

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

July 30, 2014

Council Chamber, 8th Floor

CONVENE: 9:04 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Mike White, Vice-Chair (out 10:17 a.m., in 10:30 a.m.)
Councilmember Gladys C. Baisa (in 9:06 a.m., out 10:17 a.m., in 10:28 a.m.)
Councilmember Robert Carroll (In 9:05 a.m.)
Councilmember Donald G. Couch, Jr.
Councilmember Stacy Crivello (In 9:06 a.m., out 10:56 a.m.)
Councilmember Don S. Guzman

STAFF:

Kimberley Willenbrink, Legislative Analyst
Erin Fleming, Legislative Attorney
Raynette Yap, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.:

David S. Taylor, Director, Department of Water Supply
Paul J. Meyer, Deputy Director, Department of Water Supply
Tammy T. Yeh, Civil Engineer IV, Department of Water Supply
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS:

Rosemary Robbins
Seated in the gallery:
Mercer "Chubby" Vicens
Others (2)

PRESS:

Akaku--Maui County Community Television, Inc.

CHAIR VICTORINO: . . .(*gavel*). . . Good morning, the meeting of the Water Resources Committee will come to order. Today is July 30, 2014, and I wanna welcome the Members that are here. Let me start by introducing the Members that are present. At the present time, the Vice-Chair of the Committee and the Budget Chair, Mr. Michael White. Good morning, sir.

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VICE-CHAIR WHITE: Good morning, Chair.

CHAIR VICTORINO: Member from South Maui, Member of the Committee, Mr. Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR VICTORINO: And Member and EAR Committee Chair and the handsome guy from Central Maui in Kahului--

COUNCILMEMBER GUZMAN: Thank you. Good morning, Chair.

CHAIR VICTORINO: --Mr. Don Guzman. After that Don, you're gonna owe me big time, right? Good morning. Good morning and I'm the Chair, Mike Victorino. Excused at this time is Stacy Crivello, Robert Carroll, and Gladys Baisa. They should be here very shortly. I wanted to get the meeting started because we have a number of things to cover and we have a presentation and I want to as much as possible complete this matter today. Now entering the room is our Vice-Chair of the Council and member from East Maui, Mr. Robert Carroll. Good morning, Mr. Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: Thank you very, very much. We have no non-voting members at this time. If any does show up, I will introduce them. This morning from the Administration we have Mr. Dave Taylor, the Director of Water Supply, and his Deputy, Mr. Paul Meyer. We have Mr. Ed Kushi, First Deputy Corporation Counsel and Jennifer Oana [*sic*], Deputy Corporation Counsel also present. At this time, I find the ladies finally came. Thank you, ladies. We have our little lovely lady from Molokai, Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR VICTORINO: Good morning. And the Chair of the Council, the lovely lady from Upcountry, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair, and I apologize for my tardiness. It's one of those days when stuff has to be handled. Thank you.

CHAIR VICTORINO: Yeah, thank you. And you know, so I had to get the meeting started 'cause we were already late as it is, so--

COUNCILMEMBER BAISA: I understand.

CHAIR VICTORINO: --and let's show the record we started at four minutes after 9:00, yeah? Let's, yeah, show the record. Okay moving along for our Committee Staff, today we have our Legislative Attorney, Erin Fleming, and I want everybody to say hello and goodbye to Erin

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because Erin will be leaving us tomorrow. While we've been glad to work with her, we're gonna miss her. Thank you very much for your short stopover in the County of Maui.

MS. FLEMING: Thank you, Chair.

CHAIR VICTORINO: Erin is one of our wonderful attorneys that we'll be losing because we hire nothing but the best and everybody seems to come to us and take it from us. So we wish you nothing but continued success, Erin.

MS. FLEMING: Thank you.

CHAIR VICTORINO: And our other Legislative Analysts are...two Legislative Analysts, oh I'm having tongue twister this morning, Ms. Kim Willenbrink, and then of course, Raynette Yap is our now our new Committee Secretary.

MS. YAP: Good morning, Chair.

CHAIR VICTORINO: My fourth secretary in the last two years. I'm beginning to get a phobia about keeping staff around me. Must be something I'm doing. Anyhow thank you, and welcome to all of you. I'd like to go and check our District Office, see if they're online. Let's start with the Hana Office, Dawn Lono, are you there?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR VICTORINO: Good morning, Dawn. Denise Fernandez, our Lanai Office, Denise are you there?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR VICTORINO: Good morning. And of course, our lovely lady from Molokai, the Molokai Office, Ella Alcon. Ella, are you there?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR VICTORINO: Okay, I'll get back to you in a few minutes as far as public testimony is concerned. So let us start off, with no objections, taking public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: This morning we have just one item, WR-11, and we will have as usual, ask everyone to turn off all cell phones or any noise-making devices. Decorum will be conducted in this Chamber at all times. Testimony will be limited to three minutes, and upon request, one minute to conclude. Please, when the light turns yellow it is two and a half minutes and when the light starts blinking it will be three minutes. If you're still talking at the four-minute mark, I

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will kindly ask you to stop. Testifiers, please state your name and if you are representing yourself or any organization. At this time, I would like to start with the Chamber. I know we have one testifier, and I'd like to call off, call up our first testifier Ms. Rosemary Robbins. And she's a concerned citizen speaking on her behalf. Ms. Robbins?

...BEGIN PUBLIC TESTIMONY...

MS. ROBBINS: Good morning everybody, nice to be here. Also on that little slip that you had there Chairman said on behalf of other concerned citizens so it's not an organized thing, but I hear it everywhere. Somebody who has dealt with water for many years knows nothing about real estate infill super expensive grass huts not my fields. But yesterday I did come down and went over the available material and there were two relative to this hearing today's agenda. Two pieces that I think probably are not getting the awareness of the public. The first one says, this is from...dated January 30, 2014, this person says the bill is prejudice against the small landowner. If I own ten contiguous lots that are surrounded appropriately by developed land then I can obtain water for development. But if I own one of ten separately owned lots which would qualify for water if they were owned by the same person or corporation I cannot. Not sitting well with people. Also says, any ordinance that is written as rigidly as proposed is grossly unfair. It is good for people who got in early and good for corporations that have the money to buy up many contiguous parcels, but it tells small landowners that they have no chance. Proposed ordinance is longer and more complicated than necessary. What is the real problem that the Water Resources Committee means to address? So thoughts from the hand of another concerned citizen. Second one that I picked up also from a concerned citizen that says a minimum requirement of 75 percent of surrounding area to be already built, it fails to take into account parcels where the perimeter consists of land that is unavailable for development for a variety of reasons. These may include streams, utility easements, and public use lands such as parks. It complements our Chairman for this Committee this morning for having put in a bid that it should be not 75 percent surrounding built up areas, but 50 percent. So you know there was a lot of work that went into getting this out there. The idea that it sounds like it's a stacked deck which is sort of like I hear from a lot of different sources out there is not a compliment to the people who are working so hard on this. I would remind all of us that in our last election, we had citizens who came and said, pono is the way to go. We also have in our Charter, County of Maui there should be no possible set up of anything but pono. And that reminds me to bring to the attention that when we're getting advertisements for people who are going to be perhaps reelected we're not...when we see in here that an advertisement is produced without the approval and authority of any candidate or candidate committee that should be an alert.

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR VICTORINO: Hang on, hang on, Mr. Couch. Ms. Robbins, I'm going to ask you to stop that because that is not part of the agenda item and I would you prefer you not discussing something, it is political by nature and we're here for water resource and WR-11. So I'm gonna ask you not to discuss that any further.

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MS. ROBBINS: Yeah, I'm done.

CHAIR VICTORINO: Thank you very much.

MS. ROBBINS: I think it relates.

CHAIR VICTORINO: Unfortunately, I determine not and I think some of my Members feel the same way, so thank you, ma'am, Ms. Robbins. Anything else? Would you like complete? That's it? Thank you. Questions for the testifier? Seeing none, thank you Ms. Robbins for being here again. And thank you, yes I agree with you as far as the 50 percent versus the 75, but we'll see how that pans out today. Thank you very much.

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: Seeing no other testifiers in the gallery at this time, I'll call upon our District Offices. Let us start with Hana. Dawn, do you have anyone there to testify?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR VICTORINO: Thank you. Lanai, Denise do you have anyone there to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR VICTORINO: Thank you. Molokai, Ella do you have anyone there to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR VICTORINO: Thank you. And seeing no one else in the gallery and one last opportunity. No one rushing to the podium, without objection, I will close public testimony.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

ITEM WR-11: DEFINITION OF INFILL DEVELOPMENT (CC 14-132)

CHAIR VICTORINO: Thank you. Thank you, ladies, have a great day. Again, this morning we have just one item and that's W...I mean, yeah, WR-11, it's County Communication 14-132 from Councilman Michael P. Victorino transmitting a proposed bill relating to the definition of infill development. Corporation Council dated June 25, 2014 from the Department of Corporation Counsel transmitted a revised proposed bill entitled, A BILL FOR AN ORDINANCE AMENDING SECTION 14.01.040 AND 14.12.030, MAUI COUNTY CODE RELATING TO

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INFILL DEVELOPMENT. The purposes of the proposed bill are to: (1) amend the definition of “infill development” in Section 14.01.040, Maui County Code, to include development or redevelopment of ten or fewer residential dwelling units on one or more contiguous vacant parcels whose boundaries are surrounded by at least 75 percent of already developed land; and (2) amend Section 14.12.030, Maui County Code relating to water availability, to exclude any subsequent development or subdivision of any resulting parcels from this infill development exemption. So today what we are gonna do is to help all of us to better understand, upon my request they have brought a PowerPoint and they have 25 different parcels for us to look at to determine what infill or how they determine infill, and what we believe infill should be. So with no objections, Mr. Paul Meyers, the Deputy Director would like to do the presentation on behalf of the Department of Water Supply to help the Committee better understand what we’re trying to accomplish here. So with no objections, I’m gonna take a three-minute recess to set the Chamber up for a presentation, a PowerPoint presentation. So with no objections, we are now in recess. . . .(gavel). . .

RECESS: 9:17 a.m.

RECONVENE: 9:20 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resource Committee will reconvene. So at this time, I would like to call upon Paul Meyer, the Deputy Director from the Department of Water Supply, and Tammy Yeh, who will also be assisting him. She’s a...what is Tammy, I forgot?

MR. MEYER: Thank you, Mr. Chairman.

CHAIR VICTORINO: Civil engineer. Okay, she’s the civil engineer. So she can give us more direct dynamics as far as how they determine infill. So if you’d go ahead, Mr. Meyer?

Note: Computer-generated presentation.

MR. MEYER: Thank you, Mr. Chairman and Members. I would like to introduce Ms. Tammy Yeh. Tammy is an engineer in our Central District. As you all know, this is the most populous district in the water system. It encompasses from Makena to Maalaea and from Paia to Waihee including Kahului and Wailuku. So it is a district that has the most frequent instance of questions regarding infill because it includes the most developed areas. Tammy has prepared the majority of the slides today, and we may call on her for her interpretation and guidance as to location and some particulars including the...some of the calculations involved. We’ll show you about 35 slides this morning. I will not take time to read every one. You Members had this material in advance. If there’s any question though please stop me and we can have discussion on each individual slide before we proceed.

CHAIR VICTORINO: No. Mr. Meyer, I would prefer if we go through the entire presentation and then upon completion, you know, the Members can make notes or can segregate what they would like

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to ask on what particular scenarios they would like to ask you questions on. So I prefer us doing it completely and then have a question and answer period.

MR. MEYER: Yes, sir, that's fine as well.

CHAIR VICTORINO: Thank you, Mr. Meyer.

MR. MEYER: Moving to the first slide. This is the old definition, base definition of infill development. It's from County Code, 14.01.040. This is the proposed amended definition. You can see new words inserted, including accessory dwellings. That is for the purpose of taking into account that on a residential parcel you can develop a home and an ohana that is two dwelling units. And the intention is to in counting the number of proposed lots for the purposes of this infill exemption that would include the dwellings made possible as ohanas and that counts as two dwellings. The proposed requirements for the definition of infill are intended to further clarify what is infill and conversely what is not infill. This, as the Members know, has been an issue that is subject to interpretation under the existing ordinance, and these proposed requirements will further clarify the issue so as to reduce uncertainty and make it more clear for citizens and more clear for the Department involved in making decisions as to what is entitled to this exemption and what is not. Looking at them quickly, 75 percent. That 75 percent requirement was basically our recommendation taken from what other parts of the country, cities, counties, and even states have done in defining infill for purposes of zoning entitlement as well as grants for things like urban development, urban renewal. Secondly, development must be in the service area. Third, infrastructure must be in place. And the proposed...lastly, the proposed the development must be consistent with the General Plan, community plans, and zoning requirements. There are two additional definitional proposals. The first is already developed land. That's important because it determines...it's really key to the determination of availability of this exemption. Secondly, is a little finer point as to what do you do with things like Conservation lands, Ag lands, beaches, and the ocean? And it's been proposed that those shall not be considered already developed land. The last item of definition is to try to deal with special conditions that may border a parcel such as roadways, streams, gulches, and things of that type. And basically you sort of look through those obstacles or those bordering conditions. We're going to run through next a number of scenarios, half of them qualifying for infill exemption, the other half not qualifying for infill exemption. Going to the first slide, Number 1, this is a rectangular shaped parcel bordered by already developed land on three or four sides. The color coding is that the red parcel is the parcel in question, the blue is already developed land, and the green is undeveloped land. I'd like to just take a second here to remind you that this infill exemption is, only applies to applications for subdivision. You really should keep that in mind. What does that mean? If you have a residential parcel you can go ahead and build a home and build an ohana. The infill exemption is only necessary if you want to subdivide the parcel. The important thing is is when you're looking at these 25 examples, especially the examples which do not qualify for exemption you may rightfully think, hey that's a vacant lot why can't the owner build a house or house and ohana? The answer is they certainly can. If however, the owner wants to subdivide the parcel that's when Chapter 14.12 of the Code, "Show Me the Water" applies. Like to make that very clear because you'll have a tendency to look at some of these slides and say, hey

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that's...somebody ought to be able to build a home. Again, it's only when it applies to...it only applies to subdivision. That's the only point at which this exemption comes into place. Moving onto the second example. This again is infill. It's a rectangular shaped parcel bordered by portions of already developed land, 75 percent of the parcel borders are already developed. Third scenario...

CHAIR VICTORINO: Mr. Meyer, one of the questions, and it's not...I don't wanna go into questions, but can you tell us on each scenario whether it qualifies or not. So Scenario 1 would have qualified, right?

MR. MEYER: Scenario 1 --

CHAIR VICTORINO: Would have qualified?

MR. MEYER: --does qualify.

CHAIR VICTORINO: Okay, Number 2...

MR. MEYER: Each, yeah each of these parcels, each of these examples, Numbers 1 through, I think 12 --

CHAIR VICTORINO: Yes.

MR. MEYER: --are infill.

CHAIR VICTORINO: Okay.

MR. MEYER: So all of the slides you'll be looking at for the next few minutes, Numbers 1 through 12--

CHAIR VICTORINO: One through 12.

MR. MEYER: --qualify as infill.

CHAIR VICTORINO: Thank you for that clarification. Go ahead.

MR. MEYER: Yes, sir. Number 2, we took a look at that earlier. Number 3, a little different scenario. An irregular shaped parcel already surrounded by already developed land and separated by a waterway. This is infill. Number 4, this is a rectangular shaped parcel bordered by already developed land and a golf course. This is infill. Number 5, rectangular shaped parcel surrounded by already developed land, noncontroversial, infill. Number 6, rectangular shaped parcel surrounded by already developed land. Another example, infill. Number 7, rectangular shaped parcel bordered by already developed land and a beach park, infill. Number 8, proposed consolidation of two parcels bordered by already developed land and the ocean. This is infill.

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The two parcels are being consolidated. Number 9, rectangular shaped parcel bordered by already developed land on three of four sides, infill. Number 10, rectangular shaped parcel bordered by already developed land of three of four sides, infill. Number 11, irregular shaped parcel surrounded by already developed land, that's infill. Number 12, an irregular shaped parcel bordered by already developed land and a park. You can see the Park District on the left-hand side. That's infill. And Number 13, this is the last infill example, an irregular shaped parcel bordered by already developed land and a cemetery. This is infill. The following are scenarios that do not meet the infill requirements. Keep in mind again we're only looking at subdivision of these parcels, building a home or a home and an ohana is not restricted and there's no exemption needed. Scenario 14, this is an irregular shaped parcel bordered by portions of already developed land. If you measure the circumference of the parcel, the linear footage, 37 percent of the parcel borders undeveloped land and as a consequence, this is not qualifying for the infill exemption. Number 15, is an irregularly shaped parcel bordered by portions of already developed land, 66 percent of the parcel is bordered by undeveloped land. Scenario 16, this is a parcel bordered by portions of already developed land, Ag lands which are not considered already developed land regardless of the presence of any structure. Remember Ag lands not developed. As a result, this is not infill. Number 17, this is a rectangular shaped parcel bordered by portions of already developed land, but 46 percent of the parcel borders undeveloped land. Does not qualify as infill. Cannot be subdivided under this exemption. Number 18, this is a parcel surrounded by Agricultural lands of approximately five acres. Ag lands are not considered already developed land regardless of the presence of any structure. As a result it doesn't qualify for the subdivision exemption. This is Scenario 19, parcel surrounded by Ag lands of two-acre size. Ag lands are not considered already developed land regardless of the presence of a structure. So it does not meet the exemption for subdivision. Scenario 20, this is a rectangular shaped parcel bordered by already developed land and the ocean. The ocean is not considered already developed land so this does not qualify for the exemption. Number 21, rectangular shaped parcel bordered by already developed land on two of four sides. In other words, two of four sides is not developed, does not qualify for exemption. Number 22, rectangular shaped parcel bordered by already developed land and the ocean, ocean is not considered already developed land. You'll notice the frontage on the road is not developed. It's a little triangular shaped parcel there and so that border, that mauka border of this parcel is not developed land, maybe difficult to see. Number 23--

CHAIR VICTORINO: Can we keep our comments down, guys. Go ahead.

MR. MEYER: --a rectangular shaped parcel bordered by already developed land and Ag District. Ag lands are not considered already developed land, does not qualify for the exemption. Number 24, this is an irregular shaped parcel bordered by already developed land and Conservation land, 26 percent of the parcel borders undeveloped land. As a result, this parcel, the red parcel does not qualify for subdivision exemption. Number 25, last example, this is a rectangular shaped parcel bordered by already developed land and Conservation land. Conservation land is not already developed, this does not qualify for the exemption. Thank you.

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CHAIR VICTORINO: Thank you, Mr. Meyers. At this time, if it...with no objections I will take a three-minute recess to get the Chambers set up so we can start with our questions for Mr. Meyer and Tammy. No objections. This meeting will stand in recess. . . .(*gavel*). . .

RECESS: 9:37 a.m.

RECONVENE: 9:39 a.m.

CHAIR VICTORINO: . . .(*gavel*). . . The meeting of the Water Resources Committee, July 30th will reconvene. What we've decided to do those in the viewing public is to keep the screen up so that our Members can ask and highlight through pointers specific questions in areas so that you, the public can understand what the question would be instead of saying, oh now what did that mean or what does that mean? So with your indulgence, we're gonna keep the screen up, and we will start our questioning first of all from 1 through 13. Members, any specific questions on those that were considered infill development and please give me the number so Mr. Meyer can go directly to the number. I'll start with Ms. Baisa, do you have any questions from 1 through 13?

COUNCILMEMBER BAISA: No, Chair I'm fine.

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yes, I do. Thank you, Chair. I have a question.

CHAIR VICTORINO: One only and then I'll pass it on so give everybody as a chance. Go ahead.

COUNCILMEMBER GUZMAN: Okay, okay. Thank you. On Number 8.

CHAIR VICTORINO: Number 8.

COUNCILMEMBER GUZMAN: And that in comparison to...

CHAIR VICTORINO: No, no, we're not comparing I just want Number 8.

COUNCILMEMBER GUZMAN: Yeah, but that's how I go...I don't see the difference between Number 8 and Number 20, and they're both...I understand they're fronting the ocean side.

CHAIR VICTORINO: Well, I think Number 8, if I remember you right, Mr. Meyer, they were consolidating Number 8--

MR. MEYER: That's correct.

CHAIR VICTORINO: --and Number 20 were two separate lots.

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MR. MEYER: That's correct. So the two red parcels will become one and then will be further subdivided. And they are surrounded on three sides by already developed land, not taking into account the ocean at all.

COUNCILMEMBER GUZMAN: I see. Just by that one vacant lot on Number 20 that's next to the structure on the upper portion that's why it's disqualified on Number 20?

CHAIR VICTORINO: I think the key here, Mr. Guzman, is the consolidation making it one lot. I think that's really the key why this became infill. And the other one, and we can go to that on 20, when we go into the non-infill we can get more specific on that if you don't, if you don't--

COUNCILMEMBER GUZMAN: Okay.

CHAIR VICTORINO: --if you'll allow me to continue. So that way we don't get mixed up if you don't mind, please?

MR. MEYER: Yeah, that's exactly right.

CHAIR VICTORINO: Thank you, Mr. Guzman. Mr. White?

VICE-CHAIR WHITE: No, my questions are in the second --

CHAIR VICTORINO: In the second--

VICE-CHAIR WHITE: --second half.

CHAIR VICTORINO: --on the non-infill determinations.

VICE-CHAIR WHITE: Right.

CHAIR VICTORINO: Okay. Mr. Couch?

COUNCILMEMBER COUCH: Number 1, please?

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: The question is if you're using I guess you were calling it circumference, but if you're using area, you know that is approximately 33 percent of the area. So it is not 75 percent surrounded. If that...especially since you use it the other...in the other example, but if you're talking 75 percent by the perimeter, that is not 75 percent of the perimeter so how does that qualify?

CHAIR VICTORINO: Mr. Mayer? Mr. Meyer? Excuse me. Whoops.

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MR. MEYER: Thank you. For rectangular parcels we use three of four sides and that's deemed to be on an azimuth basis 75 percent. If you take into account circumference, circumference is used or linear footage in each exposure is taken where you have an irregularly shaped parcel and there you get into the calculation of linear footage. This is a rectangular shaped parcel and it is surrounded by 75 percent or more in terms of azimuth by developed property.

COUNCILMEMBER COUCH: Is that anywhere in the...I'm sorry, is that anywhere in the bill?

MR. MEYER: No, sir, you may--

COUNCILMEMBER COUCH: Actually it is...

MR. MEYER: --you may further define that if you feel it's necessary.

COUNCILMEMBER COUCH: It is defined in the bill as perimeter. So the perimeter is the red line. So if you add it all up...so what we have to do is figure out the language to make that work. But right now, the way the language reads that would not qualify in my opinion. Maybe we'd have to ask Mr. Kushi to get his slide rule out.

CHAIR VICTORINO: Okay, let's not get that deep, okay. So we'll go back to one, and, Mr. Mayer, Meyer, keep that...you're using three out of four sides and we're saying or Mr. Couch...

COUNCILMEMBER COUCH: The bill says perimeter.

CHAIR VICTORINO: Perimeter which is this, right? This is the perimeter.

MR. MEYER: Yeah, Councilmember Couch brought this up in the last meeting.

CHAIR VICTORINO: Yes.

MR. MEYER: And we explained at that time that the most consistent definition used that we could find in other jurisdictions was on a rectangular parcel, three of four sides and when you get onto an odd-shaped parcel that's when you fell back to the circumference. If the Council and Corp. Counsel feels that, you know, further refinement of the definition is necessary and appropriate that's fine with us.

CHAIR VICTORINO: Okay, any more questions, Don?

COUNCILMEMBER COUCH: That was it on that one, thank you.

CHAIR VICTORINO: Anything else on the first 13?

COUNCILMEMBER COUCH: No.

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CHAIR VICTORINO: Okay, thank you. Ms. Crivello, any questions?

COUNCILMEMBER CRIVELLO: No.

CHAIR VICTORINO: Mr. Carroll, any questions? Seeing none, thank you, Mr. Carroll. Okay, moving then, I guess this is where the rubber meets the road is the infill development scenarios that are not qualifying. So we start from Scenario No. 14 if I'm correct. Okay, starting back again with Ms. Baisa?

COUNCILMEMBER BAISA: Nothing specific, Chair.

CHAIR VICTORINO: Okay. Mr. Guzman?

COUNCILMEMBER GUZMAN: So I guess I was referring back to my first question.

CHAIR VICTORINO: Original question, the 20?

COUNCILMEMBER GUZMAN: Yeah, Number 20.

CHAIR VICTORINO: Number 20.

COUNCILMEMBER GUZMAN: And can you explain why that would...is it just because of that vacant lot on the upper portion that's why it doesn't qualify?

CHAIR VICTORINO: Mr. Meyer?

MR. MEYER: Yes, sir--

COUNCILMEMBER GUZMAN: 'Cause it's not three sides.

MR. MEYER: --the vacant lot is undeveloped.

COUNCILMEMBER GUZMAN: Undeveloped, yeah. But the parcel next to it is, looks like.

CHAIR VICTORINO: Don, you want to use the pointer and try point out.

COUNCILMEMBER GUZMAN: Oh, I'm sorry. I don't have a pointer.

CHAIR VICTORINO: So that even the public can get a better understanding of what you're talking about.

COUNCILMEMBER GUZMAN: Sorry.

CHAIR VICTORINO: Show 'em where the vacant lot that...

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MR. MEYER: Sorry, the vacant lot's outlined in green.

COUNCILMEMBER GUZMAN: So this right...this portion right here.

MR. MEYER: Parcel right up there.

COUNCILMEMBER GUZMAN: Yeah, is that developed?

MR. MEYER: The parcel in question as to whether it qualifies for the exemption is this parcel outlined in red.

COUNCILMEMBER GUZMAN: Right, right, right. Oh, because this is undeveloped and this is right here, it disqualifies this because you're using the three-side rule?

MR. MEYER: You know keep in mind the ocean is undeveloped as well.

COUNCILMEMBER GUZMAN: Yeah.

MR. MEYER: So you've got two sides that are undeveloped.

COUNCILMEMBER GUZMAN: Two sides, right. Okay.

COUNCILMEMBER COUCH: Mr. Chair, on that same one?

CHAIR VICTORINO: Yeah.

MR. MEYER: This could be resolved if the Council should allow the...determine that the ocean should be considered developed.

COUNCILMEMBER GUZMAN: Yeah, see it just...you have all the way around, even up in here it's developed.

COUNCILMEMBER COUCH: Yeah, Mr. Chair, that's the...that's my concern, too.

COUNCILMEMBER GUZMAN: And even down here is developed. And because there's this one undeveloped parcel this guy is denied.

CHAIR VICTORINO: Well, again the language they use is contiguous, you know, so I think that makes it the difference. So these are the parts of the language that we may have to work on and/or, you know, again another simpler answer is 50 percent which then this would qualify if you went with 50 percent.

COUNCILMEMBER GUZMAN: Right.

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CHAIR VICTORINO: So again, there are other alternatives, but I'm glad you bringing up the questions, so hold that particular segue and you have any other questions on any of the other ones?

COUNCILMEMBER GUZMAN: It's somewhat similar to this, same type.

CHAIR VICTORINO: Yeah, okay, okay. Mr. White?

VICE-CHAIR WHITE: Thank you, Chair, and I believe the point is if these two as they were shown in the one that qualifies, if these two lots were consolidated--

CHAIR VICTORINO: Right.

VICE-CHAIR WHITE: --then --

CHAIR VICTORINO: They qualify.

VICE-CHAIR WHITE: --it qualifies.

CHAIR VICTORINO: Yeah.

VICE-CHAIR WHITE: And I think this just points out that what we're doing is really seemingly a bit unfair. If you go back to Scenario 14, please?

CHAIR VICTORINO: That's this one right here. Oh, 14.

VICE-CHAIR WHITE: No, 14. You know, again in the Scenario 1, this one is approved and this one is under this scenario not approved. Even though these are side by side lots, they're...this one is disapproved only because it's got five sides instead of four. And yet if you count it's got four out of five side facing developed land. So I don't...whatever we do, I believe we should fix, fix this and allow the same thing to happen on this lot that is happening over here, but that's just...that's one of my concerns. We seem to be boxing ourselves into a situation where we're, we're being pretty unfair between two very similar, similarly situated and similarly configured lots.

CHAIR VICTORINO: Mr. Meyer, just to add to this, again you put here 35 percent of the parcels borders is undeveloped land and because it's not a straight like this, rectangular is that one of the reasons why because of this odd shape of the, the lot itself? Because you're putting 37 percent of the parcel's border is undevelopable. In other words, you've gone with a circumference, right?

MR. MEYER: Yes, it's because of the linear footage of the different exposures. If you looked at this parcel strictly as I mentioned earlier from an azimuth basis or from an angle of what surrounds it, it would qualify. But in irregular shaped parcels you have to be, you have to be a little more fine.

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This is a pretty easy irregularly shaped parcel. Many of them aren't, little more complicated than that. Tammy, do you want to take them through the calculation here?

CHAIR VICTORINO: Yes, Ms....Tammy would you introduce yourself?

MS. YEH: Hi, I'm Tammy. I'm the civil engineer for the Central District. So for this example or scenario so basically how Paul was explaining for a rectangular shaped parcels, we don't really do the calculation we just take three of four sides. For irregular shaped parcels, we do take the perimeter, the total perimeter and as you can see the green portion which is touching that, you know, the parcel in question. That, whatever that distance is if you take the ratio of that over the total perimeter it equals 37 percent of the parcel border's undeveloped land. So that's how we're at this point doing infill exemptions. So...

CHAIR VICTORINO: Yeah, Mr. White?

VICE-CHAIR WHITE: Thank you. I think this points out how, how unfair this is because the ordinance basically says you should be using perimeter. And to Mr. Couch's earlier point, this by that calculation is less qualified than this one.

UNIDENTIFIED SPEAKER: Yes.

VICE-CHAIR WHITE: And yet this one is okay, and this one is not just because we've said administratively that development on three sides is okay, but development on four out of five sides is not. So I don't know how, I don't know how this works.

CHAIR VICTORINO: Well, can I ask you another question, Tammy? Tammy, one other question? If for say, this one was to develop, right, this lot developed?

MS. YEH: Yes.

CHAIR VICTORINO: Right. Then these guys would qualify, right?

MS. YEH: Yeah, because it's completely surrounded.

CHAIR VICTORINO: Okay, I just...okay.

MS. YEH: So I...right.

CHAIR VICTORINO: Okay, no, no, I think this is...

UNIDENTIFIED SPEAKER: ...*(inaudible)*...

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CHAIR VICTORINO: Yeah, well that's what I say, but consolidation, yeah, you know, makes the difference there. So I got the picture. I think we get the picture where there's a lot of fixing up we need to do. Okay, let's move on.

MR. MEYER: Yeah, if I might, Mr. Chair? The issues seem to revolve around whether the ocean...initially whether the ocean should be considered developed or not.

CHAIR VICTORINO: But, Mr. Meyer, there's no ocean here. See, so I mean...

MR. MEYER: Oh, I understand. I understand.

CHAIR VICTORINO: Yeah, I mean, ocean may come into play on certain lots, you know, and I'm beginning to feel and I'm maybe really working with my Members to say 50 percent because then almost all of these will then qualify and make more sense than what you're trying to do with circumferences and all this other stuff. But three sides out of four, I don't know, you know, I'm getting frustrated listening to this too, but I shouldn't. I'm sorry. I apologize

MR. MEYER: Well, the first, the first question seemed to be on an oceanfront parcel--

CHAIR VICTORINO: Yeah, but...

MR. MEYER: --that was the reason I would suggest...that could be very quickly resolved perhaps to the Council's satisfaction by considering the ocean developed. So that if you did have a single undeveloped oceanfront lot with nothing across the street, undeveloped parcel across the street, that parcel could still qualify for the exemption.

CHAIR VICTORINO: Okay, okay.

MR. MEYER: The second, this particular example, you could resolve this issue of circumference in linear footage by going back to and just saying, by angle of degrees of the land surrounding the parcel or by azimuth in other words, and that resolves Mr. Couch's issue of the relative proportion of linear footage on the frontage that he feels may result in an injustice as he put it. So--

COUNCILMEMBER COUCH: That is correct.

MR. MEYER: --that would be another way to solve it, to strictly work on angles of the surrounding land.

CHAIR VICTORINO: Okay, go to the next one.

COUNCILMEMBER COUCH: Wait, wait, wait.

CHAIR VICTORINO: I wanna go to 15, yeah, go ahead. What?

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COUNCILMEMBER COUCH: Just to throw more math or geometry at you, the green one isn't a rectangle either. Just so you know. It's a trapezoid. Rectangles have right angles. I mean, if we're gonna be picky about the law, that's not a rectangle.

CHAIR VICTORINO: And this is why I'm very concerned about using geometry in this whole picture. Okay, and that's one of the reasons I'm not a keen...you know, I mean, some people went to college for that kind of stuff. I learned geometry never perpendicular and rectangular and then you get into everything else, no. Anyhow go to 15, please. Can you go to Scenario 15?

MR. MEYER: Say it again, please?

CHAIR VICTORINO: Go to Scenario 15, please. Okay, so this one it says 66 percent of the parcel's borders is undeveloped land, okay? Here you got this side, right, all developed, right? And then you get the roadway on this side, okay we okay, right, so far? So we have almost, again if you use geometry and circumference, Mr. Couch tell me, we're gonna have most of this lot 66 percent he said is undevelopable. So this is the rest of it. This is only 33 percent? This is 66 percent?

COUNCILMEMBER COUCH: Yeah, yeah, yeah.

CHAIR VICTORINO: Okay, so what he's saying here because this is undeveloped, if one of these lots were to develop then all of a sudden those numbers would change, right, Mr. Meyer?

MR. MEYER: Yes, that's correct.

CHAIR VICTORINO: Okay, because of this undeveloped property here.

MR. MEYER: That's correct.

CHAIR VICTORINO: Yeah, okay just wanted because, sure didn't look like, but okay.

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR VICTORINO: Yeah. go ahead.

MR. MEYER: Yeah, this red parcel is surrounded on almost all three sides by undeveloped land.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR VICTORINO: Yeah, go ahead.

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COUNCILMEMBER COUCH: As I believe lawyers are want of saying is the reasonable man test. Any reasonable person can see that this is developed all around here, that that would be infill. I mean...

CHAIR VICTORINO: I was going agree with that, but you know, I wanted Mr. Meyer...

COUNCILMEMBER COUCH: And I don't know how to put that in language, you know 'cause we have to put it in language in the ordinance. But correct me if I'm wrong, Mr. Meyer, I mean if you look at that--

CHAIR VICTORINO: Develop, develop.

COUNCILMEMBER COUCH: --that's infill.

MR. MEYER: Generally accepted in terms of other jurisdictions where this is codified and legislated and approved and very well-defined, this would not...this would be incur...this would be an encroachment into a green field area, an area that is currently undeveloped, is green, might be available for conservation, for park, whatever. But it would be regarded as an encroachment in most of the research we've done as opposed to what you're saying.

COUNCILMEMBER COUCH: Okay, thank you, Chair.

CHAIR VICTORINO: Okay. All right, Ms. Crivello, do you have any questions?

COUNCILMEMBER CRIVELLO: No, thank you.

CHAIR VICTORINO: Mr. Carroll? Okay, seeing none, go onto 16, and this is our first Ag District scenario, 16 the next one.

MR. MEYER: Ms. Yeh would like to make a comment.

MS. YEH: So based on what you just said just keep in mind like what we proposed was a minimum of 75 percent of the parcels or combined parcels' perimeter is bordered by already developed land. So I understand what you're saying like it visually looks like it's surrounded but technically, you know, it's bordered by, as you can see the green which is the Residential Zone District undeveloped land. So across the street it isn't, the actual, you know, what it's touching isn't. So that's how come we...that's why we considered this not infill. So just making a comment.

CHAIR VICTORINO: Yes, Mr. Couch?

COUNCILMEMBER COUCH: And, Mr. Chair --

CHAIR VICTORINO: Go ahead.

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COUNCILMEMBER COUCH: --no disrespect at all to the Department. I understand they're stuck with a really hard task. Is this is just in general the frustrations. It has nothing to do with the Department, it's just trying to codify something that looks fairly, I mean like I said to the reasonable man or woman that that is infill. But that's totally up to the body as how they wanna define it.

CHAIR VICTORINO: Well again, there's more work to be done, but moving right along to Scenario 16 which is our first Ag parcel. Okay, questions? ...*(inaudible)*... yeah?

COUNCILMEMBER COUCH: Again, Mr. Chair, that's, again obviously that's part of a development even though it's all Ag subdivisions, that's...I don't know.

VICE-CHAIR WHITE: No, these are not Ag lots. They're too small, this is a house here.

COUNCILMEMBER COUCH: So then even...it's even more obvious that...

MR. MEYER: That doesn't mean, it doesn't mean, keep in mind that it couldn't be developed. You could develop a home and an ohana on that parcel, it just could not be subdivided.

COUNCILMEMBER COUCH: Right, understood.

VICE-CHAIR WHITE: Okay. Do you have a sense of what size this lot is because it looks like this is...

MR. MEYER: Tammy, do you recall the size of that lot?

VICE-CHAIR WHITE: It's just the house...this doesn't even look like this would be subdividable.

MR. MEYER: It looks like that would be say between 8,000 and 10,000 feet. Probably would not be subdividable.

CHAIR VICTORINO: This one right here?

VICE-CHAIR WHITE: Yeah.

MR. MEYER: Yeah. Just by eyeball looking at the size of the homes.

VICE-CHAIR WHITE: Yeah, it looks as though all these could be developed with a single-family home and an ohana if that was allowed.

CHAIR VICTORINO: All right, moving right along. The next one I think is another very interesting one, Number 17.

COUNCILMEMBER COUCH: Yeah.

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CHAIR VICTORINO: I knew Mr. Couch was gonna jump on that one. Okay, Number 17...

COUNCILMEMBER COUCH: ...*(inaudible)*... Thank you.

CHAIR VICTORINO: Yeah 17, okay, here we go. Again, this is the undevelopable lot, right?

MR. MEYER: Again, this lot...that's correct, it's surrounded by more than 75, more than 75 percent by undeveloped land. Therefore, it could not be subdivided. You'll notice this again, these are fairly small lots relative to the size of the homes. So I suspect they're probably 6,000 to 8,000 square feet per lot.

CHAIR VICTORINO: But again, this is a subdivision, right?

MR. MEYER: That's correct.

CHAIR VICTORINO: Okay. Okay, so, all right.

MS. YEH: Sorry, just one more comment. So for lot sizes I mean I didn't...these scenarios really didn't take into account that, it's just visual representation of what we kinda come across. So yes, maybe some of them might look a little small in the sense of maybe, you know, it can't be subdivided but just keep in mind, this is just visualize not...don't get too I guess hung up on the size or stuff like that, so just...

VICE-CHAIR WHITE: We get hung up on everything.

CHAIR VICTORINO: I was gonna say we got a hung up group over here, you know, Tammy, thank you. I mean, I really appreciate what you're trying to do here, and you know teaching Mr. Couch and Mr. Victorino sometimes is really difficult. So thank you very much. And Mr. White qualifies in that respect too. Go onto 18. Go onto 18, please. Next one, 18. Okay, so here's the undevelopable lot, right, right here. All ag lots around it, right?

MR. MEYER: That's correct.

CHAIR VICTORINO: Okay, we're all okay with that one?

VICE-CHAIR WHITE: Yeah.

CHAIR VICTORINO: Okay then.

COUNCILMEMBER COUCH: Well.

VICE-CHAIR WHITE: Chair?

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CHAIR VICTORINO: Mr. White then Mr. Couch, because one said yes and one said no. Go ahead, Mr. White?

VICE-CHAIR WHITE: I have no problem with this not being subdividable because there are...this is clearly ag-sized lot. It looks like a two-acre lot.

CHAIR VICTORINO: Two acres, yeah.

VICE-CHAIR WHITE: So I'm just fine with this because they're not saying you can't build. They're saying you can build one house and if an ohana is allowed, you can build an ohana, but this I don't have a problem with.

CHAIR VICTORINO: Thank you. Counterpoint, Mr. Couch?

COUNCILMEMBER COUCH: I understand that, but just to...let's go with what if those were all five-acre lots?

CHAIR VICTORINO: But they're not.

COUNCILMEMBER COUCH: No, I understand that. But the same...the idea is the same.

CHAIR VICTORINO: Let's try to stick onto the subject matter. If there were five lots, it's a different...*(inaudible)*...

COUNCILMEMBER COUCH: If they're two-acre lots you can't subdivide anyway.

CHAIR VICTORINO: Thank you. Thank you. Okay, moving right along.

COUNCILMEMBER COUCH: So...all right.

CHAIR VICTORINO: Thank you. Let's move onto 19. I mean, I don't want to get hung up on something about five, it's we know. Okay, here we go guys. All right, are we okay with this undivided, undevelopable, undividable lot right here? I can't even say it.

MR. MEYER: These are Agricultural lots.

CHAIR VICTORINO: All...*(inaudible)*...

COUNCILMEMBER COUCH: Again, we're talking apples and oranges, Mr. Chair, because if it's two acres you can't subdivide so...

CHAIR VICTORINO: Well, they brought it forward so I wanted to show the public so that somebody who has a two-acre will understand they can't subdivide it.

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MS. YEH: Sorry, so Scenario 18--

CHAIR VICTORINO: Yeah.

MS. YEH: --is five acres. This one is two.

COUNCILMEMBER COUCH: Oh okay so then back to Scenario 18.

MS. YEH: Eighteen?

COUNCILMEMBER COUCH: If they're all five acres.

CHAIR VICTORINO: Okay.

MS. YEH: Yes, those are five acres.

COUNCILMEMBER COUCH: Then those should be able to subdivide.

MS. YEH: Correct.

COUNCILMEMBER COUCH: According to the sliding scale, right?

CHAIR VICTORINO: But not develop...

VICE-CHAIR WHITE: No, depends...not if the...not if they were...

MR. MEYER: They just wouldn't qualify for the exemption from "Show Me the Water".

COUNCILMEMBER COUCH: That's the big scenario we have with our family plots Upcountry is, you know --

CHAIR VICTORINO: No more water.

COUNCILMEMBER COUCH: --if now...okay. I think that's unfair.

MR. MEYER: Yeah, Council Couch, "Show Me the Water" doesn't have any impact on the Ag subdivision size or rule. It has no bearing whatsoever on whether this Ag lots could be subdivided. This is an exemption from "Show Me the Water" which is a separate bill, separate ordinance.

COUNCILMEMBER COUCH: Understood. So you're saying that that family lot there can't be subdivided to give to the heirs because it's in an Ag land. Whereas, if that were Residential it would have been fine. It's obvious that everything around it is homes. So you want to do a family subdivision you can't unless there's a "reliable", "long-term reliable supply of water".

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MR. MEYER: It doesn't apply. "Show Me the Water" does not apply Upcountry but it applies elsewhere. And it was Council's determination that they wanted to have people in cases of subdivisions show the water, show availability of water. And if the Council wants to further widen the exemption it created it certainly could do so.

CHAIR VICTORINO: And it says right here, by the way none of us saw five acres right there. The next one shows two acres. They're actually showing us that and I'm just not picking up on it, sorry. Moving on. Let's move on, we looked at 19, I think we agreed with 19, 20? Mr. Guzman? We come back to you again.

COUNCILMEMBER GUZMAN: I think Mr. White pointed it out, you know, it's...and Mr. Couch as well and the reasonable person standard because I believe on Scenario Number 9 I believe or Number 8?

CHAIR VICTORINO: Number 8.

COUNCILMEMBER GUZMAN: Right, where it was consolidated.

CHAIR VICTORINO: Right.

COUNCILMEMBER GUZMAN: It's basically the same, same scenario but the one is consolidated. You know, they're surrounded by developed parcels and I guess the solution would probably be to treat the ocean as --

CHAIR VICTORINO: Developable.

COUNCILMEMBER GUZMAN: --developable.

CHAIR VICTORINO: Yeah. The oceanfront as developable.

COUNCILMEMBER GUZMAN: Right.

CHAIR VICTORINO: 'Cause remember we decided in the last meeting not to.

COUNCILMEMBER GUZMAN: Right.

CHAIR VICTORINO: You know so we can always amend.

COUNCILMEMBER GUZMAN: But I don't know, I don't know.

CHAIR VICTORINO: That and the other thing and I keep bringing this up, if this was 50 percent it would qualify.

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COUNCILMEMBER GUZMAN: Oh that, that could possibly do it too.

CHAIR VICTORINO: Yeah, that could be another possibility.

COUNCILMEMBER GUZMAN: Yeah, that's another possibility.

CHAIR VICTORINO: And you know, and that may simplify a lot of this inequities.

COUNCILMEMBER GUZMAN: Right.

CHAIR VICTORINO: You know, so something to consider. I mean, I understand the rest of the world use 75 percent, but there becomes a point where we may have to consider other methods and including maybe 50 percent. So let's, you know, let's, you know, we're gonna think about it and move on to the next slide which is 21. And again, Mr. Couch's favorite one right here.

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: Go ahead, Mr. Couch.

COUNCILMEMBER COUCH: And Mr. Chair, this is, this just points out your last comments, that's real obvious that that is infill. Yeah, you know, sorry to...

CHAIR VICTORINO: Especially if you use 50 percent. I mean...

COUNCILMEMBER COUCH: Right. So...

CHAIR VICTORINO: But again, because they're using the two sides instead of the four...you know, three sides.

COUNCILMEMBER COUCH: And it also, it is not a rectangle.

CHAIR VICTORINO: You got it. Thank you. Okay, just so long we're clear on that. Any other questions on slide 21, on Scenario 21? Seeing none, let's go onto Scenario 22. We only got a few more so, and then that way at least the public and us are pretty good. So again, this one wouldn't qualify because this side, the ocean side is not...is now considered undevelopable and this side is touching adjacent and undeveloped lot. Is that correct?

MR. MEYER: That's correct.

CHAIR VICTORINO: Even though we pretty much, you know, man we touching and, you know, it's I don't see how...yeah, okay here we go again. I think that's another one we wanna really look at because again, including the ocean fine, if that's the only way to solve it but just a...okay, anyhow we'll go back to that one, 22 and we'll keep that on the radar. Let's go onto 23. Oh, this is...

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UNIDENTIFIED SPEAKER: . . .(*inaudible*). . .

CHAIR VICTORINO: Okay, go ahead, Mr. Couch, I know you was going after that one.

COUNCILMEMBER COUCH: No, that one actually is good.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: I mean you're...would...you would be moving, encroaching into the ag area.

CHAIR VICTORINO: Right here.

COUNCILMEMBER COUCH: Obvious ag area so I can understand that one. That's a valid...

CHAIR VICTORINO: Any questions on 23? Are we okay with 23? Okay and the last one is 24, and this one really got to me because it was 26 percent of the parcel border is undevelopable land. Phew, okay.

MR. MEYER: Is it clear the borders with the Conservation land?

CHAIR VICTORINO: Here, right?

MR. MEYER: That side and a little bit on the other side.

CHAIR VICTORINO: A little bit on this side.

MR. MEYER: That's correct.

CHAIR VICTORINO: But 26 percent?

MR. MEYER: Yes, sir.

CHAIR VICTORINO: Not 24 percent, but 26 percent? Okay, I think I got that one too.

COUNCILMEMBER COUCH: And, Mr. Chair, too, it's...I mean, it's rather obvious that this is a subdivision.

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER COUCH: Here's the entrance into one. And I believe it looks like there's...

CHAIR VICTORINO: Yeah, this is all here, yeah.

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COUNCILMEMBER COUCH: So I mean, whatever.

CHAIR VICTORINO: Yeah, okay. And the final one, Number 25. Whoop, this has been an interesting morning. Okay. Okay, go ahead, Mr. White?

VICE-CHAIR WHITE: You know, I was just noticing that the parcels, the parcel in Scenario 24?

CHAIR VICTORINO: Yes.

VICE-CHAIR WHITE: Is the same parcel as Scenario 12.

CHAIR VICTORINO: Yes.

VICE-CHAIR WHITE: And on 24, this red parcel is disqualified, but on 12, it's qualified.

MR. MEYER: That was a test. They're the same slide. We simply relabeled the land from Conservation to Park in the prior slide.

VICE-CHAIR WHITE: Okay, so that was to make a point?

MR. MEYER: Good catch.

CHAIR VICTORINO: Park District, right? Instead of Conservation? Yeah, so now maybe we gotta change Conservation. I don't know. Okay, any questions on Slide No. 25?

COUNCILMEMBER GUZMAN: What's the point?

UNIDENTIFIED SPEAKER: It's the same.

CHAIR VICTORINO: One has Conservation and the other one used Park.

VICE-CHAIR WHITE: A distinction without a difference.

CHAIR VICTORINO: I'm not...that's kinda...okay.

COUNCILMEMBER COUCH: And 25 is the same, Mr. Chair.

CHAIR VICTORINO: Yes.

COUNCILMEMBER COUCH: I mean it's obviously that that's...

CHAIR VICTORINO: Yes, yes. Okay. You know, if it's all right with the Committee now I would like to, you know, raise the screen and I think we all know particularly which ones we want to focus

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in on and some of the ideas we wanted. So this meeting will now stand in recess for three minutes. . . .(gavel). . .

RECESS: 10:12 a.m.

RECONVENE: 10:17 a.m.

CHAIR VICTORINO: . . .(gavel). . . Water Resources Committee will convene. Because of time constraints we're gonna take our ten-minute morning break and reconvene at 10:25. This meeting is in recess. . . .(gavel). . .

RECESS: 10:17 a.m.

RECONVENE: 10:27 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resource Committee, July 30, 2014 will reconvene. Let me start off this portion before we get into our discussion is I would like to thank the Department, especially you, Tammy, for those wonderful scenarios. I mean, you know, a picture's worth a thousand words and I think that really, really helped us an awful lot. I think we still have some concerns and questions and maybe even some changes and we'll be discussing that further, but Paul and Tammy, and of course David 'cause under your direction thank you very, very much because I think we, the Members, as well as the public had a opportunity to see how you're determining infill. And you know, it isn't just picking something out of the sky and saying, hey, this is what we're gonna consider infill. So thank you, thank you very, very much. What I would like us to focus in on is a number of different issues. One would be urban growth areas. I think that's important to put that into the scenario. Number two, again I still am a real proponent of two sides of 50 percent. And again, the Department wants three sides or 75 percent and as you can see if we had 50 percent or two sides the vast majority of these scenarios that were not restricted under other restrictions such as ag lots two acres or less and other issues, there would be no challenge. You know, it would be pretty easy to say yes to or no to. The other part is whether we wanna consider oceanfront as one side or un...or developed land. I think that opens Pandora's Box especially in South and West Maui and building accordingly. So again, another area of concern. And finally, again, circumferences and geometrics and whether they're rectangular or octagon or circles or whatever the lot shape is really has sometimes a real disadvantage for many and advantage to some and really almost in the same case scenario. And as we had shown here, if you combine two lots it becomes subdividable. If they stay separate, they're not subdividable. And so I think a number of questions were brought up and I think it's now time to get specific discussion in what language we would like to because I would really after today try to come back with a bill that we can conclude and move on. We spent...you know for something that I was told would be fairly simple, we spent three meetings and you know, I hate to think we're gonna have to spend a fourth meeting, but I think today with the pictures that were provided, the scenarios that were provided to us I think we have a much better understanding on what the Department's been doing and what we need to do to make their job a little simpler. Again, like I...I'll remind everybody there is no perfect law, no perfect ordinance,

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no perfect policy. We've gotta put something together to give them an opportunity to reduce the amount of appeals, but more importantly so the public truly understands what's going on as far as the word, "infill". Okay, so with that I will open the floor for questions and discussion. And Mr. Couch is just about jumping off of his chair. His hand has gone up five times and I haven't finished my sentence. Mr. Couch, I'll start with you and then I'll work my way across the room. Everybody will have a chance.

COUNCILMEMBER COUCH: I'm just going like this, sorry.

CHAIR VICTORINO: Yeah, I know you're chomping at the bit. Go ahead, mister...

COUNCILMEMBER COUCH: Mr. Chair, I wanna thank the Department as well for actually showing how difficult that kind of a decision is to make. One of the things that we've done with the Maui Island Plan and are continuing on with the community plans is we've drawn Urban Growth and Rural Growth Boundaries. You mentioned it in your comments just now. My suggestion might be to say if it's inside the Urban Growth Boundary or the Rural Growth Boundary it is considered infill because we're saying this is where we want the development to happen. Now my only concern would be what would the Water Department's comments on that be? I know I kinda brought it up to Mr. Taylor and he had some concerns and questions. So if we could hear from him, I would appreciate it. ...*(inaudible)*...

CHAIR VICTORINO: I don't think so. I don't think...he hasn't been a part of the conversation all morning, so I don't know. I'll defer to Mr. Meyer. No, go ahead, Mr. Taylor, if you would like to take the table, please? ...*(inaudible)*...

COUNCILMEMBER COUCH: I mean that would fix this whole problem real quick.

CHAIR VICTORINO: Okay, Mr. Taylor?

MR. TAYLOR: Thank you, Mr. Chair and Mr. Couch. Did I just say something wrong?

CHAIR VICTORINO: No...

MR. TAYLOR: Oh, Chair and Couch, I got that, okay.

CHAIR VICTORINO: That's okay, you hurt my feelings, but that's okay, moving right along.

MR. MEYER: Very good.

MR. TAYLOR: Little slow today. The original "Show Me the Water" Bill was not written by this Department. We've had to interpret it. If you didn't know any of the history of it and you just read it, you would say what it is is it rations water. It basically says, the utility has only so much water so we'll allow potential users fitting certain conditions to have access and people who don't fit those conditions not to have that access. I mean, that's what it does regardless of what

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its intentions were. So these exemptions are really just implementing the Council's policy of which group do you want people in, people who get service by the County or people who don't. As we've mentioned before, the more people who get service by the County, the greater our users for our infrastructure, the more risk that when there's shortages that more people are affected. So there is no easy answer to, you know, how much water we have, it's these ups and downs of risks that we've talked about. If you expand the exemptions to include everyone in the Urban or Rural Growth Boundaries obviously up to ten lots or something there will obviously be more people who are in the get service than there are now. If that is the Council's intention we will certainly implement that. But again, we didn't develop this bill to try to accomplish anything. It was drafted, you know by previous Council members and by this body. We are simply the implementers of it.

COUNCILMEMBER COUCH: So, thank you, Mr. Chair. If I may follow up?

CHAIR VICTORINO: Yes you may.

COUNCILMEMBER COUCH: I appreciate those comments. If we go into this ten-lot or ten-subdivision scenario, say one of those lots which is subdividable and meets any criteria that we come up with was designated Hotel and they wanted to subdivide that. So it's two...it is now two lots and you wanna put a hotel on there and uses a million gallons a day, that doesn't, that isn't precluded from this "Show Me the Water", right? 'Cause they can throw the hotel on there or whatever commercial entity on there...

MR. TAYLOR: Let me make your example simpler that I can answer.

COUNCILMEMBER COUCH: Okay.

MR. TAYLOR: Let's say it's not a subdivision. Let's say somebody owns a lot and they don't need a subdivision, they just need a building permit for an office building, for a hotel. "Show Me the Water" does not limit that. It doesn't limit the volume of water for any purpose. So if you're on one side of the street and wanna do an 11-lot subdivision for houses we'll say, no. But if on the other side of the street there is a 20-acre parcel and the guy wants to put a 20-story building that uses a million gallons a day, "Show Me the Water" does not limit that. It only limits your 11-lot subdivision. So it's limiting the act of subdivision or some multi-family things. It doesn't limit volume of water for individual applications.

COUNCILMEMBER COUCH: And, Mr. Chair, that just blows a big, huge hole in this whole thing.

CHAIR VICTORINO: Well, first of all I, you know, I do agree with his statement, but obviously there is a lot of other permits and other processes that have to go through and water is just one of many and, you know, and I can guarantee you that ain't going work.

COUNCILMEMBER COUCH: Of course.

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CHAIR VICTORINO: So that's...again, we can create scenarios till we're all blue in the face, but let's get real what we're trying to do today is infill. Okay, and infill in this definition really, really, really was residential not so much commercial although it may be a part of. But whenever you start getting into commercial entities, zoning and all kinds of other things come into play versus what we are doing here. So I think, you know, we're gonna put another whole dynamic on it if we start looking at oh yeah, you can build hotels and no, that's not true and it will be a very difficult process to do. So, but it's not impossible. Nothing's impossible in this world. However, can we focus on infill and residential infill? I think that was what we were here for and now we've gone into another dynamics which seems to happen in this place.

COUNCILMEMBER COUCH: It's fluid like water.

CHAIR VICTORINO: Yeah, thank you, Mr. Couch.

COUNCILMEMBER COUCH: Mr. Chair? Um...

CHAIR VICTORINO: Mr. White, I'll go to you. No, his turn now.

COUNCILMEMBER COUCH: Okay, thank you.

VICE-CHAIR WHITE: No...*(inaudible)*...

COUNCILMEMBER COUCH: Just one last comment if he said, if he yielded the floor. I think we should seriously consider the Urban Growth Boundary as a definition that will end all of this and we can move on. Thank you.

CHAIR VICTORINO: Okay, Mr. Couch? I mean, Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. I'd like to hear more from the Department regarding just using the Urban Growth Boundaries as the guide, whether...and what kind of challenge does that create?

CHAIR VICTORINO: Mr. Taylor?

VICE-CHAIR WHITE: From a supply standpoint.

MR. TAYLOR: From a...back in March of this year we put on our last of our major presentations right before budget where we gave some pretty detailed supply/demand forecasts for the next decade or so. Those were based on Maui Island Plan growth projects. We showed...using the words, reliability and risk and those kinds of things what our projections are for water supply versus water demand if certain decisions are made. Obviously if right now subdivisions are probably not going as fast as private landowners would like because of the "Show Me the Water" Bill. They go to DSA and they're told right away you know, you're not gonna make it. I don't even think they apply. If we expand the definition of infill to include any ten-lot subdivision in the

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Urban Growth Boundaries I think obviously a lot more people who haven't been applying would come in immediately and say, look I'm ready to go and we would have to accept those. So the rate of growth of those subdivisions will certainly be more than it would be otherwise. How many people are sitting out because of this, you know, we have no way to know. I think we anecdotally we know a number of subdividers don't come in because they know they'll be rejected. How many...if all of a sudden we freed that up and said basically everybody with a ten-lot subdivision in the Urban Growth Boundary is gonna be exempt from "Show Me the Water", we would find out how much pent up demand there is for those kind of projects. And so I'll just go back to if you'd like another presentation in the future of our projected supply versus demand, how much growth we can handle, what the repercussions will be we could do that. It would basically just be going through what we went in that March 2014 presentation. I think that's when we showed how much growth we can handle and what the repercussions would be of more growth than that.

VICE-CHAIR WHITE: I think...I guess the question is whether or not with respect to your projections, my recollection was that your projections were based on the Maui Island Plan within the Growth Boundaries. So I guess I'm not sure whether or not that was tied to any...to the application of this specific law or not.

MR. TAYLOR: Actually what they were based on, if you go back to the Maui Island Plan, this is just getting to the limits of my knowledge on it, we based our projections on the population growth estimates not the actual size of the Urban Growth Boundaries. The population estimates my understanding came out of the socio-economic studies that Long Range Planning subcontracted out to some socio-economic consulting firm of some sort. I'm not exactly sure how those population growth estimates were developed but we use those numbers saying this is what it could be for the areas and my understanding is those are overall population, not necessarily population just in the Urban Growth Boundaries.

VICE-CHAIR WHITE: Okay. Thank you, Chair.

CHAIR VICTORINO: Thank you. Mr. Guzman? You okay? Ms. Baisa?

COUNCILMEMBER BAISA: As we reviewed those scenarios several things came up and of course one was the 50 percent, another was using the ocean as developed. I'd like to hear what the Water Department has to say about that?

CHAIR VICTORINO: Mr. Taylor or Mr. Meyer, whoever would like take that?

MR. MEYER: Thank you. I think we said before the question of 50 percent would from our perspective and from our research would do some violence to the definition of infill. Infill is developed...is development of land that is in effect surrounded by existing developed property or nearly so and which has got all the urban services it needs for its higher and better use. When you, when you allow 50 percent of a border that does allow incursion or encroachment into previously undeveloped property. It's a fresh footprint in the vernacular, in the way most, most

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cities and counties look at it, and that's something that is not infill. When you allow development of into previously undeveloped land in effect it's a new footprint. The second issue as to whether the ocean...it's a unique problem here on Maui and if you look at areas like in particular Councilman Couch's areas like Kihei, some areas of West Maui, but Keawakapu for an example, those are oceanfront lots, there's no beach park on the front end and I think it would be from my perspective, it would be reasonable to assume that that oceanfront should not be a limiting factor as far as undeveloped area. Because it clearly I think those areas, those residential areas were developed with the intent of having development on the oceanfront. And I think that was the intention of for example, along Halama Street or Keawakapu Beach those lots were developed with the intent of being oceanfront lots. So I think that might be a reasonable interpretation. Beach park however, Conservation land that sort of thing, those are clearly hard boundaries on development and I think those are differentiable from oceanfront. Is it helpful?

COUNCILMEMBER BAISA: Yes, very much. Thank you very much. Thank you, Chair.

CHAIR VICTORINO: You're welcome. Mr. Carroll?

COUNCILMEMBER CARROLL: You know as we've been looking and studying all of these, yeah? And we're doing the best we can to make it easier for our people to proceed when they need to do something when it's not really necessary for us to make them go through the whole process. I think we're really close to it. I'd rather see us approve what we have right now than do nothing. At least we know, we'll be helping most of the people. If we can fine tune it some more, fine. But I think we're...I think what we have is pretty darn good. Thank you, Chair.

CHAIR VICTORINO: Thank you, Mr. Carroll. Ms. Crivello?

COUNCILMEMBER CRIVELLO: I'm just thinking that the 75 percent may be kinda too much as far as the percentage of the parcels and I think at one point you talked about 50 percent, Chair? But I think that's a more fair approach especially for the small guy who wants to subdivide for his family or what have you.

CHAIR VICTORINO: Thank you and I agree with that wholeheartedly and again as Ms. Robbins brought up there is some testimony saying to that extent that the small guy would be the one that would be hurt, and I believe a lotta stuff we do, the little guy gets hurt more than somebody who's big and a big developer. So...but going here I agree with Mr. Couch about the Urban Boundaries. You want Urban and Rural or just Urban? Urban and Rural, and I would still like to change the 75 and 3 sides to 50 and 2 sides. I believe that is a fair and more equitable way leaving oceanfront out, I know that's not going be a scenario as developed land and in these kinds of issues. That will cover most of your questions, Mr. Guzman, and your questions, Mr. Couch and Mr. White. I mean, I think it covers most of it. Again, you know, Department, one of the things I'd like to do is get something out today ...*(inaudible)*...'cause we have chance to review it and as a full Council, but more importantly put a, you know, a three-year or two-year review so that in two or three years we come back and review it. I like putting some kind of clause like that in all these new or revised statutes or revised ordinances so that we really

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whether I'm here or not or Mr. Guzman is here or whoever is here, in two years whatever sitting Council is here will take some time to review it. Is it working effectively? Is it doing what it was intended to do or is it not and do we have to change it? So, Mr. Taylor, you're looking at me with all that gleam in your eyes so I know you have something you'd really like to get off your chest so please go ahead.

MR. TAYLOR: Thank you, Mr. Chair. Deputy and I were just talking. If the Council is thinking seriously about the 50 percent versus 75 as per Member Crivello's discussion that you would help the small guy, what if you split it and said, 50 percent up to a 3-lot subdivision and anything bigger than 3 back to the 75? You know something like that would allow some help for the little guy but still the larger subdivisions would still have the 75 percent.

CHAIR VICTORINO: What if we say, five? Five, up to the five lots?

MR. TAYLOR: No, I'm just throwing out a template and--

CHAIR VICTORINO: Yeah, yeah, no, no.

MR. TAYLOR: --and I'm not going to argue with you about the number.

CHAIR VICTORINO: Because we went up to ten lots. No, no and the reason I'm saying that is we went up to the ten lots, right as far as our revision on "Show Me the Water"? Right, up to ten dwellings, excuse me ten dwellings, okay ten dwellings, okay. So you're saying five...I mean, three lots maximum?

MR. TAYLOR: That is a just a suggestion we just came up with.

CHAIR VICTORINO: No, no, no, and we're open to ideas, you know, I mean...

MR. TAYLOR: And that way it would help you know somebody who's got two kids they take their one lot they can subdivide it into three, one for each kid, but anything more than that, you know, you'd be drawing an arbitrary line of when are you getting away from family and into developer? You know, and that's why I just brought three as a, you know, a random number.

CHAIR VICTORINO: Interesting. No, no I mean that's what this is all about let's vent it out before we, you know, put it into words. Any comments on that? Any comments on that? Ms. Baisa, I can see you're looking at me like you wanna say something so I'm gonna call on you.

COUNCILMEMBER BAISA: Well, you know, one of the things we did hear was it's unfair for the little guy.

CHAIR VICTORINO: Yeah.

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COUNCILMEMBER BAISA: And we wanna be careful because we're not here to hurt little guys and we've done that, and we've had to look back and retract and redo and whatever. So I think bearing that in mind, you know, let's kinda take a look at that effect on the little guy and if there's a way to mitigate it, and I'm hearing some suggestions that intrigue me. And I'm kinda like you I like...*(inaudible)*...cut 'em in half.

CHAIR VICTORINO: Go with five and yeah, five dwellings.

COUNCILMEMBER BAISA: I also like the idea, your idea of review. I think a lotta the things we do we do and then we try so hard to defend them. I mean really the better thing is to come back and say, hey how did this work? You know like everything else that we've passed how does it work? And if it doesn't work then fix it.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: So I like that idea. I'm intrigued. Thank you.

CHAIR VICTORINO: Okay, well that's not very difficult to add to the verbiage. I feel like we're getting close but I mean I see heads shaking one way and somebody looking at me really story-eyed like maybe I wanna add something else. If you do, now's the time to speak up. Okay, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. You mentioned in your comments just now you like the Rural and Urban Growth Boundaries. If you do that then it doesn't matter what the percentage is 'cause it's...it basically says this is inside the Maui Island Plan Rural Growth Boundaries, ten lots, it's good.

CHAIR VICTORINO: Ten dwellings. Keep that in mind, ten dwellings.

COUNCILMEMBER COUCH: Ten dwellings, correct, correct.

CHAIR VICTORINO: So it's very important we...*(inaudible)*...

COUNCILMEMBER COUCH: So you don't need a percentage if it's inside the Urban Growth Boundaries.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: If you decide not to do the Urban Growth Boundaries, then I would support the 50 percent for five.

CHAIR VICTORINO: For five?

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COUNCILMEMBER COUCH: Yeah, that kinda thing, but if you decide...I would prefer the Urban Growth and Rural Growth Boundaries.

CHAIR VICTORINO: Well see and my concern with yours is the Urban one I wasn't too, I wasn't too objective to that. I mean I was okay with it I should say. The Rural is the one I started to question because again, we're in a flux right now of changing some to from Ag to Rural and some who wanna stay Ag and so I'm afraid if we start throwing Ag or Rural that some of that might get sucked up in some areas that we may not want to. Urban is pretty clear cut. If you're in the Urban Growth Boundaries, okay I got that one. Anybody have a question as far as first of all, staying in the Urban Growth Boundaries as our first--oh, here we go. We got Corporation...wait I didn't get to the end yet. I didn't make any definitive...I'm just asking. Go ahead, Mr. Kushi, you raised your hand.

MR. KUSHI: Yeah, my concern about the definition or use of Urban Growth Boundaries.

CHAIR VICTORINO: Yes?

MR. KUSHI: I'm not too familiar with it. I know Ms. Baisa is working on it, but are there specific maps? Delineating by TMK?

COUNCILMEMBER COUCH: Yes.

COUNCILMEMBER BAISA: Right, right.

MR. KUSHI: Okay. And this per part of the General Plan?

COUNCILMEMBER COUCH: Yes.

COUNCILMEMBER BAISA: Yes.

MR. KUSHI: But then Urban Growth Boundaries...so some parcels are probably zoned Ag right now, but they can be permitted to rezone to Rural? Okay. But the zoning still stays?

COUNCILMEMBER COUCH: Yes.

MR. KUSHI: Okay. So really your limitation in this proposed bill about Ag is out. You understand that?

CHAIR VICTORINO: Thank you for that clarification. Mr. Couch?

COUNCILMEMBER COUCH: Thank you and that was part of the Urban Growth Boundaries. Anything inside the Urban Growth Boundaries ultimately depending upon the community plan was allowed to be become Urban.

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MR. KUSHI: They would still have to go for rezoning.

COUNCILMEMBER COUCH: Of course.

MR. KUSHI: Right. But if you use that definition or these maps it don't have to go to rezoning to get a pass on the infill.

COUNCILMEMBER COUCH: That's right because it's, you know, if they change it from a 10-acre to two, 5-acres or three, 3-acre lots that's fine.

MR. KUSHI: Yeah well, my concern is from a practical standpoint. Can the Department handle these maps and coordinate, you know, via sketches?

COUNCILMEMBER COUCH: And it's my understanding, Mr. Chair, that the Department said that that they based that on the population growth which was what we based the Urban Growth Boundaries on.

CHAIR VICTORINO: Okay and I think, you know, we'll ask...wait hang on, Department, hang on. Okay, hang on. We'll have the Department speak to that, but okay, so can Mr. Meyer or Mr. Taylor, whoever wants to respond to that last deliberation?

MR. TAYLOR: I'm not certain that the Urban Growth Boundary maps are drawn so precisely that they follow actual TMK lines. You know, if they do and they're very clear then we could use that, but if they're, you know, kinda like how the older maps are, you know, we've all seen those with sort of wide boundaries that you really can't tell which TMK is in, which is out. And we have this whole other problem is that we can't read that maps to those...to that precision. So that becomes just a practical problem that I'm not...Mr. Couch, you're probably more familiar with the accuracy of those maps than I am and I don't know the answer.

COUNCILMEMBER COUCH: Extremely familiar.

MR. TAYLOR: So I guess that is my question is do they follow actual TMKs where you can look at a TMK kind of near the border and say, yes it's in and no, it's not?

COUNCILMEMBER COUCH: I understand and for the most part they do, but there are some larger Ag lots that get sliced in half especially in North Kihei where they intend on subdividing that Ag lot into Urban versus Ag. So there are some that come right, cut right through a large, large Ag lot.

MR. TAYLOR: The other issue that we would have with, you know, just opening it up, you know, dropping it to 50 percent or dropping anything within the Urban Growth Boundary, right now and for a number of years since this bill was passed, this has...the "Show Me the Water" Bill has probably limited how many people have come in for ten-lot subdivisions. So if there is a large queue of people who are ready to come in this could open the floodgates, okay, and all of a sudden we can get a lot of applicants very, very quickly in South and Central Maui. I know we

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don't like to expand these things, but I need to expand it into budget a little bit. We...the Water System Development Fee was cut in half. Okay, so if all of a sudden just imagine all these things happening at the same time. We've got this main line extension idea that hasn't really been vetted out yet. We don't know how much that's gonna cost. We cut the 5/8-inch meter fees in half. So if all of a sudden we free this up and there's a run on water meters, they go out very quickly at a very low cost. While everyone says let's get 'em while the gettings good, we could find ourselves...that our projections of growth just rather than following our roughly, you know, 1½ percent a year, we get 10 percent in one year because everybody just runs in right now. This could really affect our ability to support all of these meters if the projections turn out not to be true because we're changing the rules of the game mid-flow. So that is a concern I would have is we may just not be able to keep up with demand if there's a large run on, you know ten-lot subdivisions within the Urban Growth Boundaries.

CHAIR VICTORINO: Interesting, interesting.

COUNCILMEMBER COUCH: Well, that's why we asked for their comments, so.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: You know, I think, you know, these are interesting dynamics you bring up, Mr. Taylor. Again, I'll throw another scenario out that or another suggestion. If we were to leave Urban and Rural Growth Boundaries out and use what Mr. Taylor suggested earlier, but maybe using 5 dwelling or less, 2 sides or 50 percent, anything 6 or more up to 10 then you gotta go with 3. You know 'cause again, I agree let's help the small guy. I think that's what this all...this whole intent of infill was is to help the small guy. And because I was hit with many...oh, landowners who had infill but couldn't do it because of the "Show Me the Water". They needed this exemption. That's why the ten dwelling came up originally and nobody talked about infill as far as what size and how big and what percentages. So now I'm trying to come up with some kind of reasonable way for the Department to work and not put everybody through the ringer each and every time somebody walks in to put an infill development. So that's another suggestion. Mr. Carroll, did you have something you wanted to add or...

COUNCILMEMBER CARROLL: Thank you, Chair. Just pretty much what I said the first time. I think we need to pass something out. We can go on forever and ever and ever--

CHAIR VICTORINO: True.

COUNCILMEMBER CARROLL: --trying to address every possible scenario. I think we've done a pretty good job on this and it's gonna help a lotta people, and I hope we can, if not this meeting, I hope at least the next meeting we can pass this out if not this meeting.

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CHAIR VICTORINO: I would really like to try to do something this meeting, but and I think we're really close enough, you know, so that would be my, I guess my compromise move Mr. Taylor and Mr. Meyer is to offer that as, you know, if you're talking 5 dwellings or less then it would be 50 percent or 2 sides, you know. And then from 6 to 10 it be 3 sides or 75 percent, and again that's not perfect guys. And I know they have circumferences and rectangles and I don't think that's all gonna change, okay. But would that help you folks? First, Department would that give you better longitude as far as putting out and getting less what I call, well what is the word I was looking for?

MR. TAYLOR: Appeals.

CHAIR VICTORINO: Appeals, thank you. Phew, slipped my mind.

MR. MEYER: Yes, Mr. Chair, that would, that would greatly clarify the issues and greatly reduce the uncertainties for both citizens and for the Department. I just have to amplify my concerns are that we have a very limited capability in terms of source and unused capacity. And to broaden things to allow unlimited subdivisions within the Urban Growth Boundaries are to my understanding would create the opportunity for large amounts of additional demand which the utility company, the water company simply couldn't meet, especially when our existing expansion plans were predicated upon a capital program that was based on water system development fees that are dramatically reduced. In other words, we don't have the funding for the existing capital expansion program right now which is a serious problem which hopefully the Committee will address. But right now, it's my estimate that there's no way that the demand that would be created by opening this exemption to Urban Growth Boundaries could be met by the Water Department in the Central District.

CHAIR VICTORINO: Thank you, Mr. Meyer, for those comments. And, you know, let me assure you that this Committee and all the other Committees that are involved in what you're referring to are going to be and are starting to work on the situation. So let me assure you. And I guarantee even if we were to pass something out today, and even if you took my suggestions or we compromised and came up with that, I do not foresee a flood of people running out there. And if anybody knows the permitting process --

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: --it ain't gonna happen overnight and I think we have time. You know, I really believe that. And this does not cover the Upcountry Water Meter List, okay, so we know that's not a part of this equation. It is strictly, really where infill is applicable in many times, Mr. Couch, in many times in Urban areas but not always, yeah? So again, I just want that clear that we're not, we're not...I really don't believe this change will, you know, make people come charging out of the gates and you're gonna have 500 to 1,000 people at your door tomorrow morning, but this will help those who have pretty much everything set, who can do that infill, and they can get it done now for their families. Many times this is what we're looking for not big subdivisions. Mr. Kushi, you have raised your hand?

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MR. KUSHI: Yeah, you know, you mentioned families, you mentioned for the small guys...

CHAIR VICTORINO: Yeah, right, right, thank you.

MR. KUSHI: Family subdivisions are exempt already from the "Show Me the Water" Bill. So it's taken care of already. Whatever you do to expand the definition of infill and whoever passes the...meets the test, just allows that person to proceed with the subdivision. It doesn't guarantee a meter, okay? So please understand that there may be more subdivision applications, but when the time comes for hookup, if the Department has a problem with source, too bad.

CHAIR VICTORINO: Yeah, well.

MR. KUSHI: You know, they may create another priority list in Central Maui, who knows? And again, this infill does not apply to Upcountry.

CHAIR VICTORINO: So yeah, you know, agreed, agreed. Again we're trying to help the Department have a definition of infill and I think we're trying to help the small guy even if they may not be a direct family subdivision, but somebody who would build a few homes for that purpose of helping families, yeah? So, you know, that affects Mr. Guzman's district, my district, Mr. Couch's district, West Maui. I mean, those are the ones that would be profoundly affected. Hopefully we can get some affordable housing moving in some of these areas, we don't know. We'll see. Go ahead, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, and that goes to the point I believe in the bill, affordable housing, 100 percent affordable housing is exempt.

CHAIR VICTORINO: Yeah, it's qualified, yeah.

COUNCILMEMBER COUCH: But anything else, you know, we're trying to get housing --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER COUCH: --and right now this is limiting housing and maybe it's because of the source development is there, but it doesn't limit...I mean, I've got one big lot in my district that is already zoned Hotel and they wanna put another hotel in there, actually two and they're going right along and that uses a whole lot more water than if you had houses on that lot and we have a severe shortage of housing. So I'm a little confused and a little concerned that, you know, we can put a bunch of hotels up, two in my district right now that are ready to be...being built as we speak and we can't put housing up.

CHAIR VICTORINO: Mr. Taylor, could you address his question, please?

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MR. TAYLOR: I...listening to all of this discussion especially with that Mr. Kushi said and as usual Mr. Carroll's sort of quiet wisdom, what we're able to do as a Department is we have a plan to try to meet this constant level of demand. What we've shown you that we can't do is take all of that demand overnight. So anything that significantly changes that demand where we get, you know, a run on the bank, that's gonna be very difficult for us. So if we look at this saying we wanna help the people we're trying to help, we're already helping the families 'cause they're exempt as Mr. Kushi said, and we don't wanna do anything that, you know, disrupts the whole endeavor such that the demand is more than we're projecting. I would have to agree that Mr. Carroll is probably right in that we've made this bill better than it is now, we don't think it's gonna be too upsetting to the overall rate that people are coming in, so why don't we pass it the way it is now, see how it goes, and if it turns out that look we can do a little more, we can look at it next year and widen it a little bit more. I share I think everyone's concerns, especially the Deputy's concerns, if we open the flood gates too quickly there's no way to judge what the impacts of that are gonna be, but this bill would open it slowly and allow us to judge what happens, and if we wanna make further fixes we still can.

CHAIR VICTORINO: I don't think that answered Mr. Couch's question, but I think you were asking more about...

MR. TAYLOR: Okay. As far as the --

CHAIR VICTORINO: Yeah.

MR. TAYLOR: --detail to Mr. Couch's question, now you're getting to the heart of the "Show Me the Water" Bill. It is as I said before, it is a rationing bill. That's what it does. It says, we wanna support water for this but not for this. Whether or not that was its intention or not I don't know, but again, if you'd never read the bill and read it that's what it does. So if this body feels that it isn't doing that correctly, that single-family homes are more important than hotels, that you wanna add a section saying "Show Me the Water" should be applied on applications of volume, not on the action they're doing. Well this body can take that action to rewrite "Show Me the Water" so it's about, you know, no single building permit more than "x" gallons a day, and rather than the act of subdivision, you're free to do that. But again, that's up to the will of this body what policies, what water sort of rationing policy from the Department's limited supply, what is your philosophy of doling that out? And that's not what's on the table and on the agenda today though.

CHAIR VICTORINO: Okay. Are we, I mean I think at this point I'd still like to suggest just that one, one amendment is to add that if you are developing five or less dwellings, again, using the word, "dwellings" that 50 percent of the lot circumference or 50 percent or 2 sides, I don't know the exact words. How did we have it for...in the bill right now? What is the wording we use for right now, Mr. Meyer? You have the bill in front of you?

MR. MEYER: I don't have the bill right in front of me.

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COUNCILMEMBER COUCH: Mr. Chair, I do. It says...

CHAIR VICTORINO: Okay, right here. It says, a minimum of 75 percent of the parcel or combined parcel perimeter is bordered by already developed land --

MR. MEYER: Right, that would...

CHAIR VICTORINO: --or three sides. Is bordered by three sides, right?

MR. MEYER: Yeah, that would have to be changed. In effect to deal with 2 sides of a 4-sided parcel, rectangular parcel or 50 percent of the --

CHAIR VICTORINO: Circumference.

MR. MEYER: --combined perimeter. Yeah.

CHAIR VICTORINO: Combined perimeter. So long as five or less dwellings.

MR. MEYER: Correct.

CHAIR VICTORINO: Okay, I guess we'd have to ask maybe, Erin, you folks need to kinda write it out and then I can bring it forward?

MS. FLEMING: We can do that.

CHAIR VICTORINO: So why don't we take a quick recess. Let's take a five-minute recess and you can do with your personal needs and then we will try to work on it. Mr. Couch, if you would help me, please? . . .(*gavel*). . .

RECESS: 11:09 a.m.

RECONVENE: 11:45 a.m.

CHAIR VICTORINO: . . .(*gavel*).2014. Members you have received the revisions to the bill and, Ms. Willenbrink, you have to come up front now because Ms. Erin left. And what I would like you to do is to read the specific language that was inserted, the changes that was made, "infill development means a development composed of" and then from there.

MS. WILLENBRINK: Okay, thank you, Chair. Just to preface, I will say that the definition of infill development is in the Definition Section of the Water Code, but the actual exemption is in the Water Availability, Chapter 14.12.

CHAIR VICTORINO: Thank you for that clarification.

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MS. WILLENBRINK: You're welcome. So per your instructions, we made a few revisions. Infill development...infill development means a development--I'm doing as good as you today--composed of five or fewer residential dwelling units including accessory dwellings on one more contiguous vacant parcels that meet the following requirements--and this was the change that you requested--a minimum of 50 percent of the parcel's or combined parcels' perimeter or at least two sides of a four-sided parcel is bordered by already developed land. And you made no further changes there. Number two, six to ten residential dwellings, including accessory dwelling units on one more contiguous vacant parcels that meet the following requirements: a) A minimum of 75 percent of the parcel's or combined parcels' perimeter, or at least three sides of a four-sided parcel. And it goes on from there. I would also mention that you had wanted to a two-year review period; however, Chapter 14.12 already has a two-year review period included in that so that change does not need to be made.

CHAIR VICTORINO: Thank you for that clarifications. Any specific questions, Members? Yes, Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chairman, thank you for these changes, and I agree with them. I have a question, you removed the language saying, it's only Central and West Maui water system. Now it's every water system.

CHAIR VICTORINO: No, it's still has on b, development located in the service areas departments of Central Maui Water System and West Maui Water System.

MS. WILLENBRINK: That language was previously moved.

COUNCILMEMBER COUCH: Oh, I see you moved it down there. Okay, that's good.

CHAIR VICTORINO: Yeah, it's there. No, no, no changes was made in that one.

COUNCILMEMBER COUCH: The other question I would have is what about something that has been granted, infill status, and then this changes it to make it...now they're out of it, are those...*(coughs)*... excuse me, are those still granted?

CHAIR VICTORINO: Mr. Meyer, you seem like you're ready to just...go ahead.

MR. MEYER: Thank you. In these circumstances what the normal course is you look at the law in effect at the time and letters written to DSA from the Water Department saying this qualifies as infill development or in the case it does not, we don't write the letter. So there's a letter that's written and subdivision is processed accordingly. I would think that this wouldn't disturb any of those existing determinations that have been made, but this would be the law when it becomes effective that would apply to subdivision applications going forward as to whether they qualify or not.

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COUNCILMEMBER COUCH: Okay, I just wanna make sure because there are couple apparently that might get caught up in this that were granted and may not be granted now.

MR. MEYER: But if there was a negative determination, someone could always reapply --

COUNCILMEMBER COUCH: Okay. Thank you.

MR. MEYER: --or ask for a determination.

COUNCILMEMBER COUCH: Thank you.

CHAIR VICTORINO: I hope that's not the case but, you know, I know who you're referring to and they also have called me and I think that does not affect them, but we'll see. Any questions, Members? So seeing no more discussion then I would entertain a motion...Mr. Kushi, you had, oh you reached, Mr. Kushi. I thought you had something to say. No? Okay. I would entertain a motion to 1) adopt a bill for an ordinance amending Section 14.010.040...

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Yes? Did something wrong?

MS. WILLENBRINK: You might want to entertain a motion to recommend passage on first reading of a proposed bill...of a revised proposed bill--

CHAIR VICTORINO: Oh, okay.

MS. WILLENBRINK: --or as revised.

CHAIR VICTORINO: No, well I mean, it's been revised, but...okay. Just so that we do this correctly, okay. If there's no further discussion which I...has been indicated, then I would like to recommend the passage on first reading of the proposed bill entitled, A BILL FOR AN ORDINANCE AMENDING SECTIONS 14.01.040 AND 14.12.030, MAUI COUNTY CODE, RELATING TO INFILL DEVELOPMENT, as revised and the filing of County Communication 14-132.

MS. WILLENBRINK: Chair, could you include nonsubstantive and technical revisions in that motion?

CHAIR VICTORINO: And nonsubstantive and technical changes by the Staff.

MS. WILLENBRINK: Mahalo.

VICE-CHAIR WHITE: So moved.

COUNCILMEMBER COUCH: Second.

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APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:140730:ctc

Transcribed by: Carolyn Takayama-Corden

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

July 30, 2014

I, Carolyn Takayama-Corden, 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 the 20th day of August, 2014, in Makawao, Hawaii

A handwritten signature in black ink that reads "Carolyn Takayama-Corden". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn Takayama-Corden