WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

January 12, 2010

Council Chamber

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair (in 9:10 a.m.)
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho‘ohalahala
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
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Jeffrey Eng, Director, Department of Water Supply
Edward S. Kushi Jr., Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: William Blietz (Item No. 29)
Richard H. Pohle, Upcountry Meter List Association (UMLA) (Item Nos. 1(5) and 29)
Sherman Dudley DePonte (Item Nos. 1(5) and 29)
Rosemary S. Robbins, Oversight and Advisory Committee (Item Nos. 1(5) and 29)
Additional attendees (2)

PRESS:
Akaku--Maui County Community Television, Inc.

CHAIR VICTORINO: . . . (gavel) . . . Good morning, and aloha, and a Happy New Year to all those watching this proceedings today. This is the commencing of the Water Resource Committee meeting. I’d like to say we have quorum available this morning, and I want to thank all the Members for being here especially since many of us were at a very late meeting last night in Lahaina and some of us have to drive a long way home, and I appreciate the Members being present.
This morning I’d like to start out by calling upon the Members that are present. We’ll start with Vice-Chair of the County Council, Mr. Michael J. Molina. Good morning.

COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR VICTORINO: Our Land Use Committee Chair and the wonderful lady from Upcountry, Gladys C. Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Morning. And our Planning Chair and our Lanai representative, Sol P. Kahoʻohalahala.

COUNCILMEMBER KAHOʻOHALAHALA: Good morning, Chair.

CHAIR VICTORINO: Aloha. And, of course, we have our East Maui representative, Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha, good morning, Chair.

CHAIR VICTORINO: Good morning. And the other Voting Member that is present is our Chair, Mr. Danny Mateo from Molokai.

COUNCILMEMBER MATEO: Good morning, Chairman.

CHAIR VICTORINO: Good morning, and welcome, and Happy New Year to all of you. We start a new year and hopefully with new results. Our Vice-Chair and Budget Chair Pontanilla will be here very shortly. And I’d also like to take a moment to introduce a Non-Voting Member, Mr. Wayne Nishiki from Public Services Committee.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR VICTORINO: Thank you, Mr. Nishiki, for being here. And a quick note, just in case you’ve not heard, we have had a loss in our family. Jim Johnson, the husband of Jo Anne Johnson, has passed, passed this past Sunday. And on behalf of the Council and the County of Maui, we’d like to send our condolences and best wishes to Member Johnson. From the Administration we have our Director this morning, Mr. Jeffrey Eng.

MR. ENG: Good morning.

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

MR. KUSHI: Good morning.
CHAIR VICTORINO: Thank you. And, excuse me, our Committee Staff, our Legislative Analyst, Ms. Kim Willenbrink.

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: And our Committee Secretary, Ms. Tammy Frias.

MS. FRIAS: Good morning.

CHAIR VICTORINO: Thank you. Before we get started with public testimony, let me cover the two agenda items that we will be discussing today. First agenda item was WR-1(5), Subdivision Water System Requirements. A correspondence dated November 24, 2009 from myself, transmitting a draft bill entitled: “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.05, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES”. The proposed draft bill is to codify the, the rules and regulations of the Department of Water Supply relating to subdivision water system requirements. A subsequent correspondence dated December 7, 2009, also from myself, relating to the refund of water main extensions.

And the other item we’ll be covering today is WR-29, Upcountry Water Meter List. A correspondence dated January 4, 2010, from the Department of Corporation Counsel, transmitting a draft bill entitled: “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM.” The purpose of the draft bill is to provide water service applicants from the Upcountry Water Meter List a period of five years to make required water system improvements upon the receipt of a water meter reservation.

So we will start our public testimony at this time. I would like to ask everyone to please, if you’re going to speak, you may speak only to the item on the agenda today. Please sign up at the desk outside of the Chambers on the eighth floor. You will be limited to three minutes with one minute to conclude. Please state your name and if you’re representing any organization. And at this time, I’d like to ask everyone to please turn off all noisemakers, whether they’re cell phones, pagers, or whatever. We would appreciate that so that decorum can be followed, yeah.

So with no objections, ladies and gentlemen, I’d like to start public testimony. I guess that means go ahead. At this time, we have signed up four testifiers. And I will start off Mr. William Blietz. And Mr. Blietz is speaking on behalf of himself. Mr. Blietz, if you would? And we have our lighting. . .is our lighting system operational today, Kim?

MS. WILLENBRINK: It is.

CHAIR VICTORINO: Okay. So we have our lighting system. So green you have. . .when it gets to yellow you have half a minute, and when it reach red, then you have a minute to conclude. So, Mr. Blietz, please. Good morning and Happy New Year.
...BEGIN PUBLIC TESTIMONY...

MR. BLIETZ: Good morning, Mr. Chairman. I want to thank you for being the Chairman of this wonderful body because you...with the experience you have and the water background being the, the chairman of the Water Board and the other years that you’ve spent studying the water, I want to commend whoever put you in this, or whether you volunteered, or whatever.

CHAIR VICTORINO: Thank you, Mr. Blietz.

MR. BLIETZ: I also want to thank Mr. Nishiki. I know that he’s not a member here of this Committee, but he, he comes, and he talks. Thank you, Mr. Nishiki, for voicing folks’ viewpoint. I’m number 40 on the list, so I want you to know where I’m at on the, on the water list. And I’m three months short of 12 years on the list. So to say that I have a little seniority on the list, maybe I do, maybe I don’t. They haven’t handed out any meters since 2006, I think.

I want to commend you on the five-year program, but the one thing I see lacking in, in this is the fact that once I get a notice that I have a water meter available to me it’s my understanding I have 30 days, under the old existing program, to say that I want it, and then I have to pay right upfront. I would think that if you’re going to allow a five-year period of time grace period on this thing, that you should also have the actual payment for the meter put off until a later time. I mean for somebody to wait with five years plus two six months grace period, that’s six years for them to put the money upfront, and then decide they’re not going to have it, and the money. ..and it’s gone. That’s not fair. Nor is it fair that, that you have to put the money right upfront, right off the bat to, to get that. So I, I would think that. ..and you have a wonderful Counsel there, a very knowledgeable man, that he can figure out how to put that in your bill, but I think it should be in there someway.

CHAIR VICTORINO: Okay. Thank you, Mr. Blietz. Questions for the testifier. Seeing none, thank you, sir, and we will consider that. Next testifier, he will be testifying on both WR-29 and WR-1(5), Mr. Richard Pohle, and he is representing UMLA. There goes the sign.

MR. POHLE: Good morning.

CHAIR VICTORINO: Good morning, sir, and Happy New Year.

MR. POHLE: I am speaking on both items, should I pause between the two for questions or continue straight on?

CHAIR VICTORINO: Why don’t you continue straight on? I think we can ask the questions one time. Is that all right with the Members? Okay. Go ahead.
MR. POHLE: Greetings, I am Richard Pohle. My wife and I have had a protea farm on Crater Road for 25 years. We are getting old, and cold, and want to subdivide our parcel, so we’re on the list, number 675.

I am speaking regarding WR-29, the Upcountry Water Meter List. The proposed amendment will increase the time allowed to fulfill the County’s requirements to, for improvements to obtain a meter from two to five years. The Council may wish to consider that the penalty for not making these, these improvements is removal from the list. For this amendment to make sense, therefore, we have to assume the list will exist five years from now. By this amendment, the County asserts that the list will be operational in five years. Now, two years is temporary giving hope that the list is ongoing. Five years is almost permanent, no hope. And the extra time adds uncertainty to users further down the list. How many meters will really be needed? Has the DWS ever kicked anyone off the list for nonperformance? No. So why do we need this amendment to the meter list at all?

I have pleaded with this Council many times throughout the last year not to codify the list. I have shown both here and on UMLA.WS how it hurts the Upcountry people by preventing cooperative huis. At the last meeting, I was finally told, as a courtesy, that the meter list was passed out of Committee in February and passed into law in July as Title 14.13. I hope you will excuse my ignorance and wasting your time. In my defense, Title 14.13 is still not posted on the County website, six months later. Nevertheless, the list is the law and must be obeyed. Therefore, I respectfully request, for the third time in public testimony, that the DWS update the meter list which is 19 months old to the present time in accordance with the law. I expect at least 200 more meters to be on the updated list.

From reading the WRC minutes, I believe this Committee is trying to serve the Upcountry people. Some people on the list have parcels without dwellings or dwellings using catchment. They only need a meter. For these people, not subdividers like us, I propose this approach.

It shall be the Maui County policy to provide water for home use to each TMK parcel. Notwithstanding Title 14.13, a new class of conservation meters shall be created for existing parcels without meters. These 5/8 inch meters shall cost $25,000 and shall be available on request. For this consideration, the DWS shall waive jurisdiction over the building permit. Zoning requirements shall still apply. Payment shall be made when the permit is approved and the conservation meter is issued. Payment shall be made to a DWS Conservation Fund for use at their discretion and for reimbursement for developer expenses for water infrastructure development. Water from conservation meters shall be priced according to the actual cost of water at the meter. Above a baseline usage of 400 gallons a day, a penalty rate may be imposed. Buildings using conservation meters shall be exempt from fire flow regulations if they are built with an approved water tank and sprinkler system. Buildings using conservation meters shall be exempt from DWS regulations regarding fixture count.
Mr. Chair, this new approach around for the limitations of 14.13 will help the people of Upcountry on the Upcountry Meter List build on their parcels. It is a way around these limitations, and it pays its own way for water. That is the end of this section.

CHAIR VICTORINO: Go ahead.

MR. POHLE: Okay.

MS. WILLENBRINK: I am sorry, Chair, I’m not having luck with the Limitimer right now.

CHAIR VICTORINO: Well, just if you can manually keep the time. Okay. Go ahead.

MR. POHLE: Greetings, I am Richard Pohle, a Crater Road protea farmer and founder of the Upcountry Meter List Association, UMLA. We are the only Maui organization representing the small landowners on the meter list waiting for meter service.

I am speaking regarding WR-1(5), Subdivision Water System Requirements. The proposed amendment will increase the reimbursement for a water main from 50 percent over a five-year period to 75 percent over a two-year period. Title 14.05.050, mentions large quantities of water and large investment. The Council should define what large means. I would presume that small parcel developers have the same right to be informed of reimbursement conditions as large developers. Also, since the list prevents all small developers from using the funds, this is really only for those that can drill wells. In other words, big developers.

In the WRC minutes dated 12/01/09, a Member said: “In a real important question about who bears the burden of that installation of the waterline when they’re all going to be beneficiaries of the same waterline. Could you not consider looking at simply a hui of costs, you know, to make it manageable for all of them? Because their intent is to be users of that, that same line, but the burden right now is placed on the person that’s sort of at the top of the line or the head of the line versus that who is behind. Any thoughts?”

Mr. Eng: “Again, as an example that the testifier pointed out, if he knows that there is another future customer that wants to put in a line and would benefit, they certainly can work together and have them installed, and we would probably maybe work out a reimbursement to, you know, they can split the reimbursement also. So maybe those two parties should start talking and work again mutually for this. It would be in that other guy’s interest waiting for the other guy to go first.”

Mr. Chair, none of this presumed cooperation can happen since the lists prevents issuance of water meters to parties high on the list. Why would someone contribute to a project now when their list number will not be called for five or ten years?

For subdividers like us, I propose this approach. It shall be County policy to require subdividers to upgrade Maui County DWS infrastructure to currently accepted fire protection standards.
during a subdivision. Notwithstanding Title 14.13, a new class of conservation subdivisions shall be created which shall use only conservation meters. All requirements for subdivision approval shall apply to conservation subdivisions. Conversation subdivisions using the same DWS waterline, storage tanks, and other infrastructure shall be treated as if they were a single subdivision entity and may pool their resources to satisfy DWS and Fire Department fire flow requirements.

MS. WILLENBRINK: Three minutes.

MR. POHLE: Contiguous parcels in the conservation subdivision may share water. I hope the Council will consider these proposals. They solve the constraints of the list approach, pay their own way, and allow the Upcountry to share in the existing DWS infrastructure. All scenarios of the current Water Use Development Plan draft meet the requirements of all of the Upcountry Meter List of about 3,000 meters. It is time for the County Council to set a policy to take the Upcountry conservation meter fees and start developing the Upcountry infrastructure. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Pohle. Questions for Mr. Pohle? Seeing none, thank you very much, sir. The next testifier, Sherman Dudley DePonte. Good morning.

MR. DePONTE: Good morning and Happy New Year. I'm Sherman Dudley DePonte. I'll be talking on WR-1(5), and then WR-29.

CHAIR VICTORINO: Sherman, can you put the mic a little...yeah, speak right into the mic, yeah, please.

MR. DePONTE: WR...you got that part?

CHAIR VICTORINO: Yes. Yes, we did.

MR. DePONTE: Okay. I've been here a lot. Thank you, Council Members, for being here and putting up with us, and the testimony, and listening, and doing something. I've seen a lot of Council. I've been here since, you know, 1992 and went through a lot of Councils...Council people. And this year it looks like the year.

On the rules, it should apply to all. And I believe when the rules are set forth or coming up to be set forth, already the foresight should be looking at, okay, if there's water pipeline sizes that should be checked on and make sure that the County, instead of putting in water, waterlines that is not to standard, make sure that it's going to be to standard for the future, so we the people will not have to be in this frustration trying to get it, get it together and get it done.

I promote that 75 percent cost back to us. That's terrific. Also, before it used to be five years before we get paid back. In two installments, two years probably, whatever, that's way better. The interest rate on this money, you know, from something like mine would be 1.2 million. The
interest rate you can only imagine what would be. So helping the people, helping the public, helping all of our community that will work. That’s good.

Getting expanding on Sol’s question, and I say Sol because usually I have a problem with your last name. I apologize. But he, he hit on some things on the last time, and I think we need to go further on that. Leaving it to the Director’s discretion, it should not be that way. It should be equal to all because when I come over here and I speak forth on, on, and he don’t like what I speak of, it can be— you know what I mean. So what I’m saying is we should expand on that, and it should be the Council...we come before the Council if we have a discrepancy or, or something that we disagree on and come and speak out. 'Cause, again, I’m speaking as myself, but also as a surveyor that deals with all the islands and everybody in this County, whoever comes to me to help to get through that Water Department. And are we done on that first one?

CHAIR VICTORINO: Yes.

MR. DePONTE: I got my three minutes?

CHAIR VICTORINO: Yep.

MR. DePONTE: Okay. Let’s go on the second one --

CHAIR VICTORINO: Okay.

MR. DePONTE: --which is the Water Meter List. Well, I got on that Water Meter List, and we can, we all can go on that Water Meter List eventually. The thing what I wanted to do on that one is, again, point to Mr. Nishiki on the last meeting. You had terrific questions on the CIPs. Which ones are getting done now? Are we taking care of the people in the front of the list or behind the list? Are we taking care of the developers? Where are we going with this? The discretion should be in front of the Council and what are we taking care of. This is, this is our improvement project. This is the ones that we’re going to take care of, why we’re taking care of it. Present it before the public, so that we can see that, yes, it is a fair system which this democracy is supposed to be that fair system. Let’s, let’s bring it out. So that was a good, good expansion, Mr. Nishiki. I appreciate that, and I think the people of Maui will appreciate you coming in here, even on your own time, and doing this.

Also, Danny Mateo questioning the last time. I was almost in tears here with Aunty DePonte over here. She came out begging. When you have the public begging you for... to help...and, and we already taking off time from work to get here. We’re putting out a lot of money. In this economy I should be up there working because my people is just on the edge of being laid off, but I’m here trying to get the water right for everybody, not just for me, because if mine go through, my neighbors, they also have it. And if, and if I make a statement here, and, and it helps because I do have some of the experience, you know, doing the waterlines and seeing what going on in the County on different levels because I’m there in the back. I’m tromping through the backwoods. I see it. I see the water where they’re catching it. I see the wells. I worked on the
wells. I worked on the H’Poko Wells. I worked on all of these different wells in Kihei that’s supplying water. So I’ve been there. I’ve worked on it. I’ve worked on waterlines. I’ve worked on the Waihee-to-Wailea waterline that brought a lot of water and brought a lot of tropic. Now, it’s a lot of water going down to the ocean.

So we have a lot of water. We have a way of working. We can work together and try to get this. And, Mr. Victorino, last I appreciate you from sticking with it and helping us, you know, the people because you’ve been there through the trenches. You’ve listened to us from when you were on the boards. And you know what the frustrations that we went through, the reneges that I’ve had on my agreements, and I’m sure there’s a lot of other people out there that have...went through the same thing. Just my story’s been in front of you for a long time, and I appreciate you guys. Anything you can do this year, if we can put, put all this behind of us and satisfy the people of Maui, that’s what we’re here for and thank you very much.

CHAIR VICTORINO: Thank you, Mr. DePonte. Questions for the testifier? Seeing none, thank you, Dudley. Okay, and last testifier this morning Rosemary Robbins, and I think she’s testifying for the Upcountry Oversight Advisory Committee.

MS. ROBBINS: And myself.

CHAIR VICTORINO: And yourself. Okay. You only put the acronyms. I had to remember what that meant. Sorry.

MS. ROBBINS: You did well.

CHAIR VICTORINO: Good morning.

MS. ROBBINS: Good morning, everybody. I appreciate the opportunity to be here this morning. I would also like to add the public’s condolences to Jo Anne Johnson in the passing of her husband. I think the two pieces that are available to us this morning for our reflection are good. I’m very happy to say that. I also would like to endorse the refinements that were offered by the previous speakers this morning. I am not on a water meter list, so no personal situation there. But I certainly endorse the idea of having those people who are receiving them be posted and timely posted. The community would really like to know just who is getting those water lists. So I’m speaking on behalf of others, other than myself, when I say that one. I would like to see that list published.

Also, I’m concerned about the second page, in particular, of the data that came with this today. It’s referencing the Water Code 14.05.020, and it’s titled: “Reservoirs and storage tanks”, and there are several places in this that seems to set up a double standard, and I’m concerned. I just want to read this first sentence under that division. Subdividers shall install storage tanks, appurtenances, and pipelines from the tank site to the subdivision proper in accordance with the Department’s standards or as otherwise approved by the Director.
People don’t understand why the standards would stay for everybody, excepting whoever these other people are. I’m not among them. I don’t have any background on how that happens, but why that would be included in there I think is up for question. So if that could be defined as to why there would be other than the standard in there, I think that would be helpful for people to know, and it would certainly give further credence or credibility to the people who are serving both in the legal department and in the Water Department on this. So if those could be identified, I think that would just bring the community together or bring things to a head where we can just make it a better setup. Thank you.

CHAIR VICTORINO: Thank you. Any questions for the testifier? Seeing none, thank you, Ms. Robbins.

MS. ROBBINS: You’re welcome.

CHAIR VICTORINO: Ms. Robbins was the last testifier signed up. I will give an opportunity to anyone in gallery that would like to testify to come forward. Seeing no one, with no objections, I will close public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

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

CHAIR VICTORINO: Okay. Let’s begin. We will go to WR-1(5), Subdivision Water System Requirements. If you would turn to correspondence dated November 24, 2009, from the Committee Chair, attached draft bill for consideration.

At our last meeting, we discussed Section 14.05.050(C), to provide a 75 percent refund, over a two-year period, for water main installation. At that meeting, Director Eng provided us with some calculations relating to the water rates increases needed to accommodate this refund. We briefly discussed the limiting of the 75 percent, and we will be discussing this today. I would like to amend that to, to read that the 75 percent refund would be only to family subdivisions. And, and that’s where I’d like to take it.

There’s a correspondence dated November...December 21, 2009, with a copy of Section 18.20.280 of the Maui County Code relating to subdivision. Section B clearly defines what a family subdivision is. It is not limited to the number of subdivision, but may be included in a family. . .oh, correction. It does not limit the number of subdivisions that may be included in a family subdivision. So at this time, I would ask Mr. Eng if he would like to make further
comments knowing that, at this point, the consideration would be for family subdivisions only. So I think one of the big concerns we had at our last meeting was major developers taking advantage of expansion of lines.

And so, we’d like to now to limit this to just family subdivision, which, as some of the testifiers, has provided are the ones that are financially impacted greatly and also for them to wait to get their refunds over a five-year period of time is a tremendous financial burden. So, Mr. Eng, would you like to comment on that please?

MR. ENG: Thank you, Mr. Chairman and good morning, Committee Members. You know, I’m not really fully prepared to respond to the Chair’s recommendation; however, I, I can make some comments. I think that’s a noble gesture on his part, you know, to help accommodate local families in dealing with this financial burden that they have to face, but I really don’t know what the impacts would be. I, I tried to take a look at current parties that are receiving main line extension refunds, and I can’t really quite determine, by this list, if how many are family subdivision.

So really I can’t respond to that. However, it looks like the current number of parties that receive these main line extension refunds are in the number of about 19 parties. And, of them, the vast majority are, again, I, I don’t even know how to define what would be a small subdivider versus a large, but it’s apparent to me that they’re mainly the smaller subdivider, not the large developer as receiving the benefits of the main line extension refund. But, again, of this list I don’t know how many are, by definition, family subdivisions. Thank you.

CHAIR VICTORINO: All right. Thank you. Questions for Mr. Eng? Ms. Baisa?

COUNCILMEMBER BAIASA: Thank you very much, Chair. I’m sorry, but I’m tuning in late here ‘cause obviously I missed the meeting where this was talked about.

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAIASA: But in trying to read this definition of the family subdivision it clearly says that the purpose of the transfer of the land titles shall not be to provide housing or other uses. Okay. If we’re not going to provide housing or other uses, then I’m trying to figure out why we need water and how, how does this water... assistance with water help the family. All they’re doing is transferring the title of the land, I guess, and that’s fine, but then they get to the point where they want to build their houses and that’s what you want to give lands to your kids, is so they can build a home. I, I can’t follow this.

CHAIR VICTORINO: Okay. Mr. Kushi, would you like to clarify that question for Ms. Baisa?

MR. KUSHI: Mr. Chair, I’ll try.

CHAIR VICTORINO: Okay.
MR. KUSHI: I think Councilmember Baisa is correct, that is the only result of a family subdivision. It’s, it’s mainly for estate planning purposes, and you just cut up, an example, a ten, ten-acre parcel of land, one parcel, and you’ve got five brothers and sisters, and you just cut it up into two acres each. But until they do all the improvements required or necessary, they won’t get water meters, they cannot get building permits on any of those resulting subdivided lots until they do the improvements. So that’s why it’s called a deferral. It’s not a waiver. We tried to correct that. So that’s exact...you...what you say is exactly correct. So water is not involved. It’s just a matter of Water signing off, pursuant to an agreement, and then Public Works will approve that subdivision.

COUNCILMEMBER BAISA: Okay. I follow you until there. Now, this family subdivision decides they want to build a house or several houses to take care of the, the people that got the land. This is when this reimbursement of 75 percent would kick in?

MR. KUSHI: If they qualify.

COUNCILMEMBER BAISA: If they qualify. I mean that’s, that’s the time when the benefit would accrue, if they qualified for it.

MR. KUSHI: Correct.

COUNCILMEMBER BAISA: Okay. Just trying to follow the thing through so that we get it straight. Thank you.

CHAIR VICTORINO: Okay. Thank you, Ms. Baisa. Questions for the Department? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Jeff, on the 19 parties that you’ve identified, and I don’t know...were you given time to look at this, this amendment here that...

MR. ENG: Not really.

COUNCILMEMBER NISHIKI: Okay. Okay.

MR. ENG: That’s why I kind of...

COUNCILMEMBER NISHIKI: Okay. Yeah, and that’s why...

MR. ENG: I think maybe a day ago it came up.

COUNCILMEMBER NISHIKI: Okay.

MR. ENG: But I, I didn’t have the chance to, to do research.
COUNCILMEMBER NISHIKI: I guess the question is what are the financial impacts? What are we talking about as far as monies that these 19 parties have put in and what kind of impacts will it have? I think this is my concern.

MR. ENG: Member Nishiki, that is a good point, and I would be looking more at even the financial impacts to the Department --

COUNCILMEMBER NISHIKI: Right.

MR. ENG: --as far as requiring additional revenue to accommodate this. Again, I can't tell by the current list of parties receiving refunds how many are actually family subdivisions, subdividers. But if there were mostly them, then it definitely would have an impact by increasing and accelerating the refund. I really don't think and, again, this is just a speculation assumption, that it, it's not going to be a big impact. I think there's a variety of subdividers coming in and not all of them are family subdividers, because family subdividers have other, other improvement requirements too. It could be roadway, it could be sidewalks, it could be a number of things that they have to consider in getting their finances in order to go forward. So it's more than just water improvements.

COUNCILMEMBER NISHIKI: Okay. I guess help me understand. I, I personally would like to know, Mr. Chairman, what that totality is of the 19 parties that he has. Do you have a bottom-line figure of how much money that equates to?

MR. ENG: I think currently we are refunding in the approximate order of $400,000 per year.

COUNCILMEMBER NISHIKI: Okay. Now, if we escalate the refund, now, what ultimately gets affected --

MR. ENG: Okay.

COUNCILMEMBER NISHIKI: --from the Water Department's operational budget or whatever?

MR. ENG: Okay.

COUNCILMEMBER NISHIKI: What, what happens to this money?

MR. ENG: Okay. Well, this is something that we discussed at the December 8th meeting, oh, I'm sorry, December 15th meeting was our last Committee meeting.

CHAIR VICTORINO: Yes, sir.

MR. ENG: And I gave an example if we did increase the reimbursement to 75 percent --

COUNCILMEMBER NISHIKI: Right.
MR. ENG: --and accelerated it to two years for all of the participants, then additional revenue requirements we would have would be $1,375,000 per year. And that would require the Department to, to assess an additional 3 percent rate increase in order to, to be able to earn that additional $1.38 million.

COUNCILMEMBER NISHIKI: So this money is used for what part of...where does this money accumulate in the Water Department’s budget?

MR. ENG: We basically transfer cash to, to...you know, basically we budget for $500,000 per year for main line extension refunds. So it’s a line item expense item that we budget for annually. So basically it would have to be increased from the current $500,000 to an additional 1.38 million. So it would be a total of about $1.88 million line item we’d have to budget for.

COUNCILMEMBER NISHIKI: Oh, okay, because now we’re increasing the money back to the --

MR. ENG: Greater amount of reimbursement --

COUNCILMEMBER NISHIKI: --reimbursement --

MR. ENG: --in a shorter period of time.

COUNCILMEMBER NISHIKI: --in a shorter period of time also.

MR. ENG: Yeah, uh-huh.

COUNCILMEMBER NISHIKI: Okay. And when you say 3 percent rate increase, what does 3 percent equate to?

MR. ENG: Again, that’s about $1,375,000 of additional revenue we would need.

COUNCILMEMBER NISHIKI: Oh, that’s what it is.

MR. ENG: Yeah.

COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Thank you. Mr. Pontanilla? And, by the way, let the Chair recognize Vice-Chair Pontanilla in attendance.

VICE-CHAIR PONTANILLA: Oh, thank you.

CHAIR VICTORINO: I apologize.
VICE-CHAIR PONTANILLA: So the 3 percent would be a rate increase in the water rates --

MR. ENG: That’s correct.

VICE-CHAIR PONTANILLA: --to garner $1.3 million.

MR. ENG: Just to accommodate that line item only.

VICE-CHAIR PONTANILLA: Okay. And as far as the operation itself, then what percentage are you looking at in trying to meet your operational expense?

MR. ENG: I have a meeting this afternoon with the Mayor on that. So I’ll probably know better myself after, after this afternoon’s meeting.

VICE-CHAIR PONTANILLA: Okay. And once you have your meeting can you share that information with us? Just asking.

MR. ENG: I’ll give you a hand signal.

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

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Further questions? Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Good morning, Mr. Director, and thank you for sharing with us the fact that in order to make up...if we do go with the 75 percent reimbursement and reduce the amount of time from five years to two years, what we’re looking at in terms of a potential shortfall in order for your Department to still function and provide the necessary improvements. For the record, how many years in a row have we raised...or has the Department requested water rate increases? This would be now, what our third straight year, fourth straight year?

MR. ENG: Member Molina, I, I do know that in the years I’ve been here, you know, we’ve had three so far. So this is the fourth...if there is a rate increase this coming fiscal year that I am aware of. You know, it’s been kind of sporadic over the years. I, I know a few years ago when I was looking at our previous annual reports, there is a number of years there were no rate increases and that’s probably really where the Department fell back. I think it was more like in the late ‘90s. You know, we went, I think, a number of four or five years and that’s where, unfortunately, things, you know, step backwards and that’s why my concern is, is wherever we’re looking at as far as any financial guidance for next fiscal year is, you know, at least take some small steps forward rather than steps backwards.

COUNCILMEMBER MOLINA: Okay. And I ask this question because we...you know, everything is timing too, yeah. With a 3½ percent rate increase, as it relates to this, Mr. Chair, and I’ll try to
make sure we stay on, on topic, what...how much more in one's water bill are we looking at in terms of...a few cents? I mean we’re not talking something major then, right, just a...

MR. ENG: A 3 percent rate increase is very nominal.

COUNCILMEMBER MOLINA: Yeah.

MR. ENG: I mean I think most people won’t even see it too much. You know, again, we have at that inverted block rate design. So the first tier, which is the lifeline rate, we’re always going to protect those in that category. So it would be a very nominal increase, if any, at that tier. The second one also is somewhat protected. In the third tier, though, is where if we’re going to, you know, concentrate any of the increase would be in that third tier and that would be to promote conservation. So for a vast majority of people that do their best in conserving they may not even sense too much of a rate increase.

COUNCILMEMBER MOLINA: Thank you. And, you know, I, I ask this, Mr. Chair, because, you know, you’re going to have constituents out there, they’re going to say, here you guys go raising rates again. But I’m concerned with the...your remarks, Mr. Director, about, you know, we need to maintain, you know. Because at the same time if people don’t want things to go up, then we have to look at the consequences, then some things cannot get done, you know, in terms of the needed improvements and whatnot. So there’s this balance we have to find, and it’s important for me, as an elected official, to explain to my constituents why did you support a rate increase. So this, this is what it’s all about, Mr. Chair, why I’m asking these questions. So we, as nine Members, elected representatives, we can explain to our constituents the concerns for reimbursements for those with family subdivisions and so forth and while, at the same time, the need to sustain services, thus the need to increase water rates. So I’ll leave it at that, Mr. Chair.

CHAIR VICTORINO: Thank you. And again...

MR. ENG: Mr. Chairman, if I--

CHAIR VICTORINO: Yes, go ahead.

MR. ENG: --may add something to Member Molina’s statement? Yeah, and I appreciate your comments. You know, just the other day I was comparing our rates to the other counties, and in previous years when I reviewed them we were always, like, second to the lowest rate. Usually the City and County of Honolulu has the lowest rate because they have the largest customer base to spread cost over. And I know Kauai just recently had a rate increase effective January 1, and Honolulu is looking at a rate increase for July 1, this coming July 1. So assuming that their new rate is in effect, we are going to be the cheapest water by far. Our rates...our current rates compared to Honolulu’s new rates July 1 are over 11 percent lower than Honolulu. And then, and then Kauai is about 30 percent higher currently. So I don’t think there’s any reason why we need to be the, the cheapest game in town. That’s not serving us any good. So yeah, so thank you for bringing that up. I appreciate it.
CHAIR VICTORINO: Thank you, Mr. Eng. And, and, you know, you brought up some interesting dynamics, and I'm going to comment on that. You know, Mr. Molina, as far as rates Mr. Eng is correct. During the '90s they went five years without no rate increase, which really set the bar for the challenges we face now in this decade. EPA rules have changed, treatment rules have changed, many changes have occurred over the last ten years that also has forced us to look at rate increases. The deterioration of our system we constantly fall behind. And this is why the double digit figures have been coming up over the last four or five years. I was on the Board when all of this was occurring, and I saw it.

Okay. I blame nothing. You cannot change the past. I can only make sure the future is better, you know. I'm the last one that wants to increase rates, but I'm also a realist that there are people that are going to expand their systems for which we will have a direct benefit not only for what they use, but for others who will connect onto it in the future. So there's that residual that we don't talk much about. But more importantly, these people are the everyday peoples like Mr. DePonte that don't have a lot of money, they're not big developers, and they are stuck with a million, million two in line expansion, and we're going to make them wait five years for 50 percent.

Okay. And I'm not knocking Mr. Eng. I understand the economic consequences, but is fairness what we're working towards or are we always going to try to stay behind the eight ball? That's the question you have to wrestle with, with not only this but as the rates come out later on in budget and all that. It is hard. We are in pressing times, but when people don't have water, don't have clean water, don't have a system that functions well, that makes it very hard; right, Mr. Molina? Okay. And, and your constituents will say that. I've been to Upcountry meetings and the biggest thing I hear from them, we want a reliable water source, we're tired of droughts; isn't that right, Ms. Baisa?

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay. I mean I'm not creating these things. I've been listening to the people. Now, I also listen to the people in my area in Wailuku, and they say why do I have to pay more to help somewhere else? Well, because we've always been one community, and I've always stated it that way. And that's what we're trying to find fairness. Okay. And that's all this was proposed. You guys can decide yay or nay. I bring out the proposal because I think it only deems fair to the small family subdivisions, and I'm trying to limit it so that some big developer not gonna come in, and put all that expansion, and reap the benefits back. Okay. They stay at 50 percent, five years. We're not touching that one.

So that was my whole intent from the beginning. I understand the economic consequences and if you heard Mr. Eng say, that would be an all, all Upcountry expansion. How many are small family subdivisions, he hasn't been able to break that out, but I think you'll find a little bit lesser as far as you're concerned, Mr. Nishiki, and as far as the rate of return and how much money needed to be put into that. But I'm willing to gamble that this will pay off in a short-term
expansion and help people get their water and their water meters because some of the people are just waiting for that at this point. So that’s what this was all about. I will leave you to your, your thinking and further questions to the Department. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. And thank you for providing us that information. And, you know, I just want to comment on Mr. Eng’s comments earlier regarding rate increases. And, you know, here we are sitting, nine Members, and whenever a rate increase comes about we all have a difficult time in trying to meet the cost of providing the water to our community. Seven years ago when rate increases was an issue we, as a Council, decided to, to do that increases in increments. And at the same time costs, you know, went up, and we never adjusted.

So for us to provide the water services that our community require, you know, it’s going to be nine of us deciding what costs it would be to the people of this County receiving County water. So it’s going to be a burden on the nine of us to come out with that number and, you know, I know the Department has been working hard conveying that information to us and, again, we need to look at, you know, how much people can pay. So that’s the bottom line. Thank you.

CHAIR VICTORINO: And thank you, Mr. Pontanilla, and I think all of us are very cognizant of that. And, you know, again we all sit here trying to do the best for the people of Maui County no matter what district they live in. So I appreciate those comments, Mr. Pontanilla. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. And, you know, I, I want to, you know, tip my hat to you too with regards to this proposal. I think it’s, you know, we’re looking at helping the people that really, truly need help. Just if you could help explain to me or maybe if Corporation Counsel can give comments, because we use the term big developers, I’m trying to avoid a potential loophole where somebody could say, well, what is a big developer versus the family subdivision? Because you’re giving...we’re looking at proposing a different rate for those in the family subdivision. I’m trying to avoid any potential litigation that could be perceived as discrimination.

So what I need to know is how do we define the difference between the two because one can look at the 50 percent at five years as kind of like a business rate, and then the proposed amendment would be more something like that of a residential rate, for lack of a better term. So if I could get an explanation, maybe comments from Mr. Kushi, if possible. Is there any potential, shall we say, issues that those who would be subjected to the 50 percent at five years versus this new amendment, if this were to pass like this?

CHAIR VICTORINO: Mr. Kushi, would you attempt an answer to that, or...

COUNCILMEMBER MOLINA: The whole bottom line is I’d like to just avoid any litigation down the road.

CHAIR VICTORINO: Yeah, understood, Mr. Molina.
COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes, Mr. Chair. I’ll give you this attempt or response. Initially I would think there shouldn’t be…well, there always can be a challenge, but I think it’s defensible. Again, you have to understand the definition of a family subdivision is set forth in your proposed Code. It lists specific requirements, it lists the members of the subdivision, the initial subdivision, and the resulting members, and they all have to be related somehow by blood, or adoption, or marriage. So that’s the differentiation between any other big or small developers. So...and, again, I think it’s within this body’s jurisdiction, as a matter of public policy, to enhance that type of subdivision or keeping it in the family, so to say.

So initially I would think it would be defensible. People always challenge it. But, again, that’s my response. I can remember now...let’s say we’ve had situations like this. A family subdivision, five lots, from one lot to five lots, five brothers and sisters, or mom and dad and three brothers and sisters, then for whatever reason they, they sell the properties to X, Y, and Z from the mainland, developers, okay, or whoever. And these people, X, Y, and Z come into the Department, I want my meter, I want my meter, you approved this subdivision. However, we have this recorded agreement, in place, on all of these lots saying that you cannot have your meter until you do your improvements, or in the case of Upcountry, until your meter number comes up.

So what started out as a family subdivision, it turned out to be Makawao Ranch Acres. Okay. So you have to understand that. There’s no prohibition on the resulting family members from selling those parcels.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Kushi. And, Mr. Chair, Mr. Kushi makes a good point. I want to make sure there’s some type of mechanisms if we do pass this type of amendment that it’s not exploited. And, you know, we want to make sure we have a law or an amendment that is set for the right reasons and not have a situation like what Mr. Kushi explained. So, you know, I, I, I hate to see us trying to help one section of our community, then the laws, the new law is then taken advantage of and here we are, you know, you brought up the point of fairness. So anyway, just food for thought, Mr. Chair. Thank you.

CHAIR VICTORINO: Mr. Kushi, go ahead.

MR. KUSHI: Since you mentioned it, I have to say, you know, what you can’t do or I think any legislative body can’t do is enslaving, if use that word correctly, enslaving the property to a certain family member. You know, you cannot have a restraint on alienation. You know, you can’t say, oh, you shall never sell this property. You have to sell it within...to, to members of your family. I think that might be struck down. What you do...can do is put in these restrictions and record it against the property, so whoever ends up with the property knows what they’re buying.
COUNCILMEMBER MOLINA: Thank you, Chair. And those are some good points too Mr. Kushi brings up.

CHAIR VICTORINO: Okay. Thank you. Thank you for that clarification, Mr. Kushi. I mean...yeah, Mr. Kushi. Okay. Okay. Ms. Willenbrink wanted to point out something to me. On Page 4, of the...what is this now...on the November 24, 2009, correspondence, if you turn to the ordinance itself and go to Page 4, Section C, No. 5, and we have in here: “All reimbursements shall be payable to the original subdivider entering into the agreement with the Department, unless otherwise directed by the original subdivider in writing.”

So, Mr. Molina, we tried to put some protection even in this portion to make sure that the monies...all reimbursements would go back to the original subdivider. And I, I think you bring up a good point, and I don’t know how, and I don’t...you know, it’s a difficult task to make sure that no one takes advantage of the situation. But, you know, Mr. Molina, like I say many times we never have a perfect law, a perfect ordinance, a perfect anything, but we then, while we wait, we penalize the people who need the help the most. You know, I’ve always been willing to say let’s try something and if we need to revisit it in a year or two, or look at it, see what the end result is, maybe at that point in time that’s what we should be doing.

Now, in this case we have protections in here. It doesn’t guarantee it won’t happen. You know, Mr. Molina, you’re absolute correct. It could happen. But I’m also saying every time we decide to put something else in that may be challenged down the road, will that, will that solve the problem...and as we wait and keep these people from being able to do what they really need? And, again, I’m looking at the family subdivisions, people who are just everyday people. How many are going to take advantage? I don’t know. If I knew that answer, I have the million dollar question answered, right.

But, again, I leave it to this body. I think we have enough here to make it work. And I’d be willing to say that in a year or two whoever is sitting in this chair, if it’s not myself or any of you, or whomever is in this Council, if we see abuse there’s no question we could come back and make changes at that point in time. I think we’ve done that it in other, whether it be B& Bs, whatever, we’ve had that option to come back. We’re looking at the Workforce Development Plan right now; right? The affordable housing, right, which Mr. Chair Mateo brought forward, and championed, and put forth, and now we have all these different issues with it. But did we know back then what would happen? No. Times change, economy changes, things change.

I’m saying, if you guys are willing, I’m willing to... I want to see something happen so that these people understand that they will push forward, once their water, they can get most of their money back and not wait five years. And how much will that affect and how many people will be affected by that with this financial market right now, I don’t know. I really can’t answer that one too and most experts cannot answer that at this time. So I’m just putting that forward. I appreciate your manao, I appreciate what you’re saying, and we don’t want to get trapped. Yes, I agree with you. However, if you can come up with some kind of language that we know will be
defensible, I think that’s important, and that would be fair, and that would not hinder these people. I’m open. I’m open to suggestions. Okay. So I leave it to you. Mr. Pontanilla, you have a.

VICE-CHAIR PONTANILLA: Thank you. Kinda. I know you mentioned 75 percent reimbursement for family subdivision. For other developments, the talk is 50 percent.

CHAIR VICTORINO: Fifty percent, five years.

VICE-CHAIR PONTANILLA: Okay. So now the ordinance that we’re trying to create or amend we haven’t separated the two of it, two of them.

CHAIR VICTORINO: Yes.

VICE-CHAIR PONTANILLA: ...meaning the family subdivision 75 percent reimbursement, two years, and then the --

CHAIR VICTORINO: Other.

VICE-CHAIR PONTANILLA: --larger development 50 percent reimbursement, what, five years, or whatever it is. So are you going to amend Section C to indicate that or are we going to amend Section C --

CHAIR VICTORINO: Ms. Willenbrink?

VICE-CHAIR PONTANILLA: --to separate both large developments and family subdivision? Otherwise, we go off tangent, yeah --

CHAIR VICTORINO: Yeah.

VICE-CHAIR PONTANILLA: -when we do this.

MS. WILLENBRINK: That’s correct. If the Committee is in agreement by consensus to revise the ordinance today, we could sit down with Mr. Kushi and work out that language, or we could take a break and work it out very briefly.

CHAIR VICTORINO: Okay. Whichever the Committee would like to do. Would you like to take a break and let Mr. Kushi and Ms. Willenbrink kind of put the language together and come back? And it’s almost ten o’clock, so it’s about that time, you know, and I don’t like to go too long because I, you know, like everything else I have personal needs like others in this Chamber. So with, with no objections I’m going to recess this meeting to 10:15. You think 15 minutes you guys would be able to work it out, Mr. Kushi? Okay. So we will stand in recess till 10:15. . .(gavel). . .
RECESS: 10:00 a.m.

RECONVENE: 10:21 a.m.

CHAIR VICTORINO: ... (gavel). . . The Water Resources Committee will reconvene for January 12, 2010. And thank you for that break. We were able to put together some language that I would like all of you to follow. Our Analyst, Ms. Willenbrink, has passed it out to all of you. And, Mr. Kushi, at this time I'll call upon you to read these changes that are being proposed.

MR. KUSHI: Okay. Mr. Chair, Kim... Council Services Staff, Kim, passed out to you the amendments proposed, and I direct your attention to Page 4 of the proposed bill attached to Victorino's memo dated December 7, 2009, referencing Section... specifically, Section 14.05.050(C) as in cat. The proposed language is as follows, reading from that Section C: "The department shall reimburse the subdivider 50 percent of the cost of a water main extension." This is as is in the proposed draft. The new language would read as follows: "The reimbursement for subdivisions defined in Section 14.05.180", which is at the end of the proposed draft, which defines what a family subdivision is, "shall be 75 percent."

Then the section would continue reading as follows, Subsection C(3), 14.05.050(C) as in cat, (3) is as follows: "The reimbursement shall be made in five annual... five equal annual installments, without interest." That's what it reads right now. The new language would read as follows: "The reimbursement for subdivisions defined in Section 14.05.180 shall be made in two equal installments." It should be two equal annual installments without interest.

So what we've done is incorporate the family subdivisions by reference into the reimbursement section to differentiate, one, the amount of reimbursement; and, two, the timing of the reimbursement.

CHAIR VICTORINO: Thank you, Mr. Kushi. And if you're looking for 14.05.180, you'll find that portion of the Code under... in Page 10, of the November 24, 2009 letter that I sent you with the proposed bill, so, so that you can make reference to 14.05.180, yeah.

And I'll make one more quick note before we open up the floor for questions. Under this one, under Section B, No. 1: "The transfer shall be immediate and shall be limited to the following persons who are related to the subdivider by blood, adoption, or marriage, spouse, parent, children, grandparents, grandchildren, or siblings." So, again, kind of going back to your question, Mr. Molina, I mean there, again, is a clear definition of what the family subdivision means. Now, again, can somebody skate around it? I, I, I think any one of us can agree somebody may try, but it is clearly defined when it comes to transfers they shall be immediate and shall be limited to the following persons who are related to the subdivider by blood, adoption, marriage, spouse, parents, children, grandparents, grandchildren, or siblings. Okay. I think that's pretty definitive. Okay. Any questions in regards to the language change proposed? No. No questions. Yes, Ms. Baisa?
COUNCILMEMBER BAISA: Thank you very much, Chair. The reason why I haven’t answered is because you posed the question very specifically about the language proposed. I do not have a question about that.

CHAIR VICTORINO: Okay. Let’s stay with that first, and then I’ll go back for additional comments. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Regarding the wording on this, was the Director part of this or does he have comments on the wording?

CHAIR VICTORINO: Mr. Eng, will you. . .would you like to comment on the wording that we have proposed now that we have it. . .(inaudible). . .

MR. ENG: Mr. Chairman and Member Medeiros, yes, I had the opportunity to review the language with Deputy Corporation Counsel Kushi. So it is satisfactory. I have some other concerns we can discuss later, though.

COUNCILMEMBER MEDEIROS: Okay. And you’re going to discuss that at what point?

CHAIR VICTORINO: I will bring it up, Mr. Medeiros. Okay.

COUNCILMEMBER MEDEIROS: When he’s going to discuss that?

CHAIR VICTORINO: I will bring it up when, when we’re done with the specific on this, okay, you guys understand what this means, then I’ll bring up other concerns.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR VICTORINO: Okay. So then you can bring your questions up at that point.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Chairman.

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

MR. KUSHI: Yes, Mr. Chair, if may before the questioning starts? In proposing the language that’s before you, which I, I read into the record, discussing it with Director Eng, we must advise you that there is a possible loophole.

CHAIR VICTORINO: Okay.

MR. KUSHI: As…

CHAIR VICTORINO: Why don’t you go ahead and bring out that loophole at this time?
MR. KUSHI: Right. Working for a developer in my previous life I can see the loophole right here. As the Chair noted, the definition of a family subdivision as listed in 14.05.180, specifically limits...initially limits the subdivision to immediate family members, the following persons who are related to the subdivider by blood, adoption, or marriage: “spouse, parents, children, grandparents, grandchildren, or siblings.” So the immediate transfer shall be to family members. That’s why it’s so-called family subdivision, and it’s not limited in numbers. If you have a big family, better for you.

However, after the subdivision these siblings or resulting lots owned by siblings or, or family members could be sold. That’s why we have the section in Subsection C, agreement, that we would record an agreement that would run with the land and bind all successors and assigns, and anybody who owns the property. That’s for the deferral purposes. So that being the case, example, let’s say a developer goes down the list of the Water Department and identifies five family subdivisions, five lots each, then knowing the reimbursement, as developers say time is money, money is time, the developer approaches all of these subdivisions and buys them out. Then because it’s still a family subdivision they would qualify for a higher reimbursement, higher and shorter time period. That is the possible loophole. I hope I’m not giving developers a hint what to do, but, you know, I think we’re stuck if that happens.

CHAIR VICTORINO: So, Mr. Kushi, with that in mind, you know, and, and, and we’re trying...like Mr. Molina said, we’re not trying...we’re trying to prevent that kind of scenario from happening, what would we need to put in here, in your opinion, to prevent something like that from occurring? I mean there’s got to be some methodology that can protect a family subdivision, do all the things we need done, and not have it turned over to somebody else down the line and reap the benefits.

MR. KUSHI: Well, Mr. Chair, I just point that out for the Committee’s information and that would be the worse case scenario. Again, if a family, whoever subdivides it and, and for his family and wants to sell it out, that’s, that’s a situation which nobody can control. Again, I repeat, you cannot hold people to owning their property forever, but you can put restrictions if they want to take advantage of government entitlements, differential government entitlements.

However, I’d have to think about it further, but you could maybe limit the higher reimbursement and shorter reimbursement time to immediate transferees, the immediate transferees of the original subdivision. Again, whether or not that’s going to be challenged I can’t respond at this point, but then that would definitely serve the purpose of your intent.

CHAIR VICTORINO: Okay. All right. That’s, that’s good news. Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Kushi, with that said, so if, if you, we place conditions on it the conditions would run with the land, and to what point?
MR. KUSHI: As it is right now, under Section...Subsection 180, Deferral, the conditions run with the land forever in terms of improvements, not in terms of selling, or buying, or transferring.

COUNCILMEMBER MEDEIROS: Okay.

MR. KUSHI: It’s, it’s...the conditions are based on if you’re going to get a building permit or a water meter, you have to do the improvements. Now, who does the improvements is the owner of the land at that time. Regarding this reimbursement --

COUNCILMEMBER MEDEIROS: Right.

MR. KUSHI: --that’s found in another section now, Section...Subsection .050, that reimbursement occurs when the improvements are completed. When they’re completed, again, it’s a matter of timing.

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

CHAIR VICTORINO: Mr. Kushi, so if what you’ve just said to us, we were to implement that in what we have just been put in front of us, for example, let’s go 14.05.050(C), if under the part where we say: The reimbursement for subdivision defined in 14.05.180 shall be 75 percent, and if we put right after that: “This would be applicable”, oh, I don’t know the language, you know, you, you’re the legal people on this one, but this would be only applied to the immediate, I guess you used the word transfer, “the transfer shall be immediate”, or so “the immediate transfer”, I’m not sure how, the words, but if that was inserted in that area would that now mean, if I understand what you’re saying, that it would be only applicable to those defined in that immediate transfer, family, immediately siblings, and all that, by blood and by adoption?

MR. KUSHI: Yes, it, it could be interpreted in that fashion. I would limit it to the immediate...the transferees that resulted immediately after the family subdivision --

CHAIR VICTORINO: Okay.

MR. KUSHI: --which is defined in Subsection 180(B), as in boy, Subsection 1.

CHAIR VICTORINO: Just to take it one step further... 

MR. KUSHI: Right. Again, and to take it before you do.

CHAIR VICTORINO: Yeah, okay. Good.

MR. KUSHI: Let’s say there was a family subdivision of one lot into five lots. Initially five lot owners are all related. For whatever reason, the family...two of the five lots are being sold to Mr. X and
Mr. Y. Although the majority of the owners are still family members...are now, they now not covered or...I mean, you know, you have all these situations where...and it's your job to decide.

CHAIR VICTORINO: I think that's what we're trying to do here, but the water gets more murky every time we bring up another question; right? But, again, you know...

MR. KUSHI: Again, Mr. Chair, maybe Director Eng has an actual list of family subdivisions and whether or not this will be a, really a problem.

COUNCILMEMBER MEDEIROS: Mr. Chair, before...can I ask an immediate question of what he just said?


COUNCILMEMBER MEDEIROS: Yeah, what he said. So, so, Mr. Kushi, when we're talking about the description and definition of the family members that you just spoke of, was it ever considered that a hanai relationship be considered in this? And the reason I bring up that is many families in Hawaii consider certain members of their children to be their children under the hanai system and so does HMSA recognize that. So...

CHAIR VICTORINO: Mr. Medeiros, I going stop you right there because I think I want to stick with what we have here right now. That would be a question that could be brought up later. I want to stick with, with the definitions that we have right here. I'm not adding anything to the definitions at this time. I understand hanai. I'm not...you know, I just don't want to...let, let me, let us focus on what we're trying to accomplish here now and hanai could be brought up at a later point, but right now what's in front of us is what I'd like to stick with. Okay.

COUNCILMEMBER MEDEIROS: Okay. We're talking about amendments, which is changes to what we have now.

CHAIR VICTORINO: Not...well, again, the amendments we're referring to now is immediate transfer and trying to get that definition of what an immediate transfer would mean.

COUNCILMEMBER MEDEIROS: Okay. My, my, my response is just that, yeah, it is a change that we're discussing, like, I'm asking. So I'll go with your decision on that.

CHAIR VICTORINO: At this time --

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR VICTORINO: --and at a later point I will allow you to bring that up.

COUNCILMEMBER MEDEIROS: Okay. Thank you.
CHAIR VICTORINO: Okay. So, again, Mr. Kushi, I think what I want to get perfectly clear, and I think all the Members want to get perfectly clear, what would be the challenge, because you’re saying in most case or, you know, why would this be challenged is, is what you’re saying if you sold it to five family members and two of them turned around and decided to sell their portions to outside entities; right? And that’s what would, would, would make that very difficult as far as this 75 percent reimbursement; is that correct?

MR. KUSHI: Yes. You know, in that situation the Department would then have a problem of determining, because two of the five lots are not owned by family members, does the, does the entire family subdivision qualify for the higher reimbursement rate and shorter reimbursement period. Again, you, you can have a combination of situations which, you know, you have to think about now as someone said, you know, unintended consequences may, may occur. So...but, again, you know, these are just points that we, we try to bring out.

CHAIR VICTORINO: Okay. Mister...  

MR. KUSHI: And, and, and, Mr. Chair --

CHAIR VICTORINO: Yeah.

MR. KUSHI: --for Mr. Medeiros’s concerns, I understand what he’s talking about.

CHAIR VICTORINO: Okay. Thank you. Mr. Eng, you have comments?

MR. ENG: Yeah, thank you, Mr. Chairman, Committee Members. Yeah, I just...again not having all the details of our current participants as far as their current reimbursement amounts, you know, as I pointed out earlier my, my primary concern is the impact to any potential rate increases and additional revenue requirements. But during the break I did consult with one of my engineers as far...to see if he could identify, of the current 19 parties, which might be family subdividers, and he identified seven of 19. I can’t tell if they’re large or small projects, but let’s say there’s a little over one-third of the list are, are...would qualify for this proposed higher and accelerated amount of refund.

So as I pointed out earlier, you know, if, if everyone was entitled to it, it would be at least a 3 percent increase. Let’s say all the projects were equal and the one-third would qualify, you know, I’m looking at least a 1 percent increase in rates just because of this. So, again, it’s just an estimation, but it’s something that, you know, I’m trying to keep down...things down to minimal zero or minimal rate increases because we have so many other much needed revenue requirements, you know, in our, just our day-to-day operations. So, again, minimally it’s going to be a 1 percent rate increase if this proposal is adopted.

You know, there were other kind of methodologies I looked at when this was first being considered. I mean, you know, there was a 75 percent refund, but maintaining the five-year reimbursement period. You know, that would have been of a lesser, obviously, lesser revenue
requirement and impact to our rates. I even looked at keep it at 50 percent and accelerate it to only two years. That even still yet had a lesser impact to our revenue requirements. So I don’t want to confuse the matter, but there are...were other methodologies and options if you want to, you know, keep our rate increases to a minimum. Thank you.

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

COUNCILMEMBER BAISA: Thank you very much, Chair, and I think Director Eng is exactly where I’m at in the whole matter. You know, we...initially when this all began today, this discussion had quite a lively discussion about costs and possible rate increases and all of that. And I certainly applaud the Chair for trying to help family subdivisions because, you know, that’s a group that I have special, special concern for that people are allowed to keep their land and make the best use of it, and I’d like to see that happen.

I think we have...what we have here is a timing issue. You know, I think I hear what you’re saying, Director Eng, and I’m certainly well aware of the fact that this is probably going to be one of the worse budget sessions that we have ever had to deal with. And just trying to hold on to what exists right now, and keep our employees on the payroll, and not do big cutbacks, which will have terrible impacts on people in terms of water service and in any other service in this County without doing frightening tax increases, or rate increases, or whatever. I think this is a timing issue. I think we all totally agree with the Chair that we want to see benefits going to our family subdivisions, but the specter of any kind of a rate increase to implement that, that could possibly be delayed until we’re not facing a budget like we are in the next couple months is an issue for all of us that we’re all kind of thinking about and saying, now, hold on a minute. If I approve this, is it possibly that I’m approving a de facto 3 percent rate increase? And so, I think we need to think about that before we act. Thank you very much.

CHAIR VICTORINO: Thank you, Ms. Baisa. Any other...yes, Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. And, again, just to respond to Mr. Eng’s primary reference to the potential increase in water rate, that, that scenario of the potential 3 percent would be based on the 75 percent at, at a two-year reimbursement schedule. If, in fact, the Department continues to plan at the half a million dollar per year, Mr. Chairman, if we just look at the potential increase from 75 percent to three years, then there would be no increase in the, in the projected water rate because the, the current proposal, 75 at 2, warrants a 1.38 percent cover that we would need. With the 75 percent at 3, the Department is already projecting the half a million per year, so you are in fact covering this potential increase. So there would be no consideration of an increase.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Mr. Chairman. Council Chair Mateo, you know, let me kind of re-explain the numbers, because I think I might have confused you. The original proposal of 75 percent reimbursement over a two-year period would result in a revenue requirement increase of $1.38 million. So it
wasn’t a percentage. And that, that equated to a 3 percent rate increase. So any really acceleration or a higher refund amount from the current 50 percent over five years is going to entail additional revenue and, therefore, some type of rate increase.

So I could...if you give me a moment, I can work on a calculation maybe determine at 75 percent over three years approximately what that might be, but I need a moment to figure that one.

COUNCILMEMBER MATEO: Okay. Thank you.

MR. ENG: Thank you.

COUNCILMEMBER MATEO: Thank you.

CHAIR VICTORINO: Other questions for...

COUNCILMEMBER MATEO: No.

CHAIR VICTORINO: Okay.

COUNCILMEMBER MATEO: I’ll wait for the Director.

CHAIR VICTORINO: Okay. And, again, the 3 percent, again, we, we’re looking at all, yeah, and that’s what, that’s what we originally, and the 1 percent that he brought up was really for just the family subdivision, the seven out of the 19 that Mr. Eng had brought up to us earlier, yeah. And while we’re doing that, Mr. Kushi, I will allow, at this time, Mr. Medeiros to bring up the hanai issue, hanai family members. And, Mr. Kushi, since you’re keenly aware of it, and we can address it. Mr. Medeiros, your question on hanai family members to Mr. Kushi?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, Mr. Kushi, I think you heard my question the first time, but I’ll reiterate it. Is that...was there any consideration given in the crafting of this, whether it’s an amendment or the change in the ordinance, when we are talking about what constitutes family and who can receive the transfer. Were the hanai...people under the hanai label or description considered under this?

MR. KUSHI: Mr. Chairman, Member Medeiros, as far as the current consideration in redrafting these rules, no. But, again, I understand what you’re, you’re talking about. My knowledge of family law has, is really non-existent, I haven’t, I haven’t done anything for a while, but I will research if language is...additional language is needed. If the classification of hanai situations are incorporated in the Family Court Adoption laws, I don’t know, they should be, but if they need to be referenced we shall put it in.
Again, realize that these rules, the subdivision...family subdivision rules...first was called the waiver and now it’s deferral, they were done in 1970s. The Public Works definition of family subdivision was done in 1987. So, you know, things have changed since that time.

COUNCILMEMBER MEDEIROS: Right.

MR. KUSHI: But, again, if the intent is to include all those who qualify as hanai, so be it.

COUNCILMEMBER MEDEIROS: I thank you, Mr. Kushi, for that. And the only reason I bring it up is there are many local families that within their children are hanai children and many consider, under the Hawaiian culture hanai system, those under the hanai system are considered like any other of their children. So if that family decides to do a family subdivision and would like to include their hanai children, I, I just want to see if we can incorporate that. And, Mr. Kushi, I thank you for the research that you’re going to do and, Mr. Chairman, under your signature if we could, you know, get a response from Mr. Kushi once he’s determined the research is done.

CHAIR VICTORINO: Okay. I will.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR VICTORINO: I’ll forward that letter of request--

COUNCILMEMBER MEDEIROS: Okay. Mahalo.

CHAIR VICTORINO: --research what the present...*(inaudible)*...and our system here in Hawaii.

MR. KUSHI: Yeah, Mr. Medeiros, I would think...I would think--you know, I’m just taking a wild guess at this point--it would have, it would have to be tied to the entitlements for inheritance; correct? Is that where you’re coming from?

COUNCILMEMBER MEDEIROS: Well, I, I come from the, you know, the hanai system that there is no documentation on that relationship being legal under Western law. Under Hawaiian law and practices a hanai person in the family is considered as equal to the rest of the family members as anybody else. So I just wanted to be sure how do we look at this from the standpoint that we have to decide on this through existing laws or existing practices of acceptance for this hanai system.

MR. KUSHI: But, again, my point, Member Medeiros, is that it would, in my mind, have to be tied to inheritance rights --

COUNCILMEMBER MEDEIROS: Okay.

MR. KUSHI: --as other children or siblings in the Western law would be entitled to --
COUNCILMEMBER MEDEIROS: Right. Right.

MR. KUSHI: --correct? Is that where you're coming from?

COUNCILMEMBER MEDEIROS: No, I mean that’s, you know, your response as an attorney that practices the law, the Western law, but I’m just wondering if there’s room to include hanai. So I would have to, you know, listen to what you say under your research, but I understand what you’re saying about, about, you know, being tied into the inheritance under law. But, thank you. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Okay. Thank you. Mr. Kaho‘ohalahala, you have a question?

COUNCILMEMBER KAHO‘OHALAHALA: I just want to pursue the same idea of hanai and only because earlier you made a comment about the potential loophole in terms of family subdivision, and you, you used the example of a five-lot subdivision of which three of them are immediate family members and two of them may not be. In the scenario of three of them being immediate family members, and then two of them being hanai, how would you have then viewed that?

MR. KUSHI: Member Kaho‘ohalahala, if we include a definition of hanai as siblings, then it will take care of itself.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So then I think the question about hanai, then in terms of the idea of family subdivision or, or that preference, then that would have, have to be a part of the consideration then?

MR. KUSHI: Yes. I would request that you give us some time to look at it.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

CHAIR VICTORINO: Thank you. And, again, I will forward a letter to Corp. Counsel, to you, Mr. Kushi, requesting your interpretation and the customary practices of hanai as it relates to Hawaii in general because even for myself, you know, my son has a stepson which we hanai’d. I mean he’s my grandson, and we make no differentiation in that respect. Now, I grant you when it comes to legal documents and all that, I think then we’re going to have to cross certain bridges, but as far as the family is concerned he has equal rights in whatever decisions we make, but that’s, again, culture versus what the law is, and we need to separate the two. Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. Just on, on another subject, the issue that Member Baisa brought up about the consideration of looking at a rate increase and with the tough fiscal times we’re looking at. As it relates to this potential amendment, I’m just trying to think outside of the box. If it is the will of this body to go ahead and proceed in passing this amendment, we could make the effective date maybe retro to next year, January 1, 2011. That way we sidestep this budgetary session in having to deal with a potential rate increase. And I’m glad Mr., Director Eng brought up the issue that it’s only seven of these 19 applications. So
we’re looking at, what, potentially just 1 percent. And maybe deal with the issue of a rate increase for the 2012, or excuse me, 2011 budget year. I mean that’s one thing to make the law retro rather than say we pass the law this year or make the effective date this year, make it effective January 2011 or something along those lines, Mr. Chair.

So that way we don’t have to deal with the issue of a rate increase for this particular budget session we’re looking at. So I just kind of throw that out in light...because I think it was a good point that Member Baisa brought up about the timing of this matter.

CHAIR VICTORINO: Timing is everything. Mr. Eng, you have a response?

MR. ENG: Yes, I’d like to respond to Council Chair Mateo’s proposed alternative methodology, and he proposed a 75 percent reimbursement paid out over a three-year period. If all parties qualify for this methodology, then the projected rate increase would be about 2.75 percent. So not much lower than the 3 percent over a two-year reimbursement period.

And if I may also respond to Member Molina’s...

CHAIR VICTORINO: Before, before I let you move on. I would like to know if we only did the seven...you just said for all, and I understand what you just mentioned, if it were just seven out of 19 what would the percentage be at that point?

MR. ENG: Well, Mr. Chairman, you know, because I don’t know the dollar amounts associated with each of these participants, you know, again, just based on the number of participants seven out of 19 is about one-third. So only one-third, approximately, if everything is equal, you know, project valuations and reimbursement amounts, about one-third would qualify, so one-third of that rate increase, projected rate increase. But, again, that’s only a guess at this time. I’d have to do some research.

CHAIR VICTORINO: Okay. I mean, you know, that warrants some looking into. And now to answer mister or to respond to Mr. Molina’s statement, go ahead.

MR. ENG: Yes, thank you, Mr. Chairman. And, Member Molina, I think that’s a very good point that you made. Yeah, if we can defer this, the effective date, so really it...so it doesn’t impact our upcoming Fiscal Year 2011 Budget, so if you do, again, support this, approve it, if it could be effective with the Fiscal Year 2012 Budget, therefore, July 1, 2011. Thank you.

CHAIR VICTORINO: Okay. You’ve heard all these variables, these variable options, and we come to a crossroad now. I mean I think we understand the intent. I think we understand the potential consequences. Ms. Willenbrink, if, if at all possible, I hate doing this because I feel like that’s all I ever do, but Mr. Nishiki put it in a blunt word, you work very hard, and then you still come back and start over again, right, Mr. Nishiki? I’m going to, with the body’s approval defer this so that we can get the various questions that have been brought up answered and at our next meeting, sorry gang, come back again one more time and testify one more time. We will look at
some of these changes and see what we can do with it. So without any objections I will defer Item WR-1(5) to our next meeting with further information to be brought forth. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

ACTION: DEFER pending further discussion.

ITEM NO. 29: UPCOUNTRY WATER METER LIST (C.C. No. 06-279)

CHAIR VICTORINO: Now, we move to WR-29. I'm afraid to even touch that one, but we will try our best. Okay. I've moved my paper so many times, now I'm lost...oh, I got it. I got it. Okay. Okeydoke. WR-29, Upcountry Water Meter List. This correspondence dated January 4, 2010, from the Department of Corporation Counsel, transmitting a revised bill entitled: "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM." The purpose of this bill, this draft bill is to provide water service applicants from the Upcountry Water Meter List a period of five years to make required system improvements upon receipt of a water meter reservation.

Remember at our last meeting, which, Ms. Baisa, you weren't there, the last meeting we discussed providing the applicants on the Upcountry Water Meter list, which I have a response dated November, I mean, December 24, 2009. Corporation Counsel has also provided us with a revised bill incorporating the revisions that was requested by the Committee. He has also made further clarification to the bill, and that is dated December 24, 2009 from the Director relating to the number of meters requested for the Upcountry Water List.

So if you would go to WR-29, and you would go to the correspondence, first of all, dated December 24, 2009 from the Director, and I will read the response. This is to myself from Director Jeffrey Eng. Subject: "Upcountry Water Meter List (WR-29)." This letter is in response to your letter dated December 16, 2009, in which you requested the Department to provide the Committee with a total number of requested water meters on the latest Upcountry Water Meter Priority List. The total number of requested water meters is 2,955. So, Mr. Eng, I'm going to ask you, this is as current as of this date of this letter, this 2,955?

MR. ENG: Mr. Chairman, it is current as of the latest update to the list.

CHAIR VICTORINO: And what would that have been; may, may I ask?

MR. ENG: Sometime in 2008, I think, it was, spring of 2008.
CHAIR VICTORINO: So with that in mind, I would assume that there is still more applicants that have been brought forth since 2008 through December of 2009?

MR. ENG: Yes, I think we can assume that, yes.

CHAIR VICTORINO: Okay. And... is there any possibility of getting that number and update it within the next 30 days? Is that a possibility, I’m asking?

MR. ENG: I’ll have to look into that.

CHAIR VICTORINO: Okay.

MR. ENG: You know, our engineering staff is still quite swamped with CIP projects --

CHAIR VICTORINO: Okay.

MR. ENG: --and ARRA-funded projects. So we got to get those going, but as soon as we can free them up we’ll, we’ll update it.

CHAIR VICTORINO: Okay.

MR. ENG: As of now it doesn’t really serve any purpose.

CHAIR VICTORINO: Okay. Well, at least we have, you know, a much better...a specific number, and we would assume, according to some of the testifiers we’re probably gotta add another two or 300 to this list, probably, but that’s what we have there.

And then we have the January 4, 2010 response from Mr. Kushi to myself, and this is the attached draft bill and the proposed changes as dated 1/4/2010. Mr. Kushi, I would ask you, at this time, would you like to comment on the changes that was requested by the Committee?

MR. KUSHI: Mr. Chair, not really. I mean, not really. We did incorporate your requested changes. One, is that the...I’m looking at your December 16, 2009 memo to Brian Moto, revised the date of the draft bill 2010. Section 2, we, we clarified that the...by inserting the phrase “owning property” between the words “applicant” and “on”. So Section 2 reads as follows: When an applicant owning property on the priority list requesting new or additional water service. So it’s, it’s clear that the priority list is comprised of premises, but when the premises does...don’t apply themselves it’s the applicant who applies for the meter.

Number three, in Section 3, we went back to the term...Section 14.13.060(A) as in apple, we struck the words “daily” and, and inserted the word “day”, so it would read: “Priority list up to the average day capacity of any additional source.” In Section 3, again, Subsection 14.13.060(B) as in boy, subparagraph 3, we struck the word “make” and inserted the word “complete.” So it would read...right, it would say: “For water meter reservations affecting the Department’s
Upcountry Water System, an applicant shall have five years from the date of the issuance of a water meter reservation to complete”, not to make, “the water system improvements.”

Lastly, Mr. Chair, as you noted, I revised Subsection 14.13.060 into two Subsections A and B instead of three separate subsections. The first subsection is regarding...I’m sorry, we revised it to contain three separate subsections. Subsection A would...is a general section about if additional source becomes available; Subsection B is the subsection requiring improvements to the system, if necessary; and, Subsection C deals with reservations. That’s it, Mr. Chair.

CHAIR VICTORINO: Okay. Questions to Mr. Kushi or Mr. Eng? Yes, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. 14.13.060, Subsection B, did you reference a change on the second line to make certain to remove “make” and add “complete”? In other words: “Prior to the installation of a water meter, the Director may require an applicant to complete”, right now it says “make”, “to complete certain water system improvements to the premise”, and so forth. I know you added the “complete” on Page 2, where we removed “make” and added the word “complete.”

MR. KUSHI: Mr. Pontanilla, you are indeed correct.

VICE-CHAIR PONTANILLA: Thank you.

MR. KUSHI: And thank you, we will deal with that revision with the permission of the Chair.

VICE-CHAIR PONTANILLA: Okay.

CHAIR VICTORINO: Thank you, Mr. Kushi.

VICE-CHAIR PONTANILLA: Thank you, Chair.

CHAIR VICTORINO: Thank you, Mr. Pontanilla, for pointing that out. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. A question for the Director. Director Eng, on the water meter list, I was going through the different lists over the time that it was put into this binder, it goes pretty far back. I wanted to know what was the rational, at one point, when they no longer included the applicant’s name, it was just a reference number, a TMK, a lot and so forth. Because lists that are, like, in the 2000...prior to 2000...well, one list I looked at in 1998 gave the names. So I just wanted to know if there’s a rational why the names are removed, and then numbers given, and so forth.

MR. ENG: Mr. Chairman and Member Medeiros, I really don’t have a response to that. I don’t know the reason except maybe for privacy concerns.

COUNCILMEMBER MEDEIROS: I see. Okay. Thank you for that response. Mahalo, Mr. Chairman.
CHAIR VICTORINO: Thank you. Any other questions for the Director or for Mr. Kushi? Yes, Mr. Kahoʻohanohala.

COUNCILMEMBER KAHOʻOHALAHALA: Yeah, thank you and maybe this is to the Director. In 14.13.060(B), in the same section that Member Pontanilla was making reference to, when it describes that the Director may require an applicant to, in this case, it says make or complete certain water system improvements to the premise and/or to the Department water system, as a condition of the Director’s discretion what are some of the...those items that are, are being referred to so I understand what it is you are asking in that very broad...

MR. ENG: Mr. Chairman --

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

MR. ENG: --Mr. Kahoʻohanohala, you know, most of the improvements obviously refer to, you know, having adequate waterline size for fire flow protection. That's probably the majority of the offsite improvements that we see needed particularly in this Upcountry area.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. But we already are, are setting some of those standards for requirements, so --

MR. ENG: Uh-huh, yes, we are.

COUNCILMEMBER KAHOʻOHALAHALA: --why, why then are we doing this as sort of a discretionary kind of requirement?

MR. ENG: I don’t see this as necessarily discretionary. It is a...you know, to comply with the Fire Department’s and the Water Department’s standards for proper fire flow...

COUNCILMEMBER KAHOʻOHALAHALA: Yeah, so why would we put that?

MR. ENG: So it’s just basically a standard.

COUNCILMEMBER KAHOʻOHALAHALA: Yeah.

MR. ENG: It isn’t a...anything discretionary.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. When it says Director may, I, I look at that as there’s some, some, some authority that you have, but if it’s clear to you what it is that you are requiring of them, then why are we not making it clear in, in the, in the Code?

MR. ENG: Well, I think it’s really just a matter of semantics. I mean, you know, otherwise it could read the Director shall require, and we’re not always going to require. It depends on the
circumstances. So I think that’s just a, a verb to indicate there may be a condition that requires an improvement of the water system and not necessarily shall require an improvement. It, it depends on the circumstances and the existing infrastructure.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. I guess what I’m asking is why is that not directed to the applicant instead of the Director intervening at some point? So prior to the installation of water meter the applicant shall, you know, and then list those things that, that you’re already making reference to.

MR. ENG: So you might want to say prior to the installation of a water meter the applicant shall make.

COUNCILMEMBER KAHO‘OHALAHALA: That’s what the intention is; right?

MR. ENG: Are you trying to say that? I love that language, yeah. So, it puts the --

COUNCILMEMBER KAHO‘OHALAHALA: ...(Inaudible)...

MR. ENG: --burden on the applicant.

COUNCILMEMBER KAHO‘OHALAHALA: --one more section in here that leaves, leave some, some wiggle room --

MR. ENG: You know, I’d love for the applicant --


MR. ENG: --to take initiative and do the improvements as he should be providing. So it takes away our discretion. I’m perfectly fine with that.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. That’s just my concern, Chair, and I would like some consideration as to…and that’s why I wanted you to define what that is. And if you’re saying that it’s clear, then we should just state it as such.

CHAIR VICTORINO: So what you’re proposing, Mr. Kaho‘ohalahala, is that: Prior to the installation of water meter, the applicant shall make or shall complete water system improvements to the premise or to the Department’s water system, provided these improvements are necessary to meet the water requirements, and it’s clearly stated right there, water requirements set forth in the Article or to meet the fire protection requirements pursuant to the County Fire Code.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah, I’m just trying to take out one more layer of instruction.

CHAIR VICTORINO: So is that what you’re proposing, Mr. Kaho‘ohalahala?
COUNCILMEMBER KAHO'OHALAHALA: Yeah, and then maybe Mr. Kushi can make a comment as to any.

CHAIR VICTORINO: Mr. Kushi, go ahead.

MR. KUSHI: Yeah, Mr. Chair, Member Kaho‘ohalahala, this, this, this chapter is really...you know, Chapter 14.13 is dealing with the Upcountry water meter system. Again, we had just previous to this discussion, discussed the new subdivision rules. So this Section 3 that we’re talking about now, Subparagraph B, incorporates or assumes that if it’s an Upcountry property and the water meter...and it’s a subdivision that’s been waiting for water meters, and their number comes up, then the improvements will be required pursuant to the subdivision code...chapter. Okay. If it’s a stand-alone previously subdivided lot that just didn’t apply for water, you know, and, and his number comes up, whether it be in Upcountry, or Wailuku, or whatever, and the system that the County...he would tie into the County system is inadequate, then this would take care of it.

Now, the improvements that are referenced, referenced the water system requirements as set forth in this article, be it a subdivision or just general water service application rules, which we haven’t come up, which we haven’t discussed yet—that’s, that’s for future reference, that will be coming up—or to meet the Fire Code, and that will be also coming up. The Water Department is really for stand-alone lots, not subdivisions, we just want to issue it to the Fire Department, okay, and that will be coming up before you shortly.

So I look at this section as...I think it’s, it’s adequate. If an applicant...if the Director requires an applicant to complete certain requirements before the meter is issued and the applicant feels that it’s not within the requirements as set forth previously or stated in the Article, then the applicant has the decision to appeal the Director’s request and that would be heard by the Board of Water Supply. So there are provisions for...to address an applicant’s dissatisfaction if he feels the Director is arbitrary, capricious, or abusing his discretion.

COUNCILMEMBER KAHO'OHALAHALA: Okay. I’m just trying to look at language that would alleviate some of that kind of need to do so. You know, if it’s clear in, in the Code what a person should do and, and it’s clear to us and that there’s supporting sections of law that also support that, that make reference to that so it’s clear. ...but when we do the, the, the Director shall or may, you know, require these things, and then you say that there is an appeal process, it just sets, sets us in place of having to challenge someone else’s discretionary decision perhaps, you know. So wouldn’t it be simpler to just be clear in, in stating what an applicant should do rather than saying that you should do what the Director says and if you disagree with him, then go to the Board of Variances and Appeal, you know. I’m just trying to understand if, if it’s possible for us to be more simple and more clear about what the requirements would be for an applicant.

MR. KUSHI: Yes, I understand what you’re, you’re saying, and I believe what we were trying to do previously is to clarify and define the requirements for subdivisions and leave as little discretion to the Director as possible. This Director does not want to have discretion, I can tell you that.
COUNCILMEMBER KAHO‘OHALAHALA: Okay. Well, then let’s help him.

MR. KUSHI: Right. That’s what we’re trying to do in the previous discussion, Member Kaho‘ohalahala, and we will be coming forth with new ordinances regarding stand-alone building permit requirements, et cetera, stand-alone applications which may not comply with the Fire Code. For instance, an old subdivided lot that was done way back when, and it just went through. . .maybe skipped the hoops, and now we, we catch it at the time of building permit application, and rather than have the applicant reinvent the wheel and put in a whole new system, turn it over to the Fire Department. You know, these are the things that will be coming up.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So for right now for this language, then my suggestion was to remove that little clause there, “Director may require and is directed”, and then put the language directly to the applicant’s requirements. So is your, is your feeling then that this is not necessary to do so?

MR. KUSHI: Member Kaho‘ohalahala, I didn’t catch your revised language. Would you repeat that?

COUNCILMEMBER KAHO‘OHALAHALA: Okay. In the 14.13.060(B), in that paragraph it says: “Prior to the installation of a water meter, the Director may require the applicant”. My suggestion was to, to eliminate that part of it, “that the applicant complete certain water system improvements to the premise.” So just removing that section is, is...in your opinion, is that something that would be detrimental to the... .

MR. KUSHI: So it would read: “Prior to the installation of a water meter, --

COUNCILMEMBER KAHO‘OHALAHALA: The applicant.

MR. KUSHI: --the applicant shall complete”. . .that’s fine. That’s fine.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

MR. KUSHI: It would read: “Prior to the installation of a water meter, an applicant, an applicant --

COUNCILMEMBER KAHO‘OHALAHALA: An applicant.

MR. KUSHI: --an applicant shall --

COUNCILMEMBER KAHO‘OHALAHALA: Complete.

MR. KUSHI: --complete”, not certain, just water system improvements --

COUNCILMEMBER KAHO‘OHALAHALA: Yeah.
MR. KUSHI: "water system improvements to the premises and/or to the Department’s water system, provided that the improvements are necessary to meet the water system requirements set forth in this article, or to meet the fire protection requirements pursuant to the County’s Fire Code". That’s, that’s fine.

COUNCILMEMBER KAHO’OHALAHALA: Okay. Then, Chair, I would like to make a recommendation or ask to. . . do you want a motion or. . .?

CHAIR VICTORINO: We’ll do a motion. Let’s go.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. Then I would move that. . .

MS. WILLENBRINK: Excuse me, Chair.

CHAIR VICTORINO: Yeah, I’m sorry.

MS. WILLENBRINK: This Committee usually votes by consensus. I don’t know if you want to change that.

CHAIR VICTORINO: By consensus is fine. That’s fine. Not a problem. Whatever is. . .

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So that would just be a suggestion, Chair, that if the Director and Corporation Counsel are fine with that, that we’re trying to make more simple, I think, the language for the applicant.

CHAIR VICTORINO: That’s fine. The Committee. . . yeah, Ms. Baisa, go ahead.

COUNCILMEMBER BAISA: Thank you very much, Chair. I understand what Member Kaho’ohalahala is trying to say and. . . but I did hear the Director say earlier, when this was first read, that there were times when those requirements may not be required. So if we make this a shell, then there’s no more room for wiggles that I can see. It’s either you follow the law and the Fire Code, and whatever else has to be followed, or you don’t do this. Director, your comment? I know you prefer not to be put in a situation of having to use your discretion, but I mean does that make it. . . you know, we’re tying your hands?

CHAIR VICTORINO: Director, go ahead.

MR. ENG: Mr. Chairman. Thank you, Member Baisa. I think you kind of understand what I’m dealing with. As we’ve been going through the codification of our subdivision rules, Deputy Corporation Counsel Kushi and I have been trying to eliminate any kind of language that refers to any Director’s discretion because that will always be challenged. It can make my life, my staff’s life miserable and waste a lot of our time. So really I’m very supportive if you want to make it very just black and white, it’s either yes or no and nothing in between, that’s an improvement on my life. So I can live with that.
COUNCILMEMBER BAISA: Thank you, Director Eng, but we’re not here to improve your life. What I’m concerned about is improving the impact on people that we represent, and are we doing them a disservice by taking away your ability to act in a special circumstance.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Yeah, well thank you. Again, you know, I guess if there were reasons that you believe that I am abusing my discretion— if you were to, then, of course, you should set some limits on my discretionary powers. You know, if you believe my Department, myself, or whoever is in my position is doing their best effort to be fair and balanced in our decisions, especially when discretion can come into play, then, then keep this. You know, there are times that it is to the benefit of your constituents, of members of our community that there is some discretion. You know, the call is really yours. I can go either way. You know, I believe I’m always trying to be fair. You know, I’m not going to abuse my discretion, but that’s for you to determine. Thank you.

COUNCILMEMBER BAISA: Thank you very much for your answer and, you know, I’m not trying to be funny about it, but, you know, this discretion. . .whole issue of discretion, we certainly understand because every day we are here trying to make the best decision, use our discretion, follow the rules, and yet do the best thing for the people we, you know, we’re trying to help. So we fully understand. But, you know, before you say, well, okay, you can take away my discretion; however, you know, sometimes I don’t apply this ’cause I don’t have to, that makes me. . .gives me pause before we take it away. Thank you.

CHAIR VICTORINO: Thank you, Ms. Baisa. Thank you for the clarification. You know, I’ll go with whatever the Committee so feels fit. You know, if they feel that way, that’s fine. Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes, just a quick question for the Director. So if, if we allow the discretionary authority to remain as it is now and the constituent or the applicant is not satisfied with your discretion, the use of your discretion, is there an appeal process?

MR. ENG: Yes, there is, Member Medeiros. They could appeal to the Board of Water Supply.

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

CHAIR VICTORINO: And, and let me, let me ask you this question then before I recognize anybody else. If we were to put shall, then there would be no appeal. It has to be done; is that correct, Mr. Eng? If we were to change it the way it’s being proposed, eliminating your discretion and making it shall be for the applicant, then there would be no appeal. They would have to do whatever is required?
MR. ENG: Yeah, we might want to even clarify that sentence a little bit to read: “An applicant shall complete the required water system improvements”. So maybe add two words, “the required water system improvements to the premises or to the Department’s water system”.

CHAIR VICTORINO: And I guess...

MS. WILLENBRINK: Chair.

CHAIR VICTORINO: Yes, go ahead. I’m sorry, go ahead.

MS. WILLENBRINK: Yes, Chair. I think if you read the entire sentence, it would read: “Prior to the installation of a water meter, an applicant shall complete water system improvements to the premises and/or to the Department’s water system, provided that the improvements are necessary to meet the water system requirements set forth in this Article or to meet the fire protection requirements pursuant to the County’s Fire Code.”

CHAIR VICTORINO: So it’s there.

MR. ENG: Yeah, that sounds fine. Thank you.

CHAIR VICTORINO: Yeah, okay. Okay. So it’s there. Okay. So, again, the consequences of something like this, I guess what I’m trying to get at, and I think Ms. Baisa was asking the same question is, would that...now that we put that, make the applicant completely nowhere to go, it has to be done, and nothing else. There’s no, no appeal process. Mr. Kushi?

MR. KUSHI: Mr. Chair, no. I, I can see an applicant reading the Code and, and interpreting the phrase “provided the improvements are necessary to meet the water system requirements set forth in this Article”, I can see an appeal on that.

CHAIR VICTORINO: Okay.

MR. KUSHI: And they, they, again, the Board would have to interpret and deliberate on what the requirements are.

CHAIR VICTORINO: So, Mr. Kushi, if I’m correct in saying this, you know, what Member Kaho’ohalahala is proposing would just put the Director out of the picture, and it would be a direct applicant to Board appeal because they would be interpreting what they read as not fair, and so now they would go to the Board for an appeal process.

MR. KUSHI: Right. Again, you know, I don’t think there’s anything certain about any of these rules --

CHAIR VICTORINO: Yeah. Yeah.
MR. KUSHI: --and it can be interpreted either way and that’s why we have adjudicated boards. And, you know, again, if we just say, you know, this is black, this is white and the courts don’t like that. They want to have an adjudicated process, and you need that before they go to the circuit courts. So, again, government needs to have an appeal process, and I feel we have one in place. That’s not to say that you can make the, the, codes and the regulations as strict and confined as possible, which you are trying to do.

CHAIR VICTORINO: Okay. Thank you, Mr. Kushi. Mr. Kaho‘olahala, you had a question.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah, Chair, I’m just trying to read the, that section in total. If you look at it in total as, as Kim has just read it, I’m just trying to understand where in this section allowing for installation of water meters and as they’re issued. Would you require that of anyone that’s wanting to get their meter put in place and what are the requirements, you know?

MS. WILLENBRINK: Chair, would it be helpful if I made copies of the Ordinance 3667 that was passed a few months ago? It’s not, it’s not in the Code yet, so we have nothing to look at, but that. . .this is specific to the Water Meter Issuance Rule that has been in place for. . .since 2004. Would it be helpful to make copies of that? So this, this chapter doesn’t apply, except for the Upcountry Water Meter List.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. So, Chair, my, my thought is that, one, eliminating that one little section that I’m suggesting here. . .first of all, I want to just make a comment that I, I don’t think that we should be looking at the reason of elimination of this section and, Director, as something that’s directed to you personally because it shouldn’t be based on you, the person, it should be looked at who is in place in the position. So we’re talking about whoever is in this position, not you personally, that this will help to alleviate that moving forward, okay, and if we take that out and we’re a little bit more specific about what we’re requiring for anyone who is ready to install their meter, if you’re going to install your meter, these are the few things that you must do.

Are these. . .this few words in this section here to install your meter, if somebody wants to challenge that, well, I guess they could. But I don’t see it as, as offensive or overly burdening in what we’re saying to the person who’s applying for the meter and now says you want to put your meter in, then these are the things that you need to do, just meet the requirements of the Department and of the Fire Code. So can someone challenge that, I guess they, they could, but I don’t think that my suggestion is intended to make this even more offensive than simply to clarify the language, and then not to make it personal. This is not to you, Director, this is to make sure that we’re clear in what we want the applicant to be doing. So those, those are my comments.

CHAIR VICTORINO: You know, so with that in mind, would the body feel comfortable. . .you know, again using consensus, to eliminate. . .Ms., Ms. Willenbrink, would you read the, the proposed change in its entirety so the, the Members understand what we’re proposing here?
MS. WILLENBRINK: Yes, Chair.

CHAIR VICTORINO: Thank you.

MS. WILLENBRINK: This would be revising 14.13.060(B): “Prior to the installation of a water meter, an applicant shall complete water system improvements to the premises and/or to the Department’s water system, provided that the improvements are necessary to meet the water system requirements set forth in this article, or to meet the fire protection requirements pursuant to the County’s Fire Code.”

CHAIR VICTORINO: Members, are we clear with that? Ms. Baisa?

COUNCILMEMBER BAISA: Yes, Chair, that’s very clear. The only ambiguity in it is the words “as are necessary”, and I think that’s where we get into the debate or the possible appeal or whatever, but, you know, we’re always going to have that. So it’s okay.

CHAIR VICTORINO: Yeah. Thank you. Any other discussion? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Earlier Ms. Willenbrink suggested that, you know, if, if you can just read that section that you were thinking about?

MS. WILLENBRINK: Ah. . .of the ordinance.

VICE-CHAIR PONTANILLA: Of the ordinance, yeah, existing.

MS. WILLENBRINK: I guess it is in your binders.

VICE-CHAIR PONTANILLA: It is?

MS. WILLENBRINK: Tammy just pointed it out. . .December 15th meeting it was handed out. It’s Ordinance No. 3667.

CHAIR VICTORINO: It was December 15th of this year?


MS. WILLENBRINK: Yes, Chair.

CHAIR VICTORINO: Yeah. Yeah, I apologize, last year. Whoa, I’m head of myself. Sorry. . .(chuckle). . .Excuse me. Would you read the section that’s applicable that you want, that, that you brought up, Ms. Willenbrink?
MS. WILLENBRINK: Well, it wasn’t so much applicable, but just so that we, everyone could understand that this is the Water Meter Issuance Rule that was recently codified.

CHAIR VICTORINO: Oh, okay. Okay. That’s 14.05, Ms. Willenbrink?

MS. WILLENBRINK: I’m pulling it.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: Is that 14.13.05?

Note: Pause.

MS. WILLENBRINK: What you’re looking at today revises 14.13.060, formally titled “Issuance of Water Meters”.

COUNCILMEMBER NISHIKI: What’s the cover letter?

MS. WILLENBRINK: January 4. Oh, you mean for the ordinance? It was handed out at the meeting, as an FYI.

COUNCILMEMBER KAHO‘OHALAHALA: Before the December 16, ’09 communications.

CHAIR VICTORINO: Is that 14.13, right? Is that what you’re looking for, looking at?

MS. WILLENBRINK: Yes.

CHAIR VICTORINO: Okay. So it would be Bill No. 54, Ordinance 3667. . .and down at the right-hand corner, received by Committee, December 15, 2009. Okay, 14.13. Does everybody have it now? Mr. Nishiki, did you --

COUNCILMEMBER NISHIKI: Yeah.

CHAIR VICTORINO: --find it? Everybody else have it; right? Okay. Anyhow, so going back to the proposed change by Member Kaho‘ohalahala, you know, if the will of the body is to allow that, we can make that change and if that’s what the body would like to see done. I’ll start from Mr. Mateo. Mr. Mateo, would you be in agreement with that, to strike the. . .

COUNCILMEMBER MATEO: Chairman, no. At this particular point in time, I don’t, I don’t really see the relevance in it at this particular point in time based on the Upcountry Meter List.

CHAIR VICTORINO: Okay. Thank you.

COUNCILMEMBER MATEO: Thank you.
CHAIR VICTORINO: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Well, for me, Chairman, it really sets the tone that the applicant shall do all of the improvements and, you know, the Director shouldn’t be burdened with that headache. You know, either you do it or you don’t to get your meter.

CHAIR VICTORINO: Okay. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, I, I think I am going to support Member Kaho’ohalahala’s suggestion just because that, you know, it’s clear that the applicant shall do it.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER MEDEIROS: Thank you.

CHAIR VICTORINO: And I don’t have ask Mr. Kaho’ohalahala. Ms. Baisa?

COUNCILMEMBER KAHO’OHALAHALA: I change my mind.


COUNCILMEMBER BAISA: I thought maybe he might want to, you know, give us a little more reason?

CHAIR VICTORINO: I think he gave all the reasons. Yeah.

COUNCILMEMBER KAHO’OHALAHALA: No, I just think it makes it just simple and clear and without leaving too much discretion for anyone to be, you know. .

COUNCILMEMBER BAISA: Yeah. Well, I can support it. I have misgivings, but I can support it.

CHAIR VICTORINO: Mr. Molina?

COUNCILMEMBER MOLINA: I don’t know, Chair, I’m just kind of on the fence with it, Chair. So, I’m kind of. . .I’m sort of. . .I, I understand the intent, but Mr. Mateo brought up a good point. So, I’ll just leave it as such, Mr. Chair, to reserve comment, further comment.

CHAIR VICTORINO: And I will even allow Non-Voting Member Nishiki to put in his comment.

COUNCILMEMBER NISHIKI: No, I support Sol’s.
CHAIR VICTORINO: Okay. Okay, you know, consensus generally means everybody’s in agreement. Those who don’t agree, you know, either on the fence or has some reservation, it’s not something really firm. So at this time, I will instruct Ms. Willenbrink to make that change along with Corp. Counsel, and so we will, you know, let the Director, as he has stated, off-the-hook. I hope you appreciate that, Mr. Eng. . .(chuckle). . . Okay. Okay. Any other discussion?

COUNCILMEMBER BAISA: Chair?

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

COUNCILMEMBER BAISA: Yes. I’d like to get back to the Upcountry Meter List.

CHAIR VICTORINO: Yeah, go ahead.

COUNCILMEMBER BAISA: We’ve had a bit of discussion here today about the numbers on the list and what they are, and one of the testifiers said there was a need to upgrade the list, that it was 19 months behind, and we have your letter and your response from the Director talking about the number of meters. I’m, I, I have a question and this, of course, is very relative to, you know, the area that I represent. Does the list and the number that we have include the possibility that DHHL might want to install meters, maybe 800 of them, Upcountry? Are they included in that number or are they exclusive of that number, and if they want water, of course, my understanding is they go to the head of the class?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman and Member Baisa. The list has...does not have any DHHL persons or parties on the list. You know, they’re all accommodated by a separate reservation agreement with the County, which that agreement had a ceiling of 500,000 gallons per day, which currently with the reservations they have exhausted that amount. So any other future developments that they planned, they’ll probably work with the Department to develop new source, and they will probably not be included on the wait list. That would be a separate agreement activity, but they do understand that because they are utilizing our existing water system that they will have to develop source.

COUNCILMEMBER BAISA: So if in the next month or so, and we have no new source Upcountry, DHHL comes and says, okay, we want 800 meters because we’re going to start building those homes up there, what happens?

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Then we have to talk about source development and, and where we’re going with that.

COUNCILMEMBER BAISA: Because as it is what you’re telling me is they used up their reservation and there really is no water to give them.
MR. ENG: No, there isn’t.

COUNCILMEMBER BAISA: So they’re no better off than all the rest of the people --

MR. ENG: That, that is correct.

COUNCILMEMBER BAISA: --on the list, except that they jump to the head of the line.

MR. ENG: Well, in the eyes of the State Water Code, of course, they, they’re one of the high priority protected trust users, but that…even with that you’re not guaranteed any water source. I mean, domestic users, which are most of our customers, are of that same class of protected users. So there is...you know, you’re considered of high priority for consideration, but you still have to participate in developing source.

COUNCILMEMBER BAISA: Let me try one more time in another way. Okay. There’s 3,000 plus people on the list, okay, that does not include DHHL. So if we say they need 800, essentially there’s 3,800 people potentially who need water Upcountry?

MR. ENG: Then in that case if they, they have a need for 800 meters, they would develop their own source for those meters...like any other developer that develops a private source. You know, most likely if it is a ground water source, we would probably work out some kind of negotiated allocation to benefit those on our wait list. But, yeah, that’s still speculative right now. We haven’t come to any, any meetings, negotiations at this time.

COUNCILMEMBER BAISA: That’s a very interesting piece of information ’cause I think there is a great deal of misunderstanding by the public as to how this works, and I think, like myself, people are under the impression that whatever the Hawaiian Homes wants they get it first, if there’s any water to be found, and then everybody else goes after them. But this is not really what I’m hearing you say. I’m hearing you say if they want, and there isn’t, they have to develop it. So they’re in the same boat with everybody else. They’re going to have to find a way to get water if they want to build; am I correct?

MR. ENG: That’s how I interpret it. You know, again, the Water Code gives them some priority for consideration, but in reality DHHL has to participate in developing source, and we actually are working with them in West Maui to do that, jointly.

COUNCILMEMBER BAISA: Okay. Well, it was just a question that I was asked, and I thought it was important, as we discussed the numbers on the list, that we understand what is on that list. Thank you.

MR. ENG: Yeah, we’re going to do all we can to protect that list and those on that list.

COUNCILMEMBER BAISA: Thank you. We’d like to get rid of the list. Thank you.
CHAIR VICTORINO: Amen to that. Any other discussion? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. So on your Upcountry Water Development Plans, do you coordinate anything with Department of Hawaiian Home Lands in regards to cost sharing for new development?

MR. ENG: Well, again, if, when we do...if we do, if we do initiate any discussions, I'm not certain how we're going to do that, you know, it depends, again, on, on the source, and, and their demands—and like our current source agreements with the developers, if the developer were to design and construct the entire water system, you know, and, and pay for it solely, we would still get some allocation, but I don't know how that would work with DHHL, but, of course, we...something beneficial for our customers.

VICE-CHAIR PONTANILLA: Thank you. I think it’s very important that, you know, we surface these kind of issues not only for water, but other type of infrastructure that the County provide to its community. You know, basically when you look at the development in Waihee, you know, it’s good for the Hawaiian people to, to be afforded to get affordable homes, but at the same time it really, you know, burden the infrastructure that the County has in regards to sewer, water, schools, the whole bit, roadways. So thank you for your comments. Thank you, Chairman.

CHAIR VICTORINO: You’re welcome. Thank you. Any other discussion on this matter or any other questions? Seeing none, I’d like to make my recommendation, if I may.

COUNCIL MEMBERS: Recommendation.

CHAIR VICTORINO: Thank you. If there's no further discussion, I will entertain a motion to recommend the passage on first reading the draft bill, as revised: “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM,” and this would include the revisions as we have agreed upon.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move that we move forward on the Upcountry Water Meter List, an ordinance. “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM”.

COUNCILMEMBER MATEO: Second.

CHAIR VICTORINO: It’s been moved by Vice-Chair Pontanilla, seconded by Chair...Council Chair Mateo. Any other discussion?

VICE-CHAIR PONTANILLA: Chairman?
CHAIR VICTORINO: Yes, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: This will include the filing of County Communication No. 06-279.

CHAIR VICTORINO: Thank you for reminding me. Yes, and the filing of that. Thank you very much, Mr. Pontanilla, for reminding me of that. Any other discussions? Seeing none, all of those in favor signify by saying “aye”.

COUNCIL MEMBERS: “Aye”.

CHAIR VICTORINO: All those opposed. Let the record show seven ayes, no nays.

VOTE: AYES: Councilmembers Baisa, Kaho’ohalahala, Mateo, Medeiros, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

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

CHAIR VICTORINO: Thank you, ladies and gentlemen, I feel very good. We got one of the two done today. Thank you guys for all your help. And I will assure you that our next meeting we will bring that first Item WR-1(5) back to try to get that finally done.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Chair, before we adjourn and in preparation for the next time we discuss this --

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: --it would be really important that we have good financial information, because a lot of the discussion centered around, you know, possible rate increases, or how much,
or whatever. So we’re going to have to have good information in order to make a decision. So I would appreciate that. Thank you.

CHAIR VICTORINO: Okay. Between Mr. Eng and hopefully the Department. Mr. Eng, I will leave it to your discretion to bring us forth those that information, if possible. Not your discretion, your ability. I should never give you discretion, right, I’m sorry.

MR. ENG: Don’t want it.

CHAIR VICTORINO: You don’t want discretion. Okay. I...

MR. ENG: But, Mr. Chairman, if you can give me a little heads-up of various scenarios that might have impacts to our, our, our revenue requirements, please give that to me in advance --

CHAIR VICTORINO: I will work out all the scenarios --

MR. ENG: --and I’ll prepare. . .

CHAIR VICTORINO: --from two, three, four, and five, and 50, 75. I can play that game right through. I can get you exactly what everybody discussed so that you can bring, in writing, and if you can forward it to me. I will get that to you by the end of this week, and you can forward it back so I can present it to all the Members before they come in, at least they can study the ramifications? Yes. Excuse me?


CHAIR VICTORINO: . . .Okay. It has been brought to my attention, Vice-Chair Pontanilla, that Ms. Willenbrink mentioned if we file it, then it would no longer be in the Committee as part of our discussion. So in the future, as we bring the other items out, which will connect to this, then we can’t bring this because it’s been filed. So I would ask you, if with your okay and the Members okay, that if you would take back the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I take back that filing --

CHAIR VICTORINO: Okay. Thank you.

VICE-CHAIR PONTANILLA: --of the County Communication.

CHAIR VICTORINO: And I apologize because I accepted the filing without, without knowing the ramifications. Sorry, I am still learning. I apologize to the public and to my Members. Anyhow, ladies and gentlemen are there any announcements? I know we have a 1:30, Mr. Pontanilla, Budget and Finance Meeting?

VICE-CHAIR PONTANILLA: Yes.
CHAIR VICTORINO: And you have any special comments you want to make other than be there?

VICE-CHAIR PONTANILLA: I'd just like to announce that we were planning to have the Water Department at our meeting, but unfortunately we cannot due to his meeting with the Mayor on his particular budget. We were going to review some of the CIPs from the Water Department to give us a fairly good idea of how they're doing. Thank you.

CHAIR VICTORINO: Okay. Well, a little disappointing news, but we understand, Mr. Eng, and we wish you well with the, with the Mayor, and tell her we send our best wishes. Yes. . . .Okay. I think according. . . and let's get this right. If... I would like to propose... . Mr. Pontanilla, I would like to ask you to make a motion to rescind the filing of the communication and take a vote on it.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: I think that's the cleanest way to do it.

VICE-CHAIR PONTANILLA: I move to rescind the filing of County Communication No. . . . and if, Ms. Willenbrink. . .

CHAIR VICTORINO: Ms. Willenbrink?

MS. WILLENBRINK: 06-279.

VICE-CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MOLINA: Second.

CHAIR VICTORINO: Okay. Thank you. Any discussion? Seeing none, all those in favor of the rescinding of the filing of the communication, signify by saying "aye".

COUNCIL MEMBERS: "Aye".

CHAIR VICTORINO: Opposed? Let the record show seven ayes, no, no opposition I should say.
WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

January 12, 2010

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

NOES: None.

EXC.: None.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE.

CHAIR VICTORINO: Okay. I think that does it. Do we have any announcements other than Budget and Finance this afternoon? Seeing none, all those...I will close the meeting for January 12, 2009 [sic] on the Water Resources Committee. And thank you, Members and the public, for your diligence and patience. This meeting is adjourned. ...(gavel)...

ADJOURN: 11:40 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:100112 Transcribed by: Jessica Cahill
CERTIFICATE

I, Jessica Cahill, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 2nd day of February, 2010, in Wailuku, Hawaii.

[Signature]
Jessica Cahill