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OFFICE OF THE
COUNTY COUNCIL

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RECORDED

March 7, 2012

MEMORANDUM

T O: Michael P. Victorino, Chair
Water Resources Committee

F R O M: Edward S. Kushi, Jr.
First Deputy Corporation Counsel

SUBJECT: WATER AVAILABILITY (WR-8)

A handwritten signature in black ink, appearing to be "Ed Kushi", written over the name of the sender in the memorandum header.

In response to your request dated March 5, 2012, attached is the revised, proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY", approved as to form and legality.

Should you have any questions, please contact me.

ESK:lkk
Enclosure
cc: David Taylor, Director, Department of Water Supply (w/enc.)

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ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY

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

SECTION 1. Section 14.01.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Infill development” means a project composed of ten or fewer residential dwelling units on one or more contiguous vacant parcels within already developed areas in the service area of the department’s central Maui water system or west Maui water system.”

SECTION 2. Chapter 14.12, Maui County Code, is amended to read as follows:

“Chapter 14.12

WATER AVAILABILITY

Sections:

- 14.12.010 Title and purpose.
- 14.12.020 Applicability and scope.
- 14.12.030 Exemptions.
- 14.12.040 Written verification of [long term,] long-term, reliable supply of water.
- 14.12.050 Director’s comments on engineering reports.
- 14.12.060 Expiration.
- 14.12.070 Review.

14.12.010 Title and purpose. This chapter shall be known as the County’s “water availability [policy.]” policy”. The council acknowledges and affirms that water is a natural and cultural resource that must be protected, preserved, and managed as a public trust, and hereby establishes a policy that requires verification of a [long term,] long-term, reliable supply of water before applicable subdivisions are approved.

14.12.020 Applicability and scope. This chapter shall apply to all subdivisions, including subdivisions bonded pursuant to sections 18.20.190, 18.20.200, and 18.20.210 of this code, [and to water source development agreements with private entities as defined in section 14.03.025 of this code,] unless exempted under section 14.12.030.

14.12.030 Exemptions. This chapter shall not apply to: A. Building permits as described in chapter 18.28 of this code, or other ministerial construction permits that do not require new or additional water services;

B. Subdivisions that do not require water service, [such as, but not limited to,] including family subdivisions as defined in section 18.20.280 of this code, consolidations and concurrent re-subdivisions that do not create additional developable lots, road widening lots, utility lots, or easements for access or utility purposes;

C. Subdivisions that will not be regulated as a public water system pursuant to department of health rules, provided that this exemption shall not apply to any subsequent subdivision of any of the resulting parcels;

D. Infill development [that for the purposes of this chapter is defined as development of ten residential dwelling units or less on contiguous vacant parcels within areas that are already developed, consistent with applicable zoning designations and the general plan, and is within the service area of the department's central or west Maui water system];

E. Residential workforce housing units developed by a qualified housing provider pursuant to chapter 2.96 of this code, and are within the service area of the department's central or west Maui water system;

F. Residential development projects with one hundred percent affordable housing units and are within the service area of the department's central or west Maui water system; or

G. Public or quasi-public development projects as defined in section 19.04.040 of this code and related subdivisions[, and] that are within the service area of the department's central or west Maui water system.

14.12.040 Written verification of [long term,] long-term, reliable supply of water. A. No applicable subdivision shall be approved, unless prior to [submittal] approval of subdivision construction plans pursuant to section [18.20.160] 18.20.180 of this code, the director [shall provide] has provided written verification of either: (1) a County water meter or water meter reservation; or (2) the receipt of an approved engineering report for a [long term,] long-term, reliable supply of water[.] for the subdivision.

B. Written verification of a [long term,] long-term, reliable supply of water shall not constitute an assurance, covenant, or warranty by the County of water source from a private, non-County system.

14.12.050 Director's comments on engineering reports. The director shall review and comment on engineering reports during the department of health's inter-agency review period. In reviewing and commenting on an

engineering report, the director shall consider [all] any of the following applicable factors:

A. The adverse impacts on the water needs of residents currently being served and projected to be served by the department;

B. The adverse impacts to the water needs of residents currently on a County “wait list” for water meters;

[A.]C. The cumulative impacts;

[B.]D. The commission’s water resources protection plan;

[C.]E. The plan;

[D.]F. The general plan and relevant community plans;

[E.]G. The adverse impacts on surrounding aquifers and stream systems, including:

1. Water levels[.];

2. Water quality, including salinity levels[.];

3. The discharge of water into springs and nearshore marine areas[.];

4. Surface water-groundwater interactions[.]; and

5. Adverse impacts on other existing, future, or planned wells;

[F.]H. The adverse impacts on Department of Hawaiian Home Lands’ current reservations or projected future uses;

[G. The adverse impacts on the water needs of residents currently being served and projected to be served by the department;]

[H.]I. The adverse impacts on environmental resources that are rare or unique to the region and the project site (including natural, cultural, or human-made resources of historic, archaeological, or aesthetic significance);

[I.]J. The adverse impacts on the exercise of traditional and customary Native Hawaiian rights and practices;

[J.]K. United States Geological Survey studies;

[K.]L. Whether the applicant is in full compliance with the State water code and County’s water reporting laws;

[L.]M. Whether the affected water source, including groundwater, surface water, or other source of water will exceed:

1. Ninety [per cent] percent of the sustainable yield[.];

2. Instream flow standards[.]; or

3. Interim instream flow standards;

[M. The adverse impacts to the water needs of residents currently on a County “wait list” for water meters;]

N. The allocation of water set forth in this code; and

O. The adverse impacts to the water quality of any water body identified as impaired under section 303(d) of the Clean Water Act.

14.12.060 Expiration. A. Written verification of a [long term] long-term, reliable supply of water shall expire, and be deemed null and void, unless extended by the director for good cause, if:

1. For groundwater source, the director has not received a well completion report from the commission within two years from the

date of verification; provided that, the director may, for good cause, authorize up to two time extensions of up to six months each; and further provided that, any request for an extension of time shall be received by the director at least thirty days before the associated expiration date;

2. For surface water source, the director has not received a written approval for use from the department of health within two years from the date of verification; provided that, the director may, for good cause, authorize up to two time extensions of up to six months each; and provided further that, any request for an extension of time shall be received by the director at least thirty days before the associated expiration date; or

3. For County water meter reservation, if the water meters covered under the reservation have not been installed in accordance with the terms, conditions, provisions, and time limitations of the meter reservation policies of the department.

B. If written verification of a [long term,] long-term, reliable supply of water expires, a new, updated verification pursuant to section 14.12.040 must be issued before construction can resume.

14.12.070 Review. A. The council shall review this chapter beginning July 1, 2014, and every two years thereafter.

B. As part of the review, the director, in consultation with other departments, shall provide a report to the council on the status of this chapter and shall include the following in the report:

1. The number of dwelling units approved with private water source improvements;

2. The number of dwelling units approved with county water meters;

3. The number of affordable units developed and exempted from this chapter;

4. The number of residential workforce housing units developed and exempted from this chapter;

5. The number of infill dwelling units developed and exempted from this chapter; and

6. The effect, if any, of developments constructed pursuant to this chapter on native Hawaiian kuleana rights.”

SECTION 3. Section 18.20.180, Maui County Code, is amended to read as follows:

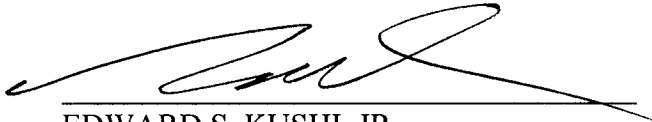
“18.20.180 Completion of construction—Final approval. When the construction drawings and specifications bear the approval of the director, the director of public works, the director of water supply, the sanitary engineer, and the district engineer as required under [Section] sections 14.12.040, 18.20.150, [through] 18.20.160, and 18.20.170 of this code, the subdivider may proceed with

the construction of the improvements and utilities. After completion of same in accordance with the requirements of this title, the director shall grant approval for recordation of [his] the subdivider's final plat. Where construction extends into the state highway right-of-way, the contractor shall obtain a permit from the district engineer prior to commencement of work within the [State] state highway right-of-way. No bond or security need be posted with the department of public works [and/or] or the board of water supply for that portion of work [with] within the state highway right-of-way.”

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:



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

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