

ORDINANCE NO. _____

BILL NO. 68 (2007)
Draft 1

A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY

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

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

““Applicant” means any person who causes, or applies to cause, land to be divided into a subdivision.

“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.

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

“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.

“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.”

“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.

“Long-term, reliable supply of water” means: (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 (B) 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.

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

“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 future, of sale, lease, rental, transfer of title to or interest in, any or all such parcels. 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.

“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 the 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.

“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 hihiwai, 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 174C-101, Hawaii Revised Statutes.”

SECTION 2. Title 14, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 14.12

WATER AVAILABILITY

Sections:

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

14.12.010 Title and purpose. This chapter shall be known as the County’s “water availability 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, reliable supply of water before 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 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; or

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.

14.12.040 Written verification of long-term, reliable supply of water.

A. No subdivision shall be approved, unless prior to submittal of subdivision construction plans pursuant to section 18.20.160 of this code, the director shall provide written verification of a long-term, reliable supply of water.

B. Written verification of a 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 of the following factors:

- A. The cumulative impacts;
- B. The commission's water resources protection plan;
- C. The plan;
- D. The general plan and relevant community plans;
- E. 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. 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. 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. The adverse impacts on the exercise of traditional and customary Native Hawaiian rights and practices;
- J. United States Geological Survey studies;
- K. Whether the applicant is in full compliance with the State water code and County's water reporting laws;
- L. Whether the affected water source, including groundwater, surface water, or other source of water will exceed:
 - 1. Ninety 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, reliable supply of water shall expire, and be deemed null and void, 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, reliable supply of water expires, a new, updated verification pursuant to section 14.12.040 must be issued before construction can resume."

SECTION 3. Section 18.04.020, Maui County Code, is amended to read as follows:

“18.04.020 Authority and scope. A. [Authorized by 8-5.3 of the charter of the county of Maui,] Authorized by section 8-5.3 of the revised charter of the County of Maui (1983), as amended, all subdivisions and consolidations, and all streets or ways within the [county] County created for the purposes of subdividing land, shall be approved by the director in accordance with this title.

B. Any person desiring to subdivide or consolidate land shall submit plans and documents for approval as provided by this title. No subdivision plat may be filed with the bureau of conveyances or land court or state department of taxation until submitted to and approved by the director. Land shall not be offered for sale, lease or rent in any subdivision, nor shall options or agreements for the sale, lease or rental of land in any subdivision be made until approval for recordation of the final plat is granted by the director as provided in this title, unless such offer, option or agreement expressly provides in writing that such sale, lease or rental of land in the subdivision shall not occur nor become effective unless and until approval for recordation of the final plat is granted by the director as provided in this title.

C. The requirements of this title shall not apply to a consolidation/resubdivision of two or more developable lots resulting in the same or fewer number of developable lots that existed before the consolidation/resubdivision action or to the establishment of easements for ingress and egress where no new developable lots are created together with the establishment of the easement subject to the following conditions[.]:

1. Compliance with title 19 of this code or chapter 205, Hawaii Revised Statutes or both;
2. Compliance with chapter 18.08 of this title except for section 18.08.090;
3. Compliance with chapter 18.12 of this title except for section 18.12.070; and
4. Compliance with chapter 18.24 of this title.

D. Parcels that have undergone consolidation/resubdivision under this subsection shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

E. If the director of public works [and waste management] finds that the subdivision will have a significant or substantial impact upon public facilities or infrastructure, the director of public works [and waste management] may impose those requirements in title 18 that are appropriate.

F. The director of public works [and waste management] shall adopt rules to implement the provisions of section 18.04.020E.

G. Except for family subdivisions as described in section 18.20.280 of this code, a consolidation and a concurrent resubdivision that does not create additional developable lots, road widening lots, utility lots, and easements for access or utility purposes, the director of public works shall not approve any subdivision unless the subdivider provides written verification of a long-term,

reliable supply of water issued by the director of the department of water supply as set forth in section 14.12.040 of this code.”

SECTION 4. Chapter 18.04, Maui County Code, is amended by adding a new definition to be appropriately designated and to read as follows:

““Long-term, reliable supply of water” means the same as defined in article 1, title 14 of this code.”

SECTION 5. Section 18.12.040, Maui County Code, is amended to add a new subsection to be appropriately designated and to read as follows:

“18.12.040 Supplemental information. The following data shall be submitted with the final plats:

A. A complete title report issued by a licensed title company showing all persons vested with record title in the land subdivided whose consent is required by section 18.12.030.E.13.a of this chapter;

B. Five copies of any deed restrictions or covenants applicable to the subdivision;

C. Written proof that all taxes and assessments on the tract are paid to date[.]; and

D. Statement regarding water system to be installed. If the proposed subdivision will be served by the County’s water system, the subdivider shall provide a receipt of payment of a water meter reservation from the department of water supply verifying that the subdivision will receive water source and service from said department. Should a private water system be proposed, the subdivider shall provide written verification of a long-term, reliable supply of water from the director of the department of water supply in accordance with chapter 14.12 of this code.”

SECTION 6. Section 18.20.010, Maui County Code, shall be amended to read as follows:

“18.20.010 Water supply. Any subdivision hereafter to be laid out within the [county] County shall be provided with water in accordance with [the rules and regulations of the board of water supply, enacted in conformity with chapter 8 of the Maui County charter, and all amendments thereto.] the requirements set forth in article 1, title 14 of this code.”

SECTION 7. 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 8. This ordinance shall take effect upon its approval. This ordinance does not apply to applicants who submitted subdivision construction plans pursuant to Sections 18.20.150 through 18.20.170, Maui County Code, prior to the ordinance's effective date.

APPROVED AS TO FORM
AND LEGALITY:

for 

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

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