

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

October 2, 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 March 3, 2009, June 24, 2009, August 18, 2009, and September 15, 2009, makes reference to County Communication No. 05-38, from Councilmember Michelle Anderson, relating to the Water Use and Development Plan.

Your Committee notes that the Council's Water Resources Committee (2005-2007 Council term) reported on this matter in Committee Report No. 06-140. The Committee met again on October 18, 2006 and November 29, 2006.

Your Committee further notes that the Council's Water Resources Committee (2007-2009 Council term) considered this matter on March 12, 2007, July 2, 2007, July 23, 2007, August 13, 2007, September 6, 2007, September 17, 2007, October 15, 2007, November 15, 2007, February 21, 2008, June 2, 2008, December 1, 2008, and December 15, 2008.

The State Water Code, Chapter 174C, Hawaii Revised Statutes, requires the Commission on Water Resource Management (Commission) to develop and update a Hawaii Water Plan (HWP). It further requires each of the counties to prepare water use and development plans, and to enact the plans by ordinance, for incorporation into the HWP. The initial HWP was adopted by the Commission in 1990 and must be reviewed and updated on a regular basis.

The Council adopted the Maui County Water Use and Development Plan (Plan) by Ordinance No. 1948 (1990), pursuant to the requirements set forth in the State Water Code, and the Revised Charter of the County of Maui (1983), as amended. The purpose of the Plan is to set forth the allocation of water to land use in Maui County.

By correspondence dated August 11, 2009, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE, RELATING TO THE WATER USE AND DEVELOPMENT PLAN". The purpose of the proposed bill is to amend

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

October 2, 2009
Page 2

Committee
Report No. _____

Chapter 14.02, Maui County Code, to establish procedures for updating or amending the Plan.

The proposed bill requires the Department of Water Supply to transmit Plan updates to the Board of Water Supply (Board) and the Commission for review. Upon receipt of comments from the Board and Commission, the Council will approve the proposed Plan updates by passage of a bill on two readings.

Your Committee recommended that the proposed bill be revised to: (1) require the Board to hold at least one public hearing in the district affected by a proposed Plan update or amendment; and (2) provide that the Council can extend the time within which the Council must approve or disapprove a proposed Plan update or amendment to no more than an additional 180 days.

At its meeting of August 18, 2009, your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Kaho`ohalahala, Medeiros, and Molina voted "aye". Committee member Mateo was excused.

Subsequently, your Committee received correspondence from Ken C. Kawahara, Deputy Director, State Department of Land and Natural Resources, Commission on Water Resource Management, informing your Committee that the Commission is not mandated by the State Water Code to comment on a draft version of the Plan. Therefore, the proposed bill should not require the Commission to submit recommendations on the Plan prior to passage of the Plan by the Council. Based on the Commission's concerns, your Committee decided to consider further revisions to the proposed bill.

At its meeting of September 15, 2009, your Committee discussed the Commission's concerns and discussed further revisions to the proposed bill. Your Committee recommended that the proposed bill be revised to: (1) remove the provision requiring the Commission to submit comments on any draft Plan updates or amendments; (2) clarify that if the Council fails to pass a proposed Plan update or amendment on second and final reading, then the Plan update or amendment would be deemed disapproved; (3) include a provision requiring the Department of Water Supply to update the Plan every five years; (4) clarify that the Board shall have 180 days to transmit findings and recommendations on any proposed Plan update or amendment to the Council for consideration; and (5) make language changes for clarification.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

October 2, 2009

Page 3

Committee

Report No. _____

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Kaho`ohalahala, Mateo, Medeiros, and Molina voted "aye".

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 recommended revisions.

Your Water Resources Committee RECOMMENDS the following:

1. That Bill No. _____ (2009), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE, RELATING TO THE WATER USE AND DEVELOPMENT PLAN", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 05-38 be FILED.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

October 2, 2009
Page 4

Committee
Report No. _____

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



MICHAEL P. VICTORINO, Chair

wr:cr:09004aa:kcw

ORDINANCE NO. _____

BILL NO. _____ (2009)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.02, MAUI COUNTY CODE,
RELATING TO THE WATER USE AND DEVELOPMENT PLAN

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

SECTION 1. Chapter 14.02 of the Maui County Code is hereby amended to read as follows:

“Chapter 14.02

WATER USE AND DEVELOPMENT PLAN

Sections:

- 14.02.010 Purpose.
- 14.02.020 Adoption of the plan.
- 14.02.030 Application of the plan.
- 14.02.040 [Amendment.] Update of the plan.
- 14.02.050 Amendment.

14.02.010 Purpose. The purpose of the water use and development plan is to meet the mandate of the State water code relative to statewide water resources planning and aid the commission [on water resource management] and the County [of Maui] in the conservation, development, and use of the water resources of the County.

14.02.020 Adoption of the plan. The council adopted the plan by ordinance no. 1948, and any [revision,] update of the plan pursuant to section 14.02.040 of this chapter, or amendment [or modification] of the [same,] plan, pursuant to section [14.02.040] 14.02.050 of this chapter, shall be deemed part of the plan [without further adoption or amendment to this chapter] and shall be incorporated into this chapter by reference.

14.02.030 Application of the plan. The plan shall serve as [a guideline] the primary guide to the council, the department, and all other agencies of the County:

1. In approving or recommending to other agencies the use or commitment of the water resources in the County; and
2. In using public funds to develop water resources to meet existing or projected future demands on the public water system as set forth in the plan.

14.02.040 [Amendment. A. If a proposed community plan amendment will impact the plan, the director shall initiate any necessary plan amendments.

B. An amendment to the plan proposed by the council, the director, or any agency shall be referred to the board of water supply for its review and recommendation. The board shall hold appropriate public hearings on proposed revisions or amendments and shall transmit the proposed revisions or amendments, with its findings and recommendations, to the council. Within forty-five days of receipt of a proposed amendment, the council shall act upon the amendment. If the council fails to act within forty-five days, the amendment shall be deemed disapproved.

C. The mayor shall appoint a nine-member task force to be chaired by the director to assist the board with the review and amendment of the plan whenever the planning director recommends revisions to the general plan pursuant to section 8-8.3(3) of the revised charter of the County of Maui (1983), as amended. The task force shall recommend to the board amendments to the plan so as to be consistent with any community plan amendment.] **Update of the plan.** Within five years from the date of any approved update of the plan, the department shall prepare a proposed update to the plan. Plan updates shall be transmitted to the board for its review and recommendation, the council for adoption by ordinance, and the commission for inclusion in the Hawaii water plan in the following manner:

1. The department shall simultaneously transmit proposed updates to the board and the commission for review.

2. The board shall hold one or more public hearings on the proposed update in the affected district, and shall transmit the proposed update, with its findings and recommendations, to the council within one hundred eighty days of the receipt of the update.

3. The council shall pass the proposed update by ordinance within one hundred eighty days from the receipt of the proposed update and the findings and recommendations of the board. The council may, by resolution, extend the time to pass the proposed update to no more than an additional one hundred eighty days. If the council fails to pass the proposed update pursuant to the provisions of this section, the proposed update shall be deemed disapproved.

4. Within ten working days after the effective date of the ordinance, the council shall transmit the ordinance to the commission for final review, acceptance, and incorporation into the Hawaii water plan.

14.02.050 Amendment. A. Any amendment to the plan proposed by the council, the director, or any agency shall be referred to the board for its review

and recommendations. Upon receipt of a proposed amendment, the board and the council shall follow the procedures set forth in section 14.02.040 of this chapter.

B. Whenever the planning director recommends revisions to the general plan pursuant to section 8-8.3(3) of the revised charter of the County of Maui (1983), as amended, which revisions will affect the plan, the director shall recommend amendments to the plan so as to be consistent with any community plan amendment.”

SECTION 2. 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 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

S:\ALL\ESK\Ords\14.02 water use & dev. plan, 9.21.09.doc