

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

July 7, 2009

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Water Resources Committee, having met on June 24, 2009, makes reference to the following:

1. County Communication No. 05-46, from former Councilmember Michelle Anderson, relating to the rules and governing policies of the Department of Water Supply (Department).
2. Committee Report No. 09-33, from your Water Resources Committee, recommending that the following proposed bills be passed on first reading and be ordered to print:
 - a. "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER".

The purposes of the proposed bill are to (1) clarify the Director's authority to promulgate rules, and (2) codify rules and regulations of the Department relating to definitions.

- b. "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM".

The purpose of the proposed bill is to codify the Department's rules and regulations relating to water meter issuance for the Upcountry water system.

Your Committee notes that in 2002, the Revised Charter of the County of Maui (1983), as amended, was further amended to transfer the authority to adopt rules and regulations having the force and effect of law relating to the County's water systems, from the Board of Water Supply to the Director of Water Supply. Your Committee has been making recommendations on proposed bills relating to this matter as they are

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received from the Department of the Corporation Counsel, for consideration and possible action.

Your Committee notes that Committee Report No. 09-33 was recommitted to your Committee at the Council meeting on March 20, 2009, due to concerns relating to the definition of “subdivision” in the proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER”.

At its meeting, your Committee considered a revised proposed bill from the Chair of your Committee entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER”. The revised proposed bill revises the definition of subdivision to clarify that condominium projects will not be required to install separate water meters for each condominium unit unless a specific request is made by the developer. The revised proposed bill also incorporates nonsubstantive revisions.

A representative from the Department of Public Works stated that by correspondence dated September 15, 2000, the Director of Public Works and Waste Management advised that subdivision approval is no longer required for access easements that are created outside of a subdivision application, according to a State Supreme Court ruling.

Accordingly, your Committee revised the definition of subdivision to delete the sentence, “Easements for roadway or access purposes shall be construed as subdivided land”.

Your Committee voted 5-0 to recommend passage of the revised proposed bill. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Mateo, and Molina voted “aye”. Committee members Kaho‘ohalahala and Medeiros were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s suggested revisions.

Your Water Resources Committee **RECOMMENDS** the following:

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1. That Bill No. _____ (2009), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That Committee Report No. 09-33 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL P. VICTORINO, Chair

ORDINANCE NO. _____

BILL NO. _____ (2009)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01,
MAUI COUNTY CODE, RELATING TO WATER

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 14.01.030, Maui County Code, is amended to read as follows:

"14.01.030 Administration. Except as otherwise provided in this article, the director shall administer, implement, and enforce the provisions herein. [Any] All powers granted to, or duties imposed upon, the director may be delegated by the director to [other County] personnel[.] within the department. The director may promulgate administrative rules pursuant to the Hawaii Administrative Procedures Act to implement the provisions of this article."

SECTION 2. Section 14.01.040, Maui County Code, is amended to read as follows:

"14.01.040 Definitions. [For the purpose of this article, unless it is] Unless otherwise expressly provided in separate provisions of this article, or unless plainly evident from the context that a different meaning is intended, [certain words and phrases used herein are] for the purposes of this article the following words, terms, and phrases shall be defined as follows:

"Applicant" means any person who causes, or applies to cause, land to be [divided into a subdivision.] subdivided. It also means any person applying for water service or additional water service.

"Application" means a request for water service or additional water service.

"Approved engineering report" means a report prepared by a licensed professional engineer, experienced in such fields as water resources, hydrogeology, water supply, or environmental engineering, and approved by the director of the state department of health pursuant to department of health rules, for non-County water service.

"Board" means the board of water supply of the County of Maui.

"Building permit" means the official document or certificate issued by the County of Maui authorizing the construction of any structure.

"Commission" means the commission on water resource management of the State of Hawaii.

"Consolidated metering system" means [the means by which] water that is furnished to multiple dwellings through a centralized [metering system to multiple consumer units.] or single meter.

"Construction" means any work associated with development of a new water source.

"Consumer" means the person, firm, corporation, association, or governmental entity, whether owner or tenant, whose name appears on the records

of the department as the party responsible and liable for receiving water service from the department.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection.

"Cost of service lateral" means the sum of the cost of the labor, materials, meter box, transportation, equipment, and road repair, if any, and other charges necessary for the complete installation of a service lateral, but excluding the cost of the meter.

"Council" means the council of the County of Maui.

"County" means the County of Maui.

"Cumulative impact" means the impact on the environment and water supply that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Dedicated water system improvements" means water system improvements that are privately designed, constructed, and dedicated to the department for operation, for which credits may be applied to all or a portion of the water system development fee.

"Department" means the department of water supply of the County [of Maui], excluding the board of water supply unless the context so indicates.

"Department of health" means the State of Hawaii department of health.

"Department of health rules" means Hawaii administrative rules, title 11, chapter 20, entitled "Rules Relating to Potable Water Systems."

"Director" means the director of the department of water supply of the County [of Maui or an authorized representative of the director].

" Dwelling unit" means [any building, addition, extension, or any portion thereof, which is designated or intended for occupancy by one family or persons living together or by a person living alone.] a dwelling unit as defined in title 19 of this code.

"Groundwater" means any water found beneath the surface, whether in perched supply, dike confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

"Irrigation" means the use of water for grazing, [and] agricultural, or landscaping purposes.

"Long-term, reliable supply of water" means:

1. [a] A County water meter reservation, as established by a receipt for payment of a County water meter reservation verifying that the proposed subdivision will be provided source and service; or

2. [the] The total water supplies from a private, non-County source that will meet the projected demand associated with a proposed development, in addition to existing and planned future demand, as established by an approved engineering report.

"Main" or "main pipe" means the department's supply or distribution pipe from which service connections are made.

"Off-site water improvements" means that portion of a subdivision water system from the point of adequacy to the point of entry of such system into the subdivision or premises boundaries.

"On-site water improvements" means that portion of the subdivision water system constructed within the property limits of the subdivision[,] or development, to include all fire hydrant assemblies and service laterals whether on or off [said] the property and as required by the department.

"Plan" means the water use and development plan.

"Point of adequacy" means that point in the public water system, as determined by the director or the director's duly authorized representative, where there is adequate pressure, storage, and pipeline size to supply water to meet the fire flow, domestic, and irrigation demands for water without detriment to the existing consumers.

"Potable water" means water that has been certified by the department of health as suitable for cooking or drinking purposes.

"Premises" means [the] a parcel of [land, lot or lots, on which the development, improvement, or service is planned.] real property and any structures thereon which have water service, will require water service, or requires additional water service.

"Private water system" means a water system constructed, owned, operated, and maintained by private individuals, corporations, or organizations.

"Public water system" means the water system owned, operated, and maintained by the [County of Maui.] department of water supply.

"Run" means the distance of water main and appurtenances to be installed from the point of adequacy to the point in question.

"Service lateral" means the [main tap,] connection to a water main, pipes, fittings, [and] valves, and other appurtenances from the water main [to and including the meter box.] up to and including the consumer shut-off valve and water-meter box, but not including the water meter.

"Source development" means the construction of any structure to capture, convey, store, and treat currently unutilized, non-potable surface waters; or the construction of facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump control, or disinfection contact time tanks; or the construction of desalination facilities; or any other technique which provides or recaptures water acceptable by the State of Hawaii department of health, together with any easements required for the improvements.

"State water code" means chapter 174C, Hawaii Revised Statutes.

"Storage tank" means a reservoir to store water.

"Structure" shall have the same meaning as defined in the building code as amended and adopted by the County.

"Subdivider" means a subdivider as defined in title 18 of this code.

"Subdivision" means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or in the future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels, and includes the process of consolidation and resubdivision, and, when appropriate to the context, shall relate to the process of subdividing land. The term also includes the construction of a building or group of buildings, other than a hotel, on a single lot, parcel, or site which will contain, result, or be divided into four or more dwelling units, including planned developments pursuant to chapter 19.32 of this code, condominium projects established pursuant to Hawaii Revised Statutes, or other forms of development, provided, that unless requested by the developer, condominium projects shall not be required to install separate water meters for each condominium unit. [Except as otherwise permitted by law, for purposes of this article, a development consisting of four or more dwelling units on a lot, parcel, or site, including planned unit developments and condominiums reviewed, approved and established pursuant to Hawaii Revised Statutes, shall be deemed a subdivision.]

"Subdivision water system" means that water system from the point of adequacy, as determined by the director or the director's duly authorized representative, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs, and all appurtenances necessary to provide water and fire protection for such subdivision.

"Surface water" means both contained surface water, that is, water upon the surface of the earth in bounds created naturally or artificially, including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction, and diffused surface water, that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs is surface water when it exits from spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source, as determined by the commission, and set forth in the plan.

"Temporary meter" means any meter connected to a fire hydrant or a service lateral used less than one year in accordance with an agreement with the department.

"Traditional and customary native Hawaiian rights and practices" means the rights of ahupuaa tenants who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, including the cultivation or propagation of taro on one's own kuleana and the gathering of hihikai, opae, oopu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes, as set forth in article XII, section 7 of the Hawaii State Constitution, and [Section] section 174C-101, Hawaii Revised Statutes.

"Transmission pipeline" means a pipeline that delivers water from a source development to a storage tank or distribution system, including any booster pump stations and appurtenances to the transmission pipeline system to increase its capacity, and any easements required for the improvements.

"Water meter" means a device that measures the volume of water delivered to any premises.

"Water service" means the complete installation of pipes, fittings, appurtenances, and meter necessary to provide service to a consumer. This term also refers to the delivery of water to [consumers.] any premises.

"Water system" means a network of pipelines, storage, facilities, pumps, and other appurtenances, wells, water filtration treatment facilities, or other sources which furnishes a supply of water to the [consumer.] premises.

"Water system development fee" ("WSDF") means a monetary [charge] rate imposed on [an] any applicant to fund a portion of costs to construct water system improvements or to recover the cost of existing water system improvements made in anticipation of additional demand on the water system.

"Water system improvements" means improvements or developments which will construct facilities to provide additional source development capacity, additional transmission or distribution pipeline capacity, or additional storage tank capacity for any of the department's water systems."

SECTION 3. Section 14.01.060, Maui County Code, is repealed

[**14.01.060 Rules.** The director may adopt, amend, and repeal rules for administration and enforcement of this article, which shall have the force and effect of law, as provided in chapter 91, Hawaii Revised Statutes.]

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

Handwritten signature of Edward S. Kushi and the date 6/26/09.

EDWARD S. KUSHI
Deputy Corporation Counsel
County of Maui

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