter or amendment--strike “modification”--of the same pursuant to Section 14.02.050 shall be deemed part of the plan without further adoption or amendment to this chapter and shall be incorporated into this chapter by reference.

Subsection .030, Application of the Plan. The only change is that, it will...it now reads: The plan shall serve as--strike “a guideline”--and now reads: the plan shall serve as the primary guide to the Council, the Department, and all other agencies of the county. I believe this was bought up in the discussion with Member Baisa so it’s clear that it is now a primary guide. The balance of that Subsection remains the same.

Subsection 04... .040 was entitled Amendment, and contained three separate paragraphs A., B. and C. We’re strike, we’re proposing to strike all of those, and now rename that Subsection .040 and call it Update of the plan, which reads: The Department shall update the plan pursuant to Section 8-11.2(3) of the revised charter of the County of Maui (1983), as amended. Plan updates
shall be transmitted to the board for its review and recommendation, the council for adoption by the ordinance, and the commission for inclusion in the Hawaii water plan in the following manner: Reference, the board has been defined previously as the Board of Water Supply, and the Commission is the State Commission on Water Resource Management.

The following manner: Subsection 1. The Department shall simultaneously transmit proposed updates to the board and the commission for review.

2. Within ninety days of receipt of any update, the board shall hold at least one public hearing on the proposed, proposed update. Within ninety days from the date of the last public hearing, the board shall transmit the proposed update its findings and recommendations to the Council.

3. Within one hundred eighty days of receipt of any proposed update, findings, and recommendations of the board, and recommendations of the commission, the Council shall either approve or disapprove the proposed update. If the Council fails to act within 180 days, the update shall be deemed approved; provided that the Council may, by resolution, extend the time within which the Council must approve or disapprove the proposed update.

4. Within ten working days after the effective date of this ordinance, of the ordinance, described above, the Council shall transmit the ordinance to the commission for final review, acceptance--excuse me--and incorporation into the Hawaii water plan.

This in essence, Members, provides you a more definite process, defined process and also provides you more time, and also provides you the opportunity to extend your time to approve or disapprove.

New Subsection .050 is now entitled Amendment. And it reads as follows: Any amendment to the plan proposed by the Council, the director, or any agency shall be referred to the board for its review and recommendations. Upon receipt of any, of a proposed amendment, the board and the Council shall follow the procedures set forth in Section 14.02.040 of this chapter, as we previously discussed above, yeah.

And B., Whenever the planning director recommends revisions to the general plan pursuant to Section 8-8.3(3) of the revised charter of the County of Maui (1983), as amended, which revisit...which revisions will affect the plan, the director shall recommend adjustments--strike that--the director shall recommend amendments to the plan so as to be consistent with any community plan amendment.

And, again, Section 2 is just the standard recitations.

CHAIR VICTORINO: Thank you, Mr. Kushi. Just to make it easier for all of us to focus in, I will leave the screen up at this time and if you have specific questions on any section--and, Kim, if you'd like to go to the very top and we can work our way down. If any Member has a specific question
on any of the Subsections that Mr. Kushi has gone through, I will allow questions at this time. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Chairman, I do have a question on the second page, 14.02.040 --

CHAIR VICTORINO: Okay, go ahead.

VICE-CHAIR PONTANILLA: --Item No. 3, 3(C)...3.

CHAIR VICTORINO: Okay, that's the one within 180 days, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR VICTORINO: Okay, go ahead.

VICE-CHAIR PONTANILLA: A question to Corporation Counsel in regards to -- provided the Council may, by resolution, extend the time within which the Council must approve or disapprove the proposed update. I'm assuming that a one-time date, in other words extending just that one time?

CHAIR VICTORINO: Mr. Kushi, would you like to answer that question?

MR. KUSHI: As it reads and as I understood to be intended, that if the Council needed more time, it could extend the time, the 180 days. Now if you're talking about --

VICE-CHAIR PONTANILLA: In other words...

MR. KUSHI: --a resolution and then a subsequent resolution?

VICE-CHAIR PONTANILLA: Yeah. If by resolution, you know, when we extend the time to a date certain and if we still, you know, don’t resolve, then can that be extended again?

MR. KUSHI: It doesn’t say either way. We can make it more specific and say one extension.

VICE-CHAIR PONTANILLA: Yeah. Otherwise, we can go on forever, you know, what I mean?

MR. KUSHI: That, that may be true.

CHAIR VICTORINO: So, Mr. Pontanilla, your suggestion that at this point you would like to amend that to have one extension?

VICE-CHAIR PONTANILLA: No, I, I think we need, you know, before I make an --

CHAIR VICTORINO: Yeah, okay.
VICE-CHAIR PONTANILLA: --amendment --

CHAIR VICTORINO: Yeah.

VICE-CHAIR PONTANILLA: --that, you know, we discuss this thing.

CHAIR VICTORINO: Okay. Okay.

MR. KUSHI: Mr. Chair, Member --

CHAIR VICTORINO: Yes, go ahead.

MR. KUSHI: --Pontanilla, if, if that’s the pleasure, I would, I would suggest maybe the language be, be stated such as where it says, provided that the council may, by resolution, extend the time, extend the time...no more than “x” days within which the Council must approve.

CHAIR VICTORINO: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. I could go with a language like that in regards to making sure that we complete this thing rather than have it hanging and no resolution.

CHAIR VICTORINO: Yeah, okay. You have a question Ms. ...or, Ms. Baisa, on this matter?

COUNCILMEMBER BAISA: I have a question on another section.

CHAIR VICTORINO: Oh, okay.

COUNCILMEMBER BAISA: But to comment on Mr. Pontanilla’s suggestion, I think it’s a good one and I think that it’s very good to put a time in there because we do have matters that go for years and years, never resolved. So, I think that’s a very good suggestion and we should accept one, maybe Corp. Counsel can give us an idea of, you know, what is appropriate. But again, it’s how soon do we want to act. And, you know, I had a little experience with this last year as Planning Committee Chair, and we had to ex...ex...we had to extend the, like the time for approving the Countywide Policy Plan, and that was nobody’s fault, it just took longer to get to where we are than we were. But I think having some kind of deadline is good, Mr. Pontanilla, I agree with you because we have to get this done. This is a very important document.

VICE-CHAIR PONTANILLA: Yes, it is.

CHAIR VICTORINO: Okay. And, and I will agree with both of you and just so that you know, my concern was and when we were doing this, if let’s say the plan came to us in early March and then we get into budget and then three months go by so now we’re into June, so you really have only three months to get it done. So if you want to extend the time for another 180 days, if you
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want time certain, I don’t know, whatever the pleasure of the Committee is. But I agree, you
know, this is not something you want to stand around forever and ever; however, I just want to
make sure that we have and all of us know, we’ve gotten bogged down with different issues that
have taken our attention for a period of time. And so I don’t want something like this because it
does say, up further that it de...be deemed approved –

COUNCILMEMBER BAISA: Right.

CHAIR VICTORINO: if we don’t get it done. So I don’t want to just automatically have things
approved that we haven’t had a chance to really work on. So I leave it to the pleasure of the
group if you want to extend the time for another 180 days or longer or shorter, I leave it up to
you folks. I, I’m open to suggestions.

VICE-CHAIR PONTANILLA: I think Mr. Kushi had some language and if we can add it in, I, I think
the area we need to discuss is that blank, you know, that, that number of days. Mr. Kushi.

CHAIR VICTORINO: Mr. Kushi, what, what would you suggest, if I may?

MR. KUSHI: I, I wouldn’t want to suggest anything, it’s up to you.

CHAIR VICTORINO: Yes.

MR. KUSHI: But the specific language if you, you just let us know what the number of days, we can
work it out with Staff to put, to clarify that.

CHAIR VICTORINO: Mr. Pontanilla, 180 days or another choice. I would, I yield to you.

VICE-CHAIR PONTANILLA: Maybe 90 days.

CHAIR VICTORINO: 90 days?

VICE-CHAIR PONTANILLA: 90 days.

CHAIR VICTORINO: What do you think, Ms. Baisa. What is your thought in that area?

COUNCILMEMBER BAISA: Thank you very much, Chair. That’s a tough one, you know, like, like it
was pointed out. Things happen around here that we don’t plan for. Things come up that have to
be dealt with right away or some legal glitch comes up and we need another, you know, we need
more opinions or somebody to look into something. I kind of like the Chair’s recommendation
of another 180 days as an...’cause that’s six months and if we can’t do it six months, and that’s
generous, we’re in trouble.

CHAIR VICTORINO: I will ask Mr. Medeiros ‘cause--what would you like to, or what would you like
to see as far as an extension?
COUNCILMEMBER MEDEIROS: Well, I think—thank you, Mr. Chairman. Member Pontanilla suggested 90 days?

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: And Member Baisa suggested 180?

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: Okay. I don’t know why, but 180 seems to be a period of time that is applied to many processes and so just with that and allowing a little bit more time, I, I would support the 180-days extension.

CHAIR VICTORINO: Okay. Thank you, Mr. Medeiros. So if, if you would, Mr. Kushi, why don’t we insert 180 days so that the language would read, so that everyone of us can see it including the public. I should say, Kim, if you would.

MR. KUSHI: Mr. Chair, to clarify it is no more than 180 days.

CHAIR VICTORINO: No more. Okay, okay. Kim, if you would for more, no more, no more—excuse me—than 180, 180 days. Okay, okay. Is everyone clear with that, and okay with that? Okay, okay. Now, Ms. Baisa, Mr. Pontanilla, you okay with that?

VICE-CHAIR PONTANILLA: Oh, yeah.

CHAIR VICTORINO: Okay. Thank you. Ms. Baisa, you had a concern or you had another area you wanted us to look at?

COUNCILMEMBER BAISA: Thank you, Chair. If we could back up to No. 2, right above it.

CHAIR VICTORINO: Kim?

COUNCILMEMBER BAISA: Within 90 days of receipt of an update, the board shall hold at least one public hearing on the proposed update, and that, that’s the, the part that I have a little concern with.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: You know, normally if it’s a simple update and we’re just changing one or two sentences, I can see where this would work. What I’m concerned about is what we’re doing right now. What we’re getting is a complete overhaul and that complete overhaul is kind of complicated and I’ve been participating in those water plan development meetings and I’m realizing, you know, what a major overhaul it is to what we have. And I’m wondering, I’m not
comfortable with one public hearing and I realize it says at least one public hearing, but this is kind of a special situation and I don’t know what the intent of the Water Board or the Water Department is and how they’re gonna deal with this, but one public hearing is not going to be sufficient to deal with the overhaul of what is coming up. That’s, that was my comment and I’d like to hear from the Director as to what their intent is.

CHAIR VICTORINO: Mr. Eng, would you like to come here, and you could use this space here. Jeff, please.

MR. ENG: Thank you, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Eng.

MR. ENG: Member Baisa, yeah, right now the decision on how to handle the public hearing is in the hands of the, the Board Chair, Mike Howden. I think there’ll be some discussion at the next Board meeting coming up this month. So, hopefully, we’ll have more clarity; it’s all new to everyone. I’m certain they would like to expedite the process, but the public will also have an opportunity before this body.

CHAIR VICTORINO: That’s correct

MR. ENG: And once it’s passed on by the Board of Water Supply. So I’m sure the, and I’m sure that’s your concern.

COUNCILMEMBER BAISA: Yes.

MR. ENG: If what the community...has the opportunity for adequate input and in this process they have from the beginning through the Water Use and Development Plan Advisory Committee meetings and, and even once it leaves this body, it goes to full Council where there’ll be further opportunities. So, I think there’ll be sufficient opportunities for the public to comment on the process.

CHAIR VICTORINO: Ms. Baisa?

COUNCILMEMBER BAISA: Yeah, thank you very much for that. It’s very interesting, you know, I get a lot of calls in my office about water, being the Upcountry representative, probably more than most. ‘Cause who do you call, you call your Council Member and say, you know, I want my meter, I don’t like this, whatever. I am amazed that most of the people who call me do not know about the Water Use and Development Plan. They don’t know it’s being done, they don’t know what’s in it, they don’t know how it’s gonna affect anything and that concerns me because, you know, if we don’t get the public input upfront, then we sit over here dealing with the...I don’t like this and how did you do that. So I just want to be sure that there is adequate opportunity for people to comment and to be made aware of that there’s enough press coverage about what’s going on. It’s just a matter of, you know, educating the public. It’s better for all of
us when we do it upfront and then we don’t have to deal with it later. That was my concern in, my concern over one, at least one.

CHAIR VICTORINO: And, I tend to agree with you, Ms. Baisa, you know, in that respect this is a major over hall and, hopefully, in the future we will not be doing this ‘cause if we do it on a timely matter we won’t have this. However, I can see and again, Mr. Eng and, and, Corp. Counsel, and the rest of the Committee if we were to inse...insert within 90 days within no, the board shall hold at least two public hearings. Now again at least means that’s the minimum, yeah, that means they can hold more if they need to, but at least two public hearings on the proposed update. Okay. Now at least we got two hearings that, you know, Mr. Eng, we will definitely have to schedule. And then you could have more if necessary, but at least this way I, I think we kind of, you know, kind of have a guide there when you’re gonna have two public hearings. I don’t know if you want to start putting it by districts and or by... or by what do you call that, water systems. I don’t know if you want it to get into that, you know, but you wanna make sure we have two definitive water systems, right?

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Central and Upcountry. So, you know, just to make sure. Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. I thought it might also provide clarification if in the affected district like say, for instance, for the Upcountry Water Use and Development Plan, I’d like to see a public hearing there and if there’s one in Molokai, then we have one there. You know what I mean the affected area so that people have an opportunity. I get a lot of complaints about the fact that we have our meetings here during the day and people cannot come and, you know, us working people have to work and you guys have all these meetings and you don’t allow to participate. So I’m trying to be sensitive to that.

CHAIR VICTORINO: So, Ms., Ms., Ms. Baisa, what you’re suggesting is maybe and again follow my train of thought and then, and then see if I’m coming into what you’re saying, is at least one public hearing in the effective, affected district or the representative district?

COUNCILMEMBER BAISA: Right. Right.

CHAIR VICTORINO: Okay. What do you think Mr., Mr. Eng, -- one public hearing in the affected district on the proposed update?

MR. ENG: You know, obviously, you know each of our water systems are of different sizes.

CHAIR VICTORINO: Yes.

MR. ENG: You know, I’d kind of like to leave it open somewhat to the Board to determine what would be appropriate number of public hearings. Obviously a minimum number, a minimum number of one is, is required but, you know, you can see like for Central the Central Maui Water Use and
Development Plan because of the expanse of that system from Wailuku, Waihee, all the way down to Makena --

CHAIR VICTORINO: Yeah...

MR. ENG: --Paia, you know, it could be appropriate to have maybe two public hearings whereas for Upcountry maybe only one would be appropriate. So I’d like to keep it kind of open for the Board.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I’m, I’m understanding what the Director is saying but I think we’re, we’re just were a little bit off here. What I’m trying to day is the Board shall, I don’t mind at least one public hearing okay. The Board shall hold at least one public hearing on the proposed update in the affected district.

CHAIR VICTORINO: I mean, I guess...

COUNCILMEMBER BAISA: And then that’s, then I’m okay.

CHAIR VICTORINO: Well, that’s exactly what I said, but I put affected districts on the proposed updates. So, yeah. Okay.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Yeah, you and I, I think talking around the same lines.

COUNCILMEMBER BAISA: We are.

CHAIR VICTORINO: So, I would, I would open it up to Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I would agree with Member Baisa on the affected district and we do have five districts that has, hopefully, Water Use and Development Plans for it, except for Lanai, which is a private water systems.

CHAIR VICTORINO: Uh-huh.

VICE-CHAIR PONTANILLA: I will tend to agree with Ms. Baisa.

CHAIR VICTORINO: Yes, go ahead, Ms. Baisa.
COUNCILMEMBER BAISA: Just one more remark and I do know there will be another opportunity for public comment when this reaches the Council. But I think it’ll be much more useful to the Council if this happens during the Water Board review so that maybe we don’t have to have public hearings, but if they’re not held in the district, I’m gonna tell you when the Upcountry Plan comes up I’m gonna insist that the Council go to the Upcountry District and allow those people to comment. If it’s done at the Water Board place, well then that’s fine, maybe we don’t have to do that so, you know, let’s avoid duplication.

CHAIR VICTORINO: That’s fine, okay. So if I’m hearing you correctly--and again, Mr. Medeiros, I will ask you for your opinion, you know.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Was Member Pontanilla done with his question?

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER MEDEIROS: Okay, yeah. I’d, I’d like to ask Director Eng, are all the Water Board meetings covered by Akaku?

MR. ENG: Member Medeiros, recently none of them have been covered by Akaku.

COUNCILMEMBER MEDEIROS: Okay.

MR. ENG: Last time it’s been probably about couple years since we’re covered by that.

COUNCILMEMBER MEDEIROS: Are there any plans to have the Water Board meetings televised for those that cannot attend so that they can keep up with what’s going on?

MR. ENG: That I’m not aware of.

COUNCILMEMBER MEDEIROS: Okay. Who’d make that decision? Would it be you and the Department or would it be the Administration as far as having it televised?

MR. ENG: I don’t know who determines Akaku’s participation in public meetings.

COUNCILMEMBER MEDEIROS: Okay. I think Member Baisa brings up the point that, you know, a lot of times many of the constituents, the residents don’t know what’s going on, and I, I know from our meetings being televised it, it becomes more helpful for those that cannot come to meetings. So, I was just wondering if, you know, there were any plans to have the Water Board meetings televised I think that would be good. But...

CHAIR VICTORINO: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah.
CHAIR VICTORINO: May I share something with you. When I was the Chair of the Water Board in fact the prior Chair was informed by the Administration back then because we were only advisory at that time they decided not to televise, televise us anymore, because it was an expense item and so they said since you guys are only advisory that it wasn't necessary for them to televise. So this was back, I'm gonna say about four or five years ago, maybe six, I'm not exactly sure. Mr. Eng was not there, but at that time Mr. Tengan, who was the Director, informed us that we will no longer have televised meetings, and since then maybe now is about a good time to look back and say maybe it's time we ask the Administration and I'll be willing to draw a letter up asking the Administration to consider that as an important meeting because we do make decisions, they do make adjudication and other decisions that maybe it's time we bring back the Water Board televised in something like this would fit very appropriately. But that's the history, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay. Mr. Chairman, thank you for that history and I, I think I would, I would ask you to go ahead with that letter requesting that because Planning Commission, Burial Council, they're all televised and it's very helpful to the community and to the people, especially those that cannot come to meetings, you know those that are retired, don't have transportation, don't have the means to come to meetings. This would give them an opportunity at least to keep up with the issues and the discussions. My next question was that in the Water Use and Development Plan, I know the announcements of those meetings were very good because you know I, I was able to follow it in the paper and other announcements where the meetings were going to be and so forth. So I think it gave the community an opportunity to attend and they did move it around to districts including East Maui. So I, I think there was a great opportunity for Members to attend but those that couldn't attend I would say the next opportunity is what we're talking about now. As far as going to the district being affected or coming to the Council eventually for ten hour meetings, but, but that would be my comments on that. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros, and again I would, you know, agree with you and Ms. Baisa and even Mr. Pontanilla that I think having it by district probably would be the most appropriate way. I know, Mr. Eng, this, this puts a lot of extra pressure on the Board and means that might have to have more meetings to have these public hearings, however this and at this point this is one of the most crucial things we're going to put out over the next 10, 15 years, next to GPAC this is probably the biggest plan, biggest move this County will make. I mean this will be our guide just like GPAC for future whatever we want to do in this community, yeah. So Maui Nui and Maui County really deserves the best opportunity. So at this time for this purpose I would like to add, and, and, and, and, and I would like an amendment to read just from what Ms. Baisa said is one public hearing on, on the proposed update to be held by the affected district.

COUNCILMEMBER BAISA: In the affected...

CHAIR VICTORINO: Oh, in the affected district, okay, in the affected district.
COUNCILMEMBER BAISA: Thank you.

COUNCILMEMBER MEDEIROS: So you’re proposing that...

CHAIR VICTORINO: As an amendment.

COUNCILMEMBER MEDEIROS: As an amendment.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER MEDEIROS: And so you’re, you’re asking for a motion?

CHAIR VICTORINO: A motion, yes, please.

COUNCILMEMBER BAISA: Mr. Chair, I move that we accept that amendment.

COUNCILMEMBER MEDEIROS: And, Mr. Chair, I’ll second that.

CHAIR VICTORINO: It was moved by Member Baisa and seconded by Member Medeiros to insert up, after update to be held in the affected district. Oh, Kirstin, yeah...

MS. HAMMAN: ...*(Inaudible)*...

CHAIR VICTORINO: Oh, okay.

COUNCILMEMBER BAISA: So consensus.

CHAIR VICTORINO: Oh, okay. I was informed by Corp. Counsel [sic], we don’t need a motion, and so if you would withdraw.

COUNCILMEMBER BAISA: I’ll, I’ll withdraw. Then we’ll just do this by consensus.

CHAIR VICTORINO: By consensus.

COUNCILMEMBER MEDEIROS: Yeah. And I’ll withdraw the second.

CHAIR VICTORINO: Do we have consensus by...

COUNCILMEMBER BAISA: We do.

COUNCILMEMBER MEDEIROS: Consensus.

COUNCILMEMBER BAISA: Yeah.
COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay. Thank you, Members. I apologize. Trying to do this right. Okay, other questions in other areas by other Members, and or Ms. Baisa or anybody have any other changes you’d like to propose?

COUNCILMEMBER MEDEIROS: Mr. Chairman, I do not have any further suggestions.

CHAIR VICTORINO: Thank you. Seeing none, then if it is okay with the, body I will recess this meeting for a few minutes so we can raise the screen and we can sit down, and I will give you my recommendation at that time. So with no objections, I will recess this meeting for two minutes. . .(gavel) . .

RECESS: 11:17 a.m.

RECONVENE: 11:19 a.m.

CHAIR VICTORINO: . . .(gavel) . . . The meeting of the Water Resources Committee will reconvene for August 18, 2009. The Chair is ready to make his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR VICTORINO: Thank you. If there is no further discussion, I will entertain a motion for to pass on first reading the proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE, RELATING TO THE WATER USE AND DEVELOPMENT PLAN” with the revisions as discussed and the filing of this County Communication 05-38. And before I do that, I’d like to recognize the attendance of Member Vice-Chair Molina and Member Kaho‘ohalahala. Thank you for returning, gentlemen.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that we move forward for first reading “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE, RELATING TO THE WATER USE AND DEVELOPMENT PLAN”, and also the filing of the communication.

COUNCILMEMBER MEDEIROS: Mr. Chairman, I second the motion.

CHAIR VICTORINO: The motion has been moved by Vice-Chair Pontanilla and seconded by Member Medeiros. Any further discussion on this proposed change? Seeing none, then I’ll call for the question. All those in favor, say “aye”.

COUNCIL MEMBERS: Aye.
CHAIR VICTORINO: All those opposed? Let the record show six ayes; no opposed; and one excused, Chairman Mateo.

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

NOES: None.

EXC.: Councilmember Mateo.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised bill, and FILING of communication.

CHAIR VICTORINO: Ladies and gentlemen, that concludes our business today. I thank you for your engagement. I really truly appreciate it. I think…and I apologize for my back being what it is today and I kind of sometimes seem like I was getting a little grumpy. I apologize publicly to all of you and to the public; however, I’m very pleased that we were able to accomplish some major moves and I thank you for your continued support and effort. Mr. Eng, Mr. Kushi, I thank you for your continued support and efforts. To our Staff, Ms. Frias and Ms. Willenbrink, thank you and of course Ms. Where’s Kirstin? She left, okay, she left, okay; so and for her, her coming up and helping us out.

If there’s no announcements, then I’ll call this meeting of the Water Resources Committee adjourned. . . . (gavel). . .

ADJOURN: 11:22 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair
Water Resources Committee
CERTIFICATE

I, Chante Diaz, 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 11th day of September 2009, in Wailuku, Hawaii.

CHANTE DIAZ