

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

March 16, 2012

**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 November 29, 2011, December 13, 2011, January 3, 2012, and February 28, 2012, makes reference to County Communication 11-306, from Councilmember Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ARTICLE I OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY".

The purposes of the proposed bill are to amend Chapter 14.12, Maui County Code ("MCC"), the County's Water Availability Policy ("Policy"), to: (1) provide that an engineering report accepted by the State Department of Health ("DOH") constitutes proof of a long-term reliable source of water; (2) exempt large lot subdivisions and water source development agreements with private entities from the Policy; (3) give discretionary authority to the Director of Water Supply ("Director") to consider certain factors when reviewing an engineering report; and (4) provide for an expiration of the Policy two years from the effective date of the ordinance.

Your Committee notes that the current Policy requires the Director to provide written verification of a long-term, reliable source of water prior to a developer's submittal of subdivision construction plans. The proposed bill clarifies that a subdivision may be approved when the Director has provided written verification of either a County water meter or water meter reservation, or an engineering report approved by the DOH for a long term reliable supply of water.

The Director of Public Works noted that a developer could begin preliminary work much sooner if the Director provided written verification of a long-term, reliable source of County water prior to final subdivision approval, provided that no construction has commenced. Therefore, the First Deputy Corporation Counsel recommended that the proposed bill be revised to authorize the Director to verify water source prior to approval of subdivision construction plans.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

March 16, 2012
Page 2

Committee
Report No. _____

The First Deputy Corporation Counsel also recommended that Section 18.20.180, MCC, relating to subdivision approvals, be revised to ensure that no construction can begin until the Director verifies a reliable water source. Your Committee supported the First Deputy's recommendations.

Your Committee further notes that the current Policy requires the Director to verify a reliable water source upon receipt and review of a developer's engineering report approved by the DOH, for developments using a private water source. The proposed bill would allow the Director to verify water source upon receipt of an engineering report that has been accepted, but not yet approved, by the DOH.

According to the Engineering Program Manager, Safe Drinking Water Branch, DOH, a developer's engineering report must be approved to satisfy DOH requirements for private water systems. Your Committee, therefore, did not support the proposed revision.

The Director noted concerns regarding the Department of Water Supply's role when reviewing an engineering report. He said that prior to accepting a water meter reservation or a water meter, the Department routinely considers potential adverse impacts on the water needs of residents currently being served by the Department and residents currently on a County "wait list" for water meters. Many of the factors the Director is required to consider fall under the purview of other State and County agencies. Your Committee revised the proposed bill to give the Department more flexibility during its review of engineering reports.

Your Committee noted that the current Policy exempts large lot subdivisions that do not require water service. According to the First Deputy, exempting large lot subdivisions would conflict with Section 18.16.270, MCC, which provides that "for large lots, the size of utilities may be based on the minimum requirement of one dwelling per lot." Your Committee concluded that large lot subdivisions that require water service should not be exempted from the Policy.

Your Committee recommended that the proposed bill be revised to move the definition of "infill development" to the definitions section of Title 14, MCC.

Your Committee supported the proposed revision to delete water source development agreements with private entities from the applicability and scope of the Policy.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

March 16, 2012
Page 3

Committee
Report No. _____

Your Committee further supported giving the Director discretion when determining whether written verification of long-term reliable sources of water should expire and become null and void under certain circumstances.

Your Committee decided that the Policy should not be repealed two years after the effective date of the new ordinance, as proposed. Instead, your Committee revised the proposed bill to add a new section requiring the Council to review the Policy on July 1, 2014, and every two years thereafter. Your Committee also revised the proposed bill to require the Director to transmit a report to the Council identifying projects requesting County or private water, that are exempt from the Policy, and that could affect native Hawaiian kuleana rights.

Finally, your Committee revised the title of the proposed bill to read "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY".

Your Committee voted 7-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Carroll, Cochran, Hokama, and White, 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 _____ (2011), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 11-306 be FILED.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

March 16, 2012
Page 4

**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL P. VICTORINO, Chair

wr:cr:12008aa:kcw

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:

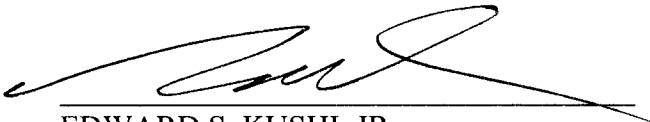
“18.20.180 Completion of construction—Final approval. When the construction drawings and specifications bear the approval of the director, the director of public works, the director of water supply, the sanitary engineer, and the district engineer as required under [Section] sections 14.12.040, 18.20.150, [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

S:\ALL\ESK\Ords\water availability.14.12.doc