

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR BOARD MEETING
THURSDAY, AUGUST 25, 2005

Thursday, August 25, 2005

9:08 a.m.

Kalana O Maui Building

200 South High Street, Seventh Floor

Wailuku, Maui, Hawaii

Reported by: Darcy J. Brokaw, RPR, CRR

APPEARANCES

Chairperson: MICHAEL VICTORINO

Vice-Chairman: KENNETH OKAMURA

Board Members: STACY HELM CRIVELLO

GINNY PARSONS

SALLY RAISBECK

RALPH JOHANSEN

GREGORY SMITH

KENT HIRANAGA

Corp Counsel: EDWARD KUSHI, JR.

Director: GEORGE TENGAN

Engineering Program Manager: ALVA NAKAMURA

District Engineer: HERB CHANG

Administrative Officer: JACKY TAKAKURA

Board Secretary: CATHY HOWARD

PUBLIC TESTIMONY:

David Dantes, M.D.

Guy Gilliland

Captain Val Martin, Fire Prevention

(Thursday, August 25, 2005, 9:08 a.m.)

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CHAIRMAN VICTORINO: I'd like to call this meeting

to order of the Board of Water Supply, County of Maui, for our

August 25th, 2005 meeting.

Members present today: Greg Smith, Sally

Raisbeck, Kent Hiranaga, Stacy Crivello, Ginny Parsons, also

Vice-Chair Kenneth Okamura, and Chair Mike Victorino. Thank

you very much for being here.

First order of business, announcements. Do we

have any announcements that you would like to bring up,

members?

I do have one, and I'd like to bring this matter

up. I'm in possession -- and some of you may have heard -- of

a letter of resignation that was addressed to the mayor and

sent to me a copy from Michelle McLean. I'd like to read the

letter for the record. It is addressed to the mayor, but you know, she did send it to me and said please read it.

It says: "Dear Mayor Arakawa: Please accept my letter of resignation from the Board of Water Supply effective immediately. I have recently taken a new position with the Kahoolawe Land Reserve Commission, and my professional obligations precludes me from fully preparing for and participating in the board meetings and other events."

"It is with regret I feel compelled to resign from the board, though I know the board will benefit from having a complete and full engagement of its members. I truly

appreciate having been appointed to the board and I'm honored to have served the past 15 months."

"Should you have any questions, please do not hesitate to contact me. Sincerely, Michelle McLean."

A little note at the bottom: "P.S., Aloha, Mike. It's been fun and enjoyable."

So I want that put in the record. And hopefully, we'll have a new member appointed soon to the board.

Any other announcements? If not, I will go through the approval of the minutes from the July 28, 2005

regular meeting. I do have one correction that was given to me.

On page 2, line 16, showing Greg Smith as excused when he was actually present at the meeting. So please note that correction.

Are there any other corrections, additions or deletions to the July 28th meeting?

BOARDMEMBER RAISBECK: Yes, Mr. Chair.

CHAIRMAN VICTORINO: Ms. Raisbeck.

BOARDMEMBER RAISBECK: I'm not sure this is turned on. Oh, there it is.

CHAIRMAN VICTORINO: It's just the recording

system, so it's working.

BOARDMEMBER RAISBECK: It's working?

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER RAISBECK: Okay. On page -- I was not present at the meeting, but I did read the minutes carefully.

And on page 27, line 13, the word should be "flashy," not "fleshy"; "flashy" as describing streams that are very full, sometimes than not. So it should be flashy.

And there was another thing in that same sentence that I didn't understand, but I can't correct because I don't

know what was actually said.

On page 33, line 15, minor point, it's listed as "Driscoll" with two Ls. I believe the technical term is "Drisco," D-r-i-s-c-o, which is a brand name.

On page 33, line 17, "What Up." "What Up," capitalized, should be Water Use and Development Plan, W-U-D-P, which is -- people have taken to referring as "WUDP."

And page 39, line 16, where it says Wailuku Agriculture, the "A" should be capitalized to make it clear that what is being referred to is the company, Wailuku -- oh, "Agribusiness," I guess it is. I believe it's referring to

Wailuku Agribusiness, and there should be a capital "A."

That's all, Mr. Chairman.

CHAIRMAN VICTORINO: Thank you very much,

Ms. Raisbeck.

Anything else, board members?

Okay. Move that the minutes be approved with the
corrections?

BOARDMEMBER RAISBECK: So moved.

BOARDMEMBER CRIVELLO: Seconded.

CHAIRMAN VICTORINO: All those in favor, say aye.

(Ayes.)

CHAIRMAN VICTORINO: Opposed?

Okay. Now we will open up for testimony from the public. I think we have two people here present, and I would like to start with Mr. Dantes first. Mr. Gilliland, you will be right after that, because your matter has a lot more substance to it.

So at this time, I'd like to call upon Mr. David Dantes, and he'd like to speak on item 9A, which is the presentation part of Fire Department and the Department of Water on water protection standards.

Mr. Dantes, please go ahead.

MR. DANTE: Well, thank you everybody, and members, for the opportunity of giving testimony.

I'm here as a president of the Maui Vacation Rental Association. And I'd like to give you some input about difficulties caused to our members and indirectly to the Planning Commission and the Council and to the Fire Prevention Bureau by certain inconsistency in fire protection standards between the Fire Department and the Water Supply Department.

Specifically in our case, this inconsistency is that there is an unwritten policy in the Water Department to

treat bed and breakfasts and vacation rentals as commercial.

For those of us who are in ag and rural areas where we don't have 1,500 gallons per minute, this imposes a requirement, unrealistic requirement for infrastructure upgrades.

In the vast majority of cases, our members are not applying for any new construction. They already live in fully compliant and approved dwellings, and they're simply asking to get a permit to use portions of these dwellings for short-term rental.

Although we believe we should be taxed as

businesses, we are not businesses in the sense of a hotel which is open to the public. Obviously, a member of the public cannot just drive up to our vacation homes and walk in and read a newspaper in the front room or use the restroom if they feel like it. People are only invited onto private property by invitation or by reservation. So we don't have the same type of activity as a business that's open to the public.

In fact, the activities that take place in our homes are residential. People live in them, just as people in

an ordinary household live in a dwelling or people who are a long-term tenant live in a dwelling. And there are no business activities that take place on the premises other than collection of rent.

In short, we don't feel that the use of bedrooms in our homes and cottages constitute an increased fire hazard. And we would strongly urge that approval of the Fire Prevention Bureau standards, which are the National Fire Protection Agency Code, be applicable to our operations rather than imposing commercial infrastructure requirements on us.

And lastly, I should mention that an unwritten

policy to classify our operations as commercial really is against the intention of the state legislature, which requires an agency to have a formally-adopted rule. Not that I want you to go now and formally adopt a rule calling us commercial, but please don't have an unwritten policy that requires these infrastructure upgrades.

Thank you.

CHAIRMAN VICTORINO: Do the board members have questions for Mr. Dantes?

Mr. Okamura?

VICE-CHAIRMAN OKAMURA: Mr. Dantes, I have a

couple questions.

MR. DANTE: Yes, sir.

VICE-CHAIRMAN OKAMURA: You run into problems with fire protection when you need to get a permit to operate? Is

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that when you have problems?

MR. DANTE: Yes.

VICE-CHAIRMAN OKAMURA: And you have to go and see both the Fire Department and Department of Water Supply?

MR. DANTE: Actually, there's 17 agencies to which our applications are circulated, and they all have

comments, and many of them perform inspections, and some impose requirements; but the most burdensome are those of the Water Supply Department.

VICE-CHAIRMAN OKAMURA: And do you also have to go to the Fire Department?

MR. DANTE: Yes, sir.

VICE-CHAIRMAN OKAMURA: And because you're treated as commercial, do they require like a more -- I guess more pressure and volume in terms of fire protection?

MR. DANTE: Yes. And in rural and ag areas, they

require a level which doesn't exist by the existing water supply system; so it's really not possible to comply without extremely costly upgrades to the water supply delivery system.

VICE-CHAIRMAN OKAMURA: So basically, then, out of let's say all the -- so it's hard to get a license to operate as a -- to operate as a bed and breakfast or whatever?

MR. DANTE: It's almost impossible. But even those who have succeeded are in violation of the Department of Water Supply standards if they're outside of an urban district, and they could be subject to penalties or having their permit revoked.

VICE-CHAIRMAN OKAMURA: Okay, thank you.

CHAIRMAN VICTORINO: Ms. Parsons?

BOARDMEMBER PARSONS: Is this vacation rental as well as bed and breakfast, or --

MR. DANTE: Yes.

BOARDMEMBER PARSONS: So it doesn't matter whether it's one room or ten rooms; it's still the same -- it's still taking the same -- we're taking the same stand; is that what you're saying?

MR. DANTE: Yes. But the maximum permissible number of rooms, whether it's bed and breakfast or vacation

rental, is six. And probably the average number of rooms among our whole membership is two.

BOARDMEMBER PARSONS: And these are mostly local folks that are just adding, for extra income, their --

MR. DANTE: Yes, they're mostly people that either live in the same dwelling or on the same parcel as the guests, but there are exceptions. There are properties that have nonresident owners that are managed by realtors on the island. Those are the exceptions, but they also exist.

BOARDMEMBER PARSONS: But there is somebody that looks over them.

If we were to be able to work something out with the standard, in your opinion do you think it would legalize -- we would be promoting more legalization rather than people doing it under, you know, behind the door, back door?

MR. DANTES: It would certainly be a big step in that direction, because the infrastructure requirements are a tremendous impediment to people coming forward and identifying themselves.

BOARDMEMBER PARSONS: Okay. Thank you.

CHAIRMAN VICTORINO: Ms. Raisbeck?

BOARDMEMBER RAISBECK: If the County were to -- or the Department of Water Supply had a written policy regarding bed and breakfast and vacation rentals, are there any safeguards that would prevent the usage of water from increasing greatly, say for each -- for a property that's used for those purposes, can you suggest any modification of the policy that would contribute to not -- especially upcountry, where probably most of the rural and ag properties are, we already have a water shortage up there. So how could we frame it so that it didn't allow great increases in water usage?

MR. DANTE: Just off the top of my head, I would say that if you had some kind of range of appropriate water use for households with different numbers of occupants, I would expect that would be reasonable -- whether the occupants rented for six months or six days -- in terms of the overall water consumption.

And of course, people are limited to the number of flow units by the size of their meter. I don't know if that's of any help or not.

BOARDMEMBER RAISBECK: Okay.

CHAIRMAN VICTORINO: Let me make sure that

everybody's had a chance before I go back to -- is there anyone else that hasn't asked a question of Mr. Dantes?

Okay. Then Ms. Parsons.

BOARDMEMBER PARSONS: Just a quick question. If we were able to put together an average amount, and if you go above that average amount, like on your phone, your cell minutes, would the association be apposed to a rate increase on that additional portion?

MR. DANTE: I'd have to take that question to our board, but it sounds to me like it's a reasonable proposition.

CHAIRMAN VICTORINO: Okay. Thank you, Mr. Dantes.

And let me also recognize Mr. Ralph Johansen, member, is now present. My apologies; I did not see him come in.

Ralph, do you have a question?

BOARDMEMBER JOHANSEN: Well, without knowing any more about it, the first question I have is: How do you differentiate -- what's the history of differentiating hotels from bed and breakfast? What conditions do they share and what conditions make them different, so that a different policy could be recommended?

MR. DANTE: Well, the Maui County Code Housing

Section defines a hotel as a building that has at least ten rooms that are devoted to transient rental. Our operations range from one to six rooms.

The other thing is that a hotel has a much more intensive use of land and improvements than we do. Our operations basically are homes, mostly occupied by the families that own them, and also partly rented to guests.

Hotels generally have dozens or hundreds of rooms; they're food service establishments; and they have liquor licenses, live entertainment, activity centers, paid parking.

It's really a full-on commercial kind of enterprise.

Larger hotels, I believe generate more revenue in a single hour than our average member does in a year.

BOARDMEMBER JOHANSEN: There's a line between a small hotel, Mr. Dantes, and a bed and breakfast. I just wonder in terms of risk to the County, expense to the County, and the expense of infrastructure for a bed and breakfast, what differences there are.

MR. DANTE: Well, again, the bed and breakfasts and vacation rentals are making use of single-family dwellings which have already been inspected and have already been deemed

safe and inhabitable for the occupants.

And where there's no new construction requested for the permit, I think they're still safe for inhabitation by the occupants, whether or not the occupants are long-term or short-term tenants.

BOARDMEMBER JOHANSEN: May we hear from the Department?

CHAIRMAN VICTORINO: Before I ask the Department, are there any other questions for Mr. Dantes?

BOARDMEMBER RAISBECK: Just one question.

What's the name of your organization that you

represent?

MR. DANTES: Maui Vacation Rental Association,

which is commonly abbreviated MVRA.

BOARDMEMBER RAISBECK: And how many members are

there?

MR. DANTES: Around 150.

BOARDMEMBER RAISBECK: Thank you.

BOARDMEMBER PARSONS: Mr. Dantes, one more

question.

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER PARSONS: Mr. Dantes -- and this kind

of goes back to what you were talking about, Ralph, too.

I heard a figure that was batted around the other day, and I realize how it got exaggerated, but they were trying to say that there were over 20,000 vacation rentals on the island of Maui because when you would surf on the Internet "Maui vacation and rental," you came up with 20,000 hits.

MR. DANTE: That's true, you get 20,000 hits.

There's probably under a thousand single-family dwellings used for short-term rental, both bed and breakfast and vacation rental. And we're trying to get a more accurate

figure on that, but I would say under a thousand.

The rest of those numbers are either duplicates or they're condos or time-shares, which is not the subject that I'm discussing.

BOARDMEMBER PARSONS: 20,000 hits means anything that has the word "Maui" in it, anything that has the word "rental" in it, anything that has "vacation" in it, not necessarily --

MR. DANTE: Yes. There may be more than 5,000 condos and time-shares, but there's under a thousand single-family dwellings.

And I forgot to mention in answer to the gentleman's question about the County, about liability, that one of the standard conditions on our permits is that we have a liability policy of a million dollars that indemnifies and holds harmless the County if anything happens to a guest on our property, and that the standards that I'm requesting are National Fire Protection Agency standards, which I think would really be defensible.

BOARDMEMBER JOHANSEN: Mr. Chair, just one more question.

CHAIRMAN VICTORINO: Yes, Mr. Johansen.

BOARDMEMBER JOHANSEN: There's no limitation by statute or ordinance to the size of a bed and breakfast?

MR. DANTES: Well, the most number of guest rooms it can have is six, and the most number of adult guests per room is two.

BOARDMEMBER JOHANSEN: I didn't get that. Thank you.

MR. DANTES: I'm sorry.

CHAIRMAN VICTORINO: Okay. Anything else?

This is not something we can take action today on,

and I'm not sure if the Department is equipped to respond to Mr. Dantes' comments and requests. And I will leave it up to the director if he would like to put this as an agenda item in the future at our next meeting, that he can be better prepared.

Mr. Director, Mr. Tengan, what would be your pleasure, sir?

DIRECTOR TENGAN: Mr. Chair, I would agree with you that these items would be placed on the agenda before the Department gets involved in the discussion. We need to place this on the agenda so that staff can be prepared to respond to

the issues presented.

And maybe during the discussion on the item, presentations by the Fire Department and the Department of the Water Supply on fire protection standards, you know, some questions of the board might be answered.

I might offer a comment. It's not an issue here of, you know, that these bed and breakfast operations are not increasing the fire hazards, but they are increasing the need for fire protection when these operations house guests on their premises.

CHAIRMAN VICTORINO: And if you look under "Other

Business," we do have a presentation coming forward from the Fire Department.

So Mr. Dantes, we'll bring this up at our next meeting as an agenda item. We will have some discussion later, as you notice under "Other Business," and hopefully we can look at this matter and start trying to find some resolve for you folks, something that's equitable.

But I agree when it comes to protecting the public, whether you're bed and breakfast, whether you're long-term rental, whether you're hotel or condo, the public's protection is paramount. A million-dollar liability doesn't

do enough if somebody's hurt or killed in a fire. And just
take that as my belief that the public's safety is so
paramount in this area.

MR. DANTE: Agreed.

CHAIRMAN VICTORINO: Okay. Thank you, Mr. Dantes.

MR. DANTE: Thanks, everybody.

BOARDMEMBER PARSONS: Thank you.

BOARDMEMBER RAISBECK: Thank you.

CHAIRMAN VICTORINO: The other testifier is
actually -- and I'm going to move on, if it's all right with

the board, to item number VI. That was item number V.

So number VI falls right after that, under

"Communications." Communication 05-05, a letter from Guy

Gilliland to the Mayor Arakawa, dated July 28th, 2005,

forwarded to the board on July 29, 2005.

You'll find that in your packet, pages 4 to 26. I

think Mr. Guy Gilliland is here.

Guy, would you like to come up and give your

testimony and we can proceed from there. If you'd introduce

yourself.

(Discussion off the record.)

MR. GILLILAND: Thank you, Chair Victorino and members for having me here this morning.

I laid out my case in the communication that has been presented to you in your packet. I'm here to answer any questions you may have as the members see fit.

I just wanted to highlight, if I could, basically the essence of what we're pursuing. We believe if you look at the circumstances of our family situation, the unique circumstances, should I say, that there is an opportunity for discretionary approval for us to get consideration to get an opportunity to have a meter on our property up in Haiku or

Makawao.

The basis for that request is primarily that we completed our subdivision application at the time they were formulating the priority list ordinances, and the departmental procedures I think precluded us from receiving a certified notice to register on the priority list. That's the essence of our position: The timing of our completion of our subdivision in April of '93 and the implementation and formalization by the Department of notices precluded us from receiving a notice. I'm not clear why.

We attempted to work with Herb Chang, who I must

offer has been very cordial and very helpful, and I appreciate the effort he's given so far. But we couldn't get a clear determination of the circumstances that occurred there. That's our primary position.

The second point is basically that we're now in sort of an unviable situation where there's a meter on our property, on parcel 166, which is in my name, and it's reflected and concluded that it's shared by multiple TMKs.

And so we're in this bind, if you will, where we're being asked to have the other parties release their

interest, their shared interest, if you will, in the meter.

And it's a challenge I'll just offer to you when you go forth to a party. And at this point, we haven't been able to achieve that.

So it puts us in sort of an unviable situation to utilize this meter for purposes of getting a building permit, which is what we're trying to pursue.

I did read the Director's comments and I understand where he's coming from, but I don't know if in his response he spoke directly to the issue of a notice and the potential defects in us not getting a certified notice at the

time that the Department was administering the development of

the priority list.

CHAIRMAN VICTORINO: Mr. Gilliland, just one

moment.

MR. GILLILAND: Sure.

CHAIRMAN VICTORINO: Would everybody please turn

off their cell phones before we go any further. I mean, I

think that's such a distraction. If you don't have it on

vibrate, please turn it off.

Thank you, Mr. Gilliland. I didn't mean to

interrupt. And you need to speak up, because she's having a

difficult time hearing you.

MR. GILLILAND: And respectfully, I understand it's a challenging area that the Department is working through, but I believe that the unique circumstances in our case will not set a precedent, and would offer an opportunity for the board to recommend to the mayor, or whoever has the proper authority, to approve our request.

I'm available for any questions or any other information that you may have.

CHAIRMAN VICTORINO: Okay. I will open the floor to questions for Mr. Gilliland from the members.

Mr. Okamura?

VICE-CHAIRMAN OKAMURA: How did the situation arise whereby three properties are -- one meter is being shared by three properties?

MR. GILLILAND: The history is -- I'll take you back.

It's a family-held property that was held by my father, his brother, one large 36-acre piece, and his cousin, the mauka property, another 36-acre piece, all of which had a pasture lease demising the three TMKs.

The meter served the pasture's purposes. And the application for the water permits historically reflected that, as well as the various correspondences through the years, all the way from 72 communications to tenants. And the various tenants have reflected this multi-TMK use of the meter for purposes of a pasture tenancy. So that's --

VICE-CHAIRMAN OKAMURA: So generally, the gist is that also somebody went to get it subdivided, wanted to get it subdivided?

MR. GILLILAND: Correct.

VICE-CHAIRMAN OKAMURA: And you agreed at that

time that you wouldn't be asking for any more meters?

MR. GILLILAND: No, I don't think there was any understanding like that considered, addressed, or dealt with in the process of the subdivision.

VICE-CHAIRMAN OKAMURA: That's what I thought I read.

MR. GILLILAND: Either on the family members' side or in the administrative review.

VICE-CHAIRMAN OKAMURA: Okay. So you're saying that when you went for a subdivision of the property, the two 36-acre parcels, you did not make any agreements about not

going in for any more water meters?

MR. GILLILAND: No. Nothing was addressed either at the personal level, the family level, and as well as it being raised in the course of the review, the administrative review.

VICE-CHAIRMAN OKAMURA: I thought that was part of it, but maybe the Director can address that.

The other issue is that you had nine years from the time the subdivision was approved until now to ask for a water meter, and you would have gotten a water meter, but you didn't do that.

MR. GILLILAND: That's correct.

VICE-CHAIRMAN OKAMURA: Why was that?

MR. GILLILAND: Well, we weren't in a position to pursue a building on the property, a straight answer on that.

VICE-CHAIRMAN OKAMURA: Okay. So it's not logical to me where you're looking back now and saying, okay, we didn't get it; so that's a technicality, because in the meantime, you didn't want to -- you didn't request a meter. If at any time after that you had requested it, you would have gotten it.

MR. GILLILAND: I would add -- I'm not disputing that line of thinking. But I would add that the adjacent parcel -- and I should clarify it to the board, that the 36-acre piece that was held by my father Mervin and his brother Leroy Gilliland, they both pursued -- they built the property in two 18-acre pieces. They subsequently -- this was in '83, the first breakdown occurred.

In '93, they both subsequently at the same time pursued a three-lot family subdivision for their two separate properties. Leroy Gilliland got certified notice to get on the priority list; Mervin Gilliland didn't.

So it was back to another compounding factor, and from our perspective, as to being not served proper notice just to get on the priority list.

Mr. Okamura, I think we would -- if we were on the priority list, we would have at least had a better standing at the point in time through the nine-year horizon to have a better standing in getting a permit.

CHAIRMAN VICTORINO: Okay. Ms. Parsons?

BOARDMEMBER PARSONS: Can you make a clarification for me, Mr. Gilliland? You do have a meter on your property, right?

MR. GILLILAND: Correct, on parcel 166.

BOARDMEMBER PARSONS: And it's the adjacent property for Lowry that doesn't have the meter?

MR. GILLILAND: Correct.

BOARDMEMBER PARSONS: Is that correct?

MR. GILLILAND: Yes, there's no meter on parcel

85.

BOARDMEMBER PARSONS: See, what I think, just to kind of make a clarification here, in the old days, they had these what they called two 16s where they allowed one meter on a property to be able to feed like cattle and stuff on

another. It was like a shared meter.

So technically, it seems to me that Mr. Lowry should have been the one applying for a meter. And what we were doing sometime ago when we first did this, the list, we put the list together, we were trying to eliminate a lot of these shared issues.

And so we were having people put their names on the priority list, and as water became available, we were trying to fulfill.

For some reason, whether -- and this is looking

back, and I've looked at this with Herb, too, to see what was going on. Whether we just didn't give notification because we were getting confused because there were two Gillilands, which may be a possibility, or else notification was going to a tenant somewhere.

Because everything we see on here is Tom Morrow and Freitas but not the landowner. And when we start talking to the Department, I want to see if there's anything that we can show that went right to -- your father; is that correct, Guy?

MR. GILLILAND: Mervin, Mervin Gilliland.

BOARDMEMBER PARSONS: To Mervin.

But he actually has a meter on his property. What he's trying to do right now is to resolve this and ask for a meter actually for Lowry so he doesn't have to share the water anymore. But I think Lowry should be asking for it himself, but Lowry has this agreement going on and he doesn't have to release it unless we do something.

CHAIRMAN VICTORINO: Ms. Raisbeck?

BOARDMEMBER RAISBECK: If we could look at page 22.

CHAIRMAN VICTORINO: That's the one with the map;

is that correct?

BOARDMEMBER RAISBECK: With the map, right.

I'm a little confused myself. Apparently, the meter, you say, in the Department's records is assigned to 33. And I assume, from what I know about how big pieces get broken up, that probably the original property included both your three lots and maybe the three lots that include 33.

MR. GILLILAND: 33 was the original TMK for the

36.

BOARDMEMBER RAISBECK: For the whole 36?

MR. GILLILAND: For the whole 36, correct.

BOARDMEMBER RAISBECK: But 85 was not?

MR. GILLILAND: 85 was not. It was a separate 36-acre parcel. So 33 and 85 were the two initial 36-acre parcels.

BOARDMEMBER RAISBECK: Okay. And 33, meanwhile, has been broken into 6 --

MR. GILLILAND: 33 got split into two 17s. And those two individual 17-acre parcels got separated into three family lot subdivisions.

BOARDMEMBER RAISBECK: Okay. Well, I did read the material that was provided by the department. And I see there

was an agreement authorizing waiver for subdivision water systems that you signed.

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: Okay. And this agreement, to me, reads that the waiver exists only for purposes of dividing up the property, not for purposes of housing and not for purposes of -- let's see, what else was it?

Not for purposes of housing. That's on page 3 of the agreement. "No residential building permit or additional water service shall be requested by the subdivider and all subsequent without full compliance with all subdivision

requirement under Rule 2 and other rules and regulations of the board in effect at the time that a residential building permit or additional water service is desired."

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: Now, the trustee -- on page 4, the trustee, that was the original owner?

MR. GILLILAND: Correct.

BOARDMEMBER RAISBECK: Well, it's a woman's name, I thought.

MR. GILLILAND: It would be -- yes, pardon me. It would be my mother and father.

BOARDMEMBER RAISBECK: So the trustee represents that water service necessitated by the subdivision can be met by the existing water system and would not require a private water system.

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: And the existing use of the property does not include any existing structures or private sewage disposal systems.

And there's also a hold harmless clause at the very end -- or not the very end. On page 5, there's a hold harmless clause. And in the agreement -- based on the

trustee's representation, the board finds that water service necessitated by the subdivision request can be met by the existing water system and does not require a private water system.

So what I read this agreement, which you signed in

19 -- when was it?

MR. GILLILAND: I believe '93.

BOARDMEMBER RAISBECK: Okay. Which you signed at the time of the subdivision request.

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: To me, what this says is

that the subdivision is totally for the ability of the family to give property ownership to the children.

MR. GILLILAND: That's the way I understand it.

BOARDMEMBER RAISBECK: And it specifically

excludes housing. It specifically says that essentially, the use of the subdivision to grant the right to build a home, for example, is not included. That's the waiver part of it.

So you sort of waived your right to get a meter in that agreement, to me. And you know, if you have other opinions about it, I'd like to hear it. It seems to me a very

tightly-drawn agreement.

MR. GILLILAND: I mean, my -- generally, I don't dispute anything, your interpretation of it.

But I think really what the agreement is it enabled the family to break up a property, defer the water improvements, particularly the laterals connected to the main water line until such time as we're prepared to do a building permit, to pull a building permit and -- but it didn't preclude us from the opportunity to do that.

It didn't preclude us from the opportunity -- at the point in time that we were to pull the permit, if you read

the agreement, it requires us at that time to complete the deferred subdivision improvements, which is what we're pursuing and we're doing.

So we're following the spirit of that in terms of putting the deferred improvements in place in order to enable us to get a building permit. But it didn't prohibit us from getting the building permit.

BOARDMEMBER RAISBECK: No, it didn't prohibit you.

But it does make you subject to all -- I mean that was what, '93?

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: '93, that's 12 years ago.

It makes you subject to all of the rules that have been passed
in the 12 years since.

MR. GILLILAND: I agree.

BOARDMEMBER RAISBECK: And one of the rules that
was passed in the 12 years since was the rule establishing the
upcountry waiting list. And so there was a 60-day period in
which people who wanted a meter should have done it. And
again, the rules say specifically that if it isn't done within
the 60-day period, your opportunity fails or lapses.

So I have the problem that to me, I haven't -- I'm not an attorney and I haven't consulted our attorney, but to me that agreement is so tightly drawn that it requires -- it does not give you the right to ask for the meter at this time unless you are on the waiting list.

CHAIRMAN VICTORINO: Well, let's make sure everybody has a chance before I go back to Ms. Parsons. Does anybody else have any questions for Mr. Gilliland?

Okay. Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Do you reside on the Island of Maui?

MR. GILLILAND: No, I don't.

BOARDMEMBER HIRANAGA: Where do you reside?

MR. GILLILAND: On Oahu.

BOARDMEMBER HIRANAGA: So have you been following the situation with the upcountry water meter shortage since 1993 to 2005?

MR. GILLILAND: No, I couldn't say that. That wouldn't be the case. I've gotten more familiar with it now as I've gone through the process.

BOARDMEMBER HIRANAGA: So for the past 12 years, you've been fairly ignorant about what's been happening on

Maui as far as --

MR. GILLILAND: Passive, yes.

BOARDMEMBER HIRANAGA: Okay, that's all.

CHAIRMAN VICTORINO: Any other questions?

I'll go back to Ms. Parsons. I just wanted to
make sure that everybody had at least one opportunity.

Okay, Ms. Parsons.

BOARDMEMBER PARSONS: I just wanted to clarify the
fact that you do have a water meter on this parcel?

MR. GILLILAND: Yes. Physically, it sits on
parcel 166.

BOARDMEMBER PARSONS: And it's your water meter?

It's to feed your parcel and service the one next to you, as well?

MR. GILLILAND: Right.

BOARDMEMBER PARSONS: It's a shared meter?

MR. GILLILAND: Right.

BOARDMEMBER PARSONS: But it is assigned to your parcel?

MR. GILLILAND: As I understand it, at the minimum, we think it's a -- we have a right to it. But in

working with the DWS and Herb, their interpretation is it's a shared meter.

BOARDMEMBER PARSONS: But who did it get assigned to originally?

CHAIRMAN VICTORINO: Before we go any further, I think it would be prudent that unless the questions -- respectively, I'd like to get Herb up here to give his or to address some of the questions that you're bringing up.

Herb, would you mind? Herb Chang, please?

Thank you, Herb.

Okay. Mr. Kushi.

MR. KUSHI: Are you Lance or Guy?

MR. GILLILAND: I'm Guy.

MR. KUSHI: Okay. Who's Lance?

MR. GILLILAND: Lance would be Leroy's son, and he
owns parcel 261.

MR. KUSHI: And parcel 261 is not part of the
subdivision?

MR. GILLILAND: Not the Gilliland parcel.

And if I can just add --

CHAIRMAN VICTORINO: Hang on. Please, everybody,
you need to speak slowly and loudly, because that noise is

very difficult for her and even for myself sometimes hearing what you have to say.

So I ask all testifiers -- Herb, I know you're a very soft-spoken person. I'm going to have to ask you to come out of that shell and really speak up, please. I'd really appreciate it, because it's a real challenge with this noise today.

Go ahead, Herb.

MR. CHANG: I'll give a brief summary on what -- I had a lot of meetings with Guy, so I'll give you kind of a quick rundown on what we had discussed, and maybe it might

shed a little bit more light.

This particular subdivision that we're talking about that entered into this deferral waiver agreement --

CHAIRMAN VICTORINO: Herb, hang on. I'm going to call a recess.

(A brief recess was taken.)

CHAIRMAN VICTORINO: I'm going to reconvene the meeting. We have a microphone there, and that's to be passed around, which has amplification. But right now the noise has stopped, so let's move as quickly as possible in this area.

Herb, you were left hanging, poor thing. I

apologize. If you'd go ahead and start from the top as far as the Department's review on this whole matter.

MR. CHANG: Just a quick summary of my discussions with Guy Gilliland.

He's one of the owners of the three lots that we're talking about. And like we talked about before, there was a family subdivision agreement entered into. So his intent was to construct a dwelling on parcel 166. So we tried to figure out a way how to get that accomplished.

So one -- there's basically two steps. One is to

get rid of this agreement that was entered back in 1993, which is saying they cannot apply for a building permit, cannot get water service --

(Reporter interruption.)

MR. CHANG: The agreement that was entered back in 1993, which needs to be cancelled, and the way to get it cancelled is to comply with the subdivision requirements, which Guy has submitted construction plans. So once those things are constructed, these things, this agreement can be cancelled.

The other half he needs to comply with is -- let's

talk about this water meter being shared between this property of the subdivision and parcel 85. The County Department records show that there is references to both TMKs, and so before the department can say, okay, we'll allow the meter to be assigned to parcel 166, which is Guy's property, we're going to have to make sure that parcel 85 is not going to come back to the department and say, hey, I have some rights to this meter. So we wanted to make sure we don't get into trouble.

So we asked Guy whether he could have parcel 85 to release all rights. Unfortunately, Guy was not able to

achieve that. And so this is where we are right now.

CHAIRMAN VICTORINO: Just for clarification,
parcel 85 that you're referring to, is that Lance -- is this
what Lance's letter is?

MR. GILLILAND: No.

CHAIRMAN VICTORINO: What is Lance's letter?

MR. GILLILAND: I only saw it also myself this
morning, so this is just my preliminary look at it. And his
parcel that he owns and is the owner of is parcel 261.

For reference, they received a certified notice

which put them on the priority list at number 26. I have a copy of the priority list. It notes their subdivision.

That's where I have some questions about why they got the notice and we didn't get a notice, which would preclude anything from this nine years arising. We would have at least been on the list, in the running to get an opportunity to pursue.

So they've got a meter on 261, and I believe they have another meter, too. They've already got two meters. I'm not clear; I'm not really sure.

BOARDMEMBER PARSONS: They do.

THE WITNESS: On parcel 33. So they already have two meters. And now he's putting in a claim. This is the first time I'm reading this. We don't have any squabble or anything, but I think he's just, you know, registering his interest is what I see in the letter.

CHAIRMAN VICTORINO: Just for clarification, Lance is your --

MR. GILLILAND: He's my first cousin. Mervin is my dad. Leroy is Lance's dad.

CHAIRMAN VICTORINO: Lance's dad, okay. Just so all of us are clear on this matter.

MR. GILLILAND: Certainly. So that's why.

CHAIRMAN VICTORINO: Did that help you, Sally, as far as the clarification on the board's stand?

BOARDMEMBER RAISBECK: No, not really. Because what this letter says is that "the meter described above is located on but not assigned to 166. This meter was moved from 33 and placed on parcel 166 by myself," by Lance, in order to satisfy the Board of Water Supply requirements."

So that the history of this meter is it was moved to the location on your lot from a different location but not assigned to your lot, according to him, according to him.

BOARDMEMBER PARSONS: Ask Herb.

BOARDMEMBER RAISBECK: Well, I'm just quoting what
the letter says here.

So I need to understand, I guess, Herb -- I know
there are remote meters that exist that are located in one
place and on some other lot. Is that one of these cases? Who
is that meter assigned to?

MR. CHANG: I'll explain it, try to explain it
without drawing pictures; but if I need to, I will draw
pictures.

If you notice on -- what sheet is this --

BOARDMEMBER RAISBECK: Yes, I've got a copy. All
the board members have a copy of that.

CHAIRMAN VICTORINO: What page is that?

BOARDMEMBER RAISBECK: Page 22.

CHAIRMAN VICTORINO: 22, okay. All board members,
22.

MR. CHANG: If you look on page 22, the area that
is kind of highlighted is the makai subdivision. The one to
the left of that, which is an additional three lots, that is
guy's first cousin's; he has interest in that one.

And if you take the area that is within all these -- actually, there's six lots here. Because the original property started off with what is now six lots. And the first step of their transition was they cut up the original lot into two lots, and they further subdivided each of the two lots into three lots, which is what we see now.

And both subdivisions, when they processed the application with the Water Department, went under this family subdivision agreement. So Lance's subdivision, he applied for -- he made his application to Public Works in 1993. Guy's, they made application in 1992.

Being that Lance's subdivision which was applied in 1993, it was applied for after March 16th, 1993, so that was automatically put on the priority list, because that's when we used as the cutoff date. So I think Guy's is number 26 on the list.

MR. GILLILAND: Yes.

MR. CHANG: So when we came to that position, we offered the meters, Lance did his thing, he did whatever he needed to do to complete -- to satisfy the family subdivision agreement, which was service laterals. I think that's about all he did.

So he was able to wipe out that agreement saying -- that restricts him, or which prevents him from applying for water meters. So that's how we got to this point where his side of the subdivision, all three lots have water meters.

And so the question came up during that process where they got water meters: So what are we going to do with the existing meter? And I think, from what I recall, Lance was saying put it on the other side, which is Guy's portion, because he didn't really need the meter. Because the original

lot had only one meter when it was one parcel.

So we thought, okay, no problem, we'll just put it on the other half. But that still didn't clear up the sharing of the meters.

CHAIRMAN VICTORINO: So you're saying that Lance, as far as your research has shown, agreed to put the meter on Guy's side of the property because he already had the meters he needed?

MR. CHANG: He will be getting them.

CHAIRMAN VICTORINO: He will be getting the meters that he needed.

MR. CHANG: (Nods head up and down.)

CHAIRMAN VICTORINO: But did not release the meter as far as to Guy's property; it still wants to be a shared meter; is that what you're saying?

MR. CHANG: Correct.

MR. GILLILAND: In response to Herb, because this is the first time I heard these dates -- and we may not have hit this when we talked, Herb. But you said March 16th was a date that allowed the Leroy Gilliland, for lack of a better word, subdivision to get the certified notice.

We didn't get our complete subdivision until --

the approval was April 28th, '93. And so that's what -- part of the confounding thing for us is that the Leroy Gilliland subdivision got the certified notice to at least register on the priority list and have a standing to be in the mix to get a meter. And we completed ours after this March 16th date, which is the date I was trying to determine what is the -- what was the procedural process in the administrative implementation.

I recognize it was a real challenging time that was going on there. And the fact that there was a working knowledge of our ongoing subdivision and we were precluded

from getting a notice is the issue to us. We would have registered all three lots -- I mean, that would be my sense of it -- if we got the proper notice. And I'm not saying it's -- it's just an oversight, or maybe the confusion between the two subdivisions, but that's kind of the essence of our position, everything else aside, to be real honest with you.

CHAIRMAN VICTORINO: Ms. Raisbeck, you had your hand up.

BOARDMEMBER RAISBECK: Yes.

I'm still a bit confused, I'm sorry to say. The

sharing is not then with any of the three lots next to your three, the three lots on your side of that divide; the sharing that's occurring is with 85?

BOARDMEMBER PARSONS: Well, it was all one big parcel at one time.

BOARDMEMBER RAISBECK: So the meter in question at one time served -- is it still serving 85? Is the water from that meter going to 85?

MR. GILLILAND: The water facility resides -- for the cattle, resides on parcel 166. That's where they clean the cattle, you know, dehorn them, do all the works. The

watering is there. The cattle graze -- the demise is the parcel 85 of 36 acres.

And I know it's very confusing, so I appreciate your, you know -- and then also parcel 166, the entire -- all the parcels, with the exception of Lance's house now, where he doesn't have cattle on there.

But the original demise was parcel 33 and 85, which were two 36-acre parcels. And the cattle continued to graze that but come to parcel 166 for water, with the exception of parcel 261 where there's a home on it now, with meters. I mean, they have their own meter, too.

BOARDMEMBER RAISBECK: So there are no houses

on --

MR. GILLILAND: 85? No.

BOARDMEMBER RAISBECK: No. On yours.

MR. GILLILAND: Pardon. Yes.

BOARDMEMBER RAISBECK: 222, 166, 223, no houses?

MR. GILLILAND: Yes, correct.

BOARDMEMBER RAISBECK: And there's one house on

the other --

MR. GILLILAND: On 261.

BOARDMEMBER RAISBECK: On 261, but not on what is

now 33?

MR. GILLILAND: Correct.

BOARDMEMBER RAISBECK: Okay. So there's one house that has its meter, and the meters have been in place on what is now 33 and the one above?

MR. GILLILAND: They applied and received meters, if I'm not mistaken.

BOARDMEMBER RAISBECK: They received meters. Those meters exist.

And meanwhile, for this 12 years, parcel 85 has

been using the water from 166. Has anybody else used water from that meter? Or the tenant leases all of that?

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: The tenant leases all of that?

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: Except for the place where Lance has his house?

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: I see. And the use has been for the purpose of the cattle this entire 12 years?

MR. GILLILAND: Yes.

BOARDMEMBER RAISBECK: Okay. Now I understand.

Thank you.

CHAIRMAN VICTORINO: Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Looking at the staff

report, it does not state who this -- which parcel this meter is assigned to. Because the meter can only be assigned to one parcel. So what parcel is it assigned to?

MR. CHANG: This issue about the meter can only serve one property really came up in our rules and regs of 1994. This meter has been in place since --

MR. GILLILAND: '72.

MR. CHANG: So although the 1994 water system fee rule came into place, which had a condition where everybody who was sharing meters was supposed to come in and declare I'm sharing; I want to stop and I want to come in for more meter. I mean, the public is not going to do that. Although there is a condition in that particular rule that requires it, it hasn't been done. It was not done in this case, either.

VICE-CHAIRMAN OKAMURA: What is that?

MR. CHANG: Declaring that you're sharing a meter and applying for your own separate meter.

CHAIRMAN VICTORINO: Let one board member finish his line of questioning.

Go ahead, Mr. Hiranaga.

BOARDMEMBER HIRANAGA: So your answer is -- which parcel is this meter assigned to? Both?

MR. CHANG: According to our records, there are references to both properties. So we would surmise that it's being shared.

BOARDMEMBER HIRANAGA: So the official position of the Department is this meter is officially shared by 166 and

85? Is that the official position of the Department?

MR. CHANG: I would say because the original property which is 33, which is now six lots, and because Lance's properties have their own three meters, I would say 166, 223, 222, 85 is now shared.

BOARDMEMBER HIRANAGA: Okay. Looking at the TMK numbers, it appears that the Leroy subdivision was granted final subdivision approval after the Lance subdivision, because the TMK numbers are higher than the TMK numbers for the Lance subdivision.

MR. CHANG: Lance's subdivision -- are you

referring to the position on the priority list?

BOARDMEMBER HIRANAGA: 222, 223.

MR. CHANG: Yes. We placed subdivisions by the date that they applied for subdivision with the Department of Public Works. So Guy's subdivision was applied in 1992. Lance's was applied in 1993.

BOARDMEMBER HIRANAGA: Is that Leroy, Lance or --

MR. GILLILAND: One and the same.

MR. CHANG: The one that we offered meters to, the one on the left side. They actually applied for their subdivision application in 1993; so they were placed on the

priority list according to that date. And Guy's subdivision was applied in 1992, which there's no projects on the priority list before 1992.

BOARDMEMBER HIRANAGA: So these conditions for subdivision, I don't see those additions for subdivision approval. Those conditions that were deferred, I don't see the conditions.

MR. CHANG: What do you mean, conditions?

BOARDMEMBER HIRANAGA: It says that you would sign this agreement to defer the subdivision conditions and you cannot obtain a water meter until these conditions are

satisfied. What are those conditions?

MR. CHANG: The conditions would be set at the time they either come in for water service or come in for building permits. They would need to comply with the current applicable subdivision rules and regs for subdivisions at the time they come in.

BOARDMEMBER HIRANAGA: So have you specified those conditions, identified those conditions?

MR. CHANG: Yes, we have. In fact, they already submitted construction plans to satisfy this.

BOARDMEMBER HIRANAGA: So they're in the process of complying or satisfying those conditions?

MR. CHANG: Yes.

BOARDMEMBER HIRANAGA: And this decision to satisfy these conditions was made when, their application?

MR. CHANG: It was just this year, I think.

MR. GILLILAND: Yes. Well, we commenced the discussions in May of '04; and through the course of talking with Herb, we submitted --

BOARDMEMBER HIRANAGA: And Leroy, when did they obtain their additional water permits?

MR. CHANG: I don't have that data.

MR. GILLILAND: Very roughly, I think it was '96.

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BOARDMEMBER HIRANAGA: Could the staff reply,

please?

CHAIRMAN VICTORINO: Herb, please.

MR. CHANG: I don't have that information with me.

BOARDMEMBER HIRANAGA: Was it recently?

MR. CHANG: Within five years.

BOARDMEMBER HIRANAGA: So they were issued three

new meters although they had an existing meter? Or they were

issued two new meters?

MR. CHANG: I don't have that information. But it sounds like, if I were to look at the numbers, they got three meters, new meters.

BOARDMEMBER HIRANAGA: Was that legal for him to transfer the meter to 166 from 33?

MR. CHANG: I believe so, because when they did the two large subdivisions, they entered -- I think they also entered into one of those family subdivision agreements.

So I think that what happened was it was mutually agreed with Lance and the Department that if they wanted to,

they could transfer or relocate the existing meter onto Guy's subdivision and obtain three new meters. That wouldn't be a problem with the Department under the water meter issuance rule.

VICE-CHAIRMAN OKAMURA: Can you repeat what you said? I'm sorry.

CHAIRMAN VICTORINO: Go slowly.

MR. CHANG: At the time when we offered three meters, two or three meters to Lance, the department and Lance both decided that it wouldn't be a problem if the existing

water meter was transferred onto Guy's half of the

subdivision.

CHAIRMAN VICTORINO: So if I'm correct, you

physically moved that meter from where it was located over to

its present location? And the old location was Leroy's

subdivision?

MR. CHANG: I would say Lance's.

CHAIRMAN VICTORINO: Lance's, okay. Let's use,

just for confusion purposes, Guy's.

MR. CHANG: Guy's.

CHAIRMAN VICTORINO: And then moved it to -- no,

moved it from Lance's to Guy's subdivision?

MR. CHANG: Yes.

CHAIRMAN VICTORINO: Okay. I'm just getting a little confused myself listening to this. I apologize.

BOARDMEMBER HIRANAGA: So you installed a new service lateral to service 166? How does --

MR. CHANG: Because the original subdivision, the large lot subdivision entered into a family subdivision. Before we could approve the three water meters to Lance's subdivision, they had to comply with the original family subdivision agreement.

So he had to install, as part of his three-lot subdivision, a new lateral for Guy's. There was actually three family subdivision agreements entered into, the original and then the subsequent three subdivisions.

BOARDMEMBER HIRANAGA: Okay, thank you.

CHAIRMAN VICTORINO: Mr. Okamura, you had --

VICE-CHAIRMAN OKAMURA: I was just asking him about what he said. I couldn't -- I missed what Herb said, so I just wanted him to repeat that.

CHAIRMAN VICTORINO: Okay. Ms. Parsons?

BOARDMEMBER PARSONS: Herb, could we have confused

or missed sending Mervin a notice at that time? Could we have confused it with Leroy?

MR. CHANG: I don't think so, because we went strictly by subdivisions' applications and the date of the application with Public Works. And clearly, Guy's subdivision, their application for subdivision was made in 1992; so there would have been no other procedure other than the priority list to notify them.

BOARDMEMBER PARSONS: But if they were in the process of doing a -- this is what I kind of don't understand.

If they were in the process of doing a subdivision and it was completed in '93, why wouldn't they have been included on the automatic priority list?

MR. CHANG: It was a decision that we use the application date with Public Works is how we placed projects on the list. If we had chose to use final subdivision approval is another method, perhaps it would be, but that wasn't the decision.

BOARDMEMBER PARSONS: And then when we went in to clean this up later on, you know, when we were asking for people to come forward, we sent notifications out?

MR. CHANG: No, because the Department didn't know how many -- who was sharing. And to go through our files --

BOARDMEMBER PARSONS: Oh, okay.

CHAIRMAN VICTORINO: Ralph, you had a question?

BOARDMEMBER JOHANSEN: Well, I don't know whether it's terribly relevant. But doesn't the Department's records with respect to these parcels reflect whether a notice was sent to both parties or to one party, the right party, whether it's certified or not, there should be some record of the notice. And if there's a record of the notice, there's a presumption that it's received unless it's returned.

CHAIRMAN VICTORINO: Do you want to answer that,

Herb?

MR. CHANG: I'm not quite following that.

BOARDMEMBER JOHANSEN: Well, is there a record of
a notice to the proper party in the Department's records?

That's all I'm asking.

MR. CHANG: Notice of what?

BOARDMEMBER JOHANSEN: He's saying he didn't
receive certified notice, which is ambiguous to me, because I
don't know whether he received a notice that wasn't certified.
I'm just confused about that question, if it's relevant.

MR. CHANG: Well, let me explain. We do send out certified letters as meters become available to projects on the priority list. That's the only people that we -- project owners that we actually send out letters to.

So in this case where his first cousin's project was up for meters, we would -- we did send certified letters to those property owners that were affected only. Being that Guy's property wasn't really offered meters because they're not even on the priority list, there was no reason to send them any certified letters.

CHAIRMAN VICTORINO: So if I get this correct,

Herb, because their subdivision went in for approval in 1992

and subsequent in 1993 -- I'm not going to use months or

dates, but just 1993, we came up with this priority list,

which subsequently you looked at anything that was from 1993

forward that was on the books or on the scales or whatever you

want to call it, and those were the people that were sent

these notices?

MR. CHANG: They were sent certified letters when

meters were available for their projects.

CHAIRMAN VICTORINO: But those are the guys, those

are the people that would have been sent these certified
letters?

MR. CHANG: Yes.

CHAIRMAN VICTORINO: Anything prior to that, 1992,
1991, would not have been on that scope, on that map,
whatever?

MR. CHANG: Yes.

CHAIRMAN VICTORINO: Okay. I'm just clearing this
up because I'm trying to clear it up in my mind.

Yes, go ahead.

BOARDMEMBER HIRANAGA: Certified letters were sent

to people that were on the priority list or to be placed on
the priority list?

MR. CHANG: Certified letters are being sent to
project owners when the department has -- is ready to offer
that particular project water service.

BOARDMEMBER HIRANAGA: But they're already on the
list?

MR. CHANG: Right.

BOARDMEMBER HIRANAGA: So this claim that he
wasn't provided notice to get on the list, was there a policy
or a decision that certain people were required to be provided

notice to be placed on the list? Or was it just public knowledge of the notice that there's a list being formed; if you want to get on this list, you get on the list?

MR. CHANG: It was pretty much the latter. We did notify the public by Maui News, I think Haleakala Times.

BOARDMEMBER HIRANAGA: So we're talking in 1993, not 2002?

MR. CHANG: In 1993, we -- back in '93, up to 2002, it was just general knowledge.

BOARDMEMBER HIRANAGA: He's claiming he did not

get certified notice to sign up on this.

MR. CHANG: There was no such thing as certified letters to anybody.

BOARDMEMBER HIRANAGA: Isn't that your claim, though?

MR. GILLILAND: Maybe I used the wrong word. But the notice, I had understood that Lance had gotten notice, with their subdivision in the works, to register on the priority list. That's what we were relying on, too, is being notified, with an approved subdivision that occurred in April of '93, to at least, heads-up, you guys got this deferred

water agreement with some preexisting right at that time, get your name on the list.

I mean, they're 26. Leroy Gilliland is 26. Also on the list, there's priority dates of number 5. And I was trying to read this legend. There's water reservations, there's subdivisions, and there's building permit applications. There's three types, and maybe I should -- you folks know this better than me. But number five on the priority date is a 4/7/93 subdivision. We got approval 4/16.

BOARDMEMBER HIRANAGA: So on your letter, page number 5, at the bottom you say: "Gillilands felt they should

have received certified notice to register on the priority
list."

So are you saying that you felt the County had an
obligation to notify you that this priority list was being
formed?

MR. GILLILAND: The word certified may not be the
correct term, but notice, you know, or communication.

BOARDMEMBER HIRANAGA: You felt the Department had
an obligation to notify you that this list was being formed?

MR. GILLILAND: To get on it. Put your name on
the list so at least you have an opportunity at a later point

in time to register for standing.

CHAIRMAN VICTORINO: Ms. Parsons?

BOARDMEMBER PARSONS: Herb, do you feel that --

you kind of mentioned this earlier that maybe if we had used when the subdivisions were final rather than applied for, or maybe both, in that time period. Do you think this may have fallen through the cracks because of the procedure that we used? Is that a possibility?

MR. CHANG: I don't think the Department really gave much, too much emphasis on -- we just felt that the --

well, what happened was if you look at it, 1993 and 2002, when the water meter rule came into play, there's a gap of nine years.

I think the Department felt by using the date that this applicant made his submittal to the Department of Public Works would be the, I guess the most fair; because that's more a timeline that would allow more subdivisions to be placed on the list versus final, because application becomes -- is prior to final approval. So that would allow more projects to be on the list.

So it was just based on that, we decided it would

be more advantageous to the public. More or less, we decided to put more projects on the list by using the earlier date, not really taking into account the final, you know, what happens if somebody's like on the borderline.

BOARDMEMBER PARSONS: Like this is, because it's like he's finished in '93. So he kind of fell through the cracks, right? Because he wasn't finished but his application went in before we started the list, but he didn't finish until we started the list.

MR. CHANG: But then again, he had nine years to do his thing.

CHAIRMAN VICTORINO: And his thing, I think he's referring to is getting on the priority list. I think that's what you're referring to.

MR. CHANG: Or comply with his family's subdivision restriction, get rid of that and apply for the meters.

CHAIRMAN VICTORINO: Thank you.

Okay. Sally, then Kent.

BOARDMEMBER RAISBECK: Okay. One of the questions this brings up for me is what defines the ownership of a meter. Is it ownership of the lot that it's placed on, is it

usage, is it -- does the history affect this here so that when Mr. Gilliland says that, you know, the meter belongs to that property, the question it raises in my mind is it's never been -- well, it's been used by the adjacent property for all of these 12 years, and presumably the bills have been paid by the tenant of the entire property, of the 85 and these other ones that aren't Lance's.

So I just don't -- maybe Mr. Kushi has -- or

George, maybe George can give us a little more guidance about what constitutes ownership of a meter. Is it simply the

ownership of a particular land that the meter is located on?

DIRECTOR TENGAN: Mr. Chair, if I might.

CHAIRMAN VICTORINO: Mr. Tengan, go ahead.

DIRECTOR TENGAN: The property itself doesn't own the meter. The property would have rights to the meter. And I would say in this case here, we would probably have to go back to the original date of application and, you know, what lots are possible that the application was being filed for.

And in this case here, it looks like it should go back to 33.

BOARDMEMBER RAISBECK: So that in '72 or whatever,

when the meter was put in in a different location, that would
sort of determine ownership?

DIRECTOR TENGAN: No. It's the application that
the meter was being applied for.

BOARDMEMBER RAISBECK: Well, at what time in --

DIRECTOR TENGAN: It seems like in this case here,
without seeing the original application and from all the
testimony or write-ups in here, that the original parcel 33
was the parcel that the meter should have been assigned to.

BOARDMEMBER PARSONS: But it has a new one.

CHAIRMAN VICTORINO: Hang on.

Mr. Kushi, from a legal aspect, what would be your take on this as far as this meter, A, being moved from the original location to the present location and what the service agreements for that meter, how would that play into this whole --

MR. KUSHI: Well, Mr. Chair, I don't know the entire history of this situation. It seems like there was one big lot at one point in time, or two big 36-acre lots and then one remains, parcel 85. And then the other one was divided into subdivisions, one of them is his and one of them is Lance's. Correct?

MR. GILLILAND: Essentially, yes, but the dad's.

MR. KUSHI: And then the meter in question was assigned to Leroy or Lance's subdivision; they divided that into three lots, and per the Department, they got three new meters. So there's four meters for three lots; so they have an extra one.

And according to the testimony, Lance or Leroy says, okay, go ahead and move that meter to my cousin's property; but apparently, the Department's records indicates that the subject meter is still assigned to Leroy or Lance's.

MR. GILLILAND: Correct.

MR. KUSHI: So I don't see a problem in assigning that meter since there's an extra one, unless he wants to be greedy and have four, you know. But that's another problem. That's separate from what he's asking for.

CHAIRMAN VICTORINO: Right.

MR. KUSHI: But even if you resolve that, even if you resolve that issue about Guy having one meter, he still has three lots. That's one issue here, whether he should get two additional lots, two additional meters.

The other issue is testimony has it that one

existing meter is being used by parcel 85, which is not part of this subdivision. That's the original 36-acre lot.

Now I'm not sure, when they say sharing the meter, is parcel 85 strictly grazing? Are there any structures on parcel 85?

BOARDMEMBER RAISBECK: No.

MR. GILLILAND: Not necessarily.

MR. KUSHI: Are there any structures on parcel 85 is one question. Are there any structures on this three-lot Guy's subdivision is another question.

If the meter is serving parcel 166 and is I'm

assuming grazing, there's a trough or whatever they use, and the cows go into parcel 85 but they drink the water from parcel 66, I don't consider that sharing.

I mean, if the water from parcel 66 goes over to parcel 85, then that may be sharing. But these are factual issues that you need to ferret out.

CHAIRMAN VICTORINO: Kenneth?

VICE-CHAIRMAN OKAMURA: Thank you.

So what you're asking right now is for like a 2-inch meter?

MR. GILLILAND: Our prior request is to address

the lack of being put on the priority list so that we could have an opportunity for the three lots to register.

VICE-CHAIRMAN OKAMURA: But actually, you want a 2-inch meter basically based on that?

MR. GILLILAND: Not necessarily. The preference would be three meters for the three lots, to be honest with you.

VICE-CHAIRMAN OKAMURA: And Herb, I also wanted to ask you, you said that if he complied with the subdivision requirements or something like that, currently, the current

requirements, he would be entitled to a meter or meters; is

that what you said?

MR. CHANG: No. If he did the subdivision

improvements, he would be able to cancel that agreement, and

whereby the restrictions of that agreement would be no longer

--

VICE-CHAIRMAN OKAMURA: And then stand in line for

a meter after that?

MR. CHANG: Right.

VICE-CHAIRMAN OKAMURA: And then on this letter

from Lance, it says the requirement and others placed -- well,

he's saying he moved the meter to parcel 166 "by myself in order to satisfy the Board of Water Supply requirements."

So we need to find out possibly what that means, what requirements were placed on Mr. -- in regards to that meter, we need to find out what requirements the board, the Department placed on Lance Gilliland when he was allowed to put in the three meters. We need to find out what requirement forced him to place the meter on lot 166, I think. Thank you.

CHAIRMAN VICTORINO: Okay. Anybody else?

Okay. I'll do Stacy first.

BOARDMEMBER CRIVELLO: You probably explained this

before. But a priority list or notification was not sent out to Guy Gilliland because their application was in 1992 and not 1993?

MR. CHANG: Yes.

BOARDMEMBER CRIVELLO: And that's the consideration to determine whether they get a notice or not?

MR. CHANG: If they were not on the list, they wouldn't be getting that notice that meters are available.

BOARDMEMBER HIRANAGA: Are you talking about the '93 list, or the 2000 list?

BOARDMEMBER CRIVELLO: The '93, or the 2000 list.

MR. CHANG: Yes. Since Guy's subdivision was made prior to 1993, there would be no reason to send that to his property because he's not even on the list to offer meters to.

CHAIRMAN VICTORINO: Okay. Ginny first, then Kent.

BOARDMEMBER PARSONS: Herb, do we want to cure sharing? I mean, from the Department, from the Department's level, do we want to cure it?

MR. CHANG: Sure.

BOARDMEMBER PARSONS: So whatever we decide here

could help get this situation of sharing taken care of?

MR. CHANG: (Nods head up and down.)

CHAIRMAN VICTORINO: Before I go to you, Kent, Mr.

-- okay. Go ahead, Mr. Hiranaga.

BOARDMEMBER HIRANAGA: Could you briefly summarize

the water meter issuance rule for the upcountry water system?

Is that basically that if the property owner felt they had

some type of reliance and they provided notice to the County

that they were prepared to meet the conditions in order to

receive a meter, that they would be placed on the top of the

list? Is my recollection correct?

Even though they were not on the list previously, within that period if they said we'll meet and satisfy the conditions, they would be placed at the top of the list?

MR. KUSHI: Mr. Chair, Member Hiranaga, if I may respond, when we reviewed this upcountry water meter issuance rule -- and it's in your binders in your rules. And I'm looking at Section 16-106-04, and it's in the upcountry list.

Apparently, at that time -- well, I'll just -- the rules basically state, under section 104, says November 2nd, 1994, a priority list of premises has been maintained by the department by the date received. Herb said they received this

subdivision application.

MR. CHANG: The subdivision application would be the date they applied to Public Works.

MR. KUSHI: So the key date, it says November 2nd, 1994, they've been keeping this list. Guy's subdivision happened before that time.

CHAIRMAN VICTORINO: That's correct.

MR. KUSHI: So he was before his cousin Leroy or Lance. So since Leroy or Lance's subdivision fell into this crack, they became on the priority list.

Now, to address people like Guy who had a recorded

subdivision, although it's a family subdivision, he has three lots, the board included this 60-day rule which states that premises not on that priority list and have expended funds in reliance upon official assurances dated before November 2nd, 1994 or have any preexisting rights associated with the premises shall be allowed 60 days from the effective date of this rule to apply to reserve an allocation of service.

So if he had applied during that period, which the report states that he didn't, he would be before the priority list. So not only he would jump the priority list, people

situated like this subdivision, but any other stand-alone lots that for whatever reason did not apply for a meter, the Department, the board at that time wanted a cutoff deadline, a cutoff date to take care of all of these preexisting lots. So that's where he falls in the crack.

CHAIRMAN VICTORINO: Go ahead, Mr. Hiranaga.

BOARDMEMBER HIRANAGA: So from what I understand here, in my mind, this meter in question actually belongs to parcel 33 unless there is an official record permitting the transfer of this meter from 33 to 166. It is not uncommon for parcels to have more than one meter. So 33 could have two

meters.

I was on the board when we created this water meter issuance rule, and the purpose was to squash any types of claims similar to this. And so if you're going to grant him two more meters, you're basically waiving this water meter issuance rule application, which will set a precedence for other people who will claim that they were not provided notice, and you're opening the doors to more claims in my belief.

CHAIRMAN VICTORINO: Thank you, Mr. Hiranaga.

Ms. Raisbeck?

BOARDMEMBER RAISBECK: Yes. I was on a three-person committee who looked very carefully at the rule that you referred to, Kent, that you were on the board when it was passed. And Mr. -- I do not think that section B and C even apply in this case, because what you didn't read, Mr. Kushi, is that B and C, which are 60-day rules -- and one can say, oh, 60 days wasn't enough or something -- but what it says: "Or have any preexisting rights associated with the premises entitling the premises to water service."

Now, that waiver that Mr. Gilliland signed, that waiver to me makes it very clear that they are waiving any

right to water service, because all they're asking for is a subdivision that will transfer title.

And so they have waived, definitely -- they have no rights to water service because of the waiver that they signed. And I, for one, would not think that that waiver can be cancelled, unless they go to the bottom of the priority list. That's my take on what happens here.

And I just would like to say to Mr. Gilliland that I think everybody here is very sympathetic to the hardships that pertain to people who own property upcountry. And the

root of the hardship for many people is that the Department has not been able to have water in sufficient supply and infrastructure to meet the needs of everybody who would like water.

So I'm sympathetic to you, but I think we need to be very clear, as Mr. Hiranaga said, that there are many, many people in a situation of hardship regarding water upcountry because of the situation with water upcountry. But I would not -- I do not see that -- to me, it's almost definitive that the waiver that you signed gave up the rights to claim water.

CHAIRMAN VICTORINO: Ms. Parsons?

BOARDMEMBER PARSONS: Mr. Kushi, when did the one, the one TMK 1 meter rule go into effect?

MR. KUSHI: Herb, was it part of the water system development fees? It would be Chapter 108, which was done in 1993, I believe. Let me try and find that.

BOARDMEMBER PARSONS: I would think it must have been -- it must have come either after this agreement -- because how could we make an agreement for sharing if we had that rule in there? And then if it did that, wouldn't this issue here in '02 negate everything?

MR. KUSHI: Back on the original question, it's

Section 16-108-5, subsection "E" as in "Ed," states: "When premises with existing water service are subdivided, the owner may request relocation of the existing meter or a reduced size upon payment of relocation costs. All new premises resulting from the subdivision of the original premises will be required to have separate water service."

BOARDMEMBER PARSONS: And this is effective 4/93.

And we made an agreement on the subdivision for the shared meter issue in '94? When is this date on here?

MR. KUSHI: No. Will you hold on, please? You

know, you're shooting me questions which I haven't had a

chance to research, so give me some time.

BOARDMEMBER PARSONS: I know.

CHAIRMAN VICTORINO: I think we're moving into --

BOARDMEMBER PARSONS: I'm just trying to --

CHAIRMAN VICTORINO: I know what you're trying to

do. Hang on.

BOARDMEMBER PARSONS: I have different dates here.

Oh, '92.

CHAIRMAN VICTORINO: '92; December 30th, 1992.

BOARDMEMBER PARSONS: '92, 1993. And so this

would --

CHAIRMAN VICTORINO: Before.

BOARDMEMBER PARSONS: Yeah. So this would
supersede this. And '02 supersedes both, I would think.

Well, that's when this other rule was, the 60-day rule.

CHAIRMAN VICTORINO: Hang on one moment.

MR. KUSHI: There is a rule under your Chapter 7,
entitled: Rules for Charges for Water Service, and it's Rule
16-7-4, Subparagraph F as in "Frank," and it says: "The
penalty for providing water service to lots other than the lot
to which the service is assigned is removal of the meter."

That doesn't totally address your question, but
that's where the penalty provision comes from.

BOARDMEMBER PARSONS: What date is that on?

MR. KUSHI: That happened in 1997.

BOARDMEMBER PARSONS: After this parcel.

MR. KUSHI: Herb, chime in if you can.

MR. CHANG: The 1994 agreement, which one was
that?

BOARDMEMBER PARSONS: Well, this is the one you
did with -- actually, it's earlier in -- March of '93. And
then in April of '93, we came up with the one meter, one --

one meter, one TMK rule.

MR. CHANG: That agreement you're referring to in 1993 or '92, the agreement authorizing waiver for subdivision water systems, I don't believe there's a provision to allow sharing.

BOARDMEMBER RAISBECK: Mr. Chair, I would like to follow up on something that Member Hiranaga said.

CHAIRMAN VICTORINO: Yes, go ahead.

BOARDMEMBER RAISBECK: I agree with him that the ownership of this meter, despite being on Mr. Gilliland's lot, resides with whoever owns lot 33, which I presume is the

Lance, Lance Gilliland.

BOARDMEMBER PARSONS: No, he doesn't. He owns
261.

BOARDMEMBER RAISBECK: Who owns the other two
parcels in that three-lot subdivision? Is it Lance?

MR. GILLILAND: It's the Leroy Gilliland family.

BOARDMEMBER RAISBECK: Okay. But the ownership of
the meter resides with whoever owns that three-lot
subdivision. And the Lance Gilliland says: "My testimony
today is to ensure that this meter remains in place for the

purpose it was installed with no exceptions or conditions.

Should additional services be requested for the parcel above of the board. I request they refer back to the properties agreement."

Is there an agreement between the owner of those three properties? And do you own all three of the other, the

166 --

MR. GILLILAND: The Merv Gilliland family, yes.

BOARDMEMBER RAISBECK: So the two family trusts own the two separate three-parcel things; is that correct? The two separate family trusts?

MR. GILLILAND: They're not trusts, no. They're individually held by the issue of Merv Gilliland. The three kids own the three parcels. And the three kids of Leroy Gilliland own the three parcels of --

BOARDMEMBER RAISBECK: Okay. They own them separately because they're subdivided? They own --

MR. GILLILAND: Yes.

And in answering that, I've got to say one thing. Parcel 33, if it does have a right to the meter, where are you guys drawing the line where 33 owns the meter? Because the original 33 was owned by Merv and Leroy, okay, original. You

guys are with me, right?

BOARDMEMBER RAISBECK: What date?

MR. GILLILAND: They originally owned it half, half up through 1983. So I'm listening to this discussion and trying to get a sense -- you're trying to ascribe some right to 33, but 33 was Merv Gilliland's, too, I mean if you want to follow that thought process.

Yeah, the whole thing. So it's like -- you're all jumping around here and I'm trying to follow it, but it's tricky.

(Reporter interruption.)

CHAIRMAN VICTORINO: Wait a minute. There's too

much -- we have to keep the conversation one at a time.

Go ahead, Mr. Gilliland.

MR. GILLILAND: I just was clarifying the

disposition of if we're looking now, focusing on parcel 33,

don't lose sight that Merv Gilliland had an ownership interest

in parcel 33 and was the person who signed on all the

applications. From '72 -- you look at the records, because we

pulled all the records -- all the way through 1993, Merv

Gilliland signed. Leroy never signed.

CHAIRMAN VICTORINO: Director Tengan?

DIRECTOR TENGAN: Yes, Mr. Chair.

A clarification. Rights to the meter, you know, it's not assigned to the owners of the property. Rights to the meter is assigned to the parcel itself. So it doesn't matter who owns the property. It's assigned to the particular parcel, and in this case here, it's parcel 33.

CHAIRMAN VICTORINO: Okay. Thank you for that clarification.

BOARDMEMBER PARSONS: Can we clarify why we moved it from parcel 33 to 166? And do we have a set of whatever we

gave to Lance Gilliland to have moved it, then we placed it with 166? So can we get that for maybe next month so we can look at this, why we moved the -- why we moved it, what were the rules?

MR. CHANG: I think I can answer -- without going through the files, I think I have the answer, I'm pretty confident, why we did that.

Because the six properties resides on what was originally parcel 33 and because that large parcel was cut up into two properties, one by Leroy and one by Merv, to divide interest, at that time they did that step -- which was again

dividing that into two parcels -- there was only one meter.

And that parcel was 33.

So when they did that, they entered into the family subdivision agreement, which pretty much says you can't ask for more meters, and that's how they were able to cut up that one property into two lots.

BOARDMEMBER RAISBECK: Three lots.

MR. CHANG: So when they went further into what they were doing, each of these two parcels came in for a subdivision to three lots each. So it's the same thing. There's still again only one meter on the property.

So when Lance Gilliland wanted to do his section which complied with the -- wanted to get rid of the family subdivision agreement to get three meters, he was able to get either two or three meters. So the choice was given to him he could apply for three meters and then allow the existing meter to be put on the other half; so he felt no problem.

BOARDMEMBER PARSONS: Moved? Physically moved to TMK 166, correct?

MR. CHANG: Physically moved to the other half. We didn't care. They could decide which one they wanted.

166 --

BOARDMEMBER PARSONS: But that's where it went,

correct?

MR. CHANG: That's where it went.

BOARDMEMBER PARSONS: Physically, it was moved.

CHAIRMAN VICTORINO: Okay, we got that.

MR. CHANG: So basically, that's it. The one

meter that was assigned to this huge lot could -- by the

department's processing, found it was okay. There was no

problem with moving it. But at that time, we didn't clear up

this thing about sharing with parcel 85. We didn't take care

of that.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: Clarification.

CHAIRMAN VICTORINO: Yes, Mr. Hiranaga.

BOARDMEMBER HIRANAGA: Was there originally one
72-acre parcel, or -- was it 72 acres and it got broken up
into two, 36, 36?

MR. CHANG: What is six lots with one lot?

CHAIRMAN VICTORINO: There's a question. What is
the question, Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Was there one parcel that

was 72 acres that got broken up into 36 and 36?

CHAIRMAN VICTORINO: Mr. Gilliland?

MR. GILLILAND: No. It was Dick Laurie, first cousin with Merv and Leroy. Merv and Leroy got their 36-acre parcel. The entire piece prior, preceding all of this, was a huge piece that got broken up. But just for your purposes, Mr. Hiranaga, it was Merv and Leroy got a 36-acre, Dick Laurie got a 36-acre individually.

CHAIRMAN VICTORINO: That's the one showing on the map, that same map 22, as TMK 2-7-12-85, Charlotte C. Laurie and a Richard C. Laurie. Is that what you're referring to?

MR. GILLILAND: Yes.

MR. KUSHI: For clarification, on the same page
72, you've identified parcel 85, and this is 36 acres.

CHAIRMAN VICTORINO: That is correct.

MR. KUSHI: To the left of that, there's two
separate subdivisions. At one point in time, that was parcel
33.

CHAIRMAN VICTORINO: Okay. Now I'll let
Mr. Okamura go first, and then you, Ms. Raisbeck.

Go ahead.

VICE-CHAIRMAN OKAMURA: So actually, parcel 85 has

no rights to the meter? Although he's using it, use is --

does use entitle him to rights?

MR. KUSHI: Mr. Chair, I'm not aware if parcel 85

has a meter.

VICE-CHAIRMAN OKAMURA: It doesn't have a meter,

according to Guy. But Herb asked guy to get a clearing,

something in writing stating that he gives Guy the right to

the meter, but maybe Mr. Laurie doesn't have any rights to the

meter.

But if it can be shown in the records that it was

assigned to 166, you know, then parcel 85 has no claim to the meter. So that's another thing we could look into perhaps.

CHAIRMAN VICTORINO: Ms. Raisbeck?

BOARDMEMBER RAISBECK: Yes. I think what has developed from all of these questions and so on is that the tenant who is currently leasing 85, 223, 222, 33 and whatever, 260, would be the 9.497 acres. Is that 260? I can't quite tell.

Anyway, that all is being leased as pasture, and the use of the meter is for pasture purposes for the people, the person or party who is leasing all of those parcels and

using it for pasture. So that's what the use of the meter is.

I agree that 85 has no claim on the meter, but I think that unless there was -- at the time the three meters were put in for Lance's portion, unless there was something written between them and Guy, whoever owns the three -- or the owners of the three parcels, I would think all six owners of those parcels would have to agree about the use and control of that meter.

And we do have from one of those, Lance, we do have the letter saying he would object to any change in the use and the purpose. And he also says, "I request they refer

back to the property's agreement."

And I ask again is there an agreement among the
six owners or up to six owners, is there some kind of
agreement about the use of the property?

MR. GILLILAND: There's just the lease agreement.

22

BOARDMEMBER RAISBECK: I'm not talking about the
tenants.

MR. GILLILAND: No, none whatsoever.

BOARDMEMBER RAISBECK: There's no property --

MR. GILLILAND: My sense is that's what he's

referring to.

CHAIRMAN VICTORINO: I think I'm coming to a point

now that I may defer this matter, because there are

extenuating -- well, at least things coming up that we don't

have information to verify or to get enough knowledge at this

juncture to make a good decision or a decision that would be

fair to all.

I think that if it's already with the board I

think that there's a lot of information that would need to be

brought forth. How this all developed -- I mean, you gave us

the history, but I think we have to go back to square one, when it was 72, and then 36, and down and down, so that we actually have a trail to follow. I believe that's something very poignant.

We may also have to call Lance and ask Lance to be here, because we need to know what he's referring to; and if there is an agreement in writing, then to produce that document.

I think there's too many variables at this point, and that's why I'd like to defer the matter.

Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Just as a closing remark, if the owner of parcel 33 does not have an objection to this meter which resides on 166 be assigned to 166, I think the Director has the power to do that. So as long as the owner of parcel 33 has no objection, I would not -- I would be in favor of the meter officially being assigned to 166. But we have to get the concurrence of the owner of parcel 33.

CHAIRMAN VICTORINO: But I think what I'm getting is there is.

BOARDMEMBER HIRANAGA: Well, it's kind of confusing, the last statement: "Remains in place for the

purpose it was installed, with no exceptions or conditions."

What remains in place is physically where it is.

So I don't know if he's objecting to it or not.

CHAIRMAN VICTORINO: That's why I think there's

too many ambiguous -- in that letter alone, some very

ambiguous statements that we need to get clarification. So

I'd like to defer this matter so that we can really make a

good honest decision with all the necessary information.

I would ask the department to bring forth all the

necessary changes on the priority list, how this was

developed, so that we don't have any confusion when we decide this at our next meeting. So there will be some specific questions that need to be answered.

Ms. Parsons.

BOARDMEMBER PARSONS: Just to clarify something,

Lance is not the owner of 33. Lance is the owner --

BOARDMEMBER HIRANAGA: I don't care.

BOARDMEMBER PARSONS: It's 261. So we really want to see the owner of 33.

CHAIRMAN VICTORINO: Well, I think we need to bring all the parties --

MR. GILLILAND: I believe it's one of the issues of Leroy. I'm pretty comfortable it's one of the other --

CHAIRMAN VICTORINO: Is it all right, Director Tengan, that we get all these questions and all these various variables, the people that are involved, if somehow we can make sure that they're either a part of it or have some representation so we can make a decision on this matter?

MR. GILLILAND: I'd like to --

CHAIRMAN VICTORINO: I'm trying to defer this --

MR. GILLILAND: I understand.

CHAIRMAN VICTORINO: -- but everybody keeps

raising their hands.

So Mr. Kushi?

MR. KUSHI: Just for the record, if you're going to defer it, that's fine with me.

Member Parsons, I would apologize, I could not find the rule in question, but I will try and look at it before the next meeting. And your question was what rule or rules of the Department prohibit sharing of water meters.

BOARDMEMBER PARSONS: Okay.

CHAIRMAN VICTORINO: That's another one of those questions that need to be addressed.

Mr. Hiranaga? Or, I mean Mr. Okamura. I

apologize.

VICE-CHAIRMAN OKAMURA: Also, I wanted to ask that if the Department could make a judgment as to where or to which property or to whom the meter that you share belongs to, make a determination. If it could be done by the Director, that would be great. Is that -- do you know what I mean?

MR. CHANG: Yes.

VICE-CHAIRMAN OKAMURA: Thank you.

MR. GILLILAND: I have one closing comment.

First of all, thank you. I recognize you guys have a lot of business, and this is -- I'm confounded sometimes by this whole myriad of moves and issues and overlapping rules and regulations and disposition.

I would also add that if there's an opportunity for me to rehuddle up with the Department, at the Department level, and revisit my request to bring it to the board and the mayor and we can come up with a revisiting and a resolution of it, does it still stay in the purview of the board? Or can it be re --

CHAIRMAN VICTORINO: Mr. Gilliland, if you can,

with the Department, come to some resolve and it doesn't have to come back to us, that would be fine with us.

MR. GILLILAND: All right. I just didn't know if I had that latitude.

CHAIRMAN VICTORINO: We really want to help you. We want to be fair. We want to make sure all the information and all parties concerned are present, at least when we make that decision.

MR. GILLILAND: A heck of a lot more issues came up in the discussion that I didn't know about.

CHAIRMAN VICTORINO: So with that in mind, I'd

like to defer this matter to be brought up at the next meeting, unless you folks can come to some amicable decision and this matter can be resolved. Is that all right with the board?

Okay. Thank you very much. We'll take a ten-minute break.

MR. GILLILAND: Thank you for your time.

(A brief recess was taken.)

CHAIRMAN VICTORINO: Reconvene the meeting.

Going back to my question of deferral, if I have no objections from the board, can we please defer this matter

to our next meeting?

BOARDMEMBER RAISBECK: No objection.

CHAIRMAN VICTORINO: All those in favor?

(Ayes.)

CHAIRMAN VICTORINO: Thank you very much.

At this time I'd like to call up Captain Martin
from the Fire Department.

And I guess Alva Nakamura, will you be helping
from the Department's point of view as far as fire flow?

And we're moving agenda items, as I asked you

earlier. Under "Other Business," number IX, item A:

"Presentation by the Fire Department and the Department of Water Supply on fire protection standards."

Captain Martin, thank you for being here. We appreciate you waiting all this time. I do apologize. Yes, you can speak right into there. And Alva, could you just speak right in there. Speak clearly so that she can take the necessary minutes.

Go ahead.

CAPTAIN MARTIN: Good morning. Thank you for inviting me. Hopefully, I can shed some light on some of the

Fire Department requirements concerning water flow fire protection.

I'm going to go over some numbers that the Fire Department uses when we require the water flow fire protection. And I also want to make the clarification that the Fire Department gets into fire protection water requirements when it is generally not on the County system, or the fire hydrants or fire protection equipment is not on the County system.

An example is if someone lives out in Kaupo, Nahiku, where there is no County water system, the Fire

Department steps in to address that issue, and generally the Department of Water Supply will not have -- or get involved in that water issue.

We've had problems in the past with enforcing because we didn't have an adopted ordinance, rules or regulations to follow for these people that live in these rural areas.

What we currently have for agricultural districts is a minimum flow rate of 250 gallons. And I'd also like to clarify the Fire Department and the Board of the Water Department have different amount requirements right now. It

increases -- from the agriculture, 250 gallons a minute, separated at 500 feet apart; we get up to a thousand gallons per minute for residential; hotels usually 2,500 gallons per minute, along with heavy industrial is 2,500 gallons per minute.

Currently, before the County Council in the Public Works committee, we do have -- we're trying to adopt a new fire code. And in that fire code, we made amendments to it to be the same with the Water Department as far as the requirements.

We've increased the agriculture zoning to

500 gallons per minute. The rural is 1,000; duplex, 1,250;

townhouse, lowrise apartments, 1,500 gallons per minute; and

light industrial, 2,000; and heavy industrial will remain the

same at 2,500. So we're trying to be the same with the Water

Department, and we're hoping that this will help that.

But I guess basically the Fire Department has its

requirements, the Water Department has their requirements.

And again, we get involved when it's on a private system. We

inspect hydrants, we inspect water lines, we inspect flow

rates, where the Water Department doesn't.

And what we did when we recognized that we had problems with these rural areas, we went ahead and we adopted NFPA 1142, which is the National Fire Protection Association standard which deals with suburban and rural fire protection. We identified areas where people were building on agricultural lots, which required for us 250 gallons per minute. They either have to install a water tank or have a catchment. And yet, some lots, these people were building 4,000 square foot homes, and although the requirements would be 250 gallons a minute, obviously that wasn't right. It wasn't -- it's a safety issue for the firefighters, it's not effective.

So in that we do have, in 1142, a formula that we can use based on the size of the home, the type of construction, that we can use to actually upgrade the water requirements for fire protection. And again, the Water Department is usually not involved in these rural areas.

What we have been looking at also is homes or facilities that require fire protection that are far from fire stations. You can have all the water in the world at your doorstep, you could have the best fire hydrant at your doorstep, but until the fire truck gets there, it's useless.

So we have been advocating for a number of years, and we will

continue to advocate fire sprinklers, where you would actually have a fire protection system 24 hours a day, seven days a week as long, as it's maintained.

I would also like to add that the fire sprinkler topic is coming. It's a wave throughout the nation. I was just informed a few weeks ago that it's actually going to be required in the 2006 NFPA fire code. So it'll be required for all single-family dwellings.

VICE-CHAIRMAN OKAMURA: What is that now?

CAPTAIN MARTIN: To have fire sprinklers in your

home, in your single-family home.

BOARDMEMBER RAISBECK: In new --

THE WITNESS: In new construction.

VICE-CHAIRMAN OKAMURA: And who is the NFPA? I'm

sorry.

CAPTAIN MARTIN: The NFPA is the National Fire

Protection Association.

But I'd also like to clarify, we would have to
adopt something like that. And so just because it's put in
there doesn't mean people would be required to install it.

But the Fire Department is proactive in that, and we do want

to go ahead and eventually have people with sprinklers in their homes.

But that being said, if you live somewhere let's say like Kaupo, we want you to put in a fire sprinkler, because the fire truck to get out there, it'll be -- it'll be gone. So we'd rather that person put in a fire sprinkler.

You don't have to -- we're not stressing the need for a fire hydrant. But in the years ahead, 20, 30, 40 years from now, we cannot have subdivisions and neighborhoods with homes or facilities with all fire sprinklers and no fire hydrants. So there will come a time in the future where we're

going to have to have the infrastructure placed as areas
become more dense.

CHAIRMAN VICTORINO: Can I make a point in case?

Kula 200 and some of these areas for which now we have a Fire
Department there, but still many of these areas have, what,
standbys instead of fire hydrants. So even then, it doesn't
become a real good firefighting tool, because you still need
to get the necessary pressure to fight the fire.

So that's what you're referring to, that you can
build dense areas like Kula. When there was no fire station,
that was fine, standbys was the norm. But now that you have a

fire station, you still can't reap the benefits for insurance and other credits that you could get, because you lack the pumping capacity from a standby. Is that correct?

CAPTAIN MARTIN: That is correct. And it depends on when it was built, established, and the infrastructure was put in. It may have been code-compliant at the time. And of course, we can't go in after the fact and require those to upgrade, unless they come in for some type of permit, application, or to build something like that.

But also, we try to be reasonable. I'm not going

to require someone in Kaupo to install a fire hydrant. We have to be reasonable. But there will come a time in the future where infrastructure and planning will need to be done. Let's say we do put out a fire station in the future out in Kaupo, and the response would be quick, yeah.

But again, we're trying to advocate the sprinklers. And the wave is coming. There's many jurisdictions across the country right now, today, if you decide to build a new single-family home, you must put fire sprinklers in your home. It's code. So we're not blazing a new trail; it's out there. And we will be proposing something

in the future.

That's basically all I have. I don't want to take too much of your time.

CHAIRMAN VICTORINO: Why don't we have Alva give us the Department now, your fire codes or your fire protection setup, because I think that's one of the big questions we've all had is the Department has one set of standards and the Fire Department has another set of standards, and we always felt that maybe the two should get together and get one set of standards. But let's listen to the Department's point of view and your standards.

Go ahead, Alva Nakamura.

MR. NAKAMURA: Mr. Chair, as far as the Water Department's standards are occurred, as you know, one of the issues that have always been raised is -- where we had difficulty in permit applications and approvals -- was when the Fire Department provided or requested sprinkler systems to be installed in this home, and when they came to the Department, we had to require them to upgrade the infrastructure. This has caused many, many problems in the past, a lot of concerns.

Obviously, some people, if the requirements are

that they've got to upgrade say from a 4-inch to a 6-inch or an 8-inch pipeline, a thousand feet long, whatever, the cost to do some of these things have been just very, very high.

And needless to say, in the past we have got nothing but complaints from customers saying, well, the Fire Department says the sprinkler systems will do fine, how come the Water Department is requiring us to upgrade the infrastructure.

Well, in this instance, what we're doing is basically following our standards that we have. And up to now, to recently, the requirements from the Fire Department

and compared to what we have been required have been somewhat different in that respect. So I kind of welcome the change that Val has mentioned to this group that they're looking at making these changes to bring their requirements more in conformance with what our standards are.

And looking at our standards, basically we have, you know, very similar. I mean, agriculture is 250; rural, 400; residential, 1,000; hotels, 2,500. So they're coming really close to what our current rules are.

So in this respect, that should in essence now be kind of -- we're getting kind of close together in terms of

requiring any new construction permits, whatever the requirements are to meet our requirements, as well, as far as the infrastructure side of the equation, other than just looking at sprinkling the homes, you know.

Like I said before, we've gotten nothing but complaints from people, concerns about the costs of the infrastructure. And this rule, I think helped to some degree present a uniform approach in terms of people requesting building permits.

CHAIRMAN VICTORINO: Let me ask you this, either one of you: Let's use a 1,500 square foot house, just an

average house, nothing stupendous. What costs would a sprinkler system, an adequate sprinkler system, would either one of you have any kind of idea what that would cost the individual homeowner to put in?

Val?

CAPTAIN MARTIN: Thank you. That's a good question, and I'm glad you brought it up. I can answer that.

Right now, the fire sprinkler industry has really brought the cost down. You could sprinkle a residential home for about \$1.50 a square foot. So if we're talking 1,500 square foot, maybe a little over \$2,000, you know, to save

your life, to get you out of the house, possibly even save your home.

And we also stress homeowners will pay more than that to put in a solar system, you know, buy a 60-inch TV or a split air conditioner.

I'd also like to add if you put in a fire sprinkler system, I checked with the insurance industry, and you get about a 15 percent break on your insurance policy.

But I don't want to sell it as a money-saving issue; it's a life-saving issue. Putting in sprinklers is not to save your

money; it's to save your life.

And the cost has come down dramatically, because now you're allowed to use what we call CPVC pipe, which is plastic piping, and it's UL listed, and it's certified to be installed in residential homes. It's fairly reasonable, the price.

MR. NAKAMURA: And the PVC piping is also very light-weight, so it doesn't cause much structural problems; whereas, the old piping, the galvanized and the copper sometimes caused structural problems in the past, and it was also very expensive to put together.

CAPTAIN MARTIN: That's correct. And usually the water -- well, you need to have water in the piping at all times. With the metal piping, you'll get more corrosion, stagnant black water. With the plastic, that really cuts it down a bit.

But the maintenance is very important, too. You need to flow the system to put in clean water at least annually.

CHAIRMAN VICTORINO: Mr. Okamura?

BOARDMEMBER HIRANAGA: I just had one question.

Is there adequate flow out of a five-eighths inch meter to

provide the water necessary for a sprinkler system?

CAPTAIN MARTIN: I have been told by the industry a five-eighths meter, a lot of the heads now, sprinkler heads that are being placed on the market and have been tested by Underwriters Laboratories and other testing facilities flow as little as three gallons per minute, a little higher. It can be done with five-eighths, with the five-eighths meter, because in residential occupancies, the system is only calculated one sprinkler head going off.

CHAIRMAN VICTORINO: Okay. Mr. Hiranaga, anything else?

BOARDMEMBER HIRANAGA: So you're saying the system is segmented that only one sprinkler head would activate and not the entire system? Because typically, commercial, the entire floor would activate.

CAPTAIN MARTIN: You bring up a very good point. Actually, it's the opposite. Only one sprinkler head at a time. As the heat travels, and whatever the temperature of that element on that sprinkler head is set at, it would activate.

In a commercial establishment, of course you need

more water supply and more heads are calculated to go off at the same time, and we have to make sure that there is sufficient water flow to supply, let's say, ten heads before the pressure starts to drop. But in a residential home, it's only calculated on one sprinkler led.

CHAIRMAN VICTORINO: Mr. Okamura?

VICE-CHAIRMAN OKAMURA: Thank you.

So the Fire Department is part of the permitting process? In other words, if a person, homeowner or a landowner wants to build a home, he needs -- one of the departments to see to get approval from is the Fire

Department?

CAPTAIN MARTIN: Currently, if a building applicant comes in, applies for a permit to construct the home, it is determined that the permit at the permit office, if this parcel is off a County System, the majority of the residential permit applications that come in do not come to the Fire Department. The ones that come to the Fire Department are those that are off the system and either have catchment in a rural area or is on a private water system. That's when we look at it.

VICE-CHAIRMAN OKAMURA: Thank you. So you guys,

you follow like the National Fire Protection Association standard, but then the County follows some kind of insurance standard; is that correct? What standard does the County use?

MR. NAKAMURA: ISO, the ISO standards. I always refer to it as ISO. Insurance Services Office.

VICE-CHAIRMAN OKAMURA: So that's part of the problem, I guess.

So the new fire code, is that upgrading both the Water Department standards and the -- is the new fire code going to be applicable to both the Fire Department and the Water Department, or just the Fire Department?

CAPTAIN MARTIN: I would say the fire code is adopted and passed to address Fire Department issues, not -- it's not for the Water Department to enforce. However, we do meet with the Water Department prior to submitting it to just get their thoughts and ideas. But the fire code is passed for Fire Department use.

VICE-CHAIRMAN OKAMURA: One more question then.

At one point the Department was talking about raising the standards for fire protection based on ISO in the future, but that would require a rule change?

MR. NAKAMURA: That's right, that would require a rule change.

VICE-CHAIRMAN OKAMURA: Okay, thank you.

CHAIRMAN VICTORINO: Mr. Johansen?

BOARDMEMBER JOHANSEN: On the subject of costs while you're here, the existing homeowner, the new builder has to install under this new rule a sprinkler. And you say that generally home sprinklers are activated by one temperature measurement, right?

What if you wanted more than one? Because if you've got an isolated fire in one part of the building,

you're going to destroy every piece of furniture in the building if it's only -- if it's activated by one central temperature gauge. I just wondered, is there a greater cost, and how much greater is the cost, to install something that is discrete?

CAPTAIN MARTIN: I'm not sure I understand your question, but I think I'll answer it this way, and I hope this answers it: If you have a four-bedroom home, you would be required to put one sprinkler head in each of the four bedrooms. Depending on your living room size, you may be required to put one or two sprinkler heads.

You wouldn't be required to put a sprinkler in a closet or someplace that is not habitable. If you have a closet that has a water heater or a washer or dryer, the code will require you to put a sprinkler head in there.

If a fire were to take place in your living room, the sprinkler head closest to the fire will activate once it reaches that temperature. Everywhere else in the home will remain dry.

BOARDMEMBER JOHANSEN: And that's the one that you say is \$1.50 per square foot?

CAPTAIN MARTIN: That is correct.

BOARDMEMBER JOHANSEN: Okay.

CHAIRMAN VICTORINO: Ms. Raisbeck, go ahead.

BOARDMEMBER RAISBECK: Did you say when you

started out that there was a bill in front of the County

Council, or it's being discussed in committee? Or what's the

situation with regard to the adoption of the new rules, the

new fire code? What's the situation there?

CAPTAIN MARTIN: The 1997 uniform fire code

presently is in the public works committee. We've had two

meetings on it already to look at it. It's still in

committee. And the next meeting just got postponed, so the next meeting looks like it will be held in the beginning of October.

BOARDMEMBER RAISBECK: And this is Public Works?

CAPTAIN MARTIN: Correct, which is chaired by Councilmember Molina.

BOARDMEMBER RAISBECK: And can I ask you, if that bill as it exists now were passed, would the requirements be the same as what the Department requires, or would they differ?

CAPTAIN MARTIN: Our understanding right now is

that the requirements, we intend to make it the same with the Water Department's. But again, the Water Department has its rules to take care of, the Fire Department has its rules to take care of. We try not to get involved and we try to stay with our private water system. And there seems to be a confusion with the public. When the Fire Department says it's okay but the Water Department says it's not okay, and the public feels that, you know, if one says it's okay, then it must be okay for both; but we have different goals, the Water Department and the Fire Department have different goals. One is to supply clean, potable water to the public and fire

protection. We share a lot of similar goals, but we also have different goals, you know, money cost factor. There's a lot of things that are involved.

Our main goal is to save life and property, which is also shared with the Water Department. But I think the public perception is that if one says it's okay, then it's okay for everybody, but we have separate requirements.

CHAIRMAN VICTORINO: And I think you bring up a real good point. The Department is really responsible to make sure that water can be delivered for your use in that emergency. And that's why sometimes they get confused with

these standards, because you may say one thing and agree that this is right, but they've still got to make sure that that water can be delivered at that pressure to that point at that time of need; and if it's not compatible, that's when sometimes their standards seem to be excessive, and that's where I think we have that -- but I think you guys are on the right track trying to bring it together, and hopefully we can get that done soon, along with the sprinkler system.

Member Johansen?

BOARDMEMBER JOHANSEN: Just on that point, they

must be bumping heads all over the country between water departments and fire departments, both of whom comply with different standards. One, the insurance safety organization, whatever it's called, and the fire protection association.

And my question is: Do you know whether there's an attempt to coordinate between those two umbrella groups in setting standards so that there isn't this confusion everywhere?

CAPTAIN MARTIN: You're absolutely correct. There are associations, groups that have ironed out a lot of the wrinkles in other jurisdictions. And right now we still need

to contact them, meet with them. We don't need to reinvent the wheel; I'm sure it's been done before. And you bring up a very good point.

Right now, we do intend to contact -- Kauai, same problem, like I shared with Mr. Nakamura. They identically have the same issues that we have. The Water Department and the Fire Department have come to an agreement, and the Water Department put in an amendment, and we're currently looking at that and seeing how we could use some of that here on Maui. So that's where we're at, and we're not the only jurisdiction that has this problem.

VICE-CHAIRMAN OKAMURA: One last question.

CHAIRMAN VICTORINO: And I'd like to close,

because we have other items, and some of the Department people have to leave pretty soon for other meetings. So not that I want to cut out the questions, but I do need to move the meeting along. So I'll close with Mr. Okamura.

Quick questions, then, please. Quick questions.

VICE-CHAIRMAN OKAMURA: You said the fire code of 1997. In other words, it's been in committee since 1997; is that correct?

CAPTAIN MARTIN: No, that's not correct. But

being that Mr. Victorino wants to close the meeting, that would be about ten minutes and I can explain to you what's behind that, why it's like that.

VICE-CHAIRMAN OKAMURA: But it's been delayed?

CAPTAIN MARTIN: It actually goes to the state legislature first, which is submitted by the state fire counsel, which gets adopted, which then gives the counties the opportunity.

But the Fire Department has been slow. I'm not offering any excuses. We're way behind. So that's why I'm

happy it's in committee right now, and hopefully it'll be adopted in October.

VICE-CHAIRMAN OKAMURA: Thank you.

BOARDMEMBER RAISBECK: Mr. Chair, may I ask that this agenda item be referred to the Rules Committee, which could meet and update themselves thoroughly on what the proposal by the Fire Department is and if it conflicts with the Department's rules and come up with possibly some suggestions about changes in our rules that would coordinate with the Fire Department's new fire code?

CHAIRMAN VICTORINO: If the Director has no

objections to that.

DIRECTOR TENGAN: No. I would like to make a statement.

CHAIRMAN VICTORINO: Sure.

DIRECTOR TENGAN: So far, the discussion has been focusing on internal fire protection, which is what the sprinkler system is all about. We also need to address the issues about external fire protection.

BOARDMEMBER RAISBECK: Field fires.

CHAIRMAN VICTORINO: Brush fires.

DIRECTOR TENGAN: Outside of the house.

CHAIRMAN VICTORINO: Okay. And I guess there would be more discussion in that area, but I will refer this to the Rules Committee, and we'll work with them, Sally, and see how we can help them and assist them in that area.

Thank you, Val, very much for being here, and Alva. I appreciate it.

I'd like to go back to the agenda item on the Pookela well. I'm kind of bouncing around, but Alva has to leave pretty quick, and actually that really would come back to where we were originally.

Anyhow, on the Unfinished Business item, number

VII A, verbal update on the Pookela well.

MR. NAKAMURA: Mr. Chair, on the Pookela well, from talking to the general contractor on this matter, he informs me that weather permitting, they plan to pour the concrete floor for the electrical building that will be housing the motor control centers and the pump controls and everything else over at this site.

They have completed the surveying of the area, and at this point in time things are just moving along. There is no other delays or anything that I am aware of at this time.

Of course, things can change, but at this point things seem to be on track. We're still expecting the pump and motor to be delivered here on this island by January of '06. And talking to the general, they plan to have the pump and motor installed by February, in early February. So that means by March of '06, the pump should be up and hopefully pumping, doing something.

In talking to Maui Electric, they have assured me that electric service, permanent electric service to that site will be and is on track. So I'm not expecting any problems from the electric company to provide permanent power to

Pookela. So right now it seems to be running along okay.

CHAIRMAN VICTORINO: Okay. Thank you very much.

Moving on to item B, discussion of possible action regarding creation and appointments to committees.

I think the last meeting we had -- and you weren't here, Sally -- the general consensus was the Rules Committee, everybody thought that was a good idea and they wanted to do that as an ad hoc committee.

And I think the financial or like a budget committee, I got the feeling that -- I didn't really think everybody -- that you guys really didn't want that. And

the same thing with the other committee.

So unless you guys have any other objections, I would like to make sure --

BOARDMEMBER JOHANSEN: Mr. Chair, I have a couple of things about the budget committee, if I could.

CHAIRMAN VICTORINO: Okay. Go ahead.

BOARDMEMBER JOHANSEN: First of all, people will remember as well as I do or better, but we got the proposed budget -- we got the proposed budget for '05, '06, I think the night before our December meeting, which didn't give us any opportunity to consider it then.

And then we had a workshop in January, and we spent all of that time trying to get a quorum, and we spent very little time with Beck, R.W. Beck discussing it, and I felt that we weren't prepared to go forward and make a recommendation on that budget as a result of the short time.

And then the other thing is for the last seven months, eight months, I've been trying to reconcile this whole business of expansion with the revenues that are generated from the water use development fund, and I still haven't gotten an answer.

In April, Director Tengan sent us a letter saying that the water use and development fund is intended to cover expansion, and I understand that. But nevertheless, at the same time or shortly after that, we got a proposed -- a proposed project, list of projects for, I think from '05, '06. And looking at that, there were about \$8 million worth of proposed projects for '05, '06.

And then in June, Ms. Cobb gave us a finalized list of expenditures on expansion for '05, '06, and it came to close to \$5 million. So there's a discrepancy there of \$3, \$4 million between proposed projects and what was actually passed

in the budget ordinance. And I still don't know what the disposition is of the additional \$3 or \$4 million in the projects.

If they're going to be pushed forward, on that list, that wish list of projects, up to fiscal year '11, '12, there were a substantial number of million dollars worth of expansion projects in each of those fiscal years; I don't see how you can push it forward. And I don't know what the disposition is of those things that didn't get in the budget this year.

So what I'm saying is that with a budget

committee, which could start roughly now -- because as I understand it, Alva is beginning the draft for the '06, '07 budget right now. If we had a group, a small group that was coordinating with the Department so that not only could they make reports to us, but some of us would be on top of it as it goes along and maybe shorten time all around.

I understand that Mr. Hiranaga has been with this group now almost five years and he's had a lot of experience with it, and I certainly would defer to his judgment, but that's just my thought about it.

CHAIRMAN VICTORINO: Any other thoughts as far as

the budget?

Ms. Raisbeck?

BOARDMEMBER RAISBECK: Yeah, I agree with Ralph

that last year -- although, I read in I guess last month's minutes that it was better than the previous year -- but that last year, we didn't get sufficient information in sufficient time to understand what we were being asked for and make any recommendations that would be meaningful. It came in too late.

Actually, I think we approved it after it had

already gone to the mayor. We approved it pro forma. I agree with Ralph -- and I think we last year proposed a possible budget committee that would meet starting now and meet so that, in a timely fashion, when the budget is ready to go to the mayor, at least enough members of the board understand what's in there that they can make a report to the board and say, you know, this is our understanding of this budget.

Because as it is, I would not want to be on such a committee, because I want to be on the Rules Committee, but I think it would be very valuable to have some members who cared enough about understanding the budget and having some sort of

oversight of the budget. I think it would be very valuable to have a committee if anyone on this body wanted to be on that.

CHAIRMAN VICTORINO: If there are members who are interested and -- Director Tengan, for information and assistance purposes, that these members could be a part of the budget process, would you have any objections to that?

DIRECTOR TENGAN: Mr. Chair, I wouldn't object if it wouldn't, you know, for lack of a better word, interfere with the timing of the preparation of the budget.

As you know, with the charter amendment, in the past we used to submit the budget to the Water Board by March

or April. That's because we could be working with more realistic figures as far as trends are concerned. But now we need to get some preliminary budget by October so that we can get it to the board, have the board review that, and maybe by November or December have the board adopt that.

So you're talking about basically from September 1 until the October meeting for the board, the October meeting, that's the only time frame we have to work with the board in getting something to the board.

So you know, we are really hindered as far as timing is concerned, and we're trying to do the best we can to

accommodate the process as set out by the charter.

As I explained previously at another board meeting, our staff is still involved in the annual audit for 2005. So they've got to really spread out their time as far as working on the audit and working on the budget. It's a big burden on the staff right now.

CHAIRMAN VICTORINO: And I understand that, Director Tengan. And I'm hoping that these people will take that and what you just said and bear in mind that they're there to assist and to understand and not to be -- for lack of

a better word, thank you -- interfering or meddling in what the Department is trying to do, because time is of the essence, okay.

So if that can be agreed upon, then I have no qualms. But Mr. Okamura, you had your hand up. I'm sorry.

VICE-CHAIRMAN OKAMURA: I was just going to ask, what kind of audit are they doing? I know it's not related directly to this.

DIRECTOR TENGAN: The financial audit.

VICE-CHAIRMAN OKAMURA: For the County budget?

DIRECTOR TENGAN: For the Department of Water

Supply.

VICE-CHAIRMAN OKAMURA: Every year, you need to do
an audit?

DIRECTOR TENGAN: Up to now, we've been doing one.

CHAIRMAN VICTORINO: Member Hiranaga, you had
nothing?

BOARDMEMBER HIRANAGA: Nothing.

CHAIRMAN VICTORINO: If somebody would like to
entertain a motion to form an ad hoc committee to assist and
work with the Department on the budget process, I open the
floor for a motion.

BOARDMEMBER JOHANSEN: I'll make the motion in order to generate a discussion about how that would work.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: I'll second.

CHAIRMAN VICTORINO: It's been moved and seconded.

Okay, now the discussion. Again, I go back to what Director Tengan has said. The Department is stressed, is stretched real thin, and so I hope that we are here to assist them. And that's what we've always talked about, we're here to assist. So those members who want to assist -- and it's strictly voluntary -- those who have the time and desire, I

open that up. I will not assign anybody. I will ask for volunteers.

And so by let's say in the next two weeks, if anybody's interested, please let me know and I'll put a list together and give it to Mr. Tengan so that he can get it to the necessary people and maybe let you guys know when they're getting together.

But we've got to do it at their convenience, too.

We've got to assist them in that respect. Is that a fair assessment in that respect?

Yes, Mr. Johansen.

BOARDMEMBER JOHANSEN: I'm not necessarily advocating this. I'm just trying to figure out how we could help and make it easier for the board when December, January, February come around and we're called on to make a recommendation, to help the board to understand the budget better, more quickly.

CHAIRMAN VICTORINO: Okay. Any other discussion?

If not, I call for the -- oh, I'm sorry. Mr. Okamura.

VICE-CHAIRMAN OKAMURA: Another way, too, is maybe along the way, if the Department were to give updates on what

is happening with the budget. It could be to the whole committee or just to the subcommittee. It could be to the whole board or just to a subcommittee, give maybe from October updates on what's going on.

I don't know if -- without creating too much work, but that might be a possibility, instead of being too actively involved in formulating the budget.

CHAIRMAN VICTORINO: Again, we're here to help and assist, and that's what I'm putting forward on the table right now. So if that's the setup for the ad hoc committee, those would be kind of like the ground rules to assist the

Department and better inform the rest of the board members on the process and what this means to all of us and the people of Maui.

Okay. If no other -- yes, Mr. Tengan.

DIRECTOR TENGAN: Mr. Chair, I'd like to offer that we continue on with our process. Maybe we can tweak it a little so that we come up with some improvements. However, in my mind, it might be most efficient if we get -- let's say we get the draft budget to the board by October or sometime in November, we schedule a workshop again, and the board can take action either at the November or the December meeting, before

it's submitted to the mayor in January.

I would think that that, you know, would be one of the better ways of handling it, rather than having to work with a subcommittee and the subcommittee reporting back to the board and, you know, just going back and forth. If we could do it like that, then all board members could attend the workshop, and then we could resolve any questions or take any guidance that the board would like to offer to the Department.

CHAIRMAN VICTORINO: Good point.

BOARDMEMBER JOHANSEN: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER JOHANSEN: With that suggestion, I'll
withdraw my motion.

BOARDMEMBER RAISBECK: I agree.

CHAIRMAN VICTORINO: Okay. The matter has been
decided. Thank you.

Moving right along, under Director's Reports,
05-14, financial year 2005, 4th quarter program performance
measures, vacant position report, and grant revenue status
report, who will want to give that?

DIRECTOR TENGAN: Jacky is here to discuss that.

CHAIRMAN VICTORINO: Jacky Takakura.

Before we get started, does any -- because I know the next one, 05-15, would that not have to be in executive committee?

I'm asking the question. The report on the Brown & Caldwell Vulnerability Assessment Report.

BOARDMEMBER RAISBECK: They put it "may convene in executive session."

CHAIRMAN VICTORINO: That's why I'm asking the question.

I'm just asking, would 14 also have to fall under

that? Mr. Kushi, would number 14 also fall under that, under the executive session?

MR. KUSHI: 14? I've looked at the report dated August 12th, '05. Unless there's other reasons, I don't see a basis for executive session.

CHAIRMAN VICTORINO: Okay, thank you.

Go ahead, Jacky. I apologize.

MS. TAKAKURA: Well, you have the performance measures and vacant position reports in front of you. I'll just answer any questions if you have any.

The performance measures are submitted by each

separate division. The specific questions may have to be directed to the division head, but we can try to answer with the staff we have here.

CHAIRMAN VICTORINO: Go ahead.

BOARDMEMBER RAISBECK: I did take a look at this, Jacky.

MS. TAKAKURA: I'm sorry, Ms. Raisbeck, what page are you on?

BOARDMEMBER RAISBECK: I'm sorry. Page 108 of the performance measures, or page 31 of our packet, which is 108.

I didn't know why, if performance measures had been set as dollar value of design projects encumbered and dollar value of construction projects encumbered, why those were zero.

MS. TAKAKURA: I'm going to defer to Alva Nakamura for that, because that's the engineering program.

MR. NAKAMURA: Excuse me. I need to get the question. Let me get my sheet out here.

BOARDMEMBER RAISBECK: It's page 31 of the packet, which is 108 of the report. I just didn't quite understand, if that had been selected as a performance measure, why it

reads zero. Didn't we encumber any design projects or construction projects during the whole of fiscal '04?

MR. NAKAMURA: So this is for the '05 budget, and we are right now in the process of encumbering the various projects in the '05 budget. We were working on '04, and a lot of the encumbrances have been pushed to the point where we are now working on it to get it encumbered by the end of the year as far as the '05 projects are concerned. That's the reason why you see --

BOARDMEMBER RAISBECK: Well, fiscal year '05 --

MR. NAKAMURA: Ends in December of this year.

BOARDMEMBER RAISBECK: Our fiscal year doesn't end
in July?

MR. NAKAMURA: No. This is CIP. So it's an
18-month time frame. So we are in the process right now of
getting these encumbered.

BOARDMEMBER RAISBECK: Are these final -- the
final column here, those are for the entire span of a year, or
18 months, or what?

MR. NAKAMURA: Well, this one here says the fourth
quarter. That would end in July, I believe.

BOARDMEMBER RAISBECK: July?

MS. TAKAKURA: The fourth quarter ends June 30th.

It's just the events that have happened within that

three-month period.

MR. NAKAMURA: That's all it is. And we haven't

encumbered, that's correct.

BOARDMEMBER RAISBECK: So nothing was encumbered

in the fourth quarter?

MR. NAKAMURA: That's right, in the fourth

quarter.

BOARDMEMBER RAISBECK: And the same for developing

ground water sources, nothing was encumbered during the fourth quarter, right?

MR. NAKAMURA: That's right.

BOARDMEMBER RAISBECK: I see. I didn't understand that too well.

But aren't these performance measures for like the whole fiscal year or something?

MS. TAKAKURA: There will be another one later, but this is what the budget office asks for. They want a quarterly report.

BOARDMEMBER RAISBECK: So this is a quarterly

report.

MS. TAKAKURA: That's correct.

BOARDMEMBER RAISBECK: Okay, I understand now.

CHAIRMAN VICTORINO: Any other questions?

BOARDMEMBER RAISBECK: Oh, my other question --

CHAIRMAN VICTORINO: I want to make sure everybody gets a chance. Go ahead.

BOARDMEMBER RAISBECK: I have another question, which was that on the vacancies, the position vacancies, I added up to 28 vacancies. Is that correct, Jacky?

MS. TAKAKURA: That sounds about right.

BOARDMEMBER RAISBECK: Okay. So that's what?

About a 15 percent vacancy rate?

MS. TAKAKURA: 30 divided by -- we have about almost 200 approved positions. I don't have a calculator. But a 15 percent, right.

BOARDMEMBER RAISBECK: Okay.

CHAIRMAN VICTORINO: Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Page 32, up at the top, "Program: Engineering," Goal number 3(a), "Process Subdivisions." So that number on fiscal year '05, fourth quarter, 28 subdivision applications received, 11 approved,

that does not indicate that of the 28 applications received,
11 were approved. It's just that 11 -- whatever backlog or
just the pending subdivisions there are, 11 were approved?

MR. NAKAMURA: That is correct.

BOARDMEMBER HIRANAGA: So we don't know how many
pending subdivisions there are?

MR. NAKAMURA: Correct.

BOARDMEMBER HIRANAGA: Thank you.

CHAIRMAN VICTORINO: Mr. Okamura?

VICE-CHAIRMAN OKAMURA: On that same page, I was

wondering, the "Process Construction Plans," you received 114 construction plans and you approved 15, I can see that it's only for the fourth quarter. It looks like you've got a lot of construction plans coming in.

MR. NAKAMURA: I think if you were to come down to our office and take a look at the offices and the staff, I think you'd get an idea of what we are faced with.

VICE-CHAIRMAN OKAMURA: This is only one quarter?

MR. NAKAMURA: This is just one quarter. We have a lot of them coming through.

CHAIRMAN VICTORINO: So a tsunami would be an

inappropriate term as far as the amount of plans that are flowing into your office?

MR. NAKAMURA: Well, I don't know. It could be maybe.

Out of the 12 vacancies, we just have six engineers. So, you know, I have six vacancies; so six is trying to do the work of 12. One thing is good, though, that we have is that we've hired two engineers that are coming onboard with us in October, and we have the possibility of having another one. So, you know, things are brightening up hopefully once these additional people come onboard with us.

CHAIRMAN VICTORINO: Very good. That's good news.

Go ahead, Ms. Raisbeck.

BOARDMEMBER RAISBECK: I did have a comment. And

Jacky, maybe you could pass this on for me.

CHAIRMAN VICTORINO: What page?

BOARDMEMBER RAISBECK: I'm sorry. Pages 109, 110,

111, 112, 113, and even onto 114. It seems that list of goals

and objectives and performance measures for the water

resources and planning division seems to me excessive; that

maybe there should be fewer performance objectives that would

give a clearer picture.

I mean, the other divisions seem to be able to get it all on one page, so that five pages for the resources and planning division seems excessive to me.

I would suggest that the performance measures and goals, activities be made more concise and not quite so diffuse.

MS. TAKAKURA: I'll make sure the planning program manager gets that information.

BOARDMEMBER RAISBECK: Thank you.

VICE-CHAIRMAN OKAMURA: Just a comment. I thought

this was good because it really gives us an idea what the department is doing, not in terms of efficiency, but an overall view of what you guys are doing. So I feel comfortable with that.

CHAIRMAN VICTORINO: Thank you, Jacky. This is a good overview, and I think that's something we need to do a better job. This is the kind of information that is well received.

If there's nothing else on that, I will move down to Director's Report 05-17. With the other two items, we may have to go into executive session. I'd like to get the future

role of the stakeholders committee and the ongoing water rate study out of the way.

So Director Tengan, I know you gave us some information.

DIRECTOR TENGAN: Thank you, Mr. Chair. As you know, the stakeholders committee postponed these meetings following the recommendation to the board and to the council with regard to the water rates.

We had always intended that the stakeholders committee continue on with the work. There's more work that needs to be done, more issues such as customer rate classes

and all that. And so, you know, we'd like to continue on with the work, along with the board's blessing; and that if the board is going to assign members to the committee, that the board members assigned to the committee put in the effort that's really necessary to achieve the board's objectives.

CHAIRMAN VICTORINO: Okay. Very good point,

Director Tengan.

And I think on behalf of all of us, I can say quite frankly I have no problems with their continuance. I think they brought a valuable resource to our community and to us. So I have no problem with that and I will look to see who

the two board members I will assign to it at this time, and hopefully they will be able to keep us informed on what's going on.

Okay. Now, we'd like to go into executive session. For these two matters, the board needs to convene in executive session pursuant to HRS 92-5(a) in order to consider sensitive material related to public safety and security. So that would mean I'd have to ask Akaku to turn off and leave the room.

BOARDMEMBER HIRANAGA: Can we defer those two

matters to the next meeting? It's getting late.

CHAIRMAN VICTORINO: Well, I give it to you folks.

I leave it to the board. Would you rather defer those two items? If that's your pleasure, I would move to defer the matters.

Any objections?

BOARDMEMBER RAISBECK: May I make a request?

CHAIRMAN VICTORINO: Sure.

BOARDMEMBER RAISBECK: May they be first on the agenda next month, or close to the first of the agenda?

Because since we're running out of time, I'd like to have them

deferred, but I don't want them to be on the end of the agenda and be missed again next month.

CHAIRMAN VICTORINO: Well, yeah, and I think we have to be cognizant that we need to get a lot of the public testimony or whatever else needs to be done first. Because this is executive session, so we have to have everybody leave the room, except those and the department people, ourselves and the department. So yes, I will move it up as close as I can to make it fair that we get it completed next meeting.

So do I hear any objections, or can we defer this matter? All those in favor of deferring?

(Ayes.)

CHAIRMAN VICTORINO: Okay. So Directive 05-15 and Directive 05-16 will be deferred to our next meeting.

Moving down then to B under Other Business, receipt of board's requests for agenda items to be placed on future agenda. We know we have these two for sure, ladies and gentlemen. What else would be the pleasure of the members? And if you don't have anything today, we can always -- yes, Mr. Okamura.

VICE-CHAIRMAN OKAMURA: This is in relation to the vacation rentals. Maybe we need to get a Department

perspective on vacation rentals and what they were talking about on the requirements that they need to meet and so we would have an idea of what the requirements are and so maybe we can move on from there.

Because it may be a problem for them and it may be, you know, the standards -- because we don't have enough information. Although we did get Mr. Dantes' perspective, I wanted to get the Department's perspective on vacation rental requirements in terms of water and fire flow protection.

CHAIRMAN VICTORINO: Okay. Let me see. I'll talk

with Director Tengan on that.

Anything else? If not, you can still -- it's not like this is the end. I mean, you can e-mail me or call me and let me know. If you think of something else, please let me know. But again, I want to make sure that these two matters that we deferred, along with possibly Mr. Gilliland's situation may take a good part of our meeting. So anyhow, if you think of anything else, let me know.

BOARDMEMBER RAISBECK: Hopefully, we'll have enough information to come to some decision on Mr. Gilliland's next time. Maybe it would be possible to put a time limit on

the discussion of that so that we did get to these two deferred items, you know, in an appropriate kind of time.

CHAIRMAN VICTORINO: The only challenge I have, when you put time limits on any -- especially an important matter like this -- that you leave something out of the discussion that needs to be heard. I will refrain from putting any kind of time limit at this time, but we'll see how the agenda -- and I'll try to structure the agenda so that we can stay within the time frames of the usage of the rule.

Number X, Division Reports, you all have that. If you have questions, I would entertain now to ask Director

Tengan or those department heads that are still in the room,
if it'll come specifically under their purview.

Mr. Hiranaga?

BOARDMEMBER HIRANAGA: Just one question. Page
21, 16 meters were issued in the Makawao area. Is that a
subdivision or just individual applications?

DIRECTOR TENGAN: Mr. Chair, Holly left already.
So we can get the response for the next meeting.

CHAIRMAN VICTORINO: Okay. So we'll put that
question as an item on the agenda for the next time.

Yes, Mr. Okamura.

VICE-CHAIRMAN OKAMURA: I had a question on the
CIP.

CHAIRMAN VICTORINO: What page?

VICE-CHAIRMAN OKAMURA: On page 2, the Projects
Implementation Report.

When is the deadline for these projects? Like
Alva said it was 18 months. Are these all like 2005, so they
have until when to be encumbered?

CHAIRMAN VICTORINO: Well, you know, I think some
of them have answers like construction funding being

considered for 2007, fiscal year 2007. But go ahead.

MR. NAKAMURA: Mr. Chair, to answer your question,

like indicated, some of these projects, you know, we're

transferring, we have fund transfers, there's budget

amendments that go through and we transfer funds around.

However, all of the CIP projects, we have until

the end of -- this is 2005, so that would -- let's see -- end

of this year to encumber the funds. Okay, December of this

year.

CHAIRMAN VICTORINO: Okay.

MR. NAKAMURA: So if you don't see any

encumbrance, well, as I've indicated, we're really working on it now. So by the end of this year, you'll see a number of these projects encumbered.

Some of the things we run into also, see, is that when we go in and get a quotation, say for design or to bid a project out, a lot of times the costs for these projects are much higher than what they have in the budget. So in order for us to encumber it, we've got to do a budget amendment, do some transfer of funds or do something like that. Otherwise, we can't encumber, you see. So these are some of the issues that come up like this.

VICE-CHAIRMAN OKAMURA: Thank you for this report.

CHAIRMAN VICTORINO: Ms. Raisbeck?

BOARDMEMBER RAISBECK: Board member Johansen was concerned about a discrepancy in certain figures about the projects. They got different answers in April and June and recently. And I believe he told me that he sent in a memo asking for answers on that, which he hasn't received. So I would like to put on the agenda answers to the memo that Ralph sent in.

BOARDMEMBER JOHANSEN: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER JOHANSEN: After I talked with Sally about that yesterday -- I sent the memo to the Department on August 4th.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: I got a phone call yesterday afternoon late, which attempted to answer my questions but did not, and we're going to meet after this meeting and talk more about it.

CHAIRMAN VICTORINO: Well, I'll leave it to your discretion. If you think it should be brought up, then you

let us know, let me know.

BOARDMEMBER JOHANSEN: I just thought that if I were a customer and I asked a question and I had to wait three weeks to get an answer, I'd think something was wrong. And if I were on the board of the corporation and submitted a request for information and it took three weeks, I'd think something was wrong. So I thought that was really an undue amount of time to get a simple answer.

CHAIRMAN VICTORINO: Okay. Anything else?

Anything else on the divisional reports?

Okay. If not, I'll call this meeting adjourned.

Thank you.

(Meeting adjourned at 12:31 p.m.)

"By Water All Things Find Life"

Department of Water Supply
County of Maui
200 South High Street
Wailuku, HI 96793-2155
Telephone (808) 270-7816
Fax (808) 270-7951

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