CHAIR VICTORINO: . . . (gavel) . . . Good morning. The meeting of the Water Resources Committee for September 29, 2009 will come to order. We have a quorum present at this time. And before I get started on calling the Members and, and setting up the quorum, I would like the public to know and if you have not been aware of, as of 7:48 a.m. this morning an earthquake occurred in the Samoan Island region with a preliminary magnitude of 7.9 on the Richter scale. Effects based upon all available data at this time, the Pacific Tsunami Warning Center a tsunami may have been generated by this earthquake that could be devastating to coastal areas as far as Hawaii. An investigation is on the way at this time to determine if this tsunami will be a threat to Hawaii. If the tsunami waves were to impact Hawaii, the estimated, the earliest arrival of the first wave would be at 1:11 p.m. Hawaii Standard Time. That's Tuesday, September 29, 2009. I would advise all to pay close attention to the local radio as well as television networks and the Civil Defense station to keep you informed in what may be going on. The reason for this reading
of the notice is to let the public know that if it becomes imminent, this meeting may be adjourned at that point in time. I'd just like for people to be aware, if you're in a tsunami area to be prepared to move at the advice of the Civil Defense. So, ladies and gentlemen, please, again, be aware of -- there is a tsunami warning, watch, excuse me, correction - watch, at this time for all the Hawaiian Islands because of an earthquake that occurred at 7:48 a.m. Hawaii Standard Time this morning off the Samoan Islands and the magnitude preliminary was rated at 7.9 on the Richter scale.

So, ladies and gentlemen of the Committee, I will start the meeting. Let me read this morning the quorum that is present is our Vice-Chair Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Good morning. Member Gladys Baisa.

COUNCILMEMBER BAISA: Good morning.

CHAIR VICTORINO: And Member Sol Kahoʻolahala, excuse me. Some mornings I get hard time with that one. Sorry Sol. Also, Member Bill Medeiros.

COUNCILMEMBER MEDEIROS: Good morning. Aloha.

CHAIR VICTORINO: Good morning. And Member Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR VICTORINO: At this time, Chair Danny Mateo is excused and he is, actually, at this time monitoring this and we'll be returning shortly to give us a better update. Non-voting Members that are present this morning is Member Wayne Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR VICTORINO: Morning. From the Administration, we have our Water Director, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: Good morning. And Corporation Counsel Edward Kushi, Jr.

MR. KUSHI: Good morning.

CHAIR VICTORINO: We also have in the audience or will be available a little bit later Ralph Nagamine from Development Services Administration. And he's ON CALL if we need him. From our Committee Staff, we have our Legislative Analyst, Kim Willenbrink, and Committee
Secretary, Tammy Frias. And without them, a lot of the work wouldn't get done so I want to thank them very, very much.

ITEM NO. 1(5): WATER SUPPLY RULES (SUBDIVISION WATER SYSTEM REQUIREMENTS) (C.C. Nos. 05-46 and 06-228)

CHAIR VICTORINO: This morning we're going to be discussing item WR-1(5) - Subdivision Water System Requirements. And just for an update if you look in your book on correspondence dated June 29, 2009, from the Department of the Corporation Counsel, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.05, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES". The purpose of the proposed bill is to codify the rules and regulations of the Department of Water Supply relating to subdivision water system requirements. Members, we have not deliberated on this bill since August 4th and we have received response letters back from the Board of Water Supply and the Subdivision Engineering Standards Committee. We have also reached the Committee's . . . um, we have also researched the Committee's concerns relating to use of ductile iron. After receiving public testimony, I would like to go into the following information.

First of all, I know we have one testifier at this time, and let me give the limitations on public testimony. You will be limited to the item on the agenda today. If you haven't signed up, you need to sign up on the desk located outside in the 8th floor lobby. You will be limited to three minutes with one minute to conclude. Please state your name and who you represent, if you represent anyone. Before I call our first public testifier up, I would like to ask that all cell phones be put on vibrate or a silent mode so that the quorum can be conducted here in the Council Chambers. I would like to now open testimony and our first testifier and so far the only testifier that has signed up on WR-1 semicolon [sic] 5 is Ernest H. Rezents. Mr. Rezents, would you come forward to the podium? And Mr. Rezents is speaking on his behalf, and a lot of us know Mr. Rezents and we would like to thank him for being here and all his years of service to this County.

...BEGIN PUBLIC TESTIMONY...

MR. REZENTS: Thank you very much. I'm very concerned about the topic you're considering today. And I speak for the small individual and I'll end up with myself being a victim should you approve the proposed, the proposed as it is. I recommend that the two- and three-lot subdivision waterline requirements not be changed; let them remain as is. They work well all these years. Public Works exempts two- and three-lot subdivisions from upgrades such as installing sidewalks and planting street trees. Why not also exempt these same small subdivisions from water upgrades. Approving the proposed upgrades without exempting the small two- and three-lot subdivision enforces the public's opinion that the County supports big time developers at the expense of the small guy. No gender intended. I'm sure you have heard this many times from your supporters. Water Department says gain costs. You subdivide you gain, you pay. Even with the exemptions I am asking for, the County is the gainer. It gains more permit fees, more taxes, more water fees, more garbage fees, more gas taxes, et cetera. Oftentimes a small
subdivision is for a family. If this is your preference, language can be inserted to ensure that the subdivision remains within a family. It is unfair to have the small guy pay for what is a County obligation to provide us with adequate water. Approving the proposed water system upgrades without an exemption for small two-and three-lot subdivisions is not fair. And I speak for myself now. We have a piece of property that is a lot and I have two TMKs but it has not been officially subdivided. Now, if I subdivide that into two lots to separate the two TMKs, I may be obligated to upgrade the water supply. And at Toma Garage, the pipe is 8" and around our gulch it is 4" and up beyond my grass place is goes to 6". And theoretically, it's about 800 to 1,000 feet and it costs about a hundred dollars per foot to upgrade your pipe. It will cost me between 80,000 and 100,000 dollars to meet the things you're proposing or considering today. To me, I am not here to support the County. The County should be supporting me. The County should make water available and I checked with the Water Department and they have no intention of upgrading that waterline. They're waiting for people like myself to do something and then they can ask me to upgrade or else don't do anything. Thank you very much for your time. I really hope you have a good day.

CHAIR VICTORINO: Thank you, Mr. Rezents. Questions from the Committee Members? I'll start with Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Good morning, Mr. Rezents.

MR. REZENTS: Good morning, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you for your testimony. Could you provide us a copy of your written testimony?

MR. REZENTS: I do have it here.

COUNCILMEMBER MOLINA: Thank you.

MR. REZENTS: I gave it to the lady here.

COUNCILMEMBER MOLINA: Okay, thank you very much. Thank you, Chair.

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

MR. REZENTS: Thank you. Have a good day.

CHAIR VICTORINO: You too, sir. I will give one more opportunity to anyone in the gallery who wishes to come forward to give public testimony. Seeing no one rushing to the podium. With no objections, ladies and gentlemen, I'd like to close public testimony this morning.

COUNCIL MEMBERS: No objections.
CHAIR VICTORINO: Thank you very much.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Okay. Let's get started with the business at hand. Members, first of all, if you would bring us back up to speed, the last first turn around and correspondence is in your binder dated August 4, 2009, from the Committee Chair. This draft bill, for reference only, highlights the revisions that the Committee has agreed upon since the Department of the Corporation Counsel submitted it to us on June 29, 2009 the proposed bill that was noted on our agenda. You will recall that our Director Eng transmitted correspondence on July 8th requesting changes to reflect the Department's new minimum standards on water mains. For the remainder of the meeting, we will be working on the revised June 29th bill that has been posted on the agenda. Before I move on, any discussions on that revised June 29th version so that we don't get confused? Again, the June 29th version, Committee Members? I'll give you a moment to locate it, please. And I do apologize. We've had a number of variations, yeah. But again, June 29th and that's to me from Corporation Counsel Edward Kushi. Does everyone have --

COUNCILMEMBER BAISA: No.

CHAIR VICTORINO: -- the bill in front of you?

COUNCILMEMBER BAISA: Now I have it.

CHAIR VICTORINO: You have it, okay. So that's the one we'll be working off of, yeah, June 29th. At this time if you have any specific questions for the Department, I open the floor up to questions. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'm very interested in the testimony by Mr. Rezents, who we all know is a very knowledgeable and well-respected individual, and I'm sure he represents a point of view for many, many people Upcountry, particularly who have had family... I don't know, everybody has family land all over the place that they've had for generations. I'd like a comment from the Director, please, in regards to the testimony?

CHAIR VICTORINO: Mr. Eng, would you like to comment and respond to Ms. Baisa's question?

MR. ENG: Thank you, Mr. Chairman and Ms. Baisa. The matter that Mr. Rezents discussed is, for those of us who live Upcountry particularly this because we hear from Upcountry residents who have plans to do family subdivisions, you know, is something they're facing. And I don't dispute his, his facts. You know, it's... um, whenever family chooses to subdivide a piece of property you know is generally for their benefit. It's not particularly for the rest of the taxpayer's or rate payer's benefit. And many of our rules probably do lean towards protecting the general rate payer and not the specific parties. And that's just how it's always been. I don't really know how
to address it. You know it is a matter of sharing of cost. You know depending on the type of improvements we do have some, if it's a main line extension, we do have a refunding mechanism of up to 50 percent of their cost. You know, it's just kind of fact of life, given our rules. And I think right now our rules are fair in how you, who pays for these improvements but obviously there are some individuals and parties that come before you and it's an issue for them and we hear it all the time. So, um, you know, I have really nothing more to comment at this time. It is a matter that has been brought to our attention and your attention and I'm willing to hear your discussion also on this matter. Thank you.

COUNCILMEMBER BAISA: Um...

CHAIR VICTORINO: Yes, Ms. Baisa?

COUNCILMEMBER BAISA: To pursue the issue -- one of the concerns I have about this, first of all, is that you know we're dealing with an Upcountry meter situation and should meters become available, you know, everybody gets all excited -- now I cannot get a meter. And then there's this other piece that comes into play where there is the improvements that are required that cost tremendous amounts of money and he mentioned between 80 and 100,000 and I've heard lots more depending on how much pipe you have to put in and how long and how big and all those hydrants and whatever else is required, that it becomes a prohibition even though they might be able to get a meter they can't go ahead with whatever it is they want to do because they cannot afford the improvements. And while we talk about a 50-percent reimbursement depending on what that is, that could be a very substantial amount of money. If you're asking to borrow $100,000 or more from the bank even if you get $50,000 back, big deal, you probably can't afford the loan in addition to the house that you want to build or whatever it is. So this a very serious financial barrier to people wanting to build affordable housing. Now, he mentioned the idea of possibly including in this ordinance that this would be waived for true family subdivisions, and I'd like us to discuss that. I think that's a very good option if we can somehow figure out how to limit it to family because we know how it is. We build a family subdivision and then we sell it. So, I'd like the Members to think about that but I'd certainly like to consider it because I'm very much aware of the impact that this has on families. And you know, we say we're for affordable housing and this is the most affordable kind of housing that we can get when we don't have to purchase land but we still have this issue that we have to pay for the house and all the improvements so it becomes a barrier. That's where I'm coming from.

CHAIR VICTORINO: Mr. Eng, do you have any more comments on that?

MR. ENG: Actually I don't, however, --

CHAIR VICTORINO: That's fine.

MR. ENG: --I do want to inform everyone that we do fund our main line refunds through our operating budget which is cash, and we do budget annually up to $500,000 toward the main line refunds. We would have to look it up in that amount. We are currently working on our budgets and
finalizing them and this is the time to tell us, you know, the direction to take on this. We are striving to have a flat budget or less this year, and so far, my division heads have come in with their operating budgets meeting that goal. But this body who most of you will be a part of the Budget and Finance review come this Spring and I'll leave it up to you but this is time for you to make that decision. Thank you.

CHAIR VICTORINO: Thank you. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair, and good morning, Mr. Eng. First of all, I can certainly see your point of view and I certainly appreciate your honesty, you know, coming across and wanting to see what kind of resolution we can reach with this and I certainly do understand the point of view what Mr. Rezents is coming from as well. I've been like my colleague from Upcountry Member Baisa. If I could ask maybe for either your comment, Mr. Eng, or maybe even from Mr. Kushi, I believe Mr. Rezents mentioned in his testimony the possibility of inserting language that would, I guess, exempt family subdivisions or exempt I guess language that would you know providing that this is a legitimate family subdivision if that can be incorporated into this current bill and any, what kind of impacts we could see. I don't know if Mr. Kushi could comment on it at this point?

CHAIR VICTORINO: Mr. Kushi, would you like to --

COUNCILMEMBER MOLINA: Any suggestions?

CHAIR VICTORINO: --comment on that question?

MR. KUSHI: Yes, Mr. Chair. Member Molina, your question is . . . (inaudible) . . . on. In the proposed rules before you its changed from waiver to now called deferral but it was always in there and it's under Section 14.05.180 entitled Deferral. If you would look at that it's on . . . the draft that you're looking on it starts at --

CHAIR VICTORINO: 13, yeah.

COUNCILMEMBER MOLINA: Page 13.

MR. KUSHI: Uh-huh, yeah, is it Page 13?


MR. KUSHI: What this, basically, if I may summarize, if it's a true family subdivision and the definition of family is also listed in that spouse, parent, children, grandparent, grandchildren, et cetera, siblings, if it's a true family subdivision and all they want to do is cut up a piece of property into two or more lots, it doesn't limit the lot subdivision. Then the Department is authorized to approve the subdivision and defer, not waive, defer all required improvements that would otherwise would have been required at the time of subdivision. And the transfer upon
subdivision the transfer to their siblings or family members shall be immediate, and there's also an agreement that would be recorded on the property that in the event the property is to be improved by a . . . requesting a building permit or water system improvements or water meters, then any and all improvements shall be done at that time. Now, the Department has had histories, had a history of these old so-called family subdivisions where you have let's say, mom and dad and three kids they divide one property into four, four lots. Eventually the kids for whatever reason they sell it to Mr. X, a non-family member. Then Mr. X comes in and says I'm not part of that agreement. We say no, that agreement to build and request for water service applies at the time they ask for a building permit. So it is possible in the situation as I think Mr. Rezents described that if it's a true family subdivision and for estate planning purposes they just want to cut up the property and convey it to the family members before mom and dad go this can be done. But if they want to build on it or get a water meter, then the new requirements kick in.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Mr. Kushi.

MR. KUSHI: The other point I need to mention is that Mr. Rezents said that Public Works defers improvements for two or three lots. I'm not sure if that's correct. But again, you may want to check with Mr. Nagamine.

COUNCILMEMBER MOLINA: Okay, thank you. Mr. Chair, if I could ask Mr. Eng a quick question then.

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER MOLINA: So, in the ordinance we have this mechanism, 14.05.180 that I guess would address Mr. Rezents' concerns and it's at the discretion of the Water Department to grant the deferrals then. Then what would a family have to do -- they'd have to go ahead and provide proof or evidence of it being a family subdivision? I'm just, for me, trying to find out does it meet the concerns of Mr. Rezents as is?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman. Member Molina, I'm not sure if it really addresses Mr. Rezents' concerns. Again, what Mr. Kushi referred to was basically a deferral of the improvements. The family subdivision agreement is an executed agreement between the parties and the Department.

COUNCILMEMBER MOLINA: For deferral, not an exemption, right?

MR. ENG: Correct.

COUNCILMEMBER MOLINA: Okay.

MR. ENG: And I don't think that will resolve what Mr. Rezents' is . . .
COUNCILMEMBER MOLINA: Cause you have to pay at a different time . . . down the road.

MR. ENG: It only allows really transfer of title to family members.

COUNCILMEMBER MOLINA: Okay. Thank you. It clears it up a lot more for me, Chair.

CHAIR VICTORINO: Okay. Thank you. Other questions for the . . . yes, Mr. Pontanilla, Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Kushi brought out an interesting point regarding Public Works. At one time you used to defer a road improvements, meaning curbs, gutters, sidewalks for family subdivisions but one of the issues that we had or continue to have is trying to collect after years passing by when we do our improvements in that particular area. I don't know if the same thing can be done with the Water Department, you know, deferring and when we do our water improvements then, you know, somehow kick in whatever if it is a cost that need to be provided by whoever is developing. It kind of brings back to me when we had our Land Use Commission meeting regarding a subdivision in Kihei. This was about three, four weeks ago and we gave land entitlements but they didn't have the requirements or they did have a requirement when they come in for a building permit that you need to show that they have water to provide for that small subdivision in Kihei. So I view this almost in the same thing, you know, so thank you, Chairman.

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

COUNCILMEMBER BAISA: Thank you very much. I have a follow up question. We're talking about the 50 percent reimbursement and the concern I have is the person who initially does the improvements has to pay and get his 50 percent back. But then if I am close by and I tag into that and get the benefit of what you paid for I don't pay anything more. Is there a way that we can spread that cost so that those who come afterwards help reimburse the guy who had to do it first?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you. Member Baisa, I'm sure there is a methodology, you know. We'd have to look into that. It could be kind of complicated. Hopefully it doesn't require more staffing but, yeah, there's probably a mechanism. I mean, yeah, I'm not saying no to that.

COUNCILMEMBER BAISA: The reason I bring it up is, you know, we're talking about fairness and it's fair that everybody should pay their fair share and just because I happen to be the one who does it first and you come second that's not fair. You should also have to pay something because I'm helping you to get what you need, and you're not having to put all that outlay that I'm going to deal with. You know I don't think what we think about is we say, okay, we're going to outlay $100,000. How many of us have a $100,000 lying around? You know, you got to get it, you got to borrow it, you got to pay interest on a loan and I don't know how long we take to pay you back
and you are still out 50,000 regardless of what happens. So it would be nice if somewhere down the road people who connect also would start reimbursing you too or we reimburse in some way. But if you're going to talk about fairness, I don't know if this is fair what we're doing.

CHAIR VICTORINO: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. I kind of tend to agree with the Member from Upcountry. When I used to work for the utility company whenever a customer requires a phone system and we need to bill out, you know, the cost was borne by that particular customer. But there is an agreement where if anybody comes in between Point A and Point B in the future, then that particular customer would be paying a portion of the constructed cost for the particular line. So, you know, it's in the public utilities area in regards to, we used it call it line extension and there is a rebate mechanism in there where the guy that put up the cost upfront can get reimbursed for the construction. Thank you.

CHAIR VICTORINO: Yeah, we can maybe look at something of that nature just maybe if Corp. Counsel can look at something where we could add that as part of this amendment here and where some portion or a proportional portion of any hookup after the main line has been added, right, and I mean to be fair and I've always said that was one of the issues I had even when I was on the Water Board because you put the $100,000 and the next guy comes along he didn't have to pay anything extra and that's not fair. Even if we reimburse 50 percent as a County, the other 50 percent is . . . (inaudible) . . . and if another person benefits, I think they should have a fair proportional amount. So, I think something like that could be done. Mr. Kushi, not thinking of the words right now, but is something like that possible to be added as amended to this part of the and I'm not sure on the wording and maybe we have to look at that, but what do you think, Mr. Kushi?

MR. KUSHI: Mr. Chair, just off the top of my head, I don't see how you can force or require people in the future to pay a hook up fee to reimburse someone who subdivides now. For one, they're not the subdividers and, secondly, the Department would not have any jurisdictions over them at this point in time. But I guess, you know, it would when you say hook up it's a future hook up to the new main line and the hook up is for a water meter that's what I'm assuming the situation would be. If that's the case, then maybe the water meter fees in that specific situation could be reviewed that would be part of the Budget and Finance Committee's jurisdiction. But I don't think you can include future subdividers.

CHAIR VICTORINO: Okay.

MR. KUSHI: The Department can include future subdividers now.

CHAIR VICTORINO: Okay.

MR. ENG: If I may add.
CHAIR VICTORINO: Yes, Mr. Eng, before I recognize Mr. Medeiros.

MR. ENG: I just wanted to expand on what Mr. Kushi was using as an example. It would be, again, recovered in the Water System Development fees that we currently charge. So, let's say for a 5/8ths inch meter that fee really includes three charges -- a source, storage, and transmission costs about $2,000 each. So, let's say like in Mr. Rezents' example, he does a section of waterline improvements and he pays his fair proportional share and let's say that it might be quite a bit still cause there are going to be fewer future tie ins to that line maybe it's still $20,000 for him as a fair share. So down the road someone comes in wants a meter and a tie in . . . (CHANGE TAPE TO SIDE 1B) . . . development fee is 2,000 for source; 2,000 for storage and the same $20,000 as Mr. Rezents invested. So we would have to have a number of permutations of water system development fees for different areas, maybe different roads, if you were to connect. It's doable, very complex and I can hear the future applicant coming in screaming . . . at you folks, not us. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Eng, Director, I wanted to follow up on that response. So if Mr. Rezents' capital cost is a hundred thousand, he gets reimbursed 50 percent so he gets fifty thousand, and then you say you kind of prorate the fair cost to other people as the scenario. So when you recover the other $50,000 right through that system, people tying in after that would not have to pay then that because the total cost has been required. So what happens then?

MR. ENG: Member Baisa, Member Medeiros, I'm sorry, you give a good illustration. I mean, how do we know how many --

COUNCILMEMBER MEDEIROS: Right, ties in there are going to be.

MR. ENG: --are going to tie in? There might be some limitations, obviously. Number of lots, potential lots but we don't know what's going to be subdivided in the future or people, you know, who knows. So, yeah, you're just kind of illustrating how complicated it might be.

COUNCILMEMBER MEDEIROS: Right. My second question is, Mr. Rezents mentioned, well, let me ask you this first -- if a subdivider, like Mr. Rezents, is required to make the water system improvements and the cost fee estimates that it can be a hundred thousand, does the County, Department of Water Supply, now becomes the owner of that improvements as it connects to the County system?

MR. ENG: That is correct.

COUNCILMEMBER MEDEIROS: Okay.

MR. ENG: It is dedicated to us and we are responsible for the maintenance also.
COUNCILMEMBER MEDEIROS: Okay. Maybe I misunderstood Mr. Rezents but he said that the County wouldn't maintain it. But it is my understanding from your reply that once it's dedicated to the County, the County then becomes responsible for the maintenance and future work on that --

MR. ENG: Yes.

COUNCILMEMBER MEDEIROS: -- (inaudible) system.

MR. ENG: Right.

COUNCILMEMBER MEDEIROS: Okay, thank you for that information. Mahalo, Mr. Chair.

CHAIR VICTORINO: Okay. Before I recognize Member Nishiki, I will recognize Member and Chair Mateo, you wanted to say something?

COUNCILMEMBER MATEO: Chairman, no, just other than to briefly comment on your comments at the opening of your meeting.

CHAIR VICTORINO: If there's no objections from the Committee?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Okay, go ahead, Mr. Mateo.

COUNCILMEMBER MATEO: Currently, staff is in communication with Civil Defense and they are on top of securing the latest information in terms of the tracking of the tsunami alert warning that has been provided, and they will continue to be in communication every few minutes and will be advised accordingly should items or issues change throughout the rest of the morning. Okay, so they'll be advising us.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER MATEO: Thank you.

CHAIR VICTORINO: Thank you, again, Mr. Mateo, for that update. And again, I repeat to the public the best way I can say is keep in touch with your local radio and television stations and Civil Defense, the all weather station. You know those are other means of keeping cost and communication but at this time, again, we'll await and see if this danger becomes imminent.

Going back to the business at hand, ladies and gentlemen. Mr. Nishiki, I apologize for skipping over you but go ahead.
COUNCILMEMBER NISHIKI: That's okay. Jeffrey, we're talking family subdivision. Help me understand the process. At the time when someone comes in for a family subdivision and if there is an Upcountry . . . are they affected by the meter rule now? Or if we give it to them does that mean that they now can step in front of somebody else?

MR. ENG: Member Nishiki, no, the priority list still applies to them.

COUNCILMEMBER NISHIKI: Okay.

MR. ENG: So the family subdivision again only allows them to subdivide and transfer title. It doesn't entitle them to --

COUNCILMEMBER NISHIKI: Any water.

MR. ENG: --a water meter. If they seek a building permit, obviously they need a water meter first.

COUNCILMEMBER NISHIKI: Right.

MR. ENG: Then that triggers the improvements. So, basically, it's just for transferring title to the new subdivided lots.

COUNCILMEMBER NISHIKI: But if we defer the improvements, not defer, we eliminate it, they don't have to pay for it. Can they now be given a water meter?

MR. ENG: No. Again, they are still subject to the priority list. So that's not a way around the priority list. Some might think so but it doesn't work that way. It wouldn't be fair.

COUNCILMEMBER NISHIKI: So with each lot now, each lot would be required to have a water meter?

MR. ENG: Yes. On a new subdivided lot, yes, they would be required to have their own water meter.

COUNCILMEMBER NISHIKI: So, that doesn't put them in front of the line. Okay. Thank you.

CHAIR VICTORINO: Okay. Thank you, Mr. Nishiki. Other questions or discussion on this matter? Yes, Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Quick question for Mr. Eng with regards to the 50 percent pay back. Your comments if it were to be adjusted to 80 percent vs. 50 percent? I mean, less revenue for the Department but any consequences with that or even 90 percent. I mean, I'm just throwing numbers out there.

CHAIR VICTORINO: Mr. Eng?
MR. ENG: Mr. Molina, um . . .

COUNCILMEMBER MOLINA: I guess we're talking about formulas and . . .

MR. ENG: I'm not opposing any changes in the percentage. Again, if this is applicable to a true family subdivision, you know, I could support that but again, as Mr. Kushi pointed out earlier many times these family subdivisions end up being owned by others. They may benefit by this higher percentage refund. Lot of placing, lot of keeping people to stay honorable and that's what we deal with often.

COUNCILMEMBER MOLINA: So, Mr. Eng, then could we consider language in this ordinance then if the family sells to someone else, then this pay back doesn't apply, the percentage doesn't apply. You know what I mean, because they're supposed to come in with the intent of this is family and all of a sudden if we provide this benefit, we increase the percentage of the pay back they sell to Mr. X then the benefit wouldn't apply.

MR. ENG: Member Molina, once they pay, once the deal is struck and we refunded them, well, they've invested their share for their water system improvements, they can do whatever they want to. They've put in all the subdivision requirements and improvements, it doesn't have to stay in the family. Again, the family subdivision agreement is only a deferral. But once they come in for a permit, they put in the improvements, think of whatever they want to do so, um . . . and that can happen. Obviously, any family can come in, take advantage of that family subdivision higher refund amount and turn around and sell it. That would definitely happen.

COUNCILMEMBER MOLINA: Okay, thank you. Thank you, Chair.

CHAIR VICTORINO: Further questions for the Director?

COUNCILMEMBER MEDEIROS: Chair?

CHAIR VICTORINO: Yes, Mr. Mo . . . um, Medeiros, excuse me.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Director Eng, and you may have answered this already but I didn't hear it. So, the 50 percent reimbursement, that percentage was derived through what means? What is the rationale behind that?

MR. ENG: Well, we actually would look at construction costs so we require an affidavit from the subdivider usually through their contractor or consultant to provide us with an affidavit verifying cost.

COUNCILMEMBER MEDEIROS: My question is, who decided it was 50 percent and why instead of 40 or 80 like Member Molina is saying?

MR. ENG: That I don't know. I don't know the background on that.
COUNCILMEMBER MEDEIROS: So, that was before your time. Maybe Mr. Kushi been here a long time.

CHAIR VICTORINO: Mr. Kushi? You don't have to make him feel any older than he is. Excuse me.

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

CHAIR VICTORINO: Sorry, Mr. Kushi, that wasn't a . . . (inaudible) . . . statement towards you.

MR. KUSHI: Bill John is older than me. I have been here quite a while but not that long. 1977 is when these original rules were drafted, the Subdivision Rules. So at that point in time I guess the Board of Water Supply determined that 50 percent was okay. I don't know what rhyme or reason.

COUNCILMEMBER MEDEIROS: Right. Okay, thank you for the response. I thought there was a particular rationale behind it but it is, you know, quite a while since they formulated that so, mahalo, Mr. Chairman.

CHAIR VICTORINO: Unfortunately, you know when you have rules that have been around for such a long time and those who have put it together are no longer here with us it becomes real difficult to understand unless we go back to the minutes of those meetings to find out their rationale.

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR VICTORINO: So any other questions for the Department in this regard? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: I'm still not convinced that what we're proposing doing here is the best way to deal with this because all I can see is if we pass this as its proposed we're going to continue to have the people coming here to tell us all their stories about how they're unable to use their family land. And it's not enough to have the deferral because yeah, you can defer it but we're really looking at what happens when they try to build the homes for their children. And many of them, believe it or not, are building homes for their children. Yes, we have the abusers like we have in every law that we make but we also have a lot of real people that have land that are trying to take care of their children. So, we haven't found the answer for that and I think we need to. I really think we need to because I don't know how we're going to do it but what we're suggesting is not going to help the people that keep coming to us with their stories. You know, these are hard times and people are suffering and they need to take care of their families and they cannot do it. And we haven't found a solution. We're just going to say, well, we're just going to pass this the way it is because this is how it is. That's not very creative. We need to find a way to help people that really want to take care of their families. You know, I don't know about other people's property but I can tell you that when my mother gave her property to my sister and I in that deed there is a restriction that we are to sell only to family members. So, you know, it can be creative and I don't think that we found a solution here because this is . . . it's prohibitive. It's
cost prohibitive to the little guy and these are the people that really want to do this is because they can't afford to build four, five and six hundred thousand dollar homes for their children. So, I'm not satisfied with where we're at and I don't know how to deal with it. That 50 percent that is reimbursed, well, not reimbursed to the County is really income to the County. They get income, they have an asset. They also have a liability because now they've got to maintain it and I know all about that. I don't know if the 50 percent is enough. I don't know if we should put something in this law that says we can help you if it's truly a family subdivision but if you sell you pay us back. Can we do that? Is there something that we can put in land, exchanges of land that would automatically make the person who buys it have to reimburse us or sells it have to reimburse it. You sell it, you reimburse us from the sale. I don't know but I'm not satisfied with where we're at.

CHAIR VICTORINO: You know, since we have so many concerns and so many ideas and it's like everything else, I get to a point where I'm not feeling like we're moving anywhere and we're stuck in the mud, you know, and we're stuck in the mud right here. And let's call a spade a spade and we're not going anywhere with this right now. And I'm not going to go any further. What I would like to recommend is two things -- I'd like to defer this matter and I'm saying this upfront now just because I think we're stuck in the mud, and look at some alternatives and some of the proposals that you, Ms. Baisa, have made and Mr. Molina, and also land as far as . . . when a true family subdivision is brought forth, if that family subdivision is sold to anyone outside of the family within 25 years, I just took 25 right off the top of my head, but that way there is some kind of restriction that is put in the deed then the County would be reimbursed the entire portion of the improvement or something like that. Now I know Mr. Kushi, you're gonna have to look into that and there's many facets of that but I think fairness is always something we strive for but again I always go back to the statement and many of you have used to statement many times on this floor -- there's never a perfect ordinance, perfect law or perfect anything. I mean you govern 99.9 percent of all the things. And like you just mentioned, Ms. Baisa, earlier if somebody is going to abuse, they're going abuse. You know the problem is catching the abusers and the abusers make it bad for the everyday people who are honest. And again we run into this problem time in and time out. So I'm beginning to feel like we're stuck in the mud with this one, especially in this area and many of us, you know, want to get something that is fair and correct the first time out. And I think Mr. Eng has expressed his concerns and I understand that Mr. Eng and I want to address your concerns and incorporate all of them. Again, I don't want the people of Maui County getting the short end of the stick, both sides. Because maybe you as a family subdivision did all the right things but the guy who abuses it, we, the County taxpayers, somehow or rate payers or somebody is going to pay the bill. There's no free lunch in this equation. So, Mr. Pontanilla, you had something to say?

VICE-CHAIR PONTANILLA: Yes, thank you. You know, I want to request from the Department to give us some analysis in regards to what it would cost to extend a line, quarter mile, half mile, one mile and what would be the cost of that customer at the end of this line paying the County for water meter hook up, and just trying to analyze the payback time and maybe come out with a better solution, not a better solution but you know an improved rather than on the percentage that
the County pays whoever put in this line. So at least give us a fairly good idea, you know, as far as cost what it would take.

CHAIR VICTORINO: I think that's a good request, Mr. Pontanilla, and also and instead of 50 percent reimbursement maybe a fee based, you know, as time goes on the fees charged to hook up would make up for that difference. So I think we've got to look outside of the box. I think since 1977 we've been stuck in this one percentage and this one aspect and I know Mr. Eng and Mr. Kushi, you guys have worked very hard and we are trying to get this codified and moved on because that's what I said when I started this and we're making baby steps and sometimes I feel like not only I get stuck in the mud I get stuck in quick sand, you know, I start sinking real fast. Hey, sorry for the graphics. I just figure it's just a good way of making everybody feel a little bit better. But at this point, without any further discussion on the matter, I would like to make two requests from the Members first of all, if you have specific ideas, recommendations, then please forward them to me by next week Friday because I'd like to give them time. And I'm going to ask Mr. Eng, if possible, you could and I don't how much time and we can discuss the time frame as far as the request for Mr. Pontanilla as far as some alternatives. I know you're a very busy man and your Department is already overwhelmed but I think this is very important so if we could work together on that, Mr. Eng, and see what we can come up with so that we can make some recommendations. And Mr. Kushi from your side I would, you know, with these requests and these recommendations send them down to you and see what we can incorporate and how you feel with your advice from the legal standpoint, yeah. So, if there is no further discussion, I would like . . .

COUNCILMEMBER MEDEIROS: Mr. Chairman?

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: Just one quick question, if you'll allow it, please?

CHAIR VICTORINO: Yes, go ahead.

COUNCILMEMBER MEDEIROS: Thank you. For Mr. Eng, Director, the request by Member Pontanilla certainly would help us but my question would be how do you determine that with different zonings and the requirements of the system for that different zonings? I would require different size pipes, some with hydrants spread out further than others. How would you come up with an average cost?

MR. ENG: Member Medeiros, I was thinking of asking Member Pontanilla that myself. What size pipe, what type of soil, what length, a lot of things.

CHAIR VICTORINO: Okay.

MR. ENG: We'll probably just come up with just an example.
CHAIR VICTORINO: Yeah.

MR. ENG: You know, Mr. Rezents gave a good example of a hundred thousand dollars. Just real clear cut and simple.

COUNCILMEMBER MEDEIROS: But Mr. Chair, I wouldn't want the Department to come up with a figure and then everybody that wants to do a family subdivision thinks that, that's the cost because it may differ at different areas of Maui County depending on soil, zoning, everything.

CHAIR VICTORINO: And I think Mr. Medeiros you bring up a good point and that's something we were going, and I was going to be working with and I would ask Vice-Chair Pontanilla for his input in that area too. We understand the demographics and the differences in areas and the contents, the soil, and some is granite rock and it's harder to dig and whatever. So with all this in mind, I think there's a lot of variables that we need to look at and that's why I think at this point I want to stop and say, if you have specific questions, specific suggestions or recommendation, please bring them forward and I'm asking it by next week Friday so we can incorporate that and sit down and look at all of this and, hopefully, come up with some fair and equitable solutions. Again, no perfect law, no perfect ordinance but we'll try to get the best we can. And that way, once we pass it we'll all feel like we left the room doing the best we could for the people.

Okay, so I'm going to move on and I wanted to move on to the other subject that was brought up and that was the ductile iron and I did get a response. In your folders, you will find two letters dated September 22, 2009. These are responses from the Subdivision Engineering Standards Committee. And as you read and discuss each one of 'em their discussion between PVC and ductile iron pipes we have some concerns that I want to read out aloud so that people understand. Some of the concerns on the August 4th meeting relating to the possibility of use of polyvinyl chlorine or PVC piping in addition to ductile iron piping currently in Section 14.05.130 of the bill requires that pipes shall be, again the wording is pipes shall be ductile iron. It was brought to the attention that the 2009 State Legislature passed House Resolution No. 52 encouraging the use of PVC for the resistance to corrosion and the relatively low cost. I have had the staff call the other counties to get their comments about this. Honolulu City and County does not use PVC piping in areas where soil is very corrosive, excuse me, correction, does use, I said does not, does use PVC piping in areas where soil is very corrosive. This tends to lower the, tends to be in low lying areas closer to the sea level. Kauai County uses at least 95 percent ductile iron and does not see the number changing in the near future. Hawaii County has experimented with PVC piping and has not been impressed. They do not intend to use PVC piping in the future except on a limited circumstances. So these are direct responses from our neighbor counties. I figure the best place to go is to the people closest to us who have similar situations. The staff has also provided two studies dated August 6th and September 27th in your binders, comparing the differences in the two materials. One study was done in the State of California, and one study is from a consulting firm that has no association with a company selling either of the two products. From what I can tell you, both of these studies lean towards the use of ductile iron for some of the following reasons. First of all, ductile iron has more than eight times the strength of PVC piping. Ductile iron has a longer life span. Taping [sic] ductile iron is easier and is less likely to
damage pipes, I mean, tapping. I said taping. Correction . . . tapping. And if anybody doesn't understand what tapping is, is when you have a problem you can shut one area off, tap into that pipe and have water continue to flow and fix the area that has had damage. It's easier to find underground leaks. PVC is more susceptible to damage or breakage during installation. Energy savings using ductile iron due to low pumping costs, lower pumping costs. And PVC is more vulnerable to bending conditions. And if you look at the two studies I provided in there, that will give you a better understanding of the differences between ductile iron and PVC. Okay. So because I am going to recommend deferral of that first portion, the second portion at this time I will let peruse that and look it over and at our next meeting we'll bring that up along with the addressing the concerns between, the differences between ductile iron and PVC, okay. Any questions and I'll open the floor to discussion at this point on the differences. I don't know if anybody has had a chance to read it. But there are very interesting demographics. Really makes you wonder and I understand now why the Department has leaned so heavily towards ductile iron. Overall reliability, longevity seems to be very favor . . . heavily favored I should say towards ductile iron so I can understand and appreciate Mr. Eng your wanting to keep that as the main source of usage. So I thank you very much. So we'll let the Committee Members take some time and read it over. And yes, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. You referenced I know the August 6th communication which is about ductile iron. What is the second one you referenced?

CHAIR VICTORINO: The second one was September 27th.

COUNCILMEMBER MEDEIROS: Twenty-seventh.

CHAIR VICTORINO: Yeah, September 27th.

COUNCILMEMBER MEDEIROS: Oh, okay. Mahalo.

CHAIR VICTORINO: It should be because we had that . . . Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. I saw the study that was made and, you know, according to this particular firm, they say that ductile iron pipe provides the best engineered value for the authorities water system so, you know, it kind of tells you that what the Director is telling us that ductile iron is the best.

CHAIR VICTORINO: Yeah. Ms. Baisa?

COUNCILMEMBER BAI SA: Thank you very much, Chair. I had an opportunity to take a look at this and it certainly seems like ductile iron is probably the longer lasting and best thing but I'm just wondering, we had Mr. Nagamine here yesterday talking about the new electrical standards that we're adopting and he mentioned that we would be adopting new plumbing standards. What do those plumbing standards talk about in this area? Maybe we can have that at our next meeting.
CHAIR VICTORINO: Yeah, and I was gonna just say that I don't have that information so . . .

COUNCILMEMBER BAISA: We can bring it to the next meeting.

CHAIR VICTORINO: Um . . . I'm not sure if it's available for us. If it is, then I'll ask Mr. Nagamine to bring it.

COUNCILMEMBER BAISA: I believe it is because I had a casual conversation with him.

CHAIR VICTORINO: I had the same conversation with him too.

COUNCILMEMBER BAISA: So, I think it's available. It might be a good thing in helping us look at this.

CHAIR VICTORINO: What I also will say that, that should be coming through Infrastructure Management Committee. So I'm not sure how that crosses both sides so I'll check into it and I'll let you know.

COUNCILMEMBER BAISA: What I'm trying to find out is what does one thing say and if we do this do they complement each other or do they contradict each other?

CHAIR VICTORINO: Yes, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: I might just add to what Member Baisa is saying that DSA covers plumbing within the structure.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER MEDEIROS: And their plumbing requirements are very different from transmission lines and so forth. DSA would cover such things as copper pipes or PVC pipes and stuff and galvanized pipes. So I think that's the information they would provide if we inquire with them.

CHAIR VICTORINO: Okay. Well, others requested and then we can take it from there. I mean, you guys have nothing better to do but more reading so I'll make sure we get it and put in the binder and I would hope everyone does their homework so I don't have to go into explanations. Thank you. Go ahead, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Maybe the Director can clear this whole thing up. Ductile iron is basically used for transmission?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: You're absolutely correct.
VICE-CHAIR PONTANILLA: And anything within the property would be DSA. And I think most of the properties are utilizing copper and PVC.

MR. ENG: Plus PVC in-house, yeah.

VICE-CHAIR PONTANILLA: Yeah. Thank you.

CHAIR VICTORINO: Anyhow, so I will make that request and I mean something for us to peruse on our off time. Any other discussion on these matters?

UNIDENTIFIED SPEAKER: Nope.

CHAIR VICTORINO: And I will again inform the public as best I can see here at the latest update and Mr. Mateo, the latest update I have on my computer here which is of half an hour ago that a warning is in effect for the Hawaiian Islands. It has not been canceled as of half an hour ago. So, ladies and gentlemen, I know many of us are very concerned and the public out there at large is concerned. Thank you very much and I truly apologize that we couldn't get more done but I think we are walking in the right direction.

Ms. Willenbrink, I will . . . oh, yeah, yeah, you have to read the bottom. Sorry. Hang on everybody. I forgot I gotta read this. Okay. Thank you. If there's no further discussion, I would like, with the Committee's approval, to defer this matter.

COUNCIL MEMBERS: No objections.

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you. I have one more very important announcement. And I would hope all Members next week Monday, October 5th, 2009 at 6:30 p.m. upon the request of my Upcountry members, the Water Resources Committee will be holding a meeting at King Kekaulike High School Dining Room next week and we'll start at 6:30 p.m. on October 5th to discuss a bill relating to the use of Hamakuapoko Wells Upcountry . . . (CHANGE TAPE TO SIDE 2A) . . . usage during times of drought. Those who wish to testify please come early. The doors will open at 5:30 p.m. I would like to ask the public, especially Upcountry, to please attend because your manao will be greatly appreciated. Okay. So, Members, please note that on your calendar and I hope all of you can be there because this is very, very important. And I want to, first of all, thank the Director and Mr. Kushi for all your considerations and all your efforts. I know we keep making changes but like you said, Mr. Eng, now is the time to make those changes so that we're all comfortable. And we want to follow and listen to your recommendations also so thank you very much. To my staff, which is invaluable, Ms. Willenbrink comes running up to my office, I don't want to say every day but pretty close to that. I want to thank her very much because she's a great, great Analyst to work with. And Tammy,
thank you very, very much. I cannot do without you. You're so efficient and right on. Now that I've had all the pleasantries done, meeting adjourned. . . . (gavel) . . .

**ADJOURN**: 10:38 a.m.

**APPROVED:**

[Signature]

MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:090929

Transcribed by: Jo-Ann C. Sato