CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho‘ohanohana
Councilmember Danny A. Mateo
Councilmember Bill Kauakea Medeiros
Councilmember Michael J. Molina

NON-VOTING MEMBERS:
Councilmember Wayne K. Nishiki

STAFF: Kimberley Willenbrink, Legislative Analyst
Tammy M. Frias, Committee Secretary

ADMIN.: Jeffrey Eng, Director, Department of Water Supply
Jeffrey S. Hunt, Director, Department of Planning
Scott Teruya, Administrator, Real Property Tax Division, Department of Finance
Edward S. Kushi Jr., Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Sylvia Cabral
Warren Watanabe, Executive Director, Maui County Farm Bureau
Additional attendees (2)

PRESS: Akaku—Maui County Community Television, Inc.

CHAIR VICTORINO: . . . (gavel) . . . Good morning. This will convene the Water Resources Committee meeting for November 17, 2009. We have quorum present. Let me introduce the Members, voting Members, first of all. I’d like to introduce our Vice-Chair, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Good morning. Vice-Chair of the Council, Mr. Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chair.
CHAIR VICTORINO: Member Gladys C. Baisa.

COUNCILMEMBER BAIASA: Good morning.

CHAIR VICTORINO: Good morning. Member Sol P. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHLA: Good morning.

CHAIR VICTORINO: Good morning. The Chair of the Council, Mr. Danny A. Mateo.

COUNCILMEMBER MATEO: Good morning, Chair.

CHAIR VICTORINO: Good morning. And also Member Bill Medeiros.

COUNCILMEMBER MEDEIROS: Good morning, Chair.

CHAIR VICTORINO: Good morning. Thank you all for being here on time and getting the meeting started. Let the record show that we started at 9:03 a.m. We have one non-voting Member here, Mr. Wayne K. Nishiki.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR VICTORINO: Thank you, Mr. Nishiki, for being here. Let me introduce our Legislative Staff, we have here with us our Legislative Analyst, Kim Willenbrink, which is presently passing out some information, and our Committee Secretary, Tammy Frias. Thank you for being here. From the Administration, at this time, we have our Director of Water Supply, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: Good morning. From the real property, Department of Finance, Real Property Tax Administrator, Mr. Scott Teruya.

MR. TERUYA: Good morning.

CHAIR VICTORINO: Thank you. Later on, we will have Jeff Hunt and Francis Cerizo who will be attending. They will be coming a little bit later. And our Deputy Corporation Counsel, Mr. Edward Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Thank you. Ladies and gentlemen, we have just one item today. And the item is WR-1(1), Water Supply Rules (Definition of Agricultural Consumer).
ITEM NO. 1(1) WATER SUPPLY RULES (DEFINITION FOR AGRICULTURAL CONSUMER)  
(C.C. Nos. 05-46 and 06-228)

CHAIR VICTORINO: The Committee is in receipt of correspondence dated October 29, 2009, from the Department of the Corporation Counsel, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 14.01.040, MAUI COUNTY CODE, TO ADD A DEFINITION FOR AGRICULTURAL CONSUMER". The purpose of the proposed bill is to add th definition for an agricultural consumer to Article 1, Title 14, Maui County Code, County of Water . . . (County Water Code), I should say. At this time, we have . . . and we will receive public testimony on this item. Today, we only have one item and at this time I only have one testifier signed up so I am going to allow three minutes with one minute to conclude. Please, when you come up, please state your name and who you're representing other than yourself. At this time, before I call up our first testifier, I would ask all parties in the gallery and all Members present and Administrators if they would turn off their cell phone, put it on vibrate or a silent mode. And I see a couple people reaching down right away. I know, I'm guilty of that also. So, without any further, without any objections, I'd like to start public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections. Thank you. At this time, I have one testifier signed up. I have Sylvia Cabral. And Sylvia is a farmer from Kula? Sylvia, will you come forward, please.

...BEGIN PUBLIC TESTIMONY...

MS. CABRAL: Good morning.

CHAIR VICTORINO: Good morning, Ms. Cabral.

MS. CABRAL: I just have a couple of concerns. I think that in this age of internet I would sure like to see some sort of a cross reference, maybe an Excel sheet, where we can see the State, the County, the Planning, the Tax Department, the Water Department, and what their goals are such as this ruling today because there's so much confusion for the farmer. And this is starting to effect even the lending of, of . . . on a property. Say if one of the rules and I know you're about water today and I'm just trying to cross reference all the parts of Ag. But say the rules say you have to farm forever. What would happen when I'm 75 years old; am I not going to be able to get a loan on my property because I'm not farming it anymore? Another problem is that it takes many years to start crops, and like we just had the storm. What if your crop is wiped out? How do you prove that 36,000 which in one Department that law has got to be changed, that 36,000 farming a year or even 500 a month, what if your crop gets wiped out? And having the water rates is very important and I do think they should only be given to those who do actively farm or have farm interests. But my main concern is that the start-up time to qualify and get your orchards or your farm started to get the Ag rates. Thank you.
CHAIR VICTORINO: Thank you. Any questions for the testifier? Yes, Mr. Kaho‘oalahala first and then followed by Member Medeiros. Go ahead.

COUNCILMEMBER KAHO‘OHALAHALA: Thank you. Ma‘am, you are actively farming right now?

MS. CARBRAL: I have the hands to prove it.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And is your farming done for the purpose of sales so that you sell all what you grow or produce?

MS. CABRAL: Um... this bill doesn't really affect me. I'm on catchment water. I have other problems like the neighbor's animals destroying my work because there is so much open range around me. I'm just speaking for Ag and general for all farmers. I have a lot of farmer friends.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. I was just asking the question because I wanted to understand if any of your farming is done for the purpose of just subsistence.

MS. CARBRAL: No, I'm actively trying to do landscape plants.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And any of the other farmers or friends that you mentioned, are they all involved in the production for sale of their products?

MS. CABRAL: Yes.

COUNCILMEMBER KAHO‘OHALAHALA: Are any of them involved in just subsistence farming?

MS. CABRAL: No.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Thank you.

CHAIR VICTORINO: Thank you. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and mahalo, Ms. Cabral, for being here this morning and your testimony. Do your farming revenues reach the 36,000 dollar mark?

MS. CABRAL: Never will.

COUNCILMEMBER MEDEIROS: Never will. Okay. And what area of Maui County do you farm at?

MS. CABRA: Kanaio.

COUNCILMEMBER MEDEIROS: Kanaio. And you say you farm landscaped plants?
MS. CABRAL: Yes.

COUNCILMEMBER MEDEIROS: Okay. But you don't utilize agricultural water, you use catchment?

MS. CABRAL: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your testimony this morning. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Just a comment and I want to thank Ms. Cabral for being here. In regards to the issues that she brought up regarding if a person becomes of age and cannot do any more farming, what do you know then? And the one that really caught my ears is that the destruction of crop during storms. You know, I do have some friends Upcountry, whenever it rains, man, you got to go up there and protect your onions, otherwise, you lose your crop. So, those are the questions that we'll be asking the Tax Department regarding this particular item. Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Any other questions for the testifier? Seeing none; thank you, Ms. Cabral, for being here this morning. I will now offer any one else in the gallery an opportunity to testify. And if you would come up, you can sign up after you finish and complete your testimony. And if you would come up, you can sign up after you finish and complete your testimony. And I see one handsome gentleman known as Mr. Watanabe coming up real fast. Okay. Come on, Warren, I was expecting you. In fact, if you hadn't come, I think I would have been disappointed, personally. Thank you, Warren, for being here. And after you complete your testimony, you can sign up with Tammy, please.

MR. WATANABE: Okay. Warren Watanabe, Executive Director, Maui County Farm Bureau. And I really wasn't prepared to testify but . . . 'cause I didn't get a copy of the proposed ordinance so I'm not sure what it is on the table. But anyway, I just wanted to say that the Maui County Farm Bureau under the former Administration had worked with a working group to define agriculture. And it is a difficult task to try to define agriculture because we are branching out I think into a lot of different types of Ag. And I am also aware that the State of Hawaii is also looking for a definition. I think all the counties within the State of Hawaii are dealing with this issue. And so I'm just here to offer the Farm Bureau's assistance whether it's working with you on real property tax, Planning Department, Water Department to come up with one definition, if possible. Thank you.

CHAIR VICTORINO: Thank you, Mr. Watanabe. Again, this is just a step in one direction with the water and, you know, there are many more, and I thought I'd ask Planning as well as our Real Property Division to be here. And then that way, we can get some concurrence. Ms. Baisa, you have a question?
COUNCILMEMBER BAISA: Uh, yes, Chair, thank you very much and thank you, Warren, for being here. As you know, this is a long-standing item of interest -- this definition of agriculture. And if nothing has changed, that definition is still somewhere in the Planning Committee agenda, and hopefully, one of these days the Planning Chair will have time to get to it. I couldn't get to it and with Mr. Kaho'ohalahala dealing with the General Plan now I don't know how we're going to do it. But it is a very important thing that has to be done but just for your information cause I'm very interested in hearing your reaction. I'm going to read this. It's just one quick sentence that we're looking at today. It says, "Agricultural consumer means a consumer that actively engages in crop production, livestock raising, dairy farming, or aquaculture for commercial food production, and whose minimum gross annual income from such activities is $5,000." Now that you know what it says, any reaction?

MR. WATANABE: Um . . . I think as I recall the proposed definition that the agriculture working group provided was we were looking at twenty five hundred dollars. And I think one of the things too is that a lot of people talk about the 35,000 but I think if you look at the Code, it's one of three . . . options where you need to satisfy two or the three options, I believe. So there are options available. I think for the Farm Bureau we're basically, and I testified before on this fact, is that we represent commercial farming, commercial agriculture. And so I think that's reasonable. My understanding state is a thousand dollars. I believe on a Federal level, they're battling this on a Federal level also, and so it's very difficult, I think, to go with just income. It may be difficult. But that's why for us also in the Farm Bureau I just also want to comment, when I get back to commercial agriculture, we need I think as a County, need to define because as one of the reasons why the County and the State needs to define what is commercial agriculture. Because for us, we feel as the Farm Bureau, those are the businesses that deserve the credits or whatever, the breaks that will help to promote agriculture. I mean, for us, I mean, I found it very difficult when Maui Land & Pine decided to go out and you know we need, I think as a State, need to focus on getting that kind of a, giving that kind of support for a commercial production. It's not against, you know, having subsistence farming or whatever but I think that's why they're saying it becomes difficulty to define what is agriculture.

COUNCILMEMBER BAISA: So your reaction to that $5,000 limit is kind of mixed.

MR. WATANABE: Yeah. Well, I think, like anything else it's a starting point and it's up for discussion and we can come to some kind of understanding what that number should be.

COUNCILMEMBER BAISA: Thank you very much and thanks for being here.

MR. WATANABE: Thank you.

CHAIR VICTORINO: Thank you, Mr. Watanabe. And if you all want to know what Mr. Watanabe is speaking of, go to July 10, 2009, a letter that I wrote to Jeff Eng there's a response in the back of it and has a complete breakdown of the meeting and the recommendations this Committee made. Also, all the Members of the Committee. So I had that included in your binder for your perusal so that you can review this as you have brought up. And it is clearly stated, I mean, clearly
stated, excuse me, that hence $25,000 what about $25.00 with no dedication and/or farm plan seeing developer approved. I'm just reading an excerpt out of your suggestions that was dated for June 2, 2004 and then the outline of the draft proposal was revised on August 10, 2004. So it is included, ladies and gentlemen, in your binder so it is part of the record and it is part of something that you can review. Again, my take was we had to start somewhere and that's why the five thousand was there. I didn't think thirty-six thousand was appropriate. I mean, that was really out there. But five thousand was something that I thought people can kind of grasp and grab onto. So we'll go from that point. Any other questions for Mr. Watanabe? Seeing none.

COUNCILMEMBER KAHOʻOHALAHALA: Yes, Mr. Chair?

CHAIR VICTORINO: Oh, excuse. Go ahead, Member Kahoʻohalahala.

COUNCILMEMBER KAHOʻOHALAHALA: Thank you. Warren, was there any discussion and I'm just going to continue along the lines 'cause you're obviously representing the commercial farming interests, but was there any discussion in your working group about subsistence farming?

MR. WATANABE: Uh, yes. And part of it too was that we have part-time farmers too so we're trying to make it so that we could accommodate a lot of groups as possible. A previous testifier talked about retirees . . . we try to take all of that into account. And one other thing was that the group looked at was ranching. Ranching is I think a little different than from other types of vegetable production so we tried to accommodate that also because I think those, um, the smaller ranchers have a harder time to meet that qualification also. So we try to take a broad perspective at it.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. I've looked at your notes from your working group and that's why I'm asking because I don't see anywhere in here that you made any kind of decision and your discussions about subsistence farming is not.

MR. WATANABE: Well, again, this was done in 2004. And I think as the years went, you know, subsistence farming has become a greater part of the discussion.

COUNCILMEMBER KAHOʻOHALAHALA: So do you think today then that must be part of the consideration?

MR. WATANABE: Well, I think you may look at different levels of subsidies. And again, the reason why we've emphasized commercial production is because these are the guys that produce for larger numbers of people.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. Thank you.

MR. WATANABE: Thank you.

CHAIR VICTORINO: Any other questions? Yes, Mr. Medeiros.
COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and Mr. Watanabe, good morning. Thank you for being here.

MR. WATANABE: Good morning.

COUNCILMEMBER MEDEIROS: You made reference to that working group that you were part of and I see your name as Warren Watanabe Farm. So did you represent that group as the Executive Director of Maui Farm Bureau or just your farm as a farmer?

MR. WATANABE: It was pretty much both. But at that time I was more in the capacity as President of the Maui County Farm Bureau.

COUNCILMEMBER MEDEIROS: Okay. I appreciate that. I think this is an interesting group of members that you worked with. Thank you for your testimony this morning.

MR. WATANABE: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none. I thank you, Warren, for being here this morning and sharing your manao.

MR. WATANABE: Thank you.

CHAIR VICTORINO: I will, again, give one more opportunity for anyone in the gallery who would like to come forward to testify. Seeing none. With no objections, I would like to close public testimony on WR-1(1), Water Supply Rules (Definition for Agricultural Consumer).

COUNCILMEMBER MEDEIROS: No objections.

CHAIR VICTORINO: No objections. Thank you.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Members, at this time, I would also like to introduce and call to the front, if he would join us, Mr. Jeff Hunt, from the Planning Department. Thank you, Mr. Hunt, for being here this morning. As I stated earlier, we have a copy of the proposed bill, dated October 29, 2009, from the Department of the Corporation Counsel. I also directed you guys to the July 10, 2009 correspondence with the background on the water rules. At this time, I would like to ask the Director of Water Supply, if he would explain the Department's preference on this definition. And if Corporation Counsel Kushi needs to assist you, then I would welcome that. Go ahead, Mr. Eng.
MR. ENG: Thank you, Mr. Chairman, and good morning, Committee Members. The Department of Water Supply supports the proposed definition that the Chair has brought forward to this Committee. I think it's a good starting point for your discussion. We believe that it helps tighten up the definition so we'll focus on commercial food production and it will help us, the Department, to administer as request for Ag rates applications come into our Department. So this definition is certainly one that the Department supports. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng. Mr. Kushi, would you like to add anything to that?

MR. KUSHI: No, sir.

CHAIR VICTORINO: Not at this time. Thank you. Ladies and gentlemen, I'll open the floor for questions to be directed at the Department and maybe before that, hang on a second, maybe before that I would like to ask because both the Department of Planning and the Department of Finance did comment on this definition. So maybe I'll start with Planning, Mr. Hunt, if you would have any comments on this particular proposal? And then go to Mr. Teruya from the Department of Finance. Mr. Hunt?

MR. HUNT: Thank you, Mr. Chairman. Let me give you a little background on how the Department deals with agriculture. In the '60s and subsequently in the '70s, the State adopted Revised Statutes that defined agricultural use and agricultural uses that are allowed in that district. Those HRS Statutes require that the Counties only approve farm dwellings if they are located on or used in conjunction with a farm or where that activity provides income to the family occupying the dwelling. Based on the HRS, the County adopted zoning, and we have a definition in Title 19 for Agriculture, and that definition a little bit broader than the proposed definition before you today. It includes things such as flower growing, forestry, grazing and it doesn't limit it to food consumption. The Chapter 19.38, our Agricultural District in the zoning ordinance then spells out provisions for farm dwellings. And the zoning ordinance says, that two dwellings are allowed for each lot, one of which does not exceed 1,000 sq. ft. of developable area. The zoning ordinance goes on to allow a farm labor dwelling so this is in addition to the two farm dwellings, a farm labor dwelling if you have five acres or more or per five acres of lot area and then you have three criteria and you have to meet two out of the three, one of the criteria is at least $35,000 of gross sales of agricultural products. The second criteria is certification that agricultural water rates are being paid. And the third criteria is a farm plan demonstrates a visibility of the commercial agricultural production. So that's for a farm labor dwelling.

Up until 2006, the Planning Department essentially from what I have been informed, essentially required that there be some farm activity on the property before we allowed a farm dwelling to be approved. In 2006, the Department adopted Administrative Rules and the Administrative Rules specifically require a farm plan be approved prior to approval of a building permit for a farm dwelling. So, essentially, over the years we've got three different types of farm dwellings that have been approved in our community. Some that prior to the HRS being adopted in the '60s and '70s didn't require any farm activity at all. Then between the HRS adoption and the Administrative Rules in 2006, there was a requirement that some farm activity be on the
property. And then since 2006, we've required a farm plan for the first farm dwelling and then that farm plan be fully implemented for the second farm dwelling. Based on those facts and the existing situation, the Planning Department we appreciate the proposal and the intent of the proposal to give a little bit more clarity to what should be allowed an agricultural water rate. But given the facts of our background, we would suggest two things - one is that the proposed definition in 14.01.040 is somewhat restrictive. It speaks to commercial food production. It doesn't include all the farm agricultural activities that we have already in Title 19. So we would suggest that you consider using the definition that we already have in Title 19 we have a definition of agriculture. And in addition to the annual income, we think there should be a provision that if a farm plan has been approved that you get agricultural water rates. The idea being that if somebody comes in and provides a farm plan to the Planning Department, we sign off on that farm plan and then give them a farm dwelling then it seems to us to be inconsistent for them to then go and get turned down for farm or agricultural water rates. So, we, again, support the intent of the Water Department's proposed definition with some modifications that we suggested. We think it could have some merit. I'd be happy to answer any questions.

CHAIR VICTORINO: Thank you. And for the Committee Members' information, if you look up there on the board, the Department as he just referred in Section 19. is right there, agriculture means the production of plants, animal life for food and fiber, and for the raw materials for processed products. Agriculture includes but does not limit to fruits, vegetables, flower growing forestry, aquaculture, bee keeping, grazing, dairying, and their accompanying service and facilities. And Mr. Hunt, that's the definition.

MR. HUNT: Correct. That's the definition in Title 19.

CHAIR VICTORINO: In Title 19. So it's shown right there as far as their definition, okay. Mr. Teruya, you had also passed out to everyone upon Ms. Baisa's request, you passed out your rules and regulations as far as how you assess agricultural lands and the imposition, impost of the deferred tax under 3.48.325, Maui County Code. So, Mr. Teruya, would you like to explain to the Members what you folks look upon as assessment for agricultural lands?

MR. TERUYA: Good morning, Chair and Members of the Committee.

CHAIR VICTORINO: Yeah, sorry about that.

MR. TERUYA: First of all, in regards to real property tax, it's important to note that the owner of the parcel must first file either an agricultural dedication or agricultural use valuation form. Once that is submitted, the Real Property Tax evaluates and fields inspect the agricultural use. If it meets the acceptable standards to produce crop or support pasture and actually in use, then the parcel shall be granted in an agricultural use assessment for the following calendar year. It's also important to note that there is currently no income requirement required by law for the Real Property Tax Divisions agricultural dedication or use program. I believe you guys all have a copy and I don't know if you want me to read the definition.
CHAIR VICTORINO: Yeah would you so that the public understands how your definition is.

MR. TERUYA: Okay.

CHAIR VICTORINO: Go ahead, Mr. Teruya.

MR. TERUYA: In the rules and regs of the Director of Finance relating to the assessment of the agricultural lands and the imposition of the deferred tax under Section 3.48.325, of the Maui County Code, the term of "agricultural use" shall mean lands actually put to agricultural use adhering to acceptable standards to produce crop, specific livestock including ranching use. Actually put to agricultural use shall be deemed to be when crops are actually in cultivation and farm management efforts such as weed or pruning control, plowing, including housing, fencing and water facilities for livestock and pasturing of animals are clearly evident. It does not include nor apply to areas used primarily as yard space, setbacks, or open landscape associated with residential use planted with fruit and ornamental trees, flowers, and vegetables primarily for home use. And that is a copy directly out of our rules and regs.

CHAIR VICTORINO: Okay. Thank you, Mr. Teruya. So, now you've heard from the Planning, you've heard from the Department of Finance, and you see our proposal. As you can see, we have a broad spectrum. And I think this is what the ambiguity that people keep talking about has come about because you have assessments, you have Planning who gives what they think it is, and then you have Water who wants to also have water rates for agriculture. So, at this time, I'll open the floor to questions. Now come on now, I know you guys got questions. All right, I'm going to start right down here. Mr. Mateo, you have anything? We'll start from Mr. Mateo and just work my way down. How does that sound?

COUNCILMEMBER MATEO: Chairman, first of all, before a question, just for the sake of consistency, under 22.04A.050, Definitions under Ag Parks, it is also consistent with the same definition that Mr. Hunt just read a few minutes ago. So there is consistency under those two definition classifications. So if anything, I think our purpose and function is to find continued consistencies as we continue to create. Otherwise, we're just going to be spinning wheels consistently and I don't know, to me, the Ag Park, which is and this one is referenced with the Kula Ag Park and the whole premise of the Kula Ag Park was for the production of agriculture, therefore, I think it would be more consistent for us, as a Committee, to use that as a reference point because this particular definition does not only reference food production. So, if anything, I think for the sake of consistency that we already have two existing definitions that I think we need to somehow incorporate into the current definition being recommended.

CHAIR VICTORINO: No that's a good recommendation. Like I say, we brought this forward for discussion purposes and as you can see even though two out of the four or five that we've discussed have concurrency, the other two or three do not so I mean not going up the wrong tree. Actually, we're heading the right direction. So specific questions or is that all you wanted to bring up?
VICE-CHAIR PONTANILLA: Thank you, Chairman. Just a fast question for the Real Property Tax Division. I'm looking at your second to the last paragraph of the letter that was sent from the Director of Finance regarding actual square footage of agricultural use being claimed by owner. So I'm assuming that the Real Property Tax Division does have an appraiser that goes out to look at the land to make sure that active farming is being done?

MR. TERUYA: That is correct. Whenever somebody fills out an agricultural use or dedication form they attest to the area that they are going to be used in production. They also notify what is that use is going to be whether it's palm trees or whatever it is, even a pasture of use. So, what we're doing is we're going out there to physically inspect what is being claimed and identify if the area in use is actually in use. So that is the purpose of the program and what the appraiser does on his site inspection.

VICE-CHAIR PONTANILLA: Thank you. So when you read 3.48, I note that there were no value in regards to profits being made doing farming. And why I tell you that comment is because of a testifier that was here earlier this morning testifying in regards to what do you do if your crop is destroyed. So I think your definition clearly protects a farmer that loses his or her crop. So I thought I'd just make that comment, and thank you for that information regarding how you do your appraisal in regards to farming. Thank you.

CHAIR VICTORINO: That's it?

VICE-CHAIR PONTANILLA: Yes.

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, for Mr. Teruya. The definition that you read for agricultural use, I wanted to ask you, it says, specific livestock including ranching use. Specific livestock means there's a list of livestock that is incorporated in your definition?

MR. TERUYA: We don't have a specific list of livestock. For the most part when we look at predominant livestock type of grazing, it's usually horses, cattle, goats, those are the primary... there's also pig farming, chicken, etc. but I don't think we have an existing list that states what is an acceptable livestock crop.

COUNCILMEMBER MEDEIROS: So what is meant when you say specific livestock?

MR. TERUYA: I don't have an answer to what is specific livestock in reference to.

COUNCILMEMBER MEDEIROS: Oh, okay. So it's not limiting the type of livestock then?
MR. TERUYA: Not to our knowledge.

COUNCILMEMBER MEDEIROS: Okay. Okay. But this is a definition from your Department?

MR. TERUYA: This definition was established in 1981 when the Con-Con of 1978 made the taxation from the State to the Counties and this is the rules that was adopted at the time.

COUNCILMEMBER MEDEIROS: I see. Okay, because you know we have some other farming or ranching beyond the normal livestock such as sheep and elk and other things throughout our County so I just wanted to be sure that it doesn't limit what kind of livestock as part of ranching or farming. Thank you, Mr. Chairman, for now.

CHAIR VICTORINO: Thank you. Member Kahoʻohalahala?

COUNCILMEMBER KAHOʻOHALAHALA: Yeah, thank you. And again, from the Tax Department, the qualifications again for Ag has a little bit to do with the volume of water. Is that correct?

MR. TERUYU: Volume of water - there's several different when you talk about water, what we're looking for in planting of crops is that every location has a different climate as far as water fall. But for the most part, anything that you plant we expect it to be in rows and columns to have the ability to have water for the plant. We control, those are the standards that we are looking at initially. If the crop doesn't have enough water, it would be pretty evident that it's not going to sustain.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. So it has to meet that criteria as well in your assessments?

MR. TERUYA: Those to me are general standards that we normally look for. And when we talk about clearly evident, when trees are not in, you know, are just planted sporadically that, to us, would not be a standard that we would feel would be acceptable for agricultural.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. And then just for my clarification, the definition that you gave us is coming out of your own rules and regs. and that's really your Department's definition?

MR. TERUYA: That is correct. That was established in August 1981.

COUNCILMEMBER KAHOʻOHALAHALA: And that definition is based, in part, on some of the other parts of the Code like looking at this Ag zoning definition here?

MR. TERUYA: No, that is not anywhere in the Real Property Tax Code in 3.48, no.
COUNCILMEMBER KAHO'OHALAHALA: No, no, I'm looking at when you're cross-referencing, when you're trying to make some determination on your assessment of what is agriculture, and looking at the Planning Department's presentation of Title 19, is that given consideration for you and your Administration to come to some definition that would be at least cross-referencing the other parts of the Code?

MR. TERUYA: No, we have not looked at other divisions or departments as far as our Code.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you.

CHAIR VICTORINO: Thank you. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, the reason I asked to have this definition was I was privileged to be able to attend an Ag Tax workshop that was held Upcountry on November 10th. And there were about a hundred people in attendance. It was very well attended. And many of them came to discuss this whole idea of agriculture and what constitutes agriculture. And of course, they were responding to a request from Real Property Tax to clarify their qualification for Ag tax rates, and there were all kind of buzzing about that because they were in a process of gathering their documentation, and so they had a lot of questions. And that's how I became aware of this definition because it was passed out at that meeting but I couldn't find mine this morning so I asked Mr. Teruya if he would generously share his. Few concerns at this moment and then probably there will be more but when I look at the definition I have a concern about for a commercial food production because there are a lot of agriculture that has nothing to do with commercial food production. You know, I sit on the Kula Ag Park Committee, and if you go up to the Ag Park you'll see that there are a lot of sod farming, there is a lot of ornamentals, there's a lot of flower production, and there is food but you know there's these other things too which are obviously agriculture but would not be included. I, personally, at this point, tend to think that maybe using the definition in Title 19 that Director Hunt set forth is a better way to go because it requires like when we did the bed and breakfast ordinance and we were talking about agriculture, we decided that a farm plan was sufficient if it was well submitted and it was approved to prove that it was agriculture. So I think if we're looking for consistency and taking away the confusion that people have which they talked about a lot at this workshop, they're confused because they say, well, Planning says this and Real Property Tax says this and Water says something else. So I think the public is really looking for us to come up with something that is consistent and so that's where I'm at, at this moment. Thank you.

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

COUNCILMEMBER MOLINA: Thank you, Chairman. With all the different definitions, too bad we couldn't just combine components of all different versions into one. My question relates to what we're discussing here today, which is your version, Mr. Chair, and I'd like to direct a question to Finance, Mr. Teruya.

CHAIR VICTORINO: Go ahead.
COUNCILMEMBER MOLINA: Any comments on the threshold, the $5,000 threshold? I saw testimony I guess from the realtors, I guess from Mr. Deleon, they feel that the $5,000 threshold could serve as a deterrent to farming. Any comments on that, Mr. Teruya, at least from the real property tax perspective?

MR. TERUYA: I think when you look at the agricultural program income requirement is a good tool as well. I think as Mr. Watanabe also noted that income should not be the sole requirement of getting the program because there's other means or like grazing may not be able to produce a $5,000 threshold so I think maybe there's several tests and I think the Agricultural Committee had some recommendations in there as to other options to look other than just the income threshold.

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

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

COUNCILMEMBER NISHIKI: Thank you. You know, it is an eye opening situation here but I think that we need to look at water as being one issue in which we're trying to deal with today, Mr. Chairman. And for water, it's going to impact those that say they're going to use the water for Ag purposes. So those people are going to pay water now. But what Mr. Teruya is saying, and that's why I think a lot of us are now going to be really confused. He is saying that now they're making the determination on how they're going to tax land used by so-called agricultural users. So that's now another tax that is going to be placed on those that are saying that they are using their land for agriculture. And then you listen to Mr. Hunt, and he's saying, well, we've got different ways in which we deal with agriculture subdivision. One, with a farm plan if you're going to create a farm dwelling. And now we're going to need a farm plan. So in every instance, Mr. Chairman, you've got certain prerequisites that one follows but all of it is very inconsistent with one another. And I don't know if that's how we want to deal with this issue. I think if we're going to deal with agricultural water rates, the concern has to be with what the testifier said and with what Mr. Kaho'ohalahala brought out. What if one is using that property for subsistence? And I think that Mr. Watanabe said, well, maybe a tiered-type of situation. One, if someone is using it to make money as a business then it would seem like that may be the high end of a tiered system and we recognize that to have water rate usage and taxed properly. But you cannot take away the person that is retired or the person that is doing it for subsistence. The land basically is to grow food to provide for their family. Now, the problem lies that someone may say, well, I'm doing it in Kahului. And you've got a lot of especially a lot of the Filipino community that grow food in their properties. So there belies another concern about subsistence or if they're also unable to get an agricultural water rate but the question is now they're not receiving the proper zoning tax but maybe they should be given the water rates. But how are we going to tackle this consistency or the inconsistency is my concern? Finally, the question of long-term, someone that is going to plant koa or ornamentals but are . . . or even orchard farming which doesn't produce the fruits to sell immediately whether it be avocados or cherimoya or whatever, people are spending money and putting in these situations. And yet, we're going to say to them, you're not
going to get a water rate because it is based on what your income is of $5,000. So it's a little more than what meets the eye as far as income. And I think that we may need to look at some sort of tier or different way of analyzing agriculture, Mr. Chairman. I realize in Mr. Eng's circumstance that he has come out and said that we support this because obviously his little girl, Holly, is having a problem with different people coming and asking for agricultural water rates. But it doesn't mean that we need to accept something that doesn't really fit the bill. And I think that Mr. Eng, is it fair to say that the reason why you have now a bottom line of looking at how you assess water rates so, therefore, this is perhaps the one in the box that you want to support?

CHAIR VICTORINO: Mr. Eng, would you like to respond?

MR. ENG: I'd love to, Mr. Chairman.

CHAIR VICTORINO: Thank you.

MR. ENG: Member Nishiki, first of all, Ms. Perdido is a wonderful Fiscal Officer. I'm so happy that she works with us. Her concern is about the financial stability of the Department and our revenue. She understands that reduced subsidized, and that is, the general ratepayers who most of us in this room are the general ratepayers, subsidize our Ag ratepayers to the tune of about $3 million of revenue per year. And she has also observed the pattern of more and more applicants coming in requesting Ag rates, which could reduce our overall revenue and which could cause us, the general ratepayers, to pay more. So that is all that we want to bring out for this body to consider. We're looking at revenues to run County government and County departments. And this same argument is going to impact our Department of Finance and the Real Property Tax Division. So I think they share the same concerns as we do to basically tighten up the definitions, particularly during the times that we're facing right now. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng.

COUNCILMEMBER NISHIKI: And if I may continue with Mr. Eng?

CHAIR VICTORINO: Mr. Nishiki, the only statement I'll make is let's stay pertinent to the subject matter.

COUNCILMEMBER NISHIKI: Exactly . . . the Water Department and this ordinance here.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER NISHIKI: Exactly. Because we'll have another day with Mr. Teruya, I'm sure. How many people are receiving agricultural water rates now?

MR. ENG: We have about a little over 800 Ag rate customers.
COUNCILMEMBER NISHIKI: And this showing the gross annual income of $5,000 what do you use right now as a measurement for whether one receives Ag water rates or not? What is there on the books?

MR. ENG: Right now, one of the criterion to qualify for Ag rates is to have evidence of a general excise tax license or to produce the IRS Schedule F, which gives evidence of farm income. It really doesn't give any, you know, magnitude of income. Anybody can get a GET license as we know.

COUNCILMEMBER NISHIKI: Okay. Thank you. I'm done.

CHAIR VICTORINO: Okay. Thank you, Mr. Nishiki. Let me, at this point, make it clear that as you have read from Mr. Teruya and as Mr. Hunt has indicated, we have ambiguity between the definition of Ag. A lot of it is based upon different criteria. The Department of Water, as you're well aware of, right now we subsidize Ag for what the real cost of water is. And the 800 customers or so are basically consumer-oriented, in other words, they have a GET or they have a Federal ID, right? And so this is why we kind of put some kind of criteria for income in there. Okay. It is different, and again I want to reiterate different from what your tax structure is and what the Planning Department says it is versus what the Water Department says it is. That's why the challenge comes up. And how close do we want all of this to come together is what this discussion was all about. I felt that it was time to bring it to the forefront. The challenges we have little people that are out there is either substance or just raising enough to take care. I must myself in my backyard I can show you bananas, papayas and other stuff I grow and I do not get agriculture. I grow things in my yard for our family but I do not ask for Ag rates because I do not do it for commercial; I do it for our family. Okay. Many of our neighbors in Wailuku Heights, Mr. Nishiki, go down the old side a lot of them still have little gardens in the back. Some of them have almost as much as half an acre of gardens in the back all regular standard residential rates, okay. So I want to get back to what we're trying to do is rates, okay, and finding a definition for water. If I can, like Mr. Mateo mentioned, get it closer to what Planning is doing, fine, then I would try and get it closer. But real property that's not my area that I have to go back to Mr. Pontanilla. Planning, I would have to go back to Mr. Kaho'ohalahala; it's not my area. I'm just trying to get our area to have a definitive definition for Ag. That's all I'm trying to do today. And you can go in all the other directions I wanted everybody here on the table so that you all saw the differences so there wasn't a question about differences. How close can we get it? I'll leave it to the Committee. But my whole intent was to get where agricultural rates for water, if you're really doing Ag, then that's what you should be paying. And if you're not, then you're not. Not gentlemen estates right, gentlemen farming, we've heard that consistent through the years that I've been in this Council for the last three years, right, we've heard that. We get guys growing two, three banana trees and getting Ag rates or five or six orange trees and getting Ag rates. Is that agriculture? I don't think so. I don't even think Mr. Watanabe would agree that that's agriculture. But we're trying to get something together. November 10th I got a lot of calls from the people up there, and they're saying we're trying to get that because now Real Property is saying, am I agriculture? That has an even bigger effect than water. Let me tell you, a bigger profound effect if they change rates from agriculture to improved residential or something else. So they're very concerned. But that's another issue. That's not something I'm going to discuss.
today. So, anyhow, just so that everybody understands where we're trying to go with this. Yes, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, I think there's a connection and let me ask this question of Mr. Teruya, just because I thought I heard him say this.

CHAIR VICTORINO: Mr. Teruya?

COUNCILMEMBER NISHIKI: Do you ask someone if they're receiving Ag water rates as a way to determine whether or not they get an Ag tax designation? Is that something because if we take this and act and a lot of people are now not going to get an Ag water rate because they can't prove that they make $5,000 or more, then you're in essence will then go, no Ag water rates you're going to get taxed now. Is that a fact that Ag water rates is a prerequisite?

CHAIR VICTORINO: Mr. Teruya?

MR. TERUYA: No, the Ag water rates nor the farm plan affect the Real Property Tax Division's program under agriculture.

CHAIR VICTORINO: Thank you, Mr. Teruya. So is that perfectly clear, Mr. Nishiki, now that this has no effect. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, Chair. I just want to have one more piece of information --

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER BAISA: --before we go ahead here. It was revealed to the Committee that there are about 800 farms or families or whoever people that get . . . 800 that get Ag water rates. How many parcels are in Ag or determined to be Ag? I understand it's many thousands.

CHAIR VICTORINO: Mister . . . I don't know.

COUNCILMEMBER BAISA: Mr. Teruya, could you help me?

MR. TERUYA: The last count that we did that was probably about two months ago, we had about . . . I want to say about 8,000 parcels in agricultural use program, and there was probably about 4,000 in agricultural dedication program, and the overall subsidy of that agricultural designation or the use is a subsidy around $35 to $40 million.

COUNCILMEMBER BAISA: Okay. One more question for the purpose of decision making. What is the difference between the agricultural tax rate per thousand and the Ag rate per thousand?

MR. TERUYA: Okay. Let me clarify something, first of all. When we talk about agricultural tax rate it's the classification is the rate.
COUNCILMEMBER BAISA: Right.

MR. TERUYA: It's $4.55 per thousand.

COUNCILMEMBER BAISA: Right.

MR. TERUYA: The agricultural use is a valuation that is, it's a preferential value based on what you're using it for. And I would just give you a rough example. Let's say you're grazing or pasture use is maybe $500 per acre. That overrides the highest and best use value of whatever market value is. So agricultural use there's an assessment and there's a rate. So those are independent from each other.

COUNCILMEMBER BAISA: What I'm trying to think about is, Chair, I see these things that they're connected one way or another. Right now, we have 800 people or families or lots or whoever these people are that are benefitting from Ag water rates. And what we didn't hear from the Water Department was what Mr. Teruya just shared with us and maybe Mr. Eng you can help us, he mentioned how much we subsidize Ag parcels. How much do we subsidize Ag, people that get water rates?

CHAIR VICTORINO: Go ahead and repeat that please, Mr. Eng?

MR. ENG: Yes, Mr. Chairman, I did mention it earlier.

COUNCILMEMBER BAISA: I'm sorry if I missed it.

MR. ENG: It's approximately $3 million.

COUNCILMEMBER BAISA: Three million.

MR. ENG: At the general ratepayers subsidized the Ag ratepayers.

COUNCILMEMBER BAISA: And this is what those 800 people get as a subsidy?

MR. ENG: Yes.

COUNCILMEMBER BAISA: Okay. So this is a big deal because we're talking about quite a bit of money here. I still, Mr. Chair, have a concern that somehow we need to amend this definition because it's very, very limited, and I understand we want to make it limited because we don't want it abused. But it also will affect people who, at this point, are under other laws are deemed to be doing farming like I mentioned some of the people in the Ag Park. So we've got to find a way to try to bring these things together; it cannot stand alone.
CHAIR VICTORINO: I think that's the task we're being charged with today to try to bring these two in more concurrency. Again, but I just want to clarify that this was water rate-based. And the others were agricultural-based real property so that, you know, we're getting mixed up but yet, on the other hand, they really do touch each other.

COUNCILMEMBER BAISA: But let me tell you this. The public does not understand that.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: They see that if they have a parcel in Ag, they cannot understand why don't I get Ag water rates, and they cannot understand why there's any issues with Planning and Ag cause in their mind, if I'm on an Ag zoned land then I should qualify for all these things. But actually we have three different sets of regulations for different purposes.

CHAIR VICTORINO: That's correct.

COUNCILMEMBER BAISA: The idea that we're talking about this today is very good because there's an educational component here. But the closer we can bring some of these things, the less angst the public has in trying to figure out what are those people doing. So I really appreciate this opportunity to talk about all this. Thank you.

CHAIR VICTORINO: And that's what this was all about. Mr. Kaho'ohalahala followed by Mr. Medeiros.

COUNCILMEMBER KAHO'OHALAHALA: Okay, thank you. I wanted to get some further clarification from the Water Department on the subsidy of three million to the 800 users that are on this Ag rate. In our water rates bill we have three different tiers. One is for the user from 0 to 10,000 gallons; the second tier is 10,000 to 30,000; and then the third tier is greater than 30,000. So in the 800 users, can you break down where that use is?

MR. ENG: The primary subsidy comes in at the third tier which has currently the third tier for the general ratepayer is $4.10 per thousand gallons.

COUNCILMEMBER KAHO'OHALAHALA: Okay, but I'm talking about the Ag rates.

MR. ENG: Yes, and therefore, the Ag rate customer in that third tier only pays $1.00.

COUNCILMEMBER KAHO'OHALAHALA: So how many, of the 800 that you say are on this, they're obviously in three different tiers. Okay. So tell me how many are using less than 10,000? Tell me how many are using 10,000 to 30,000 and tell me how many of the 800 are using more than 30,000 gallons?

MR. ENG: Okay, I don't have the actual numbers right off hand but you can assume that, I would assume all 800 plus customers are in that third tier because that's where they get the break. They
wouldn't apply for this Ag rate if they're only in the first and second tier cause the first and second tier are the same for the general ratepayer and Ag ratepayer.

COUNCILMEMBER KAHO'OHALAHALA: Okay. I still would like to understand what that breakdown is.

MR. ENG: Okay. I would assume all 800 are in the third tier unless they wouldn't apply for the Ag rate.

COUNCILMEMBER KAHO'OHALAHALA: Okay. The people need to know that though. If they're going to be coming in and looking at an assessment by tax and as water for Ag, but you're saying that really none of you are qualifying for this rate because none of you fit in the first two tiers. All of you fit in the third tier. Those are the only real category that we have supplement for in terms of water then that would be something that we need to understand. And something is not quite right in terms of how we're assessing the rates for water because if the small farmer who is doing, I mean, is legitimately farming but they're not going to meet the volume of water, then we're not giving them an equal opportunity to be given a break for water if they're legitimately farming. But we're only looking at the guy who's using the most water as the one that gets the breaks. That's my question and I would like that information brought forth, Chair?

MR. ENG: Maybe I can explain this now. If you look at the rate design, the first two tiers that is the first tier is 0 to 10,000 gallons per bi-monthly period; the second tier is 10,000 to 30,000 those are basically the consumption rates of typical residential customer. So we can assume that on a farm someone is living on that farm and they are going to be utilizing a certain amount of quantity of water for their normal domestic purposes and that should fall under the first two tiers, fall within the first two tiers. Therefore, they would get the break in the third tier with the assumption that, that amount of water is being used for irrigation purposes.

COUNCILMEMBER KAHO'OHALAHALA: Okay, but as I'm looking at this and understanding no one really gets a break at the first two tiers. If you're a farmer, you get no break.

MR. ENG: But that's right because we're assuming they're using the first two tiers of quantity for their normal domestic purposes.

CHAIR VICTORINO: May I interject at this point? Let me . . . look there and it will clarify, I don't care what level you are, Mr. Kaho'ohalahala, you get subsidized so long as you are agriculture. Whether it's a $1.65; $2.90 or $4.10 you pay $1.00 if you're agriculture, no matter what. Okay.

COUNCILMEMBER KAHO'OHALAHALA: Chair, in our Budget law --

CHAIR VICTORINO: Yes.

COUNCILMEMBER KAHO'OHALAHALA: -- we have an agricultural rate.

CHAIR VICTORINO: That's right there.
COUNCILMEMBER KAHOʻOHALAHALA: And it is, for the first two tiers, no different than your regular water rates.

CHAIR VICTORINO: I beg to differ with you. There's our 2010 right there.

COUNCILMEMBER KAHOʻOHALAHALA: I'm looking at the law right here.

CHAIR VICTORINO: Jeff, is that not the current rate up there on the board?

MR. ENG: I don't want to get in the middle of this but, Mr. Chairman, if you look at the rates, especially the Ag rate, the $1.00 only kicks in over 30,000 gallons.

CHAIR VICTORINO: That is correct.

MR. ENG: So, again, for the general ratepayer and the Ag ratepayer the first two tiers are the same.

CHAIR VICTORINO: Okay. So the break comes in for someone . . .

MR. ENG: Over 30,000 gallons for a bi-monthly period .

CHAIR VICTORINO: All right, so are we clear now?

COUNCILMEMBER KAHOʻOHALAHALA: Yeah, I've been clear from the beginning. And, Chair, just to clarify, the Ag zoning definition, the agriculture, has been on the books since the Ag zoning bill has been passed. And there's no other definition that's being placed before the Council at this time so on my master list, Member Baisa, there is no item that's asking about the definition for Ag.

COUNCILMEMBER BAISA: Oh, really?

COUNCILMEMBER KAHOʻOHALAHALA: Yes. And the only thing that exists is currently what we have on the books that was brought over by the Planning Department. So I just wanted to clarify that while we are talking about definitions, we are looking at the water rates and the definition for agriculture is not an item that's before . . .

COUNCILMEMBER BAISA: Mr. Chair?

CHAIR VICTORINO: Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Mr. Kahoʻohalahala. Apparently, it got lost somehow in the transfer but I think that we ought to revive it and I'd be happy to do that because I think Planning Committee should take a look at it and try and come up with a more universal definition. It'd be worth the effort. It would be a big effort. But you know it's been with several committees and
task forces so I know there's a lot of material. Chair, I wanted to ask another question; take us in another direction?

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER BAISA: And here we go again. But with this proposed definition that we're, you know, it's a work in progress, if we could put it back up there, please.

CHAIR VICTORINO: Kim, please.

MS. WILLENBRINK: ...(inaudible) ...

COUNCILMEMBER BAISA: No, it isn't.

MS. WILLENBRINK: Now...

COUNCILMEMBER BAISA: Okay, thank you. Where it says, a consumer that actively engages in crop production. One of the issues that was brought up at the Ag tax workshop was the issue of Ag land that is fallow. And it may be fallow for various reasons but one of the reasons that farmers use of course is crop rotation or that they are spending time to get the land with more nutrients or in a more productive state. And the representative from the Tax Department that was there said that it would be okay as long as there was an amount of time. And the question was asked, well, what is the amount of time? And she said, two years. So I'm wondering, does the Water Department look at that too because they might not be doing active crop production if they're in this time where their land is fallow and they're replenishing the earth. So, be careful with that actively.

MR. ENG: Let me comment, Member Baisa.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you. Yeah, we would like to probably put into that definition if there is no activity over let's say a three-year period they would not be entitled to the Ag rates. But again, if the land is just in fallow, it's not utilizing water anyway.

COUNCILMEMBER BAISA: I think we all understand fallow, fallow. But you know land that is being enriched because it's a good farming practice. But again, I hear two from you, I hear three from the guy sitting next to you, this is what is causing all these angst with the public, Chair.

CHAIR VICTORINO: Uh-huh. Okay. Thank you. Yes, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. I just want to re-verify a comment that Mr. Eng made regarding evidence. You mentioned about GET tax and what was the other one that they needed to provide?
MR. ENG: There is an IRS form Schedule F that you file with your annual return, and that you have to give evidence if you're farming.

VICE-CHAIR PONTANILLA: I'm looking for commercial food production, you know, the possibility of utilizing the GET and the IRS Schedule F, which you already use, as a proof that they're doing farming. And if all 800 provide that then all 800 gets some kind of rate. Thank you.

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. For the Water Director, Mr. Eng, there are areas that receive water Ag rates that use untreated non-potable water, is that correct?

MR. ENG: Yes, that is correct, Member Medeiros. That is the Kula Agricultural Park.

COUNCILMEMBER MEDEIROS: Okay.

MR. ENG: It's untreated surface water so they get it from the first gallon at $1.00 per thousand gallons.

COUNCILMEMBER MEDEIROS: Okay. And that's only in that area specifically?

MR. ENG: That is correct.

COUNCILMEMBER MEDEIROS: So other areas of Maui where people qualify for water Ag rates, they're using potable water?

MR. ENG: Yes, they are.

COUNCILMEMBER MEDEIROS: Okay. So could you tell in a ballpark figure what the breakdown in consumption of water for farming is between the non-potable and the potable water?

MR. ENG: Yeah, I think for the . . . again, for the Ag rate customers I think in the latest fiscal year they consumed about 1.17 billion gallons, and the Kula Ag Park farmers about half of that.

COUNCILMEMBER MEDEIROS: Okay. And the 1.17 billion gallons is potable water?

MR. ENG: Yes, it is.

COUNCILMEMBER MEDEIROS: Okay. And the non-potable at the Kula Ag Park is about half of that?

MR. ENG: Yes.
COUNCILMEMBER MEDEIROS: Okay. Thank you for that information, Director Eng. That helps me understand the use of it. Mr. Chairman, I would also like Member Baisa, I'm not sure if I'm quoting her correctly, but I would tend to support Director Hunt's recommendation to use Title 19 definition. And the reason I say that is it's not as restrictive. It allows more kinds of farming. And I know it's a difficult task to determine what would qualify for farming operations but there are many things because our world is so small now and transportation brings the world smaller that there may be things introduced to Hawaii and to Maui County that we don't have currently that would become part of farming operations. So a question to Corp. Counsel is, if that particular crop or animal or fowl is brought in and used and it's not defined in the definition that we come up with, how would we include that, Corp. Counsel, would we have to change the definition?

CHAIR VICTORINO: Mister . . .

COUNCILMEMBER MEDEIROS: Or does part of the definition allows for things not covered by the definition? And I just will bring up just one scenario of that, Mr. Chairman, is that on the mainland there are quite a bit of turtle farming for food that are sold to restaurants and hotels and they're farmed on land. They're more like tortoises. And so that's not something that we have here. But what if it's allowed to come here and it becomes part of farming or ranching whatever it falls under. So, Corp. Counsel, how would we address that?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Mr. Chair, Mr. Medeiros, I can't really respond to that. That question is too speculative. Until it happens we can't really comment. If such an alien type of product or service or result, I think we'd have to deal with it at that point in time.

COUNCILMEMBER MEDEIROS: Okay.

MR. KUSHI: I think the definitions that you have right now covers most of the activity, the normal, historical activities that are traditionally covered by agriculture.

COUNCILMEMBER MEDEIROS: Well, thank you for your response. But I just wanted to bring awareness that because our world is so much smaller and we can see by the invasive species that come to Hawaii now that we never had before. So I just wanted to be sure what would be the approach or the application if something like that did occur. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Chair has a question for Mr. Eng. The suggestion was brought up Mr. Medeiros and Ms. Baisa that we use or take that Title 19 definition of agriculture and incorporate it with, into the Water Department. What would your take on that? And I won't go to Mr. Teruya because Mr. Teruya, that's something that Mr. Pontanilla and his Committee would have to go and talk to you about. But Mr. Eng, what would say to a definition of that? Would that be a) workable, and b) would it be feasible?
MR. ENG: Thank you, Mr. Chairman. I don't recall all the details of the definition of Ag in Title 19. I do know it had expanded activities in what we currently are proposing. Again, the impacts would be on our revenue and expanding how much we subsidize Ag rate customers. We're trying to minimize that expansion and the subsidy at this particular time. So that is really a policy decision of this body. Thank you.

CHAIR VICTORINO: Okay, thank you, Mr. Eng, for your response. Members, questions for Mr. Eng?

VICE-CHAIR PONTANILLA: I have one.

CHAIR VICTORINO: Go ahead, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Is it possible that all three Departments - Finance, Planning, and Water Department work together in creating a definition for agriculture? And the reason why I say Real Property Tax also, it may have some implication. And if all three agree, it makes it easier for us to decide the issue that is at hand right now. I don't know if you're looking at passing this thing out today, Mr. Chairman.

CHAIR VICTORINO: Well, the intent today was to have discussion and come up with some reasonable conclusion to this if we could. The feeling I get is there's a lot of people out there that have and because I brought in everybody. I did that purposely because I thought it was important to hear all segments but you're talking Ag, Kula Ag, whatever. So I would have no problem with what we did yesterday, you know, if the Departments are agreeable to sit down and you and I because Real Property and that Water because I think those are the two major affected. Planning, you know, has their definition so we need to incorporate that so that we all walk out on the same page or as close to it as possible, I have no problem with that if the Departments were willing to do that.

VICE-CHAIR PONTANILLA: Thank you. And we represent the County and I think that all Departments that work with agriculture and the definition of agriculture in regards to Planning as well as Water Department and the Real Property Tax Division, you know, we're just one County and for us to bicker and try to resolve something I think would be best if the Department came up to us and provide discounts with a definition that they can work with. In regards to the water rates, you know, that's something that we still need to talk about because of the tiers that we have. And I understand Mr. Eng's comments regarding the first two tiers, yeah, basically, those are the water rates for everybody. When it comes to agriculture, you know, having a side bar with Mr. Nishiki, we need to protect those farmers in regards to some of the rates that they receive or provide incentives for those farmers. Thank you.

CHAIR VICTORINO: And that, to put a little point on that, many years ago when I was on the Board of Water Supply that was our main thrust is to protect the agriculture. And that's why you saw all those rates and then agriculture, which we rely most bi-monthly use more than 30,000 gallons. If you're farming, you're going to use more than 30,000 in most cases. We wanted to protect them and give them that dollar a thousand gallons which is considerably less than anybody on the
other tiers. We understood that and that's why we worked hard to make sure and we've kept that all these years. And here this Council, who has passed the budget under your direction, Mr. Pontanilla, has kept that the same way. We're trying our best to protect our farmers. But it is a, and I think one testifier mentioned, what about storm damage? Farming is so difficult because you have more element that you can count whether it's taxes, whether it's water, whether it's world economy, whether it's storms, I mean, that's a heck of a business to be in. It's a heck of a challenge just to do that. I understand that.

VICE-CHAIR PONTANILLA: Yeah, I understand, Chairman. And one of the things that Mr. Eng, well one thing that caught my ear and I think Member Baisa also, in fact, all of us caught it is that $3 million that we subsidized...subsidized farming is similar to what we subsidized for rubbish pick up. We're not at that level where consumers pay for the services that they receive. So, thank you.

CHAIR VICTORINO: Yes, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Just a question for you, Mr. Chairman.

CHAIR VICTORINO: Yep.

COUNCILMEMBER MEDEIROS: Is there a matrix that was put together with the three definitions of --

CHAIR VICTORINO: No.

COUNCILMEMBER MEDEIROS: --the contributors so we can see it side-by-side?

CHAIR VICTORINO: No.

COUNCILMEMBER MEDEIROS: No. Okay, thank you.

CHAIR VICTORINO: That wasn't my intent. Again, I was focusing on one but I brought the others in just so everyone could get a clear picture on what their definition and what their definitions were trying to get accomplished. One was the real property assessment, one is Planning, and one was Water. So there were three different but yet like what Ms. Baisa said, because of these differences the ambiguity out there with the consumer is very difficult. So we need to work and get it closer but this was a step in that direction and that's exactly what it was. So, Departments, let me go and ask you before I recognize Mr. Nishiki, would this be a possibility of the three Departments sitting down in trying to work out on some common definition of Ag so that, you know, all of us could be comfortable with? And I ask this in all honesty. You tell me if it's possible or not. I mean, I think everything is possible but where everyone could be in their own various Departments reasonably satisfied with a definition of Ag. I'll start with Mr. Eng.
MR. ENG: Thank you, Mr. Chairman. Yeah, I think it's certainly possible that our three Departments can get together and come up with some kind of definition. I think it's our preference that we come up with it rather than you folks, so we'll go for it. Thank you.

CHAIR VICTORINO: . . . (chuckled) . . . Thank you, Mr. Eng, that was good. Mr. Teruya?

MR. TERUYA: I won't speak on behalf of the Director of Finance but as far as the Real Property Tax Division I think we would be in agreement that I think working together with the two Departments would be relatively, to me would be relatively easy. I don't think we're that far away as far as definitions. It's just a matter of using what we have as long as the Farm Bureau, some of the recommendations that came out of the Ag Committee I think would also probably help the other Departments see where the community comes with their recommendations as well.

CHAIR VICTORINO: Mr. Hunt?

MR. HUNT: We would be happy to work with the other Departments and I think it's actually a good idea. Ideally we would have one definition of agriculture and all three Departments would use it so if some customer or citizen comes to the Planning Department and gets approval for a farm dwelling, then in theory they would also get approval for agricultural water rates and they would also get agricultural tax rates. As it is now, it's very frustrating from what I've heard from citizens that they get approval from one department, the Planning Department just hypothetically, and then they go to the other departments and they say, well, we have a different definition and so I think we can all imagine how frustrating that would be.

CHAIR VICTORINO: Thank you. Members, as we've heard, we have started on a journey of conformity, and I thank the Departments for their willingness to work together. And I think Mr. Kushi would like to add something. Mr. Kushi?

MR. KUSHI: Yes, I wasn't planning to but I'm going to rain on this parade for a while.

CHAIR VICTORINO: Okay, go ahead. Rain on our parade. It's not the first time I've been rained on today.

MR. KUSHI: But you know it would be wonderful if all three of 'em can get together. It's a matter of how much time you guys want to spend on this. Again, just for the Committee's understanding, it's three separate Departments, three separate purposes in enforcing and interpreting their definitions. From the Water side you're here today to define what an Ag customer is through you implement the water rates. From the Real Property side, they have their own definition to assess real property taxes. From the Planning side, they have their own definition to allow farm dwellings or enforce zoning violations. And each department has their own appellate bodies. So, again, if we're going to come to one uniform standard, from my mind, from my office's mind is that which body does a consumer or customer appeal to? It's fine if this Committee wants the Water Department to follow whatever the Planning Department determines. It may be easier. But then appeals should go to the Planning Commission. That being said, that's my only caution
if we're going to have one universal, uniform definition because it will serve three different purposes. What I needed to also comment is that the Board of Realtors brought this up and we've dealt with it before is that the Water Department used to allow Ag rates only on Ag water rates only on Ag zoned properties. That has been taken away. I don't see any requirement now that the property be zoned or designated Ag, especially when rural properties are zoned or designated Ag activities. So that should be made explicit in any provision that you have.

CHAIR VICTORINO: Thank you, Mr. Kushi. And you didn't really rain on our parade. You know you just kind of clarified what we've been discussing this morning that we may not be able to get everything exactly alike but we should try and get as close as possible for the purpose of each Department having what they need to carry on water rates, assessment, and planning. But they shouldn't be so different that makes people confused. Now, again, conformity doesn't mean exact. Conformity means we're close and you're not confused in what you're planning to do. And I think that's what we're going to try to do, Mr. Kushi and still leave water as water, real property as real property, and planning as planning. I mean, we've got to do that and I think all of us agree. But I prefer them working on it and coming back with some possible solutions then us trying to work on it and coming up with maybe what I would call ambiguity that makes it even further confusing to the general public. So, Members, any more comments as far as what the intent and I'm going to make my recommendation shortly but any more comments? Seeing none then the Chair would like to defer this matter and allow the Department 60 days, and I'm going to put a timeframe 'cause I believe a timeframe is important. So I would put by, in fact, I will be very generous by January 31st I would like to have the three Departments meet here again with this Committee to discuss what possible solutions and possible suggestions they would have for us. Gentlemen, would that be unreasonable by January 31st, 2010? And not that you guys all don't have anything to do, I understand that part. Is that all right, gentlemen?

MR. ENG: We'll certainly try.

CHAIR VICTORINO: Okay. And if you try your best, I know we will get some results. I want to thank you, gentlemen, all of you, both Mr. Hunt, Mr. Teruya, Mr. Eng, and Mr. Kushi for all you guys help today. I'd like to thank our staff, Ms. Willenbrink, I told you it's always a pleasure. And I told you would have some questions today, didn't I not mention that?

MS. WILLENBRINK: Yes.

CHAIR VICTORINO: And Ms. Frias, thank you very much for being here. Okay, I'll do that. So, at this point, I will defer this matter, if there are no objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. No worry, Ms. Frias, I was going to get to that part. Members, I'd like to thank you all. It's been a very pleasant day. I enjoyed it. And if, you know, we get a little hot and little testy at times, I think that's good for the soul. And that's why we're here to do the people's work and it's not always easy and it's always not together. But I think we all have great
individuals and I want to thank each one of you today for being here. And I guess we have a 1:30 meeting for Budget and Finance. Okay, Mr. Pontanilla, 1:30 Budget and Finance. I would like to announce that to the public to make sure you get coverage. At this point, I would like to adjourn the meeting of November 17, 2009 for the Water Resources Committee. . .(gavel). . .

ACTION: Recommending DEFER pending further discussion.

ADJOURN: 10:33 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:091117

Transcribed by: Jo-Ann C. Sato