WATER RESOURCES COMMITTEE  
Council of the County of Maui

MINUTES

February 2, 2010

Council Chamber

CONVENE:  9:03 a.m.

PRESENT:  VOTING MEMBERS:
  Councilmember Michael P. Victorino, Chair
  Councilmember Joseph Pontanilla, Vice-Chair
  Councilmember Gladys C. Baisa
  Councilmember Sol P. Kaho‘olahala
  Councilmember Danny A. Mateo (Out 9:49 a.m.)
  Councilmember Bill Kauakea Medeiros
  Councilmember Michael J. Molina (Out 11:08 a.m.)

NON-VOTING MEMBERS:
  Councilmember Wayne K. Nishiki (Out 10:35 a.m.)

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

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

OTHERS:  Richard Pohle, Upcountry Meter List Association (UMLA)  (Item No. 1(5))
         Edward Chang (Item No. 1(5))
         Sherman D. DePonte (Item Nos. 1(5) and 5)
         Rosemary Robbins (Item No. 5)
         Laurie Chang (Item No. 1(5))

PRESS:  Akaku—Maui County Community Television, Inc.

CHAIR VICTORINO:  ...(gavel)...  Good morning. The Water Resources Committee meeting of February 2, 2010 will come to order. We have a quorum present this morning and may I introduce our Members. First of all, I’d like to introduce, introduce the Vice-Chair of the Committee, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA:  Good morning, Chairman.

CHAIR VICTORINO:  Thank you for being here. Our Vice-Chair of the Council, Mr. Michael J. Molina.
COUNCILMEMBER MOLINA: Good morning, Chair.

CHAIR VICTORINO: Okay. And also the Upcountry representative, Gladys C. Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Our Lanai representative, Mr. Sol P. Kaho‘ohalahala.

COUNCILMEMBER KAHO‘OHALAHALA: Good morning.

CHAIR VICTORINO: Good morning. Our representative from East Maui, Mr. Bill Medeiros.

COUNCILMEMBER MATEO: Good morning, Chairman.

COUNCILMEMBER KAHO‘OHALAHALA: Good morning.

CHAIR VICTORINO: Good morning. Our representative from East Maui, Mr. Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha and good morning, Chair.

CHAIR VICTORINO: Good morning. Our Council Chair, Mr. Danny A. Mateo.

COUNCILMEMBER MATEO: Good morning, Chairman.

CHAIR VICTORINO: Good morning. The...and myself, the Chair of the Committee, Michael Victorino. These are all the Voting Members, so the public understands. We have one Non-Voting Member, and I’m very appreciative he’s here from South Maui, Mr. Wayne K. Nishiki.

COUNCILMEMBER NISHIKI: Good morning.

CHAIR VICTORINO: Good morning. From the Administration, we have the Director, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: Good morning. And joining us soon will be Ed Kushi from Corp. Counsel. Our Staff, our invaluable Staff...our Legislative Analyst, Ms. Kim Willenbrink and our Committee Secretary, Ms. Tammy Frias. Thank you for being here.

Committee Members, we have two items today. Our first item is WR-1(5), Subdivision Water System Requirements. As noted, correspondence dated November 24th, 2009, from me, transmitting a draft bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.05, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES”. The purpose of the draft bill was to codify the rules and regulations of the Department of Water relating to subdivision water system requirements. A correspondence dated November 7, 2009, also from myself, relating, relating to refunds for the water main extension was part of the discussion. We also have for WR-5, “Ready to Go” Water Related Projects. This is County Communication No. 09-49, requesting a status report from the Department relating to projects that have Federal funds, Federal funds that were related to the stimulus funding, yeah. So those are the two items
that we will be discussing today. And I want to welcome Mr. Kushi to the proceedings. Thank you, Mr. Kushi, for being here.

MR. KUSHI: Good morning.

CHAIR VICTORINO: And so with that in mind, I would like to start public testimony. Public testimony will be limited to the items on today's agenda. Sign-up will be located on the 8th Floor back there at the desk. So anyone wishing to speak, please sign up. We will limit you to three minutes and one minute to conclude. Please state your name and who you're representing. At this time, I would like both people in the gallery and anyone of our Members and anyone else in the Chamber to please turn off all noise-making devices, such as cell phones...and anything else that may make noise. Decorum will be adhered to in the Chamber. And by the way, we do have the rules posted on decorum on the pillars as you first walk in. So if there's any question what that means, we do have the rules posted--not only on the pillars as you walk in, but in the hallway and assembly area outside.

At this time, I have just one...or well actually, I get two testifiers. The first testifier will be testifying on WR-1(5) and is Dr. Richard Pohle. Dr. Pohle, would you come forward? And he'll be testifying on behalf of UMLA.

...BEGIN PUBLIC TESTIMONY...

MR. POHLE: Greetings, I am Richard Pohle. My wife and I have had a protea farm on Crater Road for 25 years. I’m the founder of UMLA, Upcountry Meter List Association. I’m speaking regarding WR-1(5). The current agenda mentions a draft bill to extend the time allotted to satisfy the DWS subdivision requirements. Yet according to your website on February 5th, you already unanimously passed this bill out of this Committee. So why is the topic even on the agenda? The bill says if an applicant is unable to accept water service immediately, the Department may issue a reservation for water service up to the required, requested allocation available at the time the request is made. In other words, now that water is obligated for five years rather than two years whether or not it is used, yet Mr. Eng says, “it won’t affect anyone else waiting on the list”.

CHAIR VICTORINO: Mr. Pohle?

MR. POHLE: Yes.

CHAIR VICTORINO: Dr. Pohle, I’ll, I’ll stop you at this point. Today, we are going to be discussing the portion of the bill that refers to the refund for extensions that are mandated by the Department. Yes, what you’re saying we have completed already. This is a portion of the bill that if you did any repair or extension from where presently is served to your property and let’s say it cost you $50,000, right now the rule says we have up to five years to reimburse you 50 percent. So what we’re looking at is...well, my, my, my proposal was two years, 75 percent of that 50,000, and that’s the basic discussion that we’re having now. That’s the part of the rule
we’re working on. This part that you’re talking about, yes, has been passed, and we’re not going to rehash that again. So I’m sorry if you got confused.

MR. POHLE: Okay. I don’t get the minutes. Thank you for that clarification, Mr. Chair.

CHAIR VICTORINO: Sorry about that.

MR. POHLE: Um... but...

CHAIR VICTORINO: If you want to read anything that’s applicable, please, go right ahead.

MR. POHLE: Well, I’ll continue the next, with the testimony since I’m here.

CHAIR VICTORINO: Okay, go ahead.

MR. POHLE: “It won’t affect anyone else waiting on the list”. How can that be since he also says “So in the meantime you do get a reservation and that capacity is set aside for you.” If as Councilman Molina says “people Upcountry have been waiting for years, they’ll just jump at the chance to get, get cranking on it, you know”, then why do you need a time extension at all? In previous testimony, I’ve pointed out that the deleterious affects of the meter list. I’ve suggested a solution to allow a conservation meter purchase for $19,000 that is always available and bypasses the County bureaucracy. This approach would improve County infrastructure and pay for itself. Some would argue that this benefits only the rich. Considering that the current system Upcountry does not issue meters at all and that the additional 19,000 suggested is small compared to the cost of a new house and that everyone’s property value would immediately be increased by guaranteed availability of meters, this is a poor argument--and it assumes a class envy pettiness that is unbecoming. The Upcountry Meter Issuance Rule has affected us personally. I am 70 years old with a heart condition, my wife has arthritis. We’re too old to keep up our protea farm on our sloping parcel and have attempted to move to a warmer, flatter Oahu location. Ordinance 3667 prevents this reasonable subdivision of our land that would otherwise be permitted by zoning. Because of this, we would have had to sell our land all or nothing. We could not do this to our children. We have had to stay here. We and many other people on the list object to these rules because we are injured by them. Our meter application denotes our intent to subdivide and build. The County has no right to deny us. Ordinance 3667 and other regulations since 1993 apply only to the Upcountry Water System. They have effectively...

MS. WILLENBRINK: Four minutes.

CHAIR VICTORINO: Okay. Mr., Mr. Pohle, I’ll give you 30 seconds to conclude.

MR. POHLE: They have effectively halted the issuance of meters and small development Upcountry in spite of zoning. They dictate that all meters are to be awarded in the order of application prevents people from pooling their resources to meet the onerous new fire protection requirements placed on us. Further, for 16 years, the County has made no effective efforts to
correct the Upcountry water situation. Considering that the water policy in Hawaii is that water that belongs to the people, a reasonable person might conclude that Maui County’s policy is to halt Upcountry housing development. After 16 years, this policy might be considered a taking without compensation. I certainly hope so. Thank you very much.

CHAIR VICTORINO: Thank you, Dr. Pohle. Questions for Dr. Pohle?

VICE-CHAIR PONTANILLA: Yeah, I get one.

CHAIR VICTORINO: Yeah. Go ahead, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. It’s based on this testimony rather than what you have agendized... I, I just want to ask this simple question to Mr. Pohle. When you say subdivide, how many lots are you looking at?

MR. POHLE: I have 3½, 3.47 acres in half acre zoning. I have one meter. I could divide it into five lots because of the sloping topography, that would be it, and that’s what I would do.

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

CHAIR VICTORINO: Thank you. Any other questions for Dr. Pohle? Seeing none, thank you, Dr. Pohle. The next testifier is on W, W-5 [sic] and that’s Edward Chang, and he’s testifying on, for himself. Good morning, Uncle Eddie. How are you doing?

MR. CHANG: Good morning, Committee Chair Victorino, Councilwoman, Councilmen. My name is Edward Chang. I’m speaking on, in favor of the changes you are looking at, a two year payback at 75 percent. And I’d like to relate some experience I’ve had... I, I’m sure I’m not the only in Maui has, that is going through this. Back in 1988, I came home to assist my dad in clearing undivided interest on a piece of property in Makena. We owned about 95 percent, 5 percent was owned by some 50 other people. We, therefore, went to court and the court required that we, in order for us to partition the property we had to partition it into a legal size. A minimum size in Makena at that point in time was 10,000 square feet. The property was about four acres. The court then, then said that I had to get zoning approval and subdivision approval, which I did. I got zoning approval in 1994, subdivision approval in 1995. The court was, the property was finally sold in 1999... and we settled the undivided interest. During the course of, of, of the subdivision, there were two requirements that were required for the property in question. One was to put a swale to take care of the storm drain from across the street through our property. The other was to install a water system. And let me explain that the water system, the property fronted 750 feet, it required at that point in time an eight-inch line with three water meters. It has since been changed to a 12-inch line. Back in... anyway, I, I asked for a water deferment ‘cause I could not, a water construction deferment ‘cause I could not afford to put in the water system until after the land property was sold. So after the property was sold, I went back for resubmittal and approval of the construction plan. I’ve since submitted three construction plans over a five-year period for various reasons. We started the job and ran into certain things that was not
on the construction plan. One was a six-inch waterline, a temporary waterline. Another was during the course of our submitting the plan, they, they put in an underground electrical, and that conflicted with where the waterline was going. So, therefore, the stall over the last five-year periods. It’s taken five years, it’s taken me 11 years to go through court, five years to go through the water system since I purchased the material. I already purchased material, some $50,000, back in 2004. Here it is the beginning of 2010. The cost of construction has probably increased by at least 15 percent, and my calculation comes from taking 3.5 percent cost of living over a five-year period. The shared cost that I’m currently facing is over a five-year period at 50 percent. My dilemma over this whole thing is when I started this, the proposal I was 56 years old, I’m now 78, and if this continues at the rate it’s going, I’ll probably be 85 before I get final payment when the job is completed. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Chang. Questions for the testifier? Ms. Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. And thank you, Mr. Chang, for being here. You’re the reason why it’s important when we make decisions, that we understand the consequences of them. I think what I got out of what you’re trying to tell us today is how long it takes to do some of these things that we are asked to do, and five years may not be an ideal time because your story goes over a period of a long time--

MR. CHANG: Yes.

COUNCILMEMBER BAISA: --and you haven’t quite been able to do it. So essentially you don’t think that this five-year period is a good idea? You think we need it longer?

MR. CHANG: You mean--no, I think it should be shorter.

COUNCILMEMBER BAISA: It should be shorter?

MR. CHANG: I think your proposal of two years at 75 percent is very acceptable compared to over a five-year period. I had a . . . (inaudible). . .

COUNCILMEMBER BAISA: So you feel that the reimbursement should be made within two years? I, I’m trying to get the point of, of what your story is trying to tell us--

MR. CHANG: Well. . .

COUNCILMEMBER BAISA: --as it relates to the proposed legislation.

MR. CHANG: The current agreement that I have in hand, and it’s since exhausted, is I will get the difference, be refunded the difference between an eight-inch line and a 12-inch line as one set of parameters in return. The other is 50 percent of the cost of an eight-inch line gets paid to me over a five-year period.
COUNCILMEMBER BAISA: Right.

MR. CHANG: I prefer that it be 75 percent be paid over a two-year period as opposed to a five-year period.

COUNCILMEMBER BAISA: Okay, got it. Thank you very much. It’s important we understand what you’re trying to tell us as it relates to the proposal on the floor.

MR. CHANG: I’m sorry I wasn’t clear.


CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none, thank you, Uncle Eddie. And the last testifier that has signed up, and I don’t know if anybody else would like to testify, is Mr. Sherman DePonte and he will be testifying on WR-1(5) and WR-5.

MR. DePONTE: Hi, I’m Sherman DePonte. I’m from Upcountry. Been here awhile. Yeah, I’m wearing my red, red shirt again. Hopefully it’s not going to be 100 and . . . it’s going to be 116 years before we get things changed. Anyway, I’m speaking on WR-1 first, on the rules, rules . . .

CHAIR VICTORINO: Sherman, can you . . .

MR. DePONTE: Yeah.

CHAIR VICTORINO: Yeah. Thank you.

MR. DePONTE: The rules should apply to all and to all the same. We need to, we need to be fair. If flawed, fix it. Not to be, not to be under the Director’s or Department’s discretion, as Sol questioned, we should have that limited so that everybody gets treated fair. And that discretion, again, should be very limited. If not, it leaves open for back, backroom, you know, deals and blackballing if the thing is not getting done. I’m just saying it leaves it . . . it, it hasn’t been done here. I don’t feel it. But the next thing is the Department need to be accountable for the actions and follow, follow all the rules also. Family subdivisions exempt, that we have here first, the exempt is until you get the first building permit. Once you get the first building permit, once you want to pull the first building permit, all that fire protection needs to be in place. People need to understand that. But what happen is . . . the other thing is as I call our Tax Office, we’re going to get charged taxes for that, for that extra properties and not get the water. Then it leaves it open to when we’re going to get that water? I’ll leave that for the next section, the WR-5. Seventy-five percent of the cost return and within two years is very good. I mean that’s a, that’s a step forward on it. And the other thing is after water availability we have to do the fire protection and need to improve within five years or back, back of the list we go. That one I feel is a little bit harsh and for the people that’s been on the list for years and cannot, we’re not getting improve [sic]. For me ’92 till now, 18 years, I wasn’t on the list since ’90, ’92, but I came into
the Department and questioned the fire protection in our area and, and already it was flawed back in '92. So that's 18 years. Again, it leaves us to a--you, you know, we have as Danny, Mr. Mateo stated that one time, we've come to a new low when people gotta come in here and beg you, beg the Council for, for our water meters, beg the Council for water. It's, it's tough. it's tough for us to just come up here and speak to let alone beg, it's even tougher. And I've been watching people come over here. I have people that come to my office to do subdivisions, family subdivisions and big developments. We're handling the Hawaiian Homes development. If you want big, that's big, 100-something lots, and it's the same story, we're going for the water. Hawaiian Homes has the exempt, they get right in, and it's good. Now we need the people of Upcountry, Kula to get in there. Do I move to the next?

CHAIR VICTORINO: Go ahead.

MR. DePONTE: Okay. 'Cause I had 33 seconds... (chuckle)... I don't know.

CHAIR VICTORINO: Okay, go ahead.

MR. DePONTE: Okay. On the next one, WR-5, Mr. Nishiki's, Councilmember Nishiki's questions was which of the CIPs are being updated and taken care of and the funding, that funding? Where's the money? I mean we had an article, you know, in the paper that there, that there's going to be funding for that Upcountry reservoir and the catchment and we're going to get all that thing fixed and we're going to get that money. Where is it? I think the Council needs to demand it. If we're going to provide money from the public, demand that it's accountable. We need to know where that money is going and is it fair, is it going to take care of the waterlines that need to be replaced to the people that's coming up on the list, not the guy that's all the way back in, you know, whatever it is now, thousand or something? I think, I think it's... (chuckle)...thank you.

CHAIR VICTORINO: Okay.

MR. DePONTE: An example again is 18 years and nothing done on, on the CIP that's supposed to be, and we cannot find it on the list. The cost was 60,000, now it's 1.2 million. We're going up, I mean it keeps going up on that. As stated in one of the meetings, even after we agreed on a route and it was reneged and back, back to a more costly route, the statement was and when asked when, it's not to be done in our lifetime by the County. So that means Dudley or any, any other person or persons gonna have to put in that money. Okay. One, where do we get the money? Where, where should that money come from? And always, solution...let's, let's work on a solution. I have, I have a yard that do not have sprinkler systems in 'em, none at all. I grew up learning that there was no--we had a lack of water. So let's see, we do not water our yard; we, we have plants that take care of themself. And I usually give them the sign of the cross or whatever it is and blessing, whatever, go get 'em. I mean it, you're on your own. And if you, if you die, we replace you and, and that's basically... 'cause my yard has been brown, it's been green, it's been all the different colors and I enjoy it as it is, but I don't use excessive amount of water for, to get the money. The people that use the excessive amount of water--when you can find out, study it, find out how, how much water per family, per cap of what it's supposed to be.
We have a cap on that, say 10,000 gallons or 20,000 or whatever it’s going to be for the month, that cap. Okay. After that, this is what the rate will be. Now the County can say you are using excessive water. ‘Cause at some times we had in the, in the wintertime my neighbor would be running the water--and, and this story comes constantly--they’re running the water, running the water. I’m going why? Oh, because when it’s drought time, guess what, we have an allotment of little bit more water before. That was the idea. So anyway, moving, moving to getting more money to pay for some of these projects and watching where that money is going. The next thing and, and final on this--and I’ll have extra minutes..(chuckle)..anyway, the thing is, it is time for the Upcountry people and the little people, the poor people to be taken care of. I am asking, I am here constantly begging this Council--again, Danny, we’re begging--to, to do something to help us out. It, it is time for the...the County as a whole have a, the County as a whole have a responsibility for our water system and for all of us, not just for guys in Wailea, not guys for. . .wherever it is. We, it’s all of us and we need to take care of it. I’m willing to put out my, my efforts as a surveyor, as a professional land surveyor and help wherever I can to, to do it. If they need an elevation, if they need land acquisition, whatever it is, I’m willing to help. . .and the Department also giving, giving, whenever I give a proposal for them, I give it fair and, and give it enough that we, I’m not ripping the County. And anyway, that, that’s my thing. Please help us.

CHAIR VICTORINO: Thank you, Mr. DePonte. Questions for Mr. DePonte? Seeing none, thank you, Dudley.


CHAIR VICTORINO: Same to you, my man.

COUNCILMEMBER BAISA: Oh, same to you.

CHAIR VICTORINO: Okay. I think we have one more testifier running up. She’s running real swift. Okay. I’m going to say Rosemary Robbins. This is getting good when I can, not have to see the name and I know who the young lady is. And are you speaking on behalf of yourself?

MS. ROBBINS: Both myself and the community.


MS. ROBBINS: Good morning, everybody. I appreciate the opportunity to be here. Aren’t we glad not to be on Oahu today? Third water main break, huge; 16-inch break within the past week’s time. And their comment is that that’s what happens when infrastructure gets installed and not maintained, and I, I don’t think that’s news to anybody and I know we’re all concerned about that and I appreciate that concern. I’m appreciative also of the fact that you folks came up to the Pukalani Center last month and listened to testimony, and I’m glad everybody got home safely that night. That was pretty rough weather. Water... (chuckle)... we were getting from the sky. But I am concerned still in view of WR-5, and I mentioned when were in Pukalani, Mike, that I
was still concerned about FY '08. Safe Drinking Water Revolving Fund application and you had mentioned that we needed to get together. The Upcountry people are not aware that the Piiholo Water Treatment Plant situation has been addressed and solved. If that is written someplace, it’s buried somewhere. And we’ve really tried to keep on top of that. Remember that for Fiscal Year ’08 the Department of Health said the three most crucial issues were, number one, Big Island; number two, Big Island; and number three, that particular one for us here. I don’t know what happened on the Big Island, but my issue before this group is what has happened to that now. And what we just heard Mr. DePonte saying, the people Upcountry are concerned.

CHAIR VICTORINO: Rose, Rosemary, I’m going to stop you here because I believe you’re going off into another area that’s not related to our subject matter. I will meet with you and I’ve told you that, so we need to do that. But let’s try to stay on just these two items, the “Ready to Go” and as well as the WR-5, WR-1(5), which we were talking about extensions of lines and reimbursements, instead of five years/50 percent, two years/75. I’d rather stay on that because that’s the agenda items, please.

MS. ROBBINS: Okay. I do see that within the context of what happens to replacement of lines. It’s not just the people in their homes, it’s the community at large.

CHAIR VICTORINO: . . .okay, okay. I just want to stay within the subject matter. So I’ll let you go on, but try to condense it to where, you know, this stimulus money was to help some of these issues—you’re absolutely correct. But I don’t want to get too deep into all these other things because I’m trying to stay on this subject matter. But go ahead.

MS. ROBBINS: And I appreciate that.

CHAIR VICTORINO: Yeah, please.

MS. ROBBINS: And I think we’re on the same hand, maybe different knuckles of this.

CHAIR VICTORINO: Okay. Okay.

MS. ROBBINS: This is not for stuff to come, this is stuff that was already appropriated to have come. So I tend to think it shouldn’t be the last on the list, that it needs to be right up there. I read the materials, it said that we’ve got 77 miles of piping Upcountry.

CHAIR VICTORINO: Uh-huh.

MS. ROBBINS: If water coming through there is water from a water resource area that we know is in deep chop suey, what are we doing about the fact that we still are not addressing that, that I’m aware of?
CHAIR VICTORINO: That...well, okay. Why don’t we, again, if you want to, we’ll meet on this. I will direct a letter to the Department so that the Committee, and I’ll bring it up as an agenda item in the future to, to cover this specific request that you’re having.

MS. ROBBINS: I would appreciate that.

CHAIR VICTORINO: Okay.

MS. ROBBINS: Can, can we make a date afterwards?

CHAIR VICTORINO: Yeah. Afterwards, yeah.

MS. ROBBINS: Okay.

CHAIR VICTORINO: Okay. Thank you.

MS. ROBBINS: Thanks very much.

CHAIR VICTORINO: Questions for the testifier relating to the material that we are going to be discussing today? Seeing none, thank you, Rosemary, for being here.

MS. ROBBINS: Thank you all.

CHAIR VICTORINO: Ms. Robbins was the last testifier to sign up. And I will offer anyone in the gallery because I think everybody in the gallery has spoken. Aunty, you want to speak? You want to come up, Aunty? Okay, come. And then what you’ll do is later on you can please sign up the sheet, you can sign the sheet later...This is Laurie Chang, I mean.

MS. CHANG: Good morning.

CHAIR VICTORINO: Aunty Laurie, go ahead. . . .(chuckle)... 

MS. CHANG: I’m going to continue where my husband left off--

CHAIR VICTORINO: You have three minutes, go ahead.

MS. CHANG: --’cause I think he missed, he missed something I think that’s bothering me.

CHAIR VICTORINO: Okay.

MS. CHANG: So my name is Laurie Chang, I’m from Makena, and I’m here to talk about the 75/two year. I think that’s very fair because I think our money have gone down in all these years we’ve been waiting, and it’s been a long wait. It’s been an up-and-down thing. I think the County has taken too long with us. I think that’s been unfair and I want you folks to know that. I’m not
blaming everything on you, but I think that something can be done to improve it. But right now what I’m concerned about, when does this take effect? Does it take effect when we applied for this permit or when we finished the project? I, I don’t see anything where that is in the bill. And that’s my concern because if, when we . . . if you gonna consider it when we applied, we may not be included in this 75/two years, and that’s a big concern. And it’s also a concern for my brother and sister-in-law who’s been also waiting to build and they can’t build until we can get this waterline in. And so I would like you folks to take this into consideration that this be at a time of completion of the project. Okay?

CHAIR VICTORINO: Aunty Laurie, to address that question, and Mr. Kushi could correct me if I’m wrong in my response to that question, I am under the understanding once the extension or the necessary upgrade is completed, the Department presently has . . . (change tape, Start 1B). . . correct in my, my analysis of, of that, Mr. Kushi?

MR. KUSHI: Mr. Chair, my understanding is once the Department has inspected and, and accepted the line, then the five-year period starts to run at that point in time.

CHAIR VICTORINO: Okay. So I was a little bit wrong, I said completion. But once they come in, Aunty Laurie, to inspect, approve, then that five-year time the way it is, right, presently--

MS. CHANG: Uh-huh.

CHAIR VICTORINO: --the five year/50 percent starts from that point. So if you’re still in the process of completing it, you’re still eligible because once it’s completed, inspected and approved, then the, the timetable runs.

MS. CHANG: That’s good news. Thank you very much.

CHAIR VICTORINO: Okay.

MR. KUSHI: Mr. Chair--

CHAIR VICTORINO: Yes.

MR. KUSHI: --point of clarification. Like in any legislation--

CHAIR VICTORINO: Yes.

MR. KUSHI: --you can, you can fashion your effective date of new items.

CHAIR VICTORINO: Okay. Okay, we . . .

MR. KUSHI: So you could tie it into preliminary subdivision approval, you could tie it into acceptance. Again, it’s up to this body, but you need to make it clear.
CHAIR VICTORINO: Okay. But at the present time it’s upon approval, completion and approval...approval and inspection, five years starts running from that point?

MR. KUSHI: That’s, that’s my understanding of the Department’s internal procedures.

CHAIR VICTORINO: Okay. And, Mr. Eng, would you concur with that if I may ask?

MR. ENG: It would, Mr. Chairman.

CHAIR VICTORINO: Thank you. Just so that we’re clear on what the procedure is at this time. We can change it, but that’s the way it is right now. Okay. Any other testifiers?

MR. POHLE (from the audience): Clarification.

CHAIR VICTORINO: Uh... . Mr. Pohle, you did have your chance to speak. I’m sorry, you know, I’m not asking for clarification at this time. Thank you. Seeing no other testifiers coming forward, I will, with the Committee’s approval and no objections, close public testimony on both items.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...
Subdivision Engineering Standards Committee submitted two responses which are in your binder on the requestion, requesting a few revisions, which also is in your binder. So at this point, the topic of discussion...and we're going to start with the first question that was brought up by Member Medeiros in regards to hanai children. I did not get a written response, but Mr. Kushi has told me that he has a response for us. So at this time I will ask, Mr. Kushi, if you would give that response to all of us?

MR. KUSHI: Yes, Mr. Chair. Again, our apologies for not responding to you in writing. However, based on my preliminary research to the questions that you asked in your January 15, 2010 memo, I can orally represent the following. Let me go down as far as your questions. Your first question is do “family subdivisions” as defined in Section 14.05.180 of the draft bill recognize hanai family members as having the same rights and privileges as blood family members? Two, if the definition of “family subdivisions” does not apply to hanai family members, would it be appropriate to add a definition of hanai family members to allow them the same rights and privileges as blood family members? And lastly, how would the definition affect Department of Hawaiian Home Lands subdivisions? Again, my, my initial research and, and I, I'm coming from the angle of the law of adoption in Hawaii, which is codified in HRS 578, Hawaii Revised Statutes. The case law that reflects this issue about the Hawaiian custom of keiki hanai, if I can, if I'm saying that right, or, or the court has used this other term called...ho'oilina has been quite, quite extensive and it's quite old. However, my initial research, my preliminary research, which unless otherwise discovered otherwise, would indicate that the answer would be no. Your subdivision, family subdivision deferral ordinances specifically, specifically say family members who are related to the applicant by blood, marriage, or adoption. Again...specifically adoption. It doesn't mention any Hawaiian, about Hawaiian customs, et cetera. The case law that I, I've looked at so far, Hawaii case law, the Supreme Court specifically stated that Hawaii does not recognize a doctrine of equitable adoption. The Supreme Court also stated in a fairly recent case in 1988, I believe, I think it was a Maui Land & Pine quiet title case, coincidentally, the Supreme Court basically said, to, to paraphrase, that adoptions after, after 1841 henceforth need to apply, need to comply with the statutes. So accordingly in the olden days prior to the adoption of statutes in Hawaii, there may have been some recognition of the concept of hanai children. But since, since the statutes, legal adoption and all rights thereafter, specifically including inheritance, need to be legally via the courts in adoption decrees. Again, based...so based on that, I would opine that by, by State, State law adoption you need to do the whole nine yards and go to Circuit Court or Family Court to get a decree of adoption. So then you could qualify for this family subdivision with deferral requirements. Again, this opinion is preliminary. I will be citing various cases and specifically tied in to subdivision deferral requirements. Again, I would also, I will also mention alternatives in the case of a situation where a family does indeed have a hanai relationship, and not to say it now, but there are some other alternatives. There’s nothing to prevent, prevent adult adoptions if they wanted to go that far. There’s nothing to prevent initially starting out with a family subdivision and then subsequently conveying the property to a hanai member. But again these are outside of the initial deferral requirements. That would be it, Mr. Chair.
CHAIR VICTORINO: Thank you. I will, I will allow Mr. Medeiros to ask the first questions on this. And before you do, Mr. Medeiros, Mr. Kushi, we can look forward to this being put in writing so that we’d have that for our file?

MR. KUSHI: As best as I can.

CHAIR VICTORINO: Yeah. Thank you. I mean, you know, we’d appreciate that. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Kushi, thank you for your findings and your explanation. At the beginning of your explanation you said that part of the qualifications that someone may have is by blood, marriage, or adoption. Is blood specifically identified as far as where that bloodline is? And the reason I ask that is most hanai situations in Hawaii is of a family member by blood. It may not be the immediate child of their family, but it can be a grandchild, it can be a nephew or niece, and they are the same bloodline. So where do we stand as far as that definition of blood qualifying a person?

MR. KUSHI: The proposal before you--and just let me read it to you when referencing blood. On Section 14.05.8...180...

COUNCILMEMBER MEDEIROS: And, and Mr. Kushi--

MR. KUSHI: Yes.

COUNCILMEMBER MEDEIROS: --would, would you give us a reference date or something that we’re following?

MR. KUSHI: The reference date is the bill before you.

COUNCILMEMBER MEDEIROS: And, and which one is that, Mr. Chairman?

CHAIR VICTORINO: The, the bill itself, the... 

COUNCILMEMBER NISHIKI: 11/24.

CHAIR VICTORINO: Yeah.

MR. KUSHI: Yeah.

CHAIR VICTORINO: 11/24, please.

COUNCILMEMBER MEDEIROS: Okay. Alright, thank you.

CHAIR VICTORINO: Yeah.
MR. KUSHI: Or all of 'em, all versions contain the same language.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER MEDEIROS: Okay. Thank you.

CHAIR VICTORINO: It has not been changed.

MR. KUSHI: So the relevant Section is 14.05.180 entitled Deferral, Subsection B as in “boy”, Subsection 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, parents, children, grandparents, grandchildren, or siblings.” Okay. So that’s, that’s the proposed definition. So taking, taking that sentence apart, when they reference to blood, again bloodlines, grandparent, parent, child, grandchildren bloodlines, adoption, legal adoption or marriage. So...and again it, it then lists the various categories. So I would say blood is meaning lineal.

COUNCILMEMBER MEDEIROS: Okay. And, and, and...

MR. KUSHI: And, Member Medeiros, I understand what you’re saying, you know, but it doesn’t include cousins--

COUNCILMEMBER MEDEIROS: Nephews--

MR. KUSHI: --aunties, et cetera.

COUNCILMEMBER MEDEIROS: --nieces. Okay. Thank you for pointing that out, Mr. Kushi. My next question is in our previous discussion on this, I asked that what would be the difference or why is the law different that HMSA recognizes hanai in insurance coverages if--

CHAIR VICTORINO: Mr., Mr. Medeiros, I going stop you there because I did some research on that part. That is a policy, it’s not law. It’s a policy. An insurance company, for which I worked for many of ‘em, have various policies. So that becomes a policy call on their part that if they can say hanai will be covered under their policy, Kaiser may not. It is not a law, it is a policy set forth by HMSA.

COUNCILMEMBER MEDEIROS: Uh-huh. Okay. Thank you for that--

CHAIR VICTORINO: Just for that clarification, please. Thank you.

COUNCILMEMBER MEDEIROS: --information. No. Thank, thank you for that. And then the, Mr. Kushi, you did say that potentially there are some alternatives available as, as far as conveying the property to a hanai member by transfer of ownership, I guess. So if, if there are...in your written response if that could be also reflected in your written response as far as the
alternatives, that would be helpful. But I thank you for the information you have provided. Mahalo, Mr. Chairman.

MR. KUSHI: You’re welcome.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Any further questions on that particular subject matter? Yes, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. And this is for Mr. Kushi. My understanding is that what we’re talking today in regards to hanai is lands that are not kuleana lands? Because kuleana lands...there is a process that, you know, we recently passed a law in regards to exempting kuleana lands from real property tax, and the entity that will research the bloodline is OHA. So I, I’m of the mind that kula...kuleana land is not in this particular process that we are talking here this morning in regards to hanai.

CHAIR VICTORINO: Mr. Kushi.

MR. KUSHI: Yes, Mr. Chair. Member Pontanilla, I, I understand, I recognize what you guys did on the real property tax and that now OHA will determine who are the owners or if, if the applicant for the exemption is indeed the owner, and they would do the genealogy research. How it would apply here, I’m not so certain. Again, hard to answer that question. You’re talking about real property tax exemption. Here we’re talking about subdivision deferral requirements and the qualifications to get those requirements.

VICE-CHAIR PONTANILLA: Maybe a more simple question. Can they subdivide kuleana lands?

MR. KUSHI: I don’t see why not.

VICE-CHAIR PONTANILLA: Okay.

MR. KUSHI: Again, you know, they would have to...if they want to take advantage of the family subdivision deferral, they would have to identify the family members.

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

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Any other questions? Yes, Mr. Kaho‘ohalahala.

COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Chair. Corporation Counsel, then. I guess notwithstanding the, the...what you have presented to the Council on what exists in Family Court’s definition, is there a way that this Council can look at defining hanai versus that of the family court?

MR. KUSHI: Mr. Chair, Member Kaho‘ohalahala, I would think you, you could try. My, my concern is that would it withstand a challenge from whoever it may be? That, that would be my concern. I
mean, you know, you are empowered to enact legislation, but if it’s against the, if it runs contrary to a State statute in terms of definition of family members by adoption, then it would be my opinion that, you know, it would, it would not withstand the challenge. Now where the challenge comes from, I don’t know.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. I mean...

MR. KUSHI: Maybe internal family members saying, you know, no this is guy is not hanai, et cetera, et cetera.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. I think that, you know, in what we currently have here as a definition of family by blood adoption, the blood part of it, you know, I think in, in a Hawaiian perspective might be much more than what we would define blood as, because it is the, the part that culturally would tie that family together if they wanted to look at hanai as being a portion or somehow definable within the term blood, you know, that may exist. And then there might be hanai that are totally outside of lineal family, you know, bloodlines altogether. So there is a distinction between that. So when you use the term blood in this, to me it leaves room or some consideration for that definition of hanai versus one that is not tied by blood which is clear and distinct, you know.

MR. KUSHI: Member, are you, you specifically referencing cousins, aunties, not the lineal...I mean the straight-line descendants?

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. See, I mean in a Hawaiian, in Hawaiian term it’s not cousin and aunty and uncle, you know, it’s the genealogical tie that is the tie to the blood. So we define it in many subdivisions like this, you know, as, you know, one branch. But as the Hawaiian looks at it, their blood ties from an original bloodline that comes back, they’re all tied to that same blood. So there is a difference, but we’re using the term blood here and I’m just wondering why then the hanai person who is related by that same blood is now not defined. But so do we have that ability, is my question, and, and would we be contrary to, to the definition of blood by us elaborating what blood actually means for us here at the County for subdivision purposes, you know?

MR. KUSHI: In, Member, in the...my review of the adoption statute, there is no definition of blood, per se. I could again look at the probate statute if there is a definition of blood. If I’m hearing you correctly, you know, you, what you’re talking about is everybody derives from the same ancestor. Where does that end, I mean?

COUNCILMEMBER KAHO‘OHALAHALA: Well, it ends with the, the fact that you have a recorded genealogy and if you can tie it to everybody, then obviously they would be all connected by the same, yeah.

MR. KUSHI: Yes, yes. But, you know, my initial research was on the concept of hanai --
COUNCILMEMBER KAHOʻOHALAHALA: Uh-huh.

MR. KUSHI: --a family taking in a person related or not related by blood and treating that person as a family member. That was the scope of my--

COUNCILMEMBER KAHOʻOHALAHALA: Yeah. Right.

MR. KUSHI: --review. What you’re talking about is strict lineal bloodline, bloodlines, and that may include many more people than, than I think my, my scope of review was limited to.

COUNCILMEMBER KAHOʻOHALAHALA: Yeah. And I guess, you know, when we’re looking at the, what we’re trying to establish here is to give as, as much of an opportunity or benefit to those families who would like to subdivide their property and would like to give it to other members who are maybe considered hanai and who are still tied ...(inaudible)... So if we’re creating a policy, then that, that’s my point. I’m not going to try and define it for every single instance where this may be the case, but we’re trying to at least give the benefit of this into that direction is why I’m asking.

MR. KUSHI: Member, my last point is this. In the probate, probate statute, as I recall, there are definitions of first degree, first line of blood, of relationship, second degree, you know. I could see expanding as a policy the family scope to that situation, you know, specifically related it would be cousins, aunties and not...you know, you could spread out this way instead of just going straight down. Then it would be more definite, it could be readily identified by the person taking the application.

COUNCILMEMBER KAHOʻOHALAHALA: Okay. Yeah. Chair, I don’t want to prolong this, but I think if there’s any possibility and this Council can make some of those decisions, and would be helpful for us to have a little bit of that before we come to some final decision on, on this section.

CHAIR VICTORINO: Well let me remind you, Mr. Kahoʻohanala and the rest of the Members, that family subdivision, 18.20.280 is part of that too and then you’d have to--remember, we make changes anywhere in this, in ours, it affects others, and are we going to start going through every one? At this time, I’m going to say no because it, it says the same basic by blood, adoption, marriage, spouse, children, brothers, and sisters, okay, and that’s 18.20.280, family subdivision, which we are attaching to this. Okay. So at some point maybe we going have to do a whole review on what family subdivision and family means, but is this the venue now? I’m going to say probably not in my opinion, but I’m not the expert. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. Sometimes I think a real life example helps. This is not a big deal anymore because it’s already been taken care of, but we experienced this in my husband’s family. They have nine children and they’ve always regarded it as nine brothers and sisters.

CHAIR VICTORINO: Right.
COUNCILMEMBER BAISA: My mother-in-law when she was a young bride, her sister was drowned and she had a son and a daughter. My mother-in-law took the little boy and the little girl and she raised them along with her own seven children. We never think of them as anything but, you know, brothers and sisters.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: In this case I guess they're considered hanai unless they were formally adopted.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: Would they benefit from this or would they be excluded under the current definition?

CHAIR VICTORINO: I'm going to answer excluded under the current definition.

COUNCILMEMBER BAISA: I, I think that’s the point that Member Medeiros is trying to make. We’re not talking about anybody and everybody that you go and get and bring home and call hanai. But, you know, there are cases where people have been part of the family all their lives, they’re considered members of the family, and so it’s kind of a... I know it gets messy and how do you draw the line, but that’s the situation we’re dealing with.

CHAIR VICTORINO: Understanding. I understand that. I have that in my own family right now. And so it’s not a, it’s not a problem in my mind, but I think there is that definition for which Mr. Kushi is trying to relate to and how do we fit all of this? And are we going to spend time changing it here now and then subsequently family subdivisions, all the other ones have to be changed because there gotta be concurrency? Now we’re going to go out of the realm of what we have in other chapters.

COUNCILMEMBER BAISA: Well...

CHAIR VICTORINO: So you, you do what you want--I say it this way--but make it legal because if not, it’s just going to be right back to us in another month or two or three.

COUNCILMEMBER BAISA: Right. And it also comes back when somebody decides to take us to court because the definition of blood is not clear, you know. They are blood members of our family. They are related by... they’re nieces and nephews, you know. So this is a mess, the whole issue, and I’m sure that this is not the first time this has been discussed. I’m sure that in every venue of law, in Legislature and throughout, the word “hanai” has been debated. So I think there probably is a lot of history and we might not have to spend the time doing it at this moment, but I think it is something to think about.
CHAIR VICTORINO: Okay. Thank you. Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Just one more question. Thank you, Mr. Chairman. Mr. Kushi, you talk about lineal descendants or connect or in a relationship, and I don’t know if the law dictionary is different from Webster. But in Webster it says lineal is relating to or derived from ancestors, and I think that’s the point that Member Kaho‘ohalahala was making that lineal is actually your entire connection by bloodline. So, I just wanted to raise that information for consideration. Mahalo, Mr. Chairman.

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

COUNCILMEMBER KAHO‘OHALAHALA: Chair, when you made reference to it’s attached to Chapter 18, can you specifically tell me what you’re referring to?

CHAIR VICTORINO: Chapter 18.20.280. And this is under--

COUNCILMEMBER KAHO‘OHALAHALA: 18.20... --your correspondence dated December 21st, 2009, and it’s on page, it’s on the I think second or third, no, second page. It’s...Section 2, transfers should be immediately, immediate and shall be limited to the following persons who are related by the applicant by blood, adoption, or marriage: spouse, children, brothers, and sisters.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah.

CHAIR VICTORINO: It’s dated December 21, 2009.

COUNCILMEMBER MEDEIROS: December.

CHAIR VICTORINO: Yeah, December 21, 2009, and that’s covering family subdivisions.

*Note: pause.*

COUNCILMEMBER MEDEIROS: Oh, okay. Thank you.

CHAIR VICTORINO: Did we all find that, that particular subsection?

COUNCILMEMBER MEDEIROS: Yes.

CHAIR VICTORINO: Okay, thank you.

COUNCILMEMBER NISHIKI: No.
CHAIR VICTORINO: And that’s the definition for family subdivisions. We included that because we’re using that as the, we’re following that same premise because we’re discussing limiting it to only family subdivisions. So that’s why that, that particular chapter was put in there. I provided that as reference in the discussion matter. So, Members, we get to this point now. . .what is your prerogative? What would you guys--basically my, my recommendation or my whole policy was two years/75, family subdivisions, as we stated. And we all have the copy of the amendments that we, we did. And let me read those amendments I think were given to you at the last meeting. Okay. And 14.05.050(C), the Department shall reimburse the subdivider 50 percent of the cost of a water main extension. The reimbursement for subdivision defined in Section 14.05.180 shall be 75 percent. This reimbursement--oh, reimbursement shall be limited to transfers as defined in Section 14.05.180(B). And that was referring to family subdivisions. Am I correct, Ms. Willenbrink? Yeah. Is that right, 14, yeah. . .

MS. WILLENBRINK: Yes, Chair.

CHAIR VICTORINO: Okay. Thank you. And then the other part was 14.05.050(C)(3), reimbursement shall be made in five equal annual installments without interest. The reimbursements for subdivisions defined in Section 14.05.180 shall be made in two equal pay...equal installments without interest. Okay. Those were the two amendments that were proposed. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Just a fast question for the Director. I know back in December 15th we talked about the 75 percent, but I don’t know if we talked about the two year. According to Mr. Eng, if we go to 75 reimbursement, you know, we’re looking at an increase to their current budget of a half a million dollars, up to $1.38 million. But I don’t know if that was for five years, two years.

CHAIR VICTORINO: That was for two years.

VICE-CHAIR PONTANILLA: Two years.

CHAIR VICTORINO: I will answer the question for you, Mr. Pontanilla. That was for two years.

VICE-CHAIR PONTANILLA: Okay.

CHAIR VICTORINO: And then subsequently we have discussed--and, Mr. Eng, if you could maybe share a little bit with us on our discussion as some possibilities of going . . .(change tape, Start 2A). . .

VICE-CHAIR PONTANILLA: I just want to, you know the 1.38, this is an addition to the half a million dollars as I heard.

CHAIR VICTORINO: That is correct.
VICE-CHAIR PONTANILLA: Okay. And, and in regards to this increase then we’re looking at a 3 percent increase to water rates or...? I just didn’t get it.

CHAIR VICTORINO: Go ahead, Mr. Eng.

MR. ENG: Thank you, Mr. Chairman. Thank you, Member Pontanilla. Yeah, we kind of tossed around some numbers in previous couple of meetings and so, I’d like to simplify it and make it as understandable as possible. So I’d like to relate it to the percent increase in our revenue needs which can be in percent rate increases. Okay, the worse case would be if we went with the 75 percent over two years. Okay, this for illustration sake, this is only if all the participants qualified for this, for family subdivision, subdividers. It would require a 3 percent rate increase. And I know Chairman Victorino gave me a number scenario, so let me just walk you through them. If you went 75 percent over a three-year installments, it would be about a 1.7 percent revenue requirement increase. That also would require a 1.7 percent revenue increase. Probably the best case scenario, other than keeping it as it is, is if we went 75 percent over five years, it would be an approximate 0.6 percent revenue requirement increase.

CHAIR VICTORINO: Mr. Pontanilla, other questions?

VICE-CHAIR PONTANILLA: Yeah, I got one more question. You know right now we do have some, I guess, individual developers that probably had signed agreements or when they do their own construction, do they, do you have an agreement with either the developer or the individuals based on like say, you know, Mr. Chang here has been doing his work for quite some time now. So there, is there an agreement in regards to the repayment for Mr. Chang?

MR. ENG: Yes there is. Yeah, whether it’s a subdivider like Mr. Chang or a large developer, it’s a very similar agreement.

VICE-CHAIR PONTANILLA: Okay, and if we pass this law, do we say that rather than a 50 percent, well it’s going to be on this, Chairman, recommendation that we go back retroactive to look at all of the agreements that we have in hand that hasn’t completed their so-called water upgrades or, you know, putting infrastructure for the County of Maui as well as themselves?

MR. ENG: Well, I would think that those participants who currently have an agreement in place, I would hopefully, hope that we wouldn’t consider retroactively increasing the refunds. That would be an impact to our revenue needs.

VICE-CHAIR PONTANILLA: Okay. I just want to make sure that, you know, what we have here and what we have way back when, that, you know, we take a look at the impact of this County. You know, we surely want to help, you know, all of those individuals but keep in mind, Members, that we have an obligation to the Water Department and to the County of Maui as well as its people, the taxpayers, or the ratepayers. Thank you. Thank you, Chairman.
CHAIR VICTORINO: Mr.--thank you, Mr. Pontanilla. Mr. Eng, let me, let me get clarification on that last discussion between yourself and Mr. Pontanilla. You said that you wouldn't go back retro. Are you referring that if somebody already has completed their extension and is on the five-year/50 percent right now, they’re not going to be included in this? Am I correct in saying that?

MR. ENG: Yes, Mr. Chairman, that would be my recommendation.

CHAIR VICTORINO: Okay. However, like in Mr. Chang’s case he hasn’t completed, you haven’t had that final inspection and the turnover, that particular project, family subdivision--again that’s the thing we make sure that is clarified, family subdivision--they would be eligible for whatever new one we come up with from this point forward?

MR. ENG: Yes, Mr. Chairman. I, it's my, it would be my opinion that he would qualify for any accelerated or increased refund.

CHAIR VICTORINO: And I think, was that what your question was, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Basically, you know, I’m looking at is previous agreements that we have with developers as well as individuals and, you know, if they have started or, you know, if they haven’t started like, you know, what you’re saying, then yeah I can see the 75/two-year, but if they already started and I don’t know how many of this agreements we have, it surely will have an impact on this County financially.

CHAIR VICTORINO: Well, and I’m not disagreeing with that, but in, in Mr. Chang’s case, he has been working on this since 1992, ’96 and all these years of changes and more changes. So in other sense, he would still qualify because again the payback, if I’m correct, starts upon the inspection and acceptance. Okay, that’s when the thing, the payback starts, right, Mr. Eng?

MR. ENG: That’s correct.

CHAIR VICTORINO: Okay, or this agreement starts at that point. Up until that point they get no money back at all. So that’s where the issue is.

VICE-CHAIR PONTANILLA: Yeah. Well, Chairman, you know, I’m just trying to clarify, you know, to make it clear. . .

CHAIR VICTORINO: Yeah.

VICE-CHAIR PONTANILLA: . . .that we all understand, you know, what’s going to happen.

CHAIR VICTORINO: Right.

VICE-CHAIR PONTANILLA: That’s all it is, you know, no reflection on Mr. Chang --
CHAIR VICTORINO: No, no, no I understand.

VICE-CHAIR PONTANILLA: --or any other developer or single landowners, but, you know, we got to make sure that whatever policy that we set, we all understand it. Thank you.

CHAIR VICTORINO: Yeah. And, and I think...well, I’m trying to make that clarification that according to the Department, their start of the refund process is upon inspection and acceptance no matter what, what is out there right now. I mean you’re not getting any money until it’s all done, and again let me remind everyone, we’re staying with family subdivisions and not big developers. That’s not changing. Now even in my, in this amendment that I put forward I did not change that. I’m just staying with family subdivisions. Now there may be some discussion and maybe we have to go back and talk about family subdivision, hanai or something. I’m willing to go back at a later date and do that, but at this point that’s the subject matter that we’re referring to and I think that’s what you’re referring to as what the impacts would be if you went three year, four year, five years and the percentage that you brought forward, Mr. Eng, is that correct?

MR. ENG: That is correct.

CHAIR VICTORINO: Okay, so are we clear on where we’re at in this, at this point? Yes, Mr. Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Chair. Director, can you quantify that for us so that we understand what you mean and when we’re looking at what is currently in place with agreements on family subdivision versus, you know--well, we’re not, we’re not talking about the large developers, but is there a number?

MR. ENG: Quantify in terms of?

COUNCILMEMBER KAHO‘OHALAHALA: How many are we talking about that are in a current agreements for five, five years?

MR. ENG: Okay, give me one second, let me refer to my list here. Okay. Our current list of participants in this refund program number, 19 subdividers.

COUNCILMEMBER KAHO‘OHALAHALA: Nineteen?

MR. ENG: Nineteen in total.

COUNCILMEMBER KAHO‘OHALAHALA: So we’re not talking about--

MR. ENG: And actually, you know, to date and currently, those family subdividers that come under this proposed 14.05.180 Deferral, that number is only really one of the 19.
COUNCILMEMBER KAHO‘OHALAHALA: Okay. So if we looked at the potential for a retro, we’re talking about going back to 19 then?

MR. ENG: No ‘cause this would be limited, this proposal, to only those who are family subdividers under the proposed 14.05.280. . .

COUNCILMEMBER KAHO‘OHALAHALA: And that’s only one then at . . .

MR. ENG: . . . Deferral, yes.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

CHAIR VICTORINO: So we’re not going, and just to clarify, Mr. Kaho‘oalahala. One is a family subdivision and even that one we’re not retroactively going back on that one. We’re talking anything when the effective date becomes, and that’s another subject matter we’re going to discuss, is the effective date of the change would take forward. And so if say like Mr. Chang—again I use him as an example because he’s here today—is still working on it, he hasn’t completed his and whatever other family subdivisions are still working on that or are going to start working on it, they would be the ones that would be eligible or would be taken with this change, not the one that’s already been completed. That’s completed already. So I just want that clarification. So the impact would be from this point forward anything that comes under the family subdivision, and as you see of the 19, only one. Yes, Ms.—is that clear, Mr. Kaho‘oalahala?

COUNCILMEMBER KAHO‘OHALAHALA: I was just trying to get a number so I understand what we’re talking about.

CHAIR VICTORINO: Okay, just so long everybody clear on where we’re at. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. I’m going to refer to your letter of January 14th to Mr. Eng.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: And we’ve discussed some of this, but we’re not quite there. You have requested, what was the total refund for each subdivision on the list, that’s the 19 that we referenced in our earlier meeting. The second one, which refunds are for family subdivisions, we have been told there’s just one, and then we have the answers to the third question because Mr. Eng already gave us those. So what’s the answer to number one?

MR. ENG: Certainly. Okay. The question was, what is the total refund for each subdivision? I guess in order to protect the privacy I didn’t, I didn’t want to give any names of these participants.
COUNCILMEMBER BAISA: We don’t need them.

MR. ENG: But I’ll give you the range of dollar amounts. They range from a low of $6,400 to a high of $363,000. And the total refund amount for all 19 subdivisions is approximately $2 million.

CHAIR VICTORINO: With, let me ask this question. With the one subdivision, the family, that would go under our definition as we’re presently working on, what would that amount be? If you can disclose that one, because you don’t have to give us a name.

MR. ENG: I think it is approximately $75,000.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Thank you. I was going to ask the same question.

CHAIR VICTORINO: Okay, thank you. I just...yeah, I’m sorry I got ahead of you, Ms. Baisa.

COUNCILMEMBER BAISA: Okay. Those were the numbers that I wanted, thank you.

CHAIR VICTORINO: Okay. Okay. Now that we’ve gotten that clarification, the last thing we were going to talk about I have here was Mr. Molina’s suggestion about deferring it to maybe next year’s budget or the year...in other words, when it takes effect, that you brought that subject matter up. And so I wanted to allow that also to be discussed. Because we discussed hanai, we’re talking percentages, and now yours as far as what you were suggesting a time, you know, to enactment, when it would be enacted. So what is your suggestion, Mr. Molina?

COUNCILMEMBER MOLINA: Yeah. Well, thank you, Mr. Chair, because of, if we’re looking at amending this to say 75 percent and to be given back in two years, the discussion if, as I recall was should we consider enacting the effective date after this year’s budget session or before. Because we’re heading into budget now.

CHAIR VICTORINO: Right.

COUNCILMEMBER MOLINA: ‘Cause we didn’t know what kind of impacts at the time it would have on the budget. So I was just kind of throwing it out there, you know, maybe we have it if that the law go into effect I guess at the start of the fiscal year of July or the following fiscal year. So, you know, I guess, you know, it’s an issue that will be up to the body. But that’s the reason I brought it up because of, you know, the uncertainty of whether we’re going to get TAT and, or what kind of effects it’s going to have on the Water Department. So now that we’ve been given the figures by the Department we’re looking at 2 million. And we haven’t decided which way we’re going to go, if we’re going to amend it all or if we’re going to go 75 percent refund in five years or three years or two years. So, you know, maybe it’s good to get input from our Budget Chair as well, you know. But I would say maybe just for starters maybe let’s look at...well, you know, also we could get input from Director Eng. Maybe effective the law, if we do pass it out,
prior to the start of this. . .going into the budget session, maybe we make it go into effect July 1st of this year. So I kind of throw that out for consideration.

CHAIR VICTORINO: Okay. And again let me back, get everybody back to focusing on family subdivision, one for 75. Okay, 19 projects for 2 million, that is correct. But we have one family subdivision for 75. Okay. So I want to try to keep that as the focus point, not to say there won’t be more, you know, if let’s say this passes, maybe more will come forward to or try to come forward. This was a methodology that I’m hoping when people have to do these improvements that especially family subdivisions when and if water becomes available from Upcountry, we gave them five years. We’re trying so many methodologies to make sure they have an equal chance to get going when water becomes available. Okay. Or, you know in, in Mr. Chang’s case, how many years you’ve been working, how much money he’s put out now. . .when he’s 70, I think he said 75 or something like that, he waits five years to get his money back if he is to be finished today, he’d be 80 or 81, something like that. Again is that fair after waiting so many years? That was my whole premise just trying to get this. So I throw all of this out to you because I’m trying to do something that to me all of us have talked about in many areas. All of you have said the same thing to me in one version or another. So if you want to propose effective July 1st of 2010, I have no problem. I just want to make it equitable and we know the consequences now. We don’t know how many more will come in the future, none of us know that. But the way it’s been going there’s not that many family subdivisions. It’s not 2 million; it’s 75,000 at least for this group and hopefully will be more, but how much more? I cannot, I cannot tell you that at this point.

COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: But I think that’s what I’m trying to get to and I think all of us are on the same page. We just got to refine it to the right point.

COUNCILMEMBER MOLINA: Yeah and, you know, thank you for your comments, Chair, ‘cause, you know, in this case certainly the old phrase time is money certainly applies in this in more ways than one, both, you know, for the Department and for the applicant. So again that’s what I’ll propose, that the effective date be July of 2010. And we can see what the, where the discussion goes from here. We’ll--

CHAIR VICTORINO: Okay. I’ll, I’ll recognize our Budget Chair, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah, thank you. Thank you, Chairman. You know, right now presently I really don’t know, you know, what the Department is projecting in regards to any increases to meet their operations, especially CIPs, for the upcoming 2011 Budget. I’m sure there’s going to be some increases, but how, you know, how many, or what is the percentage, I really don’t know. So to say, you know, July 10, you know, effective July 1st, 2010, you know, we got to be sure that whatever increases in the water rates will be, plus this 3 percent, you know, what that equates to the ratepayers for this County. So for me, you know, yeah, I can go with July 1st, 2010, provided that the ratepayers, they’re the ones that going pay the rates. So July 1st,
2010 can be achievable, but again we really need to look at the numbers as far as, you know, how much we’re going to be charging the people that consume water for this County. Thank you.

CHAIR VICTORINO: And again I appreciate that comments and again the 3 percent was based on my original proposal. Again there are options on the table and I’m willing to listen to that. Seventy five percent/three year, 75 percent/four year, 75 percent/five year. I’m willing to offer that as amendments to this. I just want to make sure whatever we do, it’s going to help the people who need the help the most, is those family subdivisions who struggle putting in these extensions and these improvements. And I think all of us in this Chamber feel the same way. I, I doubt that not with anyone in this room, so I think we’re all on the same page. I open up the floor for suggestions and I can craft it from that point forward. Ms. Baisa?

COUNCILMEMBER BAISA: Chair, it appears that, you know, we’re considering delaying the implementation until the new budget year. But what we have on the table if we were to implement this now is $75,000, because that’s the only existing application or, or, you know, the work that’s being done right now. Seventy five thousand dollars doesn’t seem like a major amount of money for the County. I think, you know, it’s reasonable. I don’t know if delaying this until then is a big deal and I certainly understand where Member Molina is coming from because, you know, we don’t want to commit to—if it were $2 million, I certainly would kind of be worried ‘cause our Budget Chair would have to be struggling to figure out where he was going to get that kind of money, but maybe 75,000 we can handle. I’d like Mr. Pontanilla’s comment.

CHAIR VICTORINO: Would you like to answer Ms. Baisa’s question?

VICE-CHAIR PONTANILLA: Sure, you know, for that one subdivision, you know, currently we have according to the Department, half a million dollars budgeted. So for that one subdivision $75,000, you know, is achievable. But going forward after July 1st, 2010, you know, I don’t know.

CHAIR VICTORINO: Well I, I, you know, and I would call on Mr. Eng, but I think, Mr. Eng, would you like to endeavor on this question because again it’s futuristic, I’ll admit. What, give us your take on what Ms. Baisa’s question, Mr. Pontanilla’s response, and where we’re trying to head with this.

MR. ENG: Thank you, Mr. Chairman, Member Baisa, and Member Pontanilla. You’re absolutely right, Member Baisa, you know, this particular participant of $75,000 and currently since we’re only again have five-year installments, it amounts to $15,000 a year. And we, we can probably absorb that. . .you, we, probably it’s just a nominal amount of a percentage point. But the big question is, as Member Pontanilla has pointed out, is we don’t know what this opens up to, the potential. I think the key thing that I would like to point out when we qualify this proposed amendment is that it is specific to family subdividers who have gone through the deferral agreement as stated in proposed Section 14.05.10, 180. I think that in itself probably limits the number of participants. ‘Cause as we probably know there are other subdividers, family subdividers out there that may
not even stick to the specific definition of family, but in the interest of passing their property on to their family, they will subdivide and many times even subdivide out an extra lot or two to pay for any improvements, and I think that’s what we more commonly see. So, therefore, it’s just my opinion that I believe the impacts are pretty much constrained. So that’s my feeling on that. In regards to the start date, I know we also mentioned, as Member Molina pointed out, maybe even looking at starting it with Fiscal Year 2012, that would be July 1, 2011. But I, I think if it’s nominal as we kind of are viewing it right now, the earlier start date beginning the next fiscal year, wouldn’t be all that bad. Again the key is that it’s specific to those family subdividers that are going through the deferral process. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng, and I appreciate those comments. Any other discussion?

COUNCILMEMBER MOLINA: Mr. Chair?

CHAIR VICTORINO: Yes, Mr. Molina?

COUNCILMEMBER MOLINA: Just if I could get additional clarification from Mr. Eng. With regards to the 75,000, so if the Committee or the Council decides to enact the law or the amendment say at 75 percent within two years, so this one family subdivision applicant under the new amendment would get 37,500 for the first year and then another 37,500 for the second year? So, am I correct? ‘Cause I know you made the point of currently at five years, $15,000 a year, per year.

MR. ENG: Well yeah, it depends--

COUNCILMEMBER MOLINA: Under the current law, right?

MR. ENG: --on what scenario is adopted by this body. You know, if it’s 75 percent over two years, then obviously everything is accelerated.

COUNCILMEMBER MOLINA: So you could absorb at, if, if it were effective July of this year for this one applicant of 75,000?

MR. ENG: Yeah, we could absorb it. Yeah, I guess it’s always the unknown that we’re concerned about that.

COUNCILMEMBER MOLINA: I couldn’t think of any other adjectives. . .(chuckle). . .

MR. ENG: But, yeah, we have it within the current budget, yes.

COUNCILMEMBER MOLINA: Okay, thank you. Thank you, Chairman.
CHAIR VICTORINO: Thank you. And again this Chair is willing to look at, you know, instead of two go to three, I mean, you know, to be more palatable and to be more acceptable and more workable. So I think, I’m open, you know, and nothing’s closed. Yes, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah I’ve been, I’ve been listening and, and finally I think, as much as Jeff was hesitant, I think he’s really seeing that given the real facts, it’s minimal.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER NISHIKI: Come on; let’s not play any more games. The thrust of this legislation as you proposed was to help family people wanting to subdivide and not having to put up all that money and wait years. If this is the thrust and we heard some of the stats, we should, we should pass this out today. All the speculation that you guys may have is, is not really anything that you can get. But your bottom line was to help pretty much the local families; your bottom line was so that they wouldn’t have to wait for all of this money that they put out. Jeff has showed that there’s only one subdivision in the 19 applications, not $2 million or whatever you thought it was, and so these are the facts. So to me, as much as I was concerned for Joe, as the Budget Chair, but this kind of impact is really manini. It’s, you guys heard it. So come on, you know, if your intent is to help the local family and. and not keep their money, you know, in that account, then give it back to them, let’s go.

CHAIR VICTORINO: Thank you, thank you, Mr. Nishiki. . .(chuckle). . .

COUNCILMEMBER NISHIKI: Yeah.

CHAIR VICTORINO: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. You, you know, we heard Mr. Eng talk about what they currently budget every year, half a million dollars for reimbursement. Half a million dollars is a lot of money that, you know, can take care a lot of these family subdivisions. But when you look, you know, maybe down the road, you know, looking down the road, then it becomes an issue. You know, here we are talking about the--and, you know, I agree with my, you know, Mr. Nishiki in regards to helping families create their own subdivision for their family members. I’m sure, you know, once this law goes into effect, then how many more will show up? But, you know, I’m, I’m comfortable enough to say that, you know, half a million dollars that is currently budgeted for 2010, and maybe 2011, can go long ways, but again we, we need to take a look at the big picture. What’s going to happen in the future? Thank you.

CHAIR VICTORINO: And thank you, Mr. Pontanilla. You have been intricately embroiled in that and you’ve worked hard all these years. But let me get, before I recognize you Mr. Nishiki, let me get a clarification from Mr. Eng. Mr. Eng, in this, this fund for the refund fund, you. . .not half a million, but we’ve been putting about 400,000 in there. I don’t remember the figure being half a million. What is the figure that you normally put in, in this reimbursement fund?
MR. ENG: Mr. Chairman, we do budget $500,000 per year.

CHAIR VICTORINO: Okay, thank you. I just wanted, I just wanted to get it correct. I mean no offense to you.

MR. ENG: Actual payments have been about 400,000.

CHAIR VICTORINO: Yeah, please.

VICE-CHAIR PONTANILLA: Not an offense but... .

MR. ENG: Actual payments have been about 400,000.

CHAIR VICTORINO: Okay. Okay. Okay. Okay. Yes, Mr. Nishiki?

COUNCILMEMBER NISHIKI: And I am the biggest backer and one of the tightest guys when it comes to spending money, let me tell you, okay. And so Joe brings up futuristic kind of stuff. Hey, this law isn’t set in stone. If it is that we see that we were losing a great amount of money, then I may not be here, but the rest of you guys can change it. God, you guys think that this is the end of the world, you know, come on, we're all Legislators we know the flexibility that we have. We can change laws. ...(inaudible)... .

CHAIR VICTORINO: Okay, thank you. You know, I love this emotion, the passion. Thank you very much. .

COUNCILMEMBER NISHIKI: I don’t want to get white hairs like Junior Kushi. ...(chuckle)... .

CHAIR VICTORINO: ...(chuckle)... . If you will, if you will indulge me, I’m going to take a quick ten-minute recess for personal needs, everyone, and then come back and I will be making my recommendation on this. I will work out the verbiage so that we’re all clear on the recommendation. If that is okay with the Committee?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections? This meeting of the Water Resource Committee stands in recess till 10:45. ...(gavel)... .

RECESS: 10:35 a.m.

RECONVENE: 10:50 a.m.

CHAIR VICTORINO: ...(gavel)... The Water Resource Committee Meeting of February 2, 2010 will reconvene. Thank you for the break and now we’ll get down to the meat of the meeting. It is my intention to, with consensus, to bring forth the changes as we’ve been discussing today. First one
would be 14.05.050(C) and the words for this change would read as follows: The Department shall reimburse the subdivider 50 percent of the cost of the water main extension. The reimbursement for subdivisions as defined in Section 14.05.180 shall be 75 percent. The reimbursement procedure shall be as follows: 14.05.050(C)(3), Reimbursement shall be made in five equal installments, without interest. The reimbursement for subdivisions as defined in 14.05.180 shall be made in two equal installments, without interest. And the last recommendation with your consensus would be, this would take effect in the new Fiscal Year July 1st, 2010.

MS. WILLENBRINK: Excuse me, Chair?

CHAIR VICTORINO: Oh, sorry.

MS. WILLENBRINK: Did you want your reimbursements to be made in five equal annual installments, and two equal annual installments?

CHAIR VICTORINO: That is correct. Did I fail to say equal installments?

MS. WILLENBRINK: Annual.

CHAIR VICTORINO: Annual, okay I’m sorry. Five annual, five equal annual installments and two equal annual installments. I apologize for leaving that out. Any, any, Mr.—so that is with consensus from the body?

VICE-CHAIR PONTANILLA: Consensus.

CHAIR VICTORINO: I will turn to Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chairman.

MS. WILLENBRINK: Excuse me, Chair?

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: The effective date of the ordinance will remain the same then? . . . (change tape, start 2B). . . Oh, excuse me, I didn’t hear that.

CHAIR VICTORINO: Yeah, I did recommend that also. Okay, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: You need a motion on this? No?

COUNCILMEMBER BAISA: No.

VICE-CHAIR PONTANILLA: I thought you . . .
CHAIR VICTORINO: Yes, to pass it to go onto first reading.

VICE-CHAIR PONTANILLA: Oh, okay.

CHAIR VICTORINO: So that’s my recommendation, okay. That is my recommendation.


CHAIR VICTORINO: Okay, we’ll take a quick two-minute recess. Please don’t leave the Chambers--

VICE-CHAIR PONTANILLA: Thank you.


RECESS: 10:53 a.m.

RECONVENE: 10:54 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resource Committee will reconvene. At this time I want one clarification to be made, that the July 1st, 2010 is for the entire bill before us, not just the section, the entire bill, okay. I wanted that clarified so that there will be no more confusion. Mr. Pontanilla?

MS. WILLENBRINK: Excuse me, Chair?

CHAIR VICTORINO: Yes?

MS. WILLENBRINK: One more time, I apologize.

CHAIR VICTORINO: No problem.

MS. WILLENBRINK: Did you also want to recommend that Staff be able to make any nonsubstantive corrections?

CHAIR VICTORINO: Yes, and I think Mr. Kushi has a few grammatical changes that he’ll bring forward right after we, you know, make this change.

MS. WILLENBRINK: Thank you, Chair.

CHAIR VICTORINO: Thank you. And if that’s okay with the Staff, I mean with the body, we can make those changes.

COUNCIL MEMBERS: No objections.
COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: DAM).

CHAIR VICTORINO: No objections? Okay, go ahead, Mr. Pontanilla. Sorry.

VICE-CHAIR PONTANILLA: Thank you, Chairman. On your behalf, I’d like to move that we approve the revised bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.05, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES” on first reading.

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

CHAIR VICTORINO: Thank you. It’s been moved by Vice-Chair Pontanilla and seconded by Member Medeiros. Any further discussion? Seeing none, I’ll call for the vote. All those in favor say “aye”.

COUNCIL MEMBERS: “Aye”.

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

VOTE: 

AYES: Councilmembers Baisa, Kaho‘olahala, Medeiros, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: Councilmember Mateo.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of bill.

ITEM NO. 5: “READY TO GO” WATER-RELATED PROJECTS (C.C. No. 09-49)

CHAIR VICTORINO: Thank you, ladies and gentlemen, for your diligent work in this area. Now we’ll move onto the next section would be Section [sic] WR-5, “Ready To Go” Water-Related Projects. This, we will have no legislative action on this matter. It is really a report for an update from the Director of the Department of Water Supply in what we are, what is occurring with the monies we have received and monies we hope to receive in regards to “Ready To Go” projects.
And this would be monies that's coming from the Federal government through the stimulus package. Am I correct, Mr. Eng?

MR. ENG: Yes, that is correct, Mr. Chairman.

CHAIR VICTORINO: Okay, thank you. You don’t have to read the whole book. Okay, go ahead.

MR. ENG: Thank you, Mr. Chairman and Committee Members. I just want to give you an update of our three projects that are funded by Economic Stimulus Funds or the ARRA funding. We have three projects that are funded and I know they’ve been mentioned to you before, so I don’t have to go into detail, but one of them is called the West Olinda Tank Replacement Project. The bid was for about $1.5 million and that project is about 30 percent completed. I believe The Maui News had a photo of it, project last week or so. The second project is a Vineyard Street Waterline Replacement Project. That was at a cost of $1.43 million, it’s about 90 percent completed. And the third project is the Kihei Road Waterline Replacement Project, and that’s about $769,000. And that project has just started. And at this time we do not anticipate any additional ARRA funds, but of course if they do become available we will try to take advantage of it. Thank you.

CHAIR VICTORINO: Questions for the Department? Ms. Baisa?

COUNCILMEMBER BAIsa: So we have received a report from the Director on the three projects for which we received funding, even though there’s a laundry list in our binder. These were not all funded?

CHAIR VICTORINO: Mr. Eng.

MR. ENG: That is correct.

COUNCILMEMBER BAISA: So these are things we’d like to do if we could get the money. Is there still a possibility that we might get some? I’ve heard there’s additional money that might be available.

MR. ENG: You know that’s probably right now in the hands of the State Department of Health, there was some additional funds available. We tried to seek them for a fourth project, but again they’re not available and we are, though, going on this fourth project by using the revolving funds, State revolving funds. So that has that lower interest rate.

COUNCILMEMBER BAISA: And that fourth project is?

MR. ENG: It’s in Makawao.

COUNCILMEMBER BAISA: Thank you very much.

MR. ENG: So a few of us here will be very happy. Thank you.
COUNCILMEMBER BAISA: ...(chuckle)... Okay, you know, on this list just, and for what it's worth just a comment, I certainly would like to see something happen with the Waikamoi Flume. You know, every meeting we go to we have, we listen to people berate us about the situation there, so just a comment.

MR. ENG: I would like to give you a little update of what we're doing just so--

COUNCILMEMBER BAISA: I'd love to, love to hear if the Chair would indulge us.

CHAIR VICTORINO: Wait, okay...(inaudible)... I, I was going to recognize the Director on that one, and I will say before I recognize the Director, that we have had discussions and we are going in this year for CIP money and some additional funding from the Feds, but I'll let Mr. Eng explain the whole nine yards on that. I was going to give you a surprise, but you broke my surprise already, so go ahead.

COUNCILMEMBER BAISA: It's okay. We don't need a surprise, let's just get on with it. Okay. ...(chuckle)...

MR. ENG: I agree.

CHAIR VICTORINO: Excuse me.

COUNCILMEMBER BAISA: ... (laughter)...

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

CHAIR VICTORINO: Go ahead.

MR. ENG: You know, there's no real surprises. I'd just like to give you the status.

CHAIR VICTORINO: There you go.

MR. ENG: We are currently planning to first design the replacement of that flume, and our engineers are just about finalizing the consultant selection. They just recently (inaudible), they had a long list of potential consultants, they narrowed it down to three consultants, they've conducted interviews and they're willing to proceed with the consultant selection. So we have money in the current fiscal year for the design. We are budgeting in, in next Fiscal Year 2012, I'm sorry 2011, for some actual construction funds, and I believe when the Mayor went to Washington D.C. the other week, she did talk to some Legislators about funding for the actual construction. It could be quite costly and I don't know at this time until it's designed, you know, it could be in the order of $10 million. So that's what we might be looking at. But we're proceeding with the design and so I'm really happy to hear that.
COUNCILMEMBER BAISA: Thank you very much. We appreciate all the attempts at trying to deal with a problem that's been around for a very, very long time, Chair. Thank you very much.

CHAIR VICTORINO: No, and I think this is very important and I am, along with Budget Chair Pontanilla, going up to NACo in March, and I have been told by our Land and Energy and Water Committee that there’s subject matter on monies that are coming back. Returned monies... (inaudible) will be one of the issues to be discussed and I’m hopeful with our Congressional Delegation that if monies can be found, that Waikamoi would be one of the priorities, you know. So but again with what Mr. Eng has presented and what we’re going to try to do when we’re up there in March, hopefully—and I think the Mayor is also going up there and asked—we will have some success in something that I think is extremely crucial to this whole Upcountry water system. So thank you, Ms. Baisa, for bringing that subject up.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Mr. Pontanilla followed by Mr. Medeiros.

VICE-CHAIR PONTANILLA: Thank you, Chairman. You’re right, the Mayor had gone to Washington D.C. I think the last week and a half, and she brought forth several projects for Maui County in regards to some Federal help. And I just want to say thank you, Mr. Eng, for giving us that update. I was going to bring it up this afternoon in regard to the water projects that you have in your books. Again thank you, thank you, Chairman.

CHAIR VICTORINO: Yeah. And you can bring it up this afternoon ‘cause there’s some Members that are not here that may want to hear this. Member Medeiros, go ahead.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Director Eng, so on the Waikamoi Flume improvements, you say currently in our current fiscal year budget we have money for planning and design, and how much is that amount?

MR. ENG: That amount is $500,000.

COUNCILMEMBER MEDEIROS: So the amount listed on this document that we’re looking at and under the column Funding Required and for Waikamoi Flume improvements, it says 1.5 million. So that’s not an accurate figure anymore in your estimation?

MR. ENG: No. And again that list was just a hastily prepared list of wish list capital projects, you know, at the time back in, and this was back in December 2008. We literally had one day to develop a list to forward to the U.S. Conference of Mayors on the Mayor’s behalf so... 

COUNCILMEMBER MEDEIROS: And so what is your estimation that the entire project will cost?

MR. ENG: You know, don’t quote me--
COUNCILMEMBER MEDEIROS: Yeah.

MR. ENG: --because again we won't know until we have the design completed.

COUNCILMEMBER MEDEIROS: Ballpark figure.

MR. ENG: But I think in the order of $10 million for the construction, 10 million.

COUNCILMEMBER MEDEIROS: Ten million for construction. Okay, and currently is the Waikamoi Flume still in use?

MR. ENG: Oh, yes it is.

COUNCILMEMBER MEDEIROS: Are we experiencing a lot of leaks?

MR. ENG: We experience a regular amount of leaks; we have our crews go up there and do what they need to repair it.

COUNCILMEMBER MEDEIROS: Okay, you know, because we’re holding, you know, a big company on Maui accountable for all the leaks in their system, so we certainly would like to have our County system, you know, be an example. But thank you for that information.

MR. ENG: You’re welcome.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Any other questions for the Department?

VICE-CHAIR PONTANILLA: Chairman.

CHAIR VICTORINO: Okay, go ahead.

VICE-CHAIR PONTANILLA: Yeah, just to let the Members know that on this particular list here the Makawao Waterline Improvements that’s budgeted for Fiscal Year 2010, that $1.1 million; Wailuku Waterline Improvements - Ainaola Place, $1.1 million; Mahinahina Water Treatment Plant Improvements, $350,000; and the Maui Meadows Booster Pump Improvements, which is $1.5 million. So on this list here, those are the projects that are budgeted for Fiscal Year ’10. Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla, for that clarification. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you very much, Mr. Chair. I want to thank the Department for, you know, updating us on using these stimulus funds and for some very good infrastructure projects. I happened to be watching CNN the other day and I think a little township or a county
in Montana was getting criticized because they were using their stimulus funds to fix a tennis court. So I guess tennis must be important to those folks in Montana. But if I could ask Mr. Eng the, what is the timetable for the Olinda Water Tank completion, if you have that by now?

MR. ENG: You know, I don’t know the completion time. I’m sorry I don’t have that handy. Again, you know, I drove by there couple weekends ago and it’s just up the road, up Olinda Road about 40 percent of the way up. Yeah, it’s about 30 percent completed but it’s moving so. So we started that project as soon as that, the funds, in fact even before the funds were released.

COUNCILMEMBER MOLINA: Oh, good.

MR. ENG: We started moving on that project.

COUNCILMEMBER MOLINA: One of those “shovel ready” type of projects, right. Very good. Thank you, thank you, Chair.

CHAIR VICTORINO: Thank you very much, Mr. Molina. Mr. Medeiros, one more question?

COUNCILMEMBER MEDEIROS: Just one question. Director, I just wanted to verify that on the list was the Hamoa to Koali Waterline. That’s completed already, right?

MR. ENG: Member Medeiros, no it isn’t. We haven’t done any work on that. The design was completed only, but we’ve never gone forward with construction.

COUNCILMEMBER MEDEIROS: Okay, because we did put in a 12-inch line and hydrants, so and this is--

MR. ENG: I believe that was from Hana to--

COUNCILMEMBER MEDEIROS: This is from Koali...oh, Hamoa to Koali. So you’re going from your well in Hamoa and then going outward to Koali, is that the direction you’re going?

MR. ENG: Well, I think that if I may clarify this, I believe what you are referencing is a project that was done some years ago.

COUNCILMEMBER MEDEIROS: Right.

MR. ENG: From Hana to Hamoa?

COUNCILMEMBER MEDEIROS: Yeah, well it went from Hamoa Well to Hana Town.

MR. ENG: That’s correct.

COUNCILMEMBER MEDEIROS: Right. Okay.
MR. ENG: So, therefore, that project you’re referencing would take it from Hamoa to Koali.

COUNCILMEMBER MEDEIROS: Right, and that’s completed?

MR. ENG: No. We’ve only completed--

COUNCILMEMBER MEDEIROS: Oh, the Hamoa to Koali you’re talking about?

MR. ENG: That has not been constructed.

COUNCILMEMBER MEDEIROS: Right, okay, that’s not, and that’s the 8 million here?

MR. ENG: It’s probably in that order.

COUNCILMEMBER MEDEIROS: Estimate?

MR. ENG: Yeah, but we did the design and completed it a couple of years ago.

COUNCILMEMBER MEDEIROS: Okay. Okay, and is that also designed to be a 12-inch line? Or you’re not at that point? Okay.

MR. ENG: Probably so. Again right now we’re planning to do just some in-house improvements to that line.

COUNCILMEMBER MEDEIROS: Right. Right.

MR. ENG: I believe we have some money in the current fiscal year.

COUNCILMEMBER MEDEIROS: Thank you, Director Eng. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Ladies and gentlemen, if there’s nothing else to discuss, I thank the Department, first of all, for the updates and considerations and all their hard work in achieving in what we achieved today. I want to congratulate you and your diligence with this matter, for staying, and thank you, Mr. Kushi. To the Staff, I’d like to say thank you also, Ms. Willenbrink and Ms. Martins, for all your work--Frias. I said, I said Martin, Frias. Okay, so I get the names wrong, I sorry. Sorry, Ms. Frias, you know who I meant, yeah? Ay, carambas now. And then to the Members here, thank you very much for lasting all the way to the end and, you know, I’m sorry some of the other Members had to leave early. And this afternoon, Mr. Ponantilla, with your Budget and Finance meeting at 1:30. Anything else you would like to bring up in the area of water, please? I would, we’d be all willing to hear about it.
VICE-CHAIR PONTANILLA: Yeah. The Water Department will be in the meeting this afternoon so, you know, Mr. Eng already covered some of the projects that, you know, we wanted to discuss. So we’ll see Mr. Eng again this afternoon.

CHAIR VICTORINO: Thank you, Mr. Pontanilla, and by the way, ladies and gentlemen, we’re going to defer action on this because we’re not completed. That’s just one of the processes. So I just want to make sure that we understood that we’re going to defer the item, yeah.

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you. So if nothing else to announce, I will call this meeting of the Water Resource Committee, February 2, 2010 adjourned. . . .(gavel). . .

ADJOURN: 11:10 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:100202

Transcribed by: Chante Diaz
WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 2, 2010

CERTIFICATE

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

DATED this 24th day of February 2010, in Wailuku, Hawaii.

CHANTE DIAZ