

WATER AND INFRASTRUCTURE COMMITTEE

Council of the County of Maui

MINUTES

October 21, 2024

Online Only via Teams

CONVENE: 9:02 a.m.

PRESENT: Councilmember Tom Cook, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Gabe Johnson, Member
Councilmember Tasha Kama, Member
Councilmember Alice L. Lee, Member
Councilmember Tamara Paltin, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Nohelani U‘u-Hodgins, Member

STAFF: Jarret Pascual, Legislative Analyst
Samantha Tanck, Legislative Analyst
Carla Nakata, Legislative Attorney
Pauline Martins, Senior Committee Secretary
Lori Tengan, Committee Secretary
Lenora Dineen, Council Services Assistant Clerk
Ryan Martins, Council Ambassador

Additional Staff:

Susan Clements, Executive Assistant to Councilmember Nohelani U‘u-Hodgins

Residency Area Office:

Mavis Oliveira-Medeiros, Council Aide, East Maui Residency Area Office
Christian Balagso, Council Aide, West Maui Residency Area Office
Roxanne Morita, Council Aide, Lāna‘i Residency Area Office
Jade Rojas-Letisi, Council Aide, Makawao-Ha‘ikū-Pā‘ia Residency Area Office
Zhanterell Lindo, Council Aide, Moloka‘i Residency Area Office
Bill Snipes, Council Aide, South Maui Residency Area Office

ADMIN.: Caleb Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
James Jensen, Engineering Program Manager, Department of Water Supply

OTHERS: Jasee Law
Dave Jorgensen

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(15) additional attendees

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR COOK: . . .*(gavel)*. . . Will the Water and Infrastructure Committee of October 21, 2024, please come to order. The time is now 9:02 a.m. May I ask that all participants please quiet any noisemaking devices. I'm your Chair, Tom Cook. Members, per the Sunshine Law, please identify by name, who, if anyone, is in the room, vehicle, or workplace with you today, excluding...except for minors. Before we begin, I would also like to ask the Department representatives who have joined online to please turn on your cameras when it is your turn to speak. Now I'd like to introduce Committee Members. Good morning, Vice-Chair Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Good morning, Chair. Have a great day and let's have a productive meeting. I like the subject matter. Thank you.

CHAIR COOK: Aloha and good morning, Councilmember Tasha Kama.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair. I am in my home in my work space and I am alone. But Leena's at the dentist getting a root canal and I expect her to be home within the next half an hour, so hallelujah. Good morning, everyone.

CHAIR COOK: Good morning. Aloha and good morning, Gabe Johnson, Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Aloha Chair, Councilmembers, Committee Members. There's no testifiers at the Lāna'i District Office and I'm alone in my workspace and here and ready to work. Mahalo, Chair.

CHAIR COOK: And good morning, Councilmember Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka kākou. Mai Moloka'i Nui A Hina. I'm at my private residence, alone right in the room right now, but my daughter will be walking around, she's not feeling well. There are currently no testifiers at the Moloka'i District Office.

CHAIR COOK: Council Chair Alice Lee isn't here...excused for now. Councilmember Nohelani U'u-Hodgins, aloha and good morning. You're on mute.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I wonder if she cannot hear us. Oh, Member U'u-Hodgins.

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CHAIR COOK: We'll move on to Councilmember Shane Sinenci and come back to Member U'u-Hodgins when she gets her mic fixed and working. Aloha and good morning, Councilmember Sinenci.

COUNCILMEMBER SINENCI: Aloha kakahiaaka, Chair. Mai Maui Hikina. I'm here with District Staff Members Dawn Lono and Mavis Medeiros and there are no testifiers this morning, Chair.

CHAIR COOK: And Councilmember Tamara Paltin, who I skipped over. Good morning...aloha and good morning.

COUNCILMEMBER PALTIN: Aloha kakahiaaka kākou, streaming live and direct from Nāpili. I have with me a full house. One named male George Vierra, two unnamed minors, one named canine Kingy Poo Paltin Vierra, one unnamed canine minor, and brah the pool is back and better than ever. It was very nice this morning, so I'm ready to go. Bring it.

CHAIR COOK: Great. And Councilmember Nohe U'u-Hodgins, can you hear us now?

COUNCILMEMBER U'U-HODGINS: I can. Thank you, Chair. I couldn't earlier and then I got a few messages, so we figured it out. Thank you. I'm at the Pā'ia Office with Susan Clements and Jade Rojas-Letisi and there's no testifiers here.

CHAIR COOK: Thank you. And Council Chair Alice Lee, good morning and aloha.

COUNCILMEMBER LEE: Dumela, all the way from Africa, Chair Cook. I'm home alone in my office space. I had to give my little puppy, Koa, a time out because she ate the cat food, so she was naughty today. But looking forward to your meeting.

CHAIR COOK: Good. And, Council Chair, I would like to announce that there are no testifiers at the Kihei District Office and Bill Snipes is there ready and ready to greet anybody who does wish to do so. From the Department of Water Supply, I would like to welcome James Jensen, Engineer Program Manager.

MR. JENSEN: Mahalo, Chair. Mahalo, Committee Members, for taking the time to start your very busy week with this subject and I appreciate everyone's time.

CHAIR COOK: And from Corporation Counsel, welcome Deputy Corporation Counsel Caleb Rowe.

MR. ROWE: Good morning, Chair.

CHAIR COOK: From our...from OCS, our epic Committee Staff, Jarret Pascual, Sam Tanck, Pauline Martins, Lori Ann Tengan, Carla Nakata, and Lei Dinneen. Please see the last page of the agenda for any information on meeting connectivity. Good morning, everyone, and thank you for joining today's WAI

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meeting. We have one item on today's agenda, WAI-30. Members, if there are no objections, I would like to take testimony after receiving the opening remarks on WAI-30.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Thank you, Members.

WAI-30 BILL 130 (2024), AMENDING SECTION 14.07.090, MAUI COUNTY CODE, TO ALLOW THE DIRECTOR OF WATER SUPPLY TO ADMINISTRATIVELY EXTEND WATER METER RESERVATIONS IN LIMITED CIRCUMSTANCES

CHAIR COOK: Members, WAI-30 relates to Bill 130 (2024), entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 14.07.090, MAUI COUNTY CODE, TO ALLOW THE DIRECTOR OF WATER SUPPLY TO ADMINISTRATIVELY EXTEND WATER METER RESERVATIONS IN LIMITED CIRCUMSTANCES BASED ON SPECIFIC FINDINGS." Bill 130's purpose is to allow the Department of Water Supply to administratively extend the five-year reservation limitation for water meter based on specific criteria. Members, before this Committee meeting, your Chair met with the Department of Water Supply to get more background information on Bill 130. During the meetings, the Department of Water Supply did request some revisions which they provided to us in writing. The Department's response is listed on the agenda and can be found on Granicus as item number 4. We can discuss these proposed revisions with the Department and consider amending the bill during decision making. Before we begin, Mr. Jensen, would you be able to provide some opening remarks and background on Bill 130 and mention the proposed revisions your Department is requesting the Committee to consider.

MR. JENSEN: Mahalo, Chair. My pleasure. Real quick before I make my opening remarks, I just wanted to provide everyone a quick staffing update. We're excited that we have a Civil Engineer who started last week in our Capital Improvement Program and he's getting up to speed and loving his new work environment, and we offered a CE-5 position a couple of weeks ago that was accepted on Friday and that individual is expected to come in and do paperwork today. So, we're still short about three or four engineers, but we're excited about the positive momentum that we're seeing, so just wanted to mention that. So, going into this item, I wanted to start by saying that the Department of Water Supply understands that its role is executive in nature and not legislative and that we were not asked to specifically look at this item. But due to our experiences and our observations with folks pursuing their meter reservations, we believe that this amendment makes sense and its worth consideration. So, you know, understanding the history around this particular topic, the Department is in agreement that the prior two-year reservation system and the way that

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reservations were...could be extended indefinitely without findings is not...not really a workable solution, so we're...we are not seeking to recover that type of authority. Under the current reservation system, an applicant who finds themselves about to expire, they will request a time extension from the Director of Water Supply and currently without any authority to grant extensions, the Director will simply deny all requests. Once that denial is issued, the applicant may then appeal that denial to the Board of Water Supply and the Board may hear that appeal and grant a time extension. In certain cases, the Department supports those...those time extensions and we collaborate with our partners at Corp. Counsel to discuss the Department's support for or support against an extension, as the case may be, prior to that appeal being heard by the Board. So, what we're seeking is what we would...the Department would like to be able to extend reservations in specific instances and, you know, understanding the history we...we're not asking that we have the authority to grant extensions without findings and without time limitation. So, we're trying to strike a balance, you know, between the old two-year system and the current five-year system. So, just to reiterate, we don't want to give extensions without justification, but we do want administrative extensions to be possible. We think that that's prudent and helpful. So, the...there's two...there's two drafts, there is the original proposal that we submitted and then there is an updated proposal, and so I'll cover the findings and some of the reasoning behind how those findings were crafted and then I'll go over some of the updates that we'd like to make which is simply through kind of the organic process of crafting the original amendment and then just having dialogue along the way. So, the...let's see here. The findings are listed in 14.07.097 [sic], Section C, Waiver or Modification, and those findings are generally consistent with Section 14.13.080 of the Code. So, the first two findings, you know, finding number one is strict application of the five-year reservation limitation would cause an absurd, unfair, or unreasonably harsh result to the applicants, and then finding number two is that the applicant's circumstance or condition is exceptional and the Director would grant the same request if made by every similarly situated applicant. Those two findings we believe would typically, we could make those in a situation where an applicant has invested time and money and energy into surveyors, engineers, and other consultants, that they have to hire to prepare technical documents related to their project, you know, process plans and agreements with the Department, and generally move their application through the bureaucracy, and any applicant that's moved their project forward in earnest we would expect to be able to make these findings, because if they get to a...if they have been working their way through the process allowing that reservation to expire is kind of a rug pull and we'd like to avoid doing that where we can justify doing so. And then of course, anyone in that type of situation we would expect to consistently make those findings, so that's where we think findings one and two would be helpful for folks who have advanced their projects and in some cases, could even be on the verge of plan approval, you know, understanding that for better or for worse our process is not overnight and it does take time and for certain projects, it's daunting specifically for folks Upcountry who may not have sufficient

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infrastructure to serve their property and these are not...these are not traditional developers who, you know, get a meter reservation and they're already moving things forward. So, this...this proposed amendment is really geared towards folks who are not in the development business and they're just trying to get water to their property. The third finding is that extension of the reservation expiration will be without detriment to existing users. We believe the third finding can typically be made in most cases, because time extensions on reservations do not affect the flow of water to existing users. We considered omitting this finding, but we chose to include it simply to be consistent with the waiver modification provision that is already in 14.13.080. So, you know, the Department will need to use its best judgment to make those first three findings. It is still...it is still discretionary to interpret whether allowing expiration would be absurd or unfair, so there is...that is a subjective and that we do need to use our best judgment, but we have those findings that if no...if no action has been taken, then we can't make those findings, so it does...even though it is still discretionary, the...the way that these findings are described we think that it limits or eliminates an ability to abuse that discretion. So, the fourth...the fourth finding is kind of to provide an objective pass-fail criteria that really solidifies the first two findings, which is if you have your plans approved, you've...you have taken your project really far down the road. You...at that point we know that the applicant has what we would call sleepless nights money invested in their project and at that point, we would really...it would be a bummer to allow that reservation to expire in that situation. So, looking at the updated proposal, there are a couple of key...key modifications that, I got Caleb here just in case I summarize anything a little incorrectly here. But, so you know, since the original draft was put forward, we just had some additional conversations along the way and we wanted to offer a couple of updates that we think makes sense, and so let me make sure I explain this properly because it might get confusing and that's not the intent, but our goal was to try to maintain for new reservations a total...a total lifespan of five years. So, for new reservations issued after adoption of the amendment, we'd like to suggest that we change that initial reservation term to three years and allow a single two-year extension with those findings. The reason...there's a couple reasons for this. The first reason is that it will shorten the initial term and, you know, for an applicant that chooses not to pursue their reservation, that reservation will go back into the resource pool sooner. But we also believe that folks tend to start to get the ball rolling on their projects too deep into that five year...that five-year span. So we believe that shortening the initial period will encourage applicants to move their projects forward sooner in that overall five-year timeframe. We see that as being a good middle ground between the prior two year system and the current five year system, and then for reservations existing at the time of adoption, we would like to allow that same one two-year extension. It's really kind of a...I would say it's a grandfathering to give that...that last opportunity for...for those applicants to move forward, especially of course we have to make those findings so it's not going to work out in favor of someone who is about to expire on their five-year reservation, but haven't taken any action. And...and then we did want to include some language, even though it's not

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required, include some language in here about the applicant's ability to...if under this...if under this version of the Code, if an applicant requested an extension and we could not make those findings, we wanted to include some language that the applicant may appeal that decision by the Director, but we want applicants to understand that for the Board to hear and grant that extension, the Board has to make the same findings as the Director. So, that's...that's the summary and yeah, I appreciate everyone's time for listening. Mahalo.

CHAIR COOK: Thank you, Mr. Jensen, for that very comprehensive explanation and overview. Before we begin our discussion, let's see if anyone would like to provide testimony for WAI-30. Staff, do we have testifiers?

MS. TANCK: Chair, there's currently one individual signed up to testify, Jasee Law.

. . . OPEN PUBLIC TESTIMONY . . .

MR. LAW: Aloha po akahi. Lunu ho'omalulu Cook. Aloha kākou. Ka'ahao'ke Kalana O Maui. 'O wau Jasee Law, Kula Uka. Sorry I was late, Chair. I was getting organized here running around. I had to go up to the eighth floor to find out that the meetings were over here, even though I attend meetings regularly and trying to find out what is going on and if I can read it says Kalana Pakui Building on the agenda. But I said if you could ask the Staff, the people whoever is in charge of the lobby to put a sign directing them over here...because I'll try to stall as long as I can for testimony because there might be somebody coming in behind me. That's just the ambassador. And yeah, I was kind of busy this morning. I know it's a continuation from last week, I don't know how you got the Monday slot this time, but I've been picking cardboard out of the Salvation Army dumpster again. I know that's not your kuleana, but I just threw that one in there since I got a couple of minutes to talk.

CHAIR COOK: So, do you have any reference to this particular agenda item?

MR. LAW: Sorry. I did read the agenda and so I probably never applied for a water meter here on Maui, but I live Upcountry so I'm familiar with the kind of trouble that they've been having and I appreciate the Deputy Director --

MR. JENSEN: Engineering Manager.

MR. LAW: Engineering Manager. His explanation was plain and simple, I could understand it very well. I thought Mr. Stufflebean would be here, but I guess we're in good hands with you guys. So, I always tell the County guys thank you for working for the County because something like this, the way I see it, is there's always an exception to the rule. You can make rules and rules and rules, but there's always one thing you didn't think about. So, this is good whoever thought about this to try to help people better in a desperate situation trying to get water

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supply to their land, and the only thing I thought about was most people out there when you ask them about the County they say, ah, that's a bunch of crooks, they all put money in their pockets and, you know, you can't trust them and stuff like that. So, I would beg to disagree on those guys. But putting in all the...on Mr. Stufflebean's shoulders, it's a big job he's got and so, I thank him for bringing this to your Committee and I would just ask the County to be very, very pono in everything they do and just like try to just do the best you can and if there's any temptation at all from the devil and the angel, always listen to the angel because times are getting tough now, we need true blue leaders. I thank you for your time.

CHAIR COOK: Okay, thank you.

MR. LAW: And if you could get the water fountain fixed over here on this side too, Mr. Cook, we'd appreciate it. I'm real thirsty from running up and down those stairs. . . .*(timer sounds)*. . .

CHAIR COOK: Members, do we have any clarifying questions for our testifier? Seeing none. Thank you very much. Staff, do we have any other testifiers?

MS. TANCK: Chair, the last individual currently signed up to testify is Dave Jorgensen.

CHAIR COOK: Welcome, Mr. Jorgensen.

MR. JORGENSEN: Good morning. Can you hear me?

CHAIR COOK: Yes, you're coming in loud and clear.

MR. JORGENSEN: Thank you. Thank you very much. Good morning, Chair Cook, Members of the Committee and Staff. My name is Dave Jorgensen. I'll try and be real brief. First...I'm actually speaking this morning on behalf of some clients and longtime friends Baldev and Kim Marie, Kayani Singh, who have a property up in Pukalani they've been working on a subdivision for, and they've been through the process with the different County departments and the Water Department. I do want to very much state all of our appreciation to the Director and to Mr. Jensen for their comments and what I would say that...the kind of the attitude of the Department and their proposed revisions. My clients have, you know, they started before the five-year extension rule was adopted. The five-year extension rule was expiring, they appealed and got another year. Unfortunately due to, and I don't want to bore you with the great details, but there was an agreement...a tentative agreement with the Planning Department that was changed after the last election which set my clients back a little bit. COVID hit, the fire happened, MAPPS was implemented, there's been staffing issues, and there was a project right around the corner from them that is in the works that if depending what way that went, certain requirements would be...or could be altered. These...the revisions to the rule, we're very grateful to see those.

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We...number four, I'm glad to see that there's some extra thought going into number four. My clients have now been able to submit their construction plans, but they have not yet been approved and they are...their reservation technically expired this past July. So, we are asking for the Department, for this Committee, for the Council to take into consideration people who have been working hard, spent almost a couple hundred thousand dollars already, their son Kayani's on the MISC Committee, eradicating invasive species, their son Avi is a firefighter who fought the fires in Lāhainā, you know, this is a good local family. I really appreciated Mr. Jensen's comments and these are not normal developers. They're doing a small subdivision off of Loha in Pukalani and they've expended...Mr. Jensen also mentioned sleepless nights . . .*(timer sounds)*. . . and I'll wrap up. We appreciate the word sufficient in the language that was added or proposed to be added...that sufficient progress can be made without construction plans being executed by the Director. And we do ask for the Committee's consideration of these types of situations which I know for a fact my clients are not the only ones. Thank you very much.

CHAIR COOK: Thank you, Mr. Jorgensen. Members, do you have any clarifying questions for our testifier? Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Jorgensen. My clarifying question is, it's not too late for those clients, like if we were to change it now, go through first and second reading, it's not too late for them...the five years hasn't passed yet?

MR. JORGENSEN: That is...thank you for that question. That's a very good question and that is something that frankly we're hoping to get some clarification from the review and discussion of this proposal. We understood that the intent was to make the rule retroactive. How that will apply, we honestly don't know. We're obviously greatly hoping and praying and begging that it will be able to allow them to continue on. But that is a very good question.

COUNCILMEMBER PALTIN: And then if I could further clarify, when you say retroactive, it's just everyone...I mean I don't know how far retroactive that it needs to go that your clients would be able to take advantage of this. Is it like a year, two years, how far retroactive are we talking about?

MR. JORGENSEN: Well, in the... in Bill 130, it says that it would take effect retroactive to July 1, 2019. The process my clients are in started in July 2018, but my understanding from reading it, and I apologize, I haven't had time to discuss this with the Department, but my understanding is the effect of the bill, it's retroactive to 2019 while the process was going on. I believe this would cover my client, but I obviously can't swear to that and that's something else we'll be looking into.

COUNCILMEMBER PALTIN: Okay, so I just wanted to try clarify what you're saying. The five year clock started on 2018 is what you're saying...?

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MR. JORGENSEN: No.

COUNCILMEMBER PALTIN: Not the five year clock ended on 2018?

MR. JORGENSEN: No, no, I'm sorry. The original water service reservation was issued July 2018. The law was changed in...and Mr. Rowe can correct me if I'm wrong or anybody can, March 25th, 2019, the ordinance was adopted to make a maximum of five years. That five years expired, we appealed, we had asked for an extension, and that was denied. We appealed and ultimately our appeal requested a two-year extension, but a one-year extension was granted. That expired this past July.

COUNCILMEMBER PALTIN: Okay, thank you. I believe I understand the situation and hopefully we can clarify it in the discussion...how it would apply to those specific instances. Thank you so much. Thank you, Chair.

MR. JORGENSEN: Thank you very much.

CHAIR COOK: Member Sugimura, you have a clarifying question?

VICE-CHAIR SUGIMURA: Yeah, I do. Thank you. Thank you, Mr. Jorgensen. So...and Member Paltin for those questions. So, basically your client is...kind of got stuck in all of the natural happenings of what has happened in the County, and has been delayed of getting expeditious response to their request?

MR. JORGENSEN: Yes...yes. In some situations, some were simply COVID happened and people weren't...you know, weren't working.

VICE-CHAIR SUGIMURA: Right.

MR. JORGENSEN: The fire happened and resources were diverted and some were staffing issues, some were...we've been working with Andree-Michelle Conley-Kapoi, is our archaeologist. There was some things she needed to do where she was tied up and unfortunately, fortunately for her she's very, very busy...it was just a perfect storm of things that happened.

VICE-CHAIR SUGIMURA: So, tied to all of that then, your clients...when you requested for the two-year extension, but you got one, so the one year is what you're thinking may be too short at this point, and your --

MR. JORGENSEN: Well, it has expired. That one-year extension expired this past July.

VICE-CHAIR SUGIMURA: July...okay.

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MR. JORGENSEN: And we...just to kind of tie...my client requested an extension from the Director prior to the expiration of that, the Director responded that he didn't have jurisdiction, that we should go the Board. We submitted a request...a letter to the Board...submitted the same documentation to the Board, we were on the last agenda with the Board for discussion only, and nobody said it specifically about our request. There was another gentlemen whose request was on the agenda for an extension and he was...Bill 130 came up. And so, that's why I'm here today to...to discuss this, to bring this up and let you know this situation and request favorable consideration of modifying the language so that situations like this can be addressed...we're hoping.

VICE-CHAIR SUGIMURA: Okay. We can ask the Department for some recommendations. Thank you.

MR. JORGENSEN: Thank you.

CHAIR COOK: Thank you, Members, and I see Member Kama, clarifying question for our testifier?

COUNCILMEMBER KAMA: Yes, thank you, Chair. So, good morning, Mr. Jorgensen.

MR. JORGENSEN: Good morning.

COUNCILMEMBER KAMA: So, you know, in hearing that many of your clients have had an extension, you know, and knowing that the bill is going to go back retroactive to I think...was it 2019? Is that helpful to your clients or would it be helpful if it went back to 2018?

MR. JORGENSEN: Well, I think if it went back to 2018, that would be...that would be helpful. I'm not sure, and Mr. Rowe or Mr. Jensen could clarify, I'm not sure if it's necessary, but it would be helpful...yes.

COUNCILMEMBER KAMA: Okay. Thank you so much. Thank you, Chair.

MR. JORGENSEN: Thank you.

CHAIR COOK: Thank you, Mr. Jorgensen. Members, any further questions for the testifier? Seeing none, thank you very much.

MR. JORGENSEN: Thank you.

CHAIR COOK: Staff, any other testifiers?

MS. TANCK: Chair, there are no individuals signed up to testify at this time. We'll do a last call, three, two, one. Chair, there are no individuals signed up to testify.

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CHAIR COOK: Members, seeing that there are no more individuals wishing to testify, without objection, I will now close oral testimony for WAI-30. Written testimony will be...is welcomed and encouraged. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

. . .CLOSE PUBLIC TESTIMONY. . .

CHAIR COOK: Thank you, Members. Members, I'm proposing two rounds of three minutes each per Member. Are there any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Thank you, Members. I would now like to open the floor to questions and discussion. We will start with Committee Vice-Chair Sugimura.

VICE-CHAIR SUGIMURA: Thank you. Did the Department have an ASF that they were speaking of? I didn't see it.

MR. JENSEN: I'm sorry, can you repeat the question?

VICE-CHAIR SUGIMURA: Do you have an ASF...do you have an amendment to the original bill? I think you were referring to something like that.

CHAIR COOK: Staff?

MR. PASCUAL: Chair, we currently do not have an Amendment Summary Form, but I believe Attachment 4 has the Department of Water Supply's --

VICE-CHAIR SUGIMURA: Response.

MR. PASCUAL: Response. Correct.

VICE-CHAIR SUGIMURA: Okay, so they're just...they don't have any amendments to the original bill, they're just responding to the questions submitted by the Chair. And so, basically the Department also was talking about wanting to have in the letter that was your answers, you submitted...you wanted to have the applicant at least make a request for an extension 60 days in advance.

MR. JENSEN: Correct.

VICE-CHAIR SUGIMURA: Okay. So, you're not going to amend the bill...this is your bill, so we can't amend it. You're just fine just mentioning it then and you're not going to put anything in writing.

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MR. JENSEN: I'm sorry, we did submit an amendment, but it was late Friday, so it sounds like that's not . . . *(inaudible)*. . .

MR. ROWE: I guess it wasn't posted yet.

VICE-CHAIR SUGIMURA: Are we going to...are we...Mr. Rowe, are you going to...or can we work from that or the Department seems like they had some amendments that they wanted to make to their bill.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

MR. ROWE: Yes, so...oh, sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, it's on Granicus Item 4, right, like Staff was saying...it's number four...

VICE-CHAIR SUGIMURA: Is this the letter?

COUNCILMEMBER RAWLINS-FERNANDEZ: ..please advise any other proposed amendments on the bill and then it has the amendments. Is that the one? No?

CHAIR COOK: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo.

MR. ROWE: We did actually...we submitted a kind of bill form that was more trying to incorporate...to incorporate some of these. I guess that wasn't posted...we submitted that on Friday.

CHAIR COOK: Could you speak closer to the microphone.

MR. ROWE: Yes, we did on Friday submit...we tried to incorporate some of the language...that language into the bill itself, but I guess that hasn't been posted.

CHAIR COOK: But is that outlined in Granicus...on Item 4?

MR. ROWE: Yes.

CHAIR COOK: Okay.

VICE-CHAIR SUGIMURA: Okay, so number four --

CHAIR COOK: Member Paltin. Okay, sorry.

VICE-CHAIR SUGIMURA: Number Four, is it still...you know, is it still my turn or did I run out of time?

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CHAIR COOK: It's still your turn, I apologize.

VICE-CHAIR SUGIMURA: Okay, so October 11th is Item number 4, and it's the response exactly what the Department was talking about, but I don't see an amended bill, . . . *(timer sounds)*. . . and wondered if we could have the amended bill or if it's...could not.

MR. PASCUAL: Chair, Staff is working on transmitting that word version to Granicus with the amended language. Thank you.

VICE-CHAIR SUGIMURA: Oh, thank you. Okay, I'll wait.

CHAIR COOK: Forthcoming.

VICE-CHAIR SUGIMURA: Thank you, Chair.

CHAIR COOK: Okay. Member Paltin, you had your hand up?

COUNCILMEMBER PALTIN: Oh, thank you, Chair. I just wanted to clarify, we can amend the Administration's proposed bill in Committee, right? It's we can't amend the budget out of the budget time?

CHAIR COOK: Right.

COUNCILMEMBER PALTIN: We're allowed to amend...oh, okay, okay.

CHAIR COOK: Yes, we can amend this and that's the intention of the Chair today is to discuss this and work with the Department to determine...to accommodate their needs as long as it meets the...also meets the needs of the people.

COUNCILMEMBER PALTIN: And...and we can amend it anyway, even if they did it...I mean that's the law, right, for something?

CHAIR COOK: I see Corp. Counsel nodding his head, yes, so I'm gonna say yes.

COUNCILMEMBER PALTIN: Okay. I just wanted to make that clarification. Sorry, my husband got a skill saw or something...cutting some trees. Sorry about that.

CHAIR COOK: We didn't hear it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair. Chair.

CHAIR COOK: Member Rawlins-Fernandez.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Just a point of clarification, because the reason Member Paltin is asking that question is Member Sugimura said that we cannot amend the bill because it's their bill. So, we can amend the bill, that is our job, and we can amend budget bills that are regarding CIPs, but not operating. And we can amend it in Committee and we can amend it in full Council. All of those things we can do. The only thing we cannot do is amend budget operations. Mahalo, Chair.

CHAIR COOK: Okay, thank you for clarification, and any other clarifying...or any other comments at this time? We're going to have plenty of time for round two also. Do I see Member U'u-Hodgins' hand up?

COUNCILMEMBER U'U-HODGINS: Yeah, I can ask questions to Water at this point, we're not just clarifying what the legislative body is supposed to do, right?

CHAIR COOK: That is correct.

COUNCILMEMBER U'U-HODGINS: Okay, great. Thank you. For Mr. Jensen, is it the only...is it only Upcountry that has a reservation system or where else on this island would this affect?

MR. JENSEN: The reservation system is countywide. When the Department confirms water availability for any applicant for water service, they are given the option to pursue their project at risk, hoping that when they finish the project, water is still is available, or they can enter into that reservation and they can pay their development fees, and then they move forward with their project.

COUNCILMEMBER U'U-HODGINS: Okay. How long does the typical process for this take?

MR. JENSEN: Um...

COUNCILMEMBER U'U-HODGINS: So, yeah. Sorry, go ahead.

MR. JENSEN: I'll just say, can you clarify, because the process can be...can be fairly simple and short, or it can be fairly arduous depending on the complexity of the infrastructure needs of the applicant.

COUNCILMEMBER U'U-HODGINS: Okay. And...I mean I'm assuming each project, each location is completely different, but, so some take long time, some doesn't take as long, I get that. What are some of the issues that you typically see that creates this process to be unnecessarily long.

MR. JENSEN: The common challenges that I see are off-site improvements required at the time the reservation is issued, or the offer for the reservation is issued. So, we, specifically Upcountry applicants for water can be in situations where

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infrastructure is woefully inadequate to provide water to the property of the applicant. So, often times there can be substantial off-site improvements that require a lot of consultants and a lot of design time and effort, and there can be complicating factors like easements across neighboring properties that...they just add up and take a lot of time.

COUNCILMEMBER U'U-HODGINS: Okay, and I'm assuming something, if not many somethings triggered this proposed change on your folks' end. Besides maybe Mr. Jorgensen's client that could potentially benefit from this, about how many people do you think would benefit from this extension...or groups of people? I'm curious, the trigger. I know that a lot of things take a long time, but I would be stoked if this was to be beneficial to a bunch of people.

MR. JENSEN: Yeah, I don't have that data at my fingertips. I know that there are...there are a couple of applicants in similar situation where . . .*(timer sounds)*. . . they've moved far along the process, but there...there are probably...I'm not sure how many more, but I suspect there are more that are in the third and fourth year of their reservation and would find themselves in the same situation in the next year or two.

COUNCILMEMBER U'U-HODGINS: Okay. Thank you for this. I appreciate you guys being flexible and you're right, people do spend a whole bunch of money and things do take a long time to really no fault of anybody...sometimes it's just situational, so thank you and I look forward to supporting this. I have no further questions after this, Chair. Thanks.

CHAIR COOK: Thank you. Chair Lee, I see your hand up for questions for the Department or Corp. Counsel.

COUNCILMEMBER LEE: Oh, yes, following up question for the Department, and I know Mr. Jensen said he didn't have the answer, perhaps he can get it to us? How many reservations are there broken down by area? So, how many for Upcountry, how many for Moloka'i, how many for...what are we talking about and not only broken down by area, broken down by the number of meters, so...so that we have a better idea of what kind of volume we're working with, and so that would be important information for us to have anyway. So, that's my question and I'm assuming one last thing, I'm assuming Lāhainā is exempt?

CHAIR COOK: Mr. Jensen?

MR. JENSEN: I don't know that Lāhainā is exempt. Is...Caleb?

MR. ROWE: Exempt from what exactly, I guess I'm not sure I understand the question.

COUNCILMEMBER LEE: For all these...from all these time constraints.

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MR. ROWE: I would have to look on whether or not this section was...was put in the emergency order as being suspended.

COUNCILMEMBER LEE: Okay.

MR. ROWE: I don't know that off the top of my head.

COUNCILMEMBER LEE: We would appreciate that answer as well. Thank you, Chair.

MR. ROWE: Yeah.

MR. JENSEN: And if...if I may?

CHAIR COOK: Yes.

MR. JENSEN: In the sense of folks who are rebuilding, they...they never lost their water service so their water service is considered still intact, they will not be paying a new development fee to reconnect. So, I don't believe they're even subject to the reservation system because their rights to their water are...they still exist.

COUNCILMEMBER LEE: Well, there are other developers there that have reservations I believe, so I would still like to see that list for all areas. Thank you.

CHAIR COOK: Members? Member Johnson.

COUNCILMEMBER JOHNSON: Thank you, Chair. My question is going to be specifically honed in on the responses from the Department. Number four, in the event of a Director decision to deny the one two-year extension request, allow appeal to the Board of Water Supply to overrule the decision. So, maybe that's the meat of my question is, when it goes to the Department of Water Supply, how busy are they, can they schedule quickly? Is there going to be some kind of like dead time that these folks have to wait to be on the agenda of the Board of Water Supply? I don't know how often they meet...maybe you guys can clarify that section of the process...the proposed, because I know it seemed like you guys would suggest that, so can you speak on that section?

MR. ROWE: I can...I can speak a little bit to that. The Board of Water Supply meets once a month and usually they have a separate meeting for their normal business, and then another one for appeals, so they'll usually try and do one appeal per session. I couldn't tell you what the...what the backlog on it is, you know, what the time frame is between it being agendaized for the setting of the meeting to go into the actual hearing. And some of these take several months and they meet once a month, right? So, I had one where I think the hearing portion of it lasted at least four months. So, if that happens...answers your question. And sorry if I very quickly may, regarding Chair Lee's question, she is correct, Title 14 was suspended by the emergency proclamation. I just looked

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that up...I just wasn't comfortable in answering on the fly. But yes, that it does not apply to Lāhainā.

CHAIR COOK: Thank you.

COUNCILMEMBER JOHNSON: Okay. So, the four months seems kind of long, yeah, and does that count...I mean like, so the process is if they...if the Director denies, they can go into the Board of Water Supply, and there might be a very long time where they don't...they don't get their hearing or the decision is not made, does that time period affect anything like...does that eat into that two-year extension, or does it start the minute the decision is made?

MR. ROWE: I believe that it would start when the decision is made because it's two years from the renewal, and in that case it would be the Board approving the renewal. That's how I see that working.

COUNCILMEMBER JOHNSON: Okay. I know it's kind of a suggestion to the bill, but it's not...it doesn't say that specifically. Is that right, Mr. Rowe?

MR. ROWE: That is correct and we could add some language in there . . . *(timer sounds)*. . . specifically in this section where we're talking about appeals to the Board of Water Supply, say something along the lines of any period of reservation shall be told during the pendency of any appeal or something like that. That would be easy.

COUNCILMEMBER JOHNSON: Okay. My time's up. I heard the bell, but I just want to add at the end of my statement is that, if we're trying to push this forward and we the...our systems are the ones that is slowing it down, we should really relook at that and fix that and kind of make considerations when it comes to that time period. Thank you. Thank you, Chair.

CHAIR COOK: Thank you, Member Johnson. Member Kama.

COUNCILMEMBER KAMA: Thank you, Chair. So, I think this is for Water, I had asked Mr. Jorgensen if it would be helpful if the retroactive date that you have on your response went to July '19th, and I ask because it would be helpful for his people to have it retroactive to 2018. What is your comment on that?

CHAIR COOK: Director.

MR. JENSEN: Yeah, it's a good question. I was thinking about that when the conversation was happening is, that particular application seems like it's in a little bit of a no man's land in terms of its given one extension by the Board. If we went back to 2018 then I...I'm not sure the effect that would have on other reservations that have also expired, but because the Board granted that prior one-year extension, it's...right...it's outside of the time frames that this

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amendment is talking about and if it was retroactive to 2018, then they would not have...their prior request...I don't know if that prior request would be covered by the way that this amendment is supposed to work. So I'm not sure how...what it would look like to go back and try to capture or reconcile how that reservation has been extended to this point and how it could be extended again. So, yeah I'm sorry, I'm not really sure how the mechanics of that would work if it was retroactive to 2018, we would have to think about that more I think.

COUNCILMEMBER KAMA: I think that's an acceptable response, so thank you for that. That's why I asked the question because I wasn't sure either. Thank you.

CHAIR COOK: Okay, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just had a question to follow up along Member Kama's line of questioning as a possibility. It seems that in 2018 the Board gave a one-year extension. If we're now allowing for a two-year extension, would it be okay to give them a one-year extension because they didn't get the full two years? Or, you know, just say we're doing a clean slate in regards to there was COVID, there was fires, and like that. I think if they're doing those things like you said about sleepless nights and good faith effort, those...those applied without COVID taking place, without the fire taking place, and just our own permitting system. So, I mean I imagine for me, given COVID, given the fires, that I'd be okay that it goes back to 2018 and we either grant them the other year of their extension or a clean slate because the COVID thing, the fire thing, is not normal delays and the County also has normal delays on top of those abnormal delays I guess. And so, I guess those would be my questions. I'm sorry, I forgot your last name, Mr. Water Department.

MR. JENSEN: That is my last name, Water Department. Jensen.

COUNCILMEMBER PALTIN: Jensen.

MR. JENSEN: Can I answer now, or...?

CHAIR COOK: Yeah, please do. Please do, sir.

MR. JENSEN: So, the way that I...the way that I feel personally on this issue is if we can make the findings, then I would almost advocate for no time limitations because when folks have put that effort in, they get to a certain point where they're going to finish but the amendment's been crafted the way it's been crafted because we're being...we need to be sensitive to kind of the background on this issue and that it's had some challenges in the past, but if the findings can be made, I would support more extensions being possible because there's something that goes in the file every time that extension is made. And I don't know if it's possible . . . *(timer sounds)* . . . that, you know, if an applicant...if we make those findings because an applicant has moved forward or even gotten approved plans

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and started construction, if that project gets abandoned, then I suppose the reservation would never be...an extension would never be sought so it would expire at that point, but there's a certain time where you can almost always make the findings. So like if an applicant suddenly stops pursuing their project, there could be instances where we made findings two years ago and we really can't make them anymore...that could happen. But I would suspect that anytime we make those...you make those findings, that really means that someone is, for all intents and purposes, all in on their project and they're going to finish. So, that being said, the one situation where we could have...we could make findings and then projects are suddenly not being pursued would be something akin to say 2008, where lots of projects just stopped. I suppose there could be a larger action taken that might extend the approval period of preliminary plats or could extend approval periods of certain things because there's an understanding countywide that things have stopped, so that's probably kind of a safety net mechanism in that type of a situation.

COUNCILMEMBER PALTIN: Thank you, Mr. Jensen. Chair, I heard the bell. If I could just clarify one thing that I might not have understood what he said, I can wait until next round, I'll just write it down so I don't forget it, but while it's fresh if that's okay.

CHAIR COOK: We have time. It's okay with the Chair, if the Members don't object.

COUNCILMEMBER PALTIN: Okay, thank you.

CHAIR COOK: I don't see any objections. So, Member Paltin, continue.

COUNCILMEMBER PALTIN: Thank you. Mr. Jensen, I just wanted to clarify, it sounded like you were okay with not setting a number of extensions, is that what you're saying, like that way you kind of check up on them ever two years that they're still making progress, is that what you meant?

MR. JENSEN: Yes. I would support that. Yeah, it just was not proposed that way because, you know, we're just trying to be sensitive to the past.

COUNCILMEMBER PALTIN: Okay, thank you. Thank you, Chair. Thank you, Members.

CHAIR COOK: Okay. Member Rawlins-Fernandez, I see your hand up.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. We did receive an email from Mr. Pascual, mahalo for the amended...the bill with the incorporated amendment. So, I have a clarifying question regarding the response from Mr. Jensen to Member Paltin's question regarding being sensitive to challenges to changing the year from 2019 to 2018. Are those operational challenges or legal challenges?

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CHAIR COOK: Member [sic] Jensen?

MR. JENSEN: Yeah, I was referring to in the past they weren't...not operational challenges, but reservation extensions were given in the past without making any findings and those extensions tended to be for long periods of time, so that's where the system changed to this five-year system where the administrative extension can't be given. So we're trying to...we're trying to allow administrative extensions, but we want to require that the Department make findings that...to justify those administrative extensions so that appeals...so that we can try to capture what I would call, you know, in some instances no brainer extensions so that they don't have to keep going to the Board.

MR. ROWE: And Chair, if I may respond briefly to that, and during the old system that we were describing there were some legal challenges to it that the 2019 amendment was designed to address. So, that was partially in response to legal challenges.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And so, in response, Mr. Rowe, then if we were to change it to 2018, those would affect the strategy of addressing those legal challenges.

MR. ROWE: So, one of the challenges that we had was that there were extensions that were being given using authority that didn't exist, it was in a different portion of the code that allowed for waivers. So we're now specifically putting the waiver provision into this section, so that addresses one of those...one of those concerns. So, we were putting it specifically here with that in mind of what happened in, you know, back in the day.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that explanation. Okay. And then, so the reservation...this...the water reservations is for all projects, affordable housing and market?

MR. ROWE: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. You know, so I don't know if it's part of this but I was just wondering, for some of the affordable housing projects we . . .(timer sounds). . . Chair, is it okay if I finish my question?

CHAIR COOK: If it's...if it's a short question, yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: It's pretty quick. We have recently...well, in the past, the water development fee would be waived for affordable housing projects, but more recently we've been asked by DWS and DEM instead of waiving the fees, to still pay the fees so that their operations that rely on those fees can balance out, and so we've been taking or applying funding from the affordable

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housing fund. So, if the five year passes like how does...well, I guess it's not that quick. How would that work if the five year passes...with the fee?

MR. JENSEN: Well, so I...I'll answer it partially and then we can go from there. So, typically speaking, development projects whether they are affordable housing or market rate, they tend to not reach that...they tend to not expire because those projects pursue, they get plans approved, they build infrastructure, or they get to that point where they become "ready for service," and at that point the reservation almost goes away...they're locked in. Now, if a situation arises where a reservation does expire and I don't know, maybe I'll just throw this out there, but the current code around reservation expiration...I'll just read it, it's part (D), "Should the reservation and allocation expire, the deposit paid by the applicant must be forfeited, and said deposit will be applied to the water system development fee fund with no credit of any kind toward a future application." If I had...if I had my druthers, I would...I would write that code to state that the reservation fee would be, you know, maybe there's a non-refundable reservation fee that could be applied to the development fee at the time that the applicant actually receives water service, but that fee, if a reservation expires, the development fee should not be...it should run with the land...it should not go into the development fee fund and then put the Department in a position to exact that fee on the same property again, if that makes sense. So, a non-refundable portion of the development fee to lock in the reservation so that...or the development fee is refundable if the reservation expires, or the development fee continues to be applied to the land. That's...that's still something that we're looking at and it wasn't going to be incorporated into this amendment. We have a larger Title 14 amendment that covers a lot of stuff and we plan to tackle that issue there. But my basic position is development impact fees should be paid once for the impact not multiple times on the same property for the same impact.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Jensen. Mahalo, Chair. Sorry, that wasn't as quick as I thought it was going to be.

CHAIR COOK: Very informative. I believe Councilmember Sinenci is the last of the first round.

COUNCILMEMBER SINENCI: Mahalo, Chair. And yeah, my question was along the lines of Member Rawlins-Fernandez's question about the County's...I guess responsibility or against any litigate...potential litigation from applicants who are...for Mr. Rowe, if we are allowing the Director to make these...I know there are some safety measures in going to the Board of Water Supply. But does it now require all applicants to request an extension 60 days prior to their application deadline?

MR. ROWE: So, if by currently...you mean under the...what's currently in the Maui County Code, there aren't any extensions that are allowed, so there isn't a provision for that. If you're asking for if this proposal goes forward, I do believe

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that we had said 60 days, I'm not sure if it made it into the amended language that we had turned in but, you know, we would...we would, you know, support that to put in some sort of deadline on it. But I don't think that's in the...in the language that we provided you, other than in the response from the Department.

COUNCILMEMBER SINENCI: Okay, and the current practice is to follow the waiting list as far as who is on first, second, third. Is that what we're still doing, or with these amendments there will be potentially not following the list in order of application submittal.

MR. ROWE: So, this provision applies to the reservation system countywide. The reservation system is only particularly kind of problematic Upcountry because, you know, once you're on...once you get your reservation, you're not allowed to reapply for it because there is a list and it has to go through the system and the list has been closed. So, this wouldn't have a direct effect on the processing of the waitlist, it would just...we would still follow it, the waitlist, as we get through the waitlist. It would just...it would just basically allow people who do get those reservations to seek an extension.

COUNCILMEMBER SINENCI: Okay, thank you for that clarification. Thank you, Chair.

CHAIR COOK: Thank you all. It is now 10:13, Chair is proposing that we take a ten-minute bio break recess and come back at 10:23? . . .*(gavel)*. . .

RECESS: 10:13 a.m.

RECONVENE: 10:31 a.m.

CHAIR COOK: . . .*(gavel)*. . . Welcome back, Members. It is 10:31 and we're going to reconvene our meeting. We've just completed our first round of questioning for our resource people and I'm going to go down...I'm going to go down the list this time...I was just going with people raising hands. But I see Member Rawlins-Fernandez has her hand up, so I will...I will answer her question.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. No, I'm not trying to jump the line, I am in a new location. I'm at the Moloka'i District Office alone on my side of the office. Mahalo, Chair.

CHAIR COOK: Thank you. So, Vice-Chair Sugimura, starting with you. Second round?

VICE-CHAIR SUGIMURA: Thank you. Thank you very much for the Item number 5...I guess now hopefully on Granicus for the public. But it is the amended bill and so Department, Mr. Jensen or Mr. Rowe, as you were describing at the opening then, this amendment does then capture what you were hoping to recommend to the Committee?

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MR. JENSEN: From the Water Department's standpoint, yes.

VICE-CHAIR SUGIMURA: Okay. So, reservations after January 1, 2025 in section B is talking about it will be for...it will not exceed three years provided water service capacity is available subject to subsection (c) which are the modifications...you've mentioned that, so that's in this bill now. And then the other thing that you mentioned and it was briefly talked about, was that you would...the Department would like the applicant to apply for the waiver for this extension within 60 days.

MR. JENSEN: Yes, and that language was in there. I think when I was working with Caleb on these last updates I must have somehow deleted it out of the waiver and modification section, so we would like that to get back in there.

VICE-CHAIR SUGIMURA: To get back in. So, would it be...Mr. Rowe, would it be appropriate for it to be inserted...how do you say...if requested by the applicant by 60 days before the expiration date. Is that where you wanted it...for the wording?

MR. ROWE: You read my mind. That's exactly where I was going to put it. I would put, you know, it would be...if an applicant with a reservation is unable to accept installation of water service after a period of five years...I am looking at the old version, let me pull up the new version.

VICE-CHAIR SUGIMURA: Yeah. Under waiver.

MR. ROWE: Right. If an applicant with a reservation is unable to accept installation of water service within the duration of the reservation, the reservation may be extended one time for a period of two years by the Director if requested within 60 days of expiration by the applicant...something along the lines of that is what I was thinking where that would go.

VICE-CHAIR SUGIMURA: Okay. That's great. And then, the last thing that, if I could ask Mr. Jensen, you were giving your opinion about what would happen with the resignation and allocation expiration fees. Is this the paragraph which is item number D, you want that changed, or is that your opinion, or is that from the Department? . . .*(timer sounds)*. . .

MR. JENSEN: Yeah, it's my opinion the...my directors, we're on the same page internally that we would like to change that. I would support working through that kind of modification today if it suits the Committee.

VICE-CHAIR SUGIMURA: And what would you like it to say...this paragraph?

MR. JENSEN: Should the reservation and allocation expire, the deposit paid by the applicant shall be refunded by the Department. I think it could be as simple as that.

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VICE-CHAIR SUGIMURA: And the rest remains? And said deposit will be applied to the water system development fee fund with no credit of any kind towards a future application...that remains?

MR. JENSEN: No, we would get rid of all of that and it would be --

VICE-CHAIR SUGIMURA: Oh, okay.

MR. JENSEN: Yep, I'm sorry.

VICE-CHAIR SUGIMURA: Okay, so that would be a period then.

MR. JENSEN: Correct.

VICE-CHAIR SUGIMURA: Okay. Okay. Thank you. I think I heard the buzzer. Thank you for letting me finish that.

CHAIR COOK: There was no buzzer, but if that's...I'll move on. Member Kama. Member Kama, you're on mute. Can you hear us?

COUNCILMEMBER KAMA: I can hear you, Chair. Thank you. I have no questions. Thank you, Chair.

CHAIR COOK: Thank you, Member Kama. Councilmember Johnson, your second round of questions?

COUNCILMEMBER JOHNSON: Thank you, Chair. My questions have been answered. Mahalo.

CHAIR COOK: Councilmember Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Member Paltin has her hand up. She looks like she has a quick question before my turn.

CHAIR COOK: Okay, and I'm...I'm really sorry, Tamara, I don't mean to be skipping over you on purpose. Member...Councilmember Paltin, questions?

COUNCILMEMBER PALTIN: Thank you, Chair. My question is in regards to...so say we add the 60 days, I can totally envision folks missing that if they don't have like a consultant or something, so would that also get an appeals process or they're just SOL if they miss that 60 days? Mr. Jensen or Mr. Rowe, either or.

MR. ROWE: So, if they...oh. Sorry. So, if they miss the 60 days, then we would deny the extension based on them not falling within the 60 days, but like every final decision of the Director, that can be appealed to the...the Board of Water Supply.

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COUNCILMEMBER PALTIN: Okay, okay. And then, I might have missed it, why...what was the reason that we're returning the money if the reservation and allocation expired? Did the Department not do the work and then...I mean, so in this version it says, should the reservation and allocation expire, the deposit must be forfeited, but then we're recommending to refund it...I might have missed why we're changing that.

MR. JENSEN: Yeah, so just to give you some background to consider. So, the development...the water system development fee is a development impact fee and typically development impact fees are paid as a way of offsetting the impacts of that development. So, our development fees go toward the development of source transmission and storage infrastructure. So, to me it's very important that development impact fees be collected once...only one time for the realization of that impact. So, for example, if under the current code, if a reservation expires and that development fee is kept with no credit given to the property for future applications, then that impact has been mitigated for that demand by the payment of that fee. If that fee is collected again, it's difficult to justify what that money is to be used for because the impacts related to that application for that property were addressed through the payment of a prior fee.

COUNCILMEMBER PALTIN: Okay, I did hear you say that, I just didn't connect the two that that's where it went, so thank you so much.

MR. ROWE: Chair, if I could just maybe add a little bit to that. I think part of the forfeit system is to kind of disincentivize people from applying . . . *(timer sounds)* . . . for these things when they're, you know, a decade off. Then they just get their money back and then they can reapply for it. You know, that might be...we can potentially address that by doing what Mr. Jensen had mentioned as some sort of credit, that might be one way to kind of combine those kind of two concerns that we're thinking of addressing. But that's just a thought.

COUNCILMEMBER PALTIN: And to clarify with the Department if they have the capacity to keep track of those things, right Mr., I mean I'm super supportive of what you're saying.

MR. JENSEN: Yeah, I believe that our fiscal division does track payment of development fees and we track the balance on the fee fund. Based on Mr. Rowe's input, I think it would be prudent to further modify (D) to say, should the reservation and allocation expire, the deposit by the applicant shall be either refunded or applied to the property for future applications, so it can run with the land or be refunded, I think either of those would be appropriate.

COUNCILMEMBER PALTIN: And none of that development fee takes into account the Department's work to that point, it's just the impact fee because I guess that's a concern as well, like if the Department is doing this work to get to this point, that

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is a consideration also in your folks' staff time and effort on the matter not purely just the impact, right?

MR. JENSEN: Yes, I will gladly answer that question. So, you're absolutely right. One of the...just in the suite of issues that we're looking at now is the fact that we do not have a comprehensive development review fee schedule for different types of applications and pretty much right now our rate payers cover that cost which is not appropriate. So, the development fee does not cover any of the Department's staff time for processing development applications. So, we're...we will be coming full circle in the future to...to address that.

COUNCILMEMBER PALTIN: Okay, thank you. I might have gone over the time. Sorry, Chair.

CHAIR COOK: Yeah, thank you. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair and mahalo, Member Paltin. Those are the questions that I had too, what consisted of the impact fee if it was only construction, and it sounds like yes, or at least it doesn't include the administrative costs of processing applications.

MR. JENSEN: Correct. The development fee...the Development Fee Fund does pay for the time of our capital improvement program staff to do capital projects, but that excludes district staff performing development review services.

COUNCILMEMBER RAWLINS-FERNANDEZ: The Planning Department...well, I want to say recently, but it's not so recent anymore. They did a cost recovery study that had a schedule that would recommend a slow increase of what a permit should cost in order to recoup the administrative cost of processing the applications for the permits, but they also have like a pretty detailed list of different applications. So the Water Department is looking at something a little more comprehensive like that?

MR. JENSEN: We're not quite looking at it yet, we've identified that we need to. So, we...I think that we will end up having a less complicated menu of types of review versus Planning. But yeah, we haven't...we've identified that we need to establish some form of cost recovery. I've seen hundred percent cost recovery models where staff time is charged on kind of a T and M basis, but that doesn't always work that great, so some form of a fixed fee basis cost recovery mechanism is what we're going to be looking at. So, we're still at the stage of talking about it and we know that we want to get there and it's...yeah, it's...it's on the menu of all the different things that we're trying...we're working towards addressing.

COUNCILMEMBER RAWLINS-FERNANDEZ: Good thing we got another staffer that joined, I guess? So, I guess I would...it's not included in the Title 14 revamp that

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you were mentioning and it's going to be done in-house and not farmed out to a consultant?

MR. JENSEN: Are you referring to the actual cost recovery study?

COUNCILMEMBER RAWLINS-FERNANDEZ: Um-hum. Yes.

MR. JENSEN: Yeah, there's a good chance that we would get some consultant help with that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. All right. Mahalo. And then, my other question was regarding who are...like could you give some examples of like who the applicants are for the reservations? Not like by name, but like...so they're individuals, they're . . .*(timer sounds)*. . . developers...

MR. JENSEN: Yeah, it's anybody who requests water service and really isn't in a position to accept it. So, it's single-family homes, it can be small, rural, subdivisions, it can be CPRs, commercial...everything. It's really the physical circumstances of getting water to a property or is what tends to lead to the need for that reservation. So, it can be traditional subdivision developers and then it can go all the way down to, you know, a mom and pop just trying to build a house on a property.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that. Mahalo, Chair. And then, Staff there's like a high-pitch buzzing noise every once in a while that comes through...just flagging that.

CHAIR COOK: Okay. Thank you, we'll track that down, Member Rawlins-Fernandez. Chair Lee, your second round of questions?

COUNCILMEMBER LEE: Thank you, I have a question. Mr. Jenkins [sic], I am amazed how much time we're spending on exemptions and extensions. When was the last time your Department drilled a well and created a new source for Upcountry residents?

MR. JENSEN: I don't have the answer to that question.

COUNCILMEMBER LEE: When do you plan to do that?

MR. JENSEN: We're pursuing opportunities with some private property owners to develop wells on their property. We're currently under contract with a consultant to do some hydrogeology exploration of the Makawao Aquifer, and we're currently working on some filter membrane upgrades at the Kamole Treatment Plant, which is a substantial source to get Upcountry through our Phase 10 Booster System. We're excited about that.

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COUNCILMEMBER LEE: And so when do we expect to have new source online?

MR. JENSEN: We are cautiously optimistic about a...increasing the output of the Kamole Treatment Plant from about four million gallons a day to between five and six million gallons a day in calendar year '25.

COUNCILMEMBER LEE: Okay, are we talking about groundwater...I'm talking about groundwater, not stream water, groundwater...not surface water, right?

MR. JENSEN: Yeah, oh, I'm sorry. Yeah, I was just talking about water in general that will serve Upcountry. So, . . . *(long pause)*. . . yeah, I'm sorry, I'm taking a minute to think about what's going on up there. We're looking at a...we're looking at purchasing a well up on Pi'iholo that looks like it will produce about 700,000 gallons a day and we're working with a private property owner just --

COUNCILMEMBER LEE: And then Mr. Jenkins *[sic]*, how many...how many gallons do we need to produce to eliminate the waitlist?

MR. JENSEN: I'm sorry, I don't have that answer with me right now.

COUNCILMEMBER LEE: Okay. Well, maybe you could send it to us in writing. Thank you, Chair, I have no further questions.

CHAIR COOK: Thank you, Chair Lee. We will ask Staff to work with the Department of Water Supply for that type of information and I know that they have it, it's just...and it'll be forthcoming. Thank you. Councilmember U'u-Hodgins.

COUNCILMEMBER U'U-HODGINS: Thank you, Chair. To follow up on Chair Lee's question, so can you remind me...how many people are on the Upcountry waiting list, is it near around 2,000 and we've had it for about 30-something years?

MR. JENSEN: Yeah, currently there is about 1,400 applicants on the waitlist.

COUNCILMEMBER U'U-HODGINS: Okay, and about 20, 30 years?

MR. JENSEN: Yeah, I think the waitlist was opened in 1994, so yeah, it's been about 30 years.

COUNCILMEMBER U'U-HODGINS: Okay. Oh, yeah, we're about exactly 30 years. And to Chair Lee's point, I don't disagree that we need more source and more access to water and more storage. Even if we did, people are responsible for putting in their own infrastructure to service their house, right?

MR. JENSEN: Correct.

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COUNCILMEMBER U'U-HODGINS: Yeah, so unless people could afford, I don't know thousands of dollars' worth of upgrade infrastructure on how expensive everything is already, they might even need an extension considering...I mean I would have to take out a loan. I'm on, my family is on the water meter waiting list and if tomorrow we were granted an extension to go from my road to my house, I couldn't afford unless I sold one of my four kids or got a loan or something, and that would take time. So, I have four...obviously I'm joking, I would have to choose my favorite one. It would require some time. I'm assuming this would be helpful. Are we going to relook at the water meter waiting list considering it's just numerical, and let's say I lived on the end of the road, which I do, and I brought the infrastructure to my house, and then my neighbor who lives halfway between the road and my house, they could connect to my line and I wouldn't be able to recoup any of the money that I put in. Yes?

MR. ROWE: That is correct, it's based on your number when you join the list, rather than your proximity to and your sort of infrastructure. We don't skip people, for example, in your scenario if someone on the street builds, we currently can't go and look at everybody who is on the street and kind of have them hui together for the infrastructure, you know. We get one...the next one on the list is on your street, but then the next one after that is in a completely different town, that's how the...how it's currently structured.

COUNCILMEMBER U'U-HODGINS: Right, are we going to change that?

MR. ROWE: There are some difficulties in changing that because it's...there's potential of people saying that they have a property interest in their place on the waiting list, so our concern is that we would then be subject to some sort of due process. . .*(timer sounds)*. . . challenge of trying to move around on that waitlist outside of how it currently is.

COUNCILMEMBER U'U-HODGINS: Got it. I wonder if there is a way we could find some sort of hybrid and we can get peoples' issues Upcountry serviced quicker, but I appreciate you folks. Thank you.

MR. ROWE: And we are...we are actively looking into it and kind of considering mechanisms that I guess limit, you know, affecting people's property rights and their due process with also getting this forward...that is something that we are considering.

COUNCILMEMBER U'U-HODGINS: Yeah, thank you. This list has created a sense of false security for the people Upcountry. You know that list is like I said 30 years old now, so...and I know people have been waiting, but right now it just feels like false hope. But, thank you.

CHAIR COOK: Thank you. Member...Councilmember Sinenci, your second round of questions?

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COUNCILMEMBER SINENCI: Thank you, Chair. I just had one more. Did I miss that the Department, should this go through, will be notifying the applicants of this new extension deadline?

MR. JENSEN: No, I don't think we...I don't think we discussed whether or not the County would send out any type of mail or notification about the adoption of this amendment.

COUNCILMEMBER SINENCI: But if it is adopted, you'd send out one to applicants about the 60-day notice?

MR. JENSEN: Yeah, any existing application that's subject to the change, yeah, we would be notifying those folks.

COUNCILMEMBER SINENCI: Okay, and then you --

MR. ROWE: And if I...

COUNCILMEMBER SINENCI: Okay. Oh, go ahead.

MR. ROWE: If I could add briefly on that, you know, when we did have this earlier amendment in 2019, peoples...automatically they got longer extensions and we did notice...give notice to people, you know, that their...their reservation was no longer for the period of time that it was before it had become a reservation for 15 years. So, I believe that we would be doing something similar, sending out this...a notice to people who have existing reservations, letting them know of the change.

COUNCILMEMBER SINENCI: Oh, okay and then did you say that at that time you would...the applicants would either opt out with a refund, or keep it with the land, is that when the applicants would choose that option?

MR. ROWE: When the reservation commenced.

MR. JENSEN: Yeah, I'm sorry, can you repeat the question?

COUNCILMEMBER SINENCI: If there...I mean I did hear something about keeping it with the land...they have that option once they do the extension?

MR. JENSEN: Yes.

COUNCILMEMBER SINENCI: Or opt out. Okay.

MR. JENSEN: Yep.

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COUNCILMEMBER SINENCI: Okay. Thank you for that. Thank you, Chair.

CHAIR COOK: Thank you. Chair's question is for the Water Department, for Mr. Jensen. Approximately how many people does this affect now, I mean like this is a comprehensive realignment of the current policy enabling the Department of Water Supply to have administrative authority to grant an extension and currently that doesn't exist?

MR. JENSEN: Correct, that authority does not exist currently.

CHAIR COOK: So, the...how many approximate people would this impact from your knowledge that are in the system, that if this isn't adopted wouldn't...not have an opportunity for administrative extension because one doesn't exist?

MR. JENSEN: Yeah, I don't expect it to be very many. It is...this amendment is geared towards Upcountry. We're probably talking half a dozen to a dozen. It's a small number, it is a countywide...it will be an amendment that will affect reservations countywide, but it's really...it addresses the anomaly of Upcountry development by small non-developer folks.

CHAIR COOK: So, for clarification for me, so it gives you...the Department, the administrative powers that it doesn't have now to...according to set this criteria, because that doesn't exist right now as far as the four points of measurement, and then in the authority to issue an extension if they meet that criteria, and if it went to the Board of Water Supply, the Board would also have this criteria as a point of reference and they currently don't? No?

MR. JENSEN: That is correct.

CHAIR COOK: The two examples that we had...or the one example that we had for the resident in Pukalani that where the consideration of rolling it back to 2018, using that as an example is the...is that...would that be a necessary aspect to enable that particular person, people in that similar situation to be able to be heard or does it have to be...would that be a mechanism to roll it back to 2018 or just in general would that be an administrative authority that this bill would grant the Department? Would the Department be able to review . . . *(timer sounds)*. . . those type of applicants and still...and enable them to move forward if they met the criteria?

MR. ROWE: So, the way that we wrote it in the second version that was sent to you as opposed to the first year, instead of referencing five years we did say within the duration of the reservation. So, the idea kind of being if they had a reservation that had not expired prior to 2019, this would potentially apply to them. You know, in this situation they did have, in the one that was referenced by the testifier, you know, they would have had an existing reservation at the time when this passed. They've already been given the one year, so the way that I would

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read that would be that, you know, they had this existing reservation, they applied for...or they requested an extension within the duration of that reservation and they got one, so potentially I believe that we could apply a second one to this, but again that would be subject to the making of these findings.

CHAIR COOK: Okay, thank you for that clarification. Members, do we have a need for a third round of questions? Member Paltin, you have your hand up.

COUNCILMEMBER PALTIN: When we go into the amendments and substitutions and all like that, if we need to have some questions we can then, but I don't have any questions now, but we're going to substitute and amend and stuff like that so we can still have them available, right?

CHAIR COOK: That is correct. So, that was not...the Chair's intent was if we were done with this phase, seeing if there is no further discussion, we'll move on to decision making. The Chair would like to entertain a motion to recommend passage of Bill 130 (2024) on first reading, incorporating any nonsubstantive revisions for clarity, consistency, and style.

VICE-CHAIR SUGIMURA: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR COOK: Moved by Member Sugimura, seconded by...was that...

COUNCILMEMBER PALTIN: Tasha.

CHAIR COOK: By Chair...by Member Kama to recommend passage of Bill 130 on first reading. Members, any discussion before we consider the Department of Water Supply's proposed amendments? Member Paltin.

COUNCILMEMBER PALTIN: Oh, I would like to move to substitute the...I guess Granicus 5 version for the bill.

VICE-CHAIR SUGIMURA: Second.

CHAIR COOK: Okay, so moved by Member Paltin and seconded by Member Sugimura, is that correct? Okay. So, let's vote on that.

COUNCILMEMBER LEE: Discussion?

COUNCILMEMBER PALTIN: Oh, let's make some amendments on that first.

CHAIR COOK: Okay. So, discussion on that amendment.

VICE-CHAIR SUGIMURA: Chair?

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CHAIR COOK: Member Sugimura.

VICE-CHAIR SUGIMURA: Thank you. So, I would like to amend the...the amended version of the bill so that we can include the 60 days request by the applicant before the expiration, and I wonder if Mr. Rowe can say how you suggested the verbiage should be.

MR. ROWE: Yes, I'd be happy to. So, in Section C is where we would be making that change. Waiver or modification...if an applicant with the reservation is unable to accept installation of water service within the duration of the reservation, the reservation may be extended one time for a period of two years by the Director if requested by the applicant within 60 days of the expiration, if the Director finds at least three of the following.

VICE-CHAIR SUGIMURA: Okay, very good.

CHAIR COOK: Member Paltin.

COUNCILMEMBER PALTIN: Member Sugimura, is it okay for a friendly amendment to strike the "one time?"

VICE-CHAIR SUGIMURA: The Department...what does the Department have to say about that?

CHAIR COOK: Mr. Jensen?

MR. JENSEN: Yeah, I appreciate that suggestion because in my opinion if we can make those findings, then we should grant the extension...

VICE-CHAIR SUGIMURA: Okay.

MR. JENSEN: ...more than once.

VICE-CHAIR SUGIMURA: Oh, you're saying more than once? So, you want to leave in...?

MR. JENSEN: The suggestion was to strike "one time."

VICE-CHAIR SUGIMURA: Oh, okay. Okay.

COUNCILMEMBER PALTIN: In addition to the 60-day thing...

VICE-CHAIR SUGIMURA: Okay.

COUNCILMEMBER PALTIN: ...in one amendment and I'll second.

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VICE-CHAIR SUGIMURA: Okay.

CHAIR COOK: Staff got that?

MR. PASCUAL: Yes, Chair.

CHAIR COOK: Members, any further discussion on that amendment?
Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. For clarification, will the amendment that we're voting...the language that we're voting on now will be read in its entirety?

MS. NAKATA: So, Chair, under Subsection (c), Waiver or modification, if an applicant with the reservation is unable to accept installation of water service within the duration of the reservation, the reservation may be extended for a period of two years by the Director if requested within 60 days of the reservation's expiration...excuse me, if requested by the applicant within 60 days of the reservation's expiration and the Director finds at least three of the following.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Chair, for that.

CHAIR COOK: Member Paltin.

COUNCILMEMBER PALTIN: Thank you. For my discussion on this amendment, I would hope that this...this addresses unforeseen circumstances as long as people are continuing to make progress that they could receive an extension subject to the three of the four conditions that were written. I also am happy for the clarification if they don't do it within 60 days and the Director denies it, they can always appeal to the Board of Water Supply and my understanding is that wouldn't need to be written in the language of the bill because any denial by the Director is subject to appeal by the Board of Water Supply, is that correct? Am I telling the truth?

MR. ROWE: Yes, that's accurate.

COUNCILMEMBER PALTIN: Okay, thank you. Okay, that's it for my discussion. Thank you.

CHAIR COOK: So, we're going to vote on that amendment. Okay, all in favor of that amendment, say "aye."

COUNCILMEMBERS: Aye.

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MR. PASCUAL: Chair, you have nine “ayes,” zero “noes,” motion passes. So you are back to the motion to substitute.

**VOTE: AYES: Chair Cook, Vice-Chair Sugimura, and
 Councilmembers Johnson, Kama, Lee, Paltin,
 Rawlins-Fernandez, Sinenci, and U‘u-Hodgins.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR COOK: Okay, Member Sugimura. You’re on mute, Yuki Lei.

VICE-CHAIR SUGIMURA: Okay. Thank you. So, under Section D talking about the reservation allocation expire and deposit, could the Department read the recommendation or could Mr. Rowe read what they are recommending for this section, just so we could get the wording correctly?

MR. JENSEN: Yes, my pleasure. It’ll read, should the reservation and allocation expire, the deposit paid by the applicant shall be refunded by the Department or applied to the property for use in a future application.

VICE-CHAIR SUGIMURA: Okay, so moved.

COUNCILMEMBER PALTIN: Second.

CHAIR COOK: Member Paltin, second? So, moved by Member Sugimura, seconded by Member Paltin. Now for discussion? Member Paltin, you have your hand up?

COUNCILMEMBER PALTIN: Thank you, Chair. I guess my preference would be not to refund and just to apply the credit personally because of the situation that Deputy Rowe mentioned that there isn’t...people might just do this and then they’re like well, what’s the harm, and that the Department had already put in the time and effort into it. So, it wouldn’t be a double pay if the credit applies to the thing. I mean there’s possibility that there could be double work still, but given what we have at this time and they haven’t made their fee schedule, I think it’s better to not refund because then people take it more seriously and just put

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with credit toward a future application. But, I leave it in my colleagues' discussionary discretion, but that's my preference. Thank you.

CHAIR COOK: Member...Member [sic] Rowe...I mean...not Member.

MR. ROWE: I got a promotion.

CHAIR COOK: Yeah.

MR. ROWE: So, the only...the language that was just used instead of applied, I would recommend credited instead because we do refer to it as credits, the other places within the title, so I just wanted to kind of throw that out there. If we could have it be credited instead of applied towards the property.

MR. JENSEN: And yeah, if I could just weigh in a little bit here, I think that that is...that is a good idea to simply have that fee applied as a credit to the property because there could be a situation where those funds have been expended on a capital project related...you know, that's serving the purpose of the development fee, so by having it run with the land that does make sense. Because if we were to give a refund and meanwhile we're actually spending that money on a project, that could be a problem, so I support that suggested change.

CHAIR COOK: Okay.

COUNCILMEMBER PALTIN: If Member Sugimura is okay with a friendly amendment, I am okay with a friendly amendment.

VICE-CHAIR SUGIMURA: Yeah, so can you...me too. So, just changing that word, right? So, it's going to be credited...will be credited towards any future application, is that correct?

MR. JENSEN: Yeah, I think it would read, should the reservation and allocation expire, the deposit paid by the applicant shall be credited toward a future application on the property.

VICE-CHAIR SUGIMURA: Yeah, okay. On the property, okay. I'm fine with that.

CHAIR COOK: Okay, I see Member Rawlins-Fernandez's hand up for discussion?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Member Sugimura's motion was for it to be refunded or credited, so we would have to remove the refunded portion of her motion as well. And so, she would have to say so, because it's her motion.

VICE-CHAIR SUGIMURA: Fine. That's fine, we're accepting the Department's recommendation so you can delete that portion.

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CHAIR COOK: Staff, do you have that?

MR. PASCUAL: Yes, Chair.

CHAIR COOK: Could you read it back?

MS. NAKATA: Chair, it would read, if the reservation and allocation expire, the deposit paid by the applicant must be credited to the property for use in a future application.

MR. ROWE: On the property.

COUNCILMEMBER PALTIN: Of said property.

VICE-CHAIR SUGIMURA: Okay, of said.

MS. NAKATA: Excuse me, that was credited on the property?

CHAIR COOK: Credited to.

COUNCILMEMBER PALTIN: The same property that they worked on, not another property that the applicant owns, but that same property, even if it's a different owner...I guess runs with the land.

MS. NAKATA: Oh, thank you, Chair. So, that would be if the reservation and allocation expire, the deposit paid by the application...excuse me, paid by the applicant must be credited to the same property for use on a future application.

CHAIR COOK: Does that meet with your, Corp. Counsel's approval?

MR. ROWE: Yep.

CHAIR COOK: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR COOK: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: I wrote credited to the property for use in a future application on said property.

MR. ROWE: That works.

COUNCILMEMBER RAWLINS-FERNANDEZ: Which is preferred...which is preferred, though?

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CHAIR COOK: Staff? I just want to make sure you're getting this.

MR. ROWE: I think the language you suggested works. It specifies...it makes clear that it's on the property only.

CHAIR COOK: Okay. Is that clear Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, but I would like to...do you want me to read it again or do you want Staff to read it?

CHAIR COOK: Staff.

MS. NAKATA: Staff isn't clear which the Deputy was recommending. I believe Member Rawlins-Fernandez said if the reservation and allocation expired...excuse me, expire, the deposit paid by the application...by the applicant must be credited to the property for use in a future application on the same property.

CHAIR COOK: Does that meet with Water Department and Corp Counsel's approval? Does that clarify Member Rawlins-Fernandez's question?

MR. JENSEN: Yeah, that works for the Department.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, Ms. Nakata, is on the same property less legally than said property? Is that why we want to use the same?

MS. NAKATA: Yes, Member.

COUNCILMEMBER RAWLINS-FERNANDEZ: Got it, mahalo.

CHAIR COOK: Okay, so I believe that was moved by Member Sugimura, and seconded by Member Paltin, is that correct? And we've had discussion. Any further discussion? Member Rawlins-Fernandez, no? Okay, I think she's ready to vote?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I'm ready to vote, but what I was going to say, I think my concern about the...what were we calling it...development review fee will be proposed to us at a future time. But I like the impact fee or the development fee being credited to the property. I think that kind of helps to address the development review fee a little bit. Mahalo, Chair. So, I support.

CHAIR COOK: Okay, so Chair's discussion. I had a question for the Department of Water, and that was one of the concerns that I heard earlier was that people weren't multiple...paying multiple times for the same impact fee for the same property. This does address that issue, correct? So, no matter who owns the property, that particular property will pay one impact fee?

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MR. JENSEN: That is correct.

CHAIR COOK: Thank you for the clarification. Okay, Members, if we're ready, Chair calls for the vote, all in favor say "aye."

COUNCILMEMBERS: Aye.

MR. PASCUAL: Chair, you have nine "ayes," zero "noes," motion passes. You are back to the motion to substitute.

**VOTE: AYES: Chair Cook, Vice-Chair Sugimura, and
 Councilmembers Johnson, Kama, Lee, Paltin,
 Rawlins-Fernandez, Sinenci, and U'u-Hodgins.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVE amendment.

CHAIR COOK: Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just would like clarification on 14.07.090, Part B, where we're changing "shall" to "may" and why we're not using "must," and if we do use "may," would that apply to folks from 2018, I guess, would be my clarification question?

CHAIR COOK: Is that for Corp. Counsel?

COUNCILMEMBER PALTIN: Either...whoever feels moved to respond.

MR. ROWE: I don't feel real strongly about the use of the word "may" versus "must" in this context. I'm sorry, I was thinking about that portion of the question and missed the second part of your question.

COUNCILMEMBER PALTIN: Oh, sure no problem. The second part is, if it says "may" versus if it says "must," because the second "shall" got changed to "must," would that allow for Mr. Jorgensen's case from 2018 to be addressed with this bill rather than 2019, or I mean in Section...the new Section C or something it looks like

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“shall” got changed to “must.”. So, I wasn’t clear on why one was a “may” and one was a “must” and if it addresses the 2018 issue.

MR. ROWE: So, again I’m not sure...I don’t feel real strongly versus “may” versus...versus “must” in the context of Section B. With regard to a project that occurred in 2018, I think that that’s kind of helped addressed by the differentiating of five years versus three years based on when they were. And instead of in Section C in our original version, we put the five years directly in there as opposed to now, we’re just putting in the duration of the reservation. So, the way that that would apply, you know, they had a reservation in 2018 that was for five years, so that’s during the duration of the reservation. They then had that...they had that extended for one year by the Board of Water Supply, so that’s still during the duration of the reservation, right? So, does that address your question?

COUNCILMEMBER PALTIN: Yeah, yeah and if you don’t feel strongly either way, I would go for consistency, so my motion would be to amend that “may” to a “must” in 14.07.090(B). Is there a second?

CHAIR COOK: Any comments or concerns about that proposed amendment?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, can I...can I just explain?

CHAIR COOK: For discussion, Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Although I didn’t get a second, but okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: I know. I know you didn’t, but I think...okay. So, I’ll give it a shot at explaining why because I don’t want to second, because I think I understand why there’s a “may” and not a “shall” there, and perhaps Mr. Rowe wasn’t explaining it like to the point of why the “may” is there and not the “must.” So, in the two shalls in the first paragraph and at the bottom of subsection (b), the “shall” is a “must” in both situations. In the first situation where...in subsection (b) when it is a “shall” to a “may,” it’s not...when it...before it was amended, it was a “shall,” but because the language around it changed, it’s no longer a “shall,” it would have not been a “shall,” it would be a “may” because some situations it could exceed five years. But before the other amendments were made around that sentence, it was saying that it shall not exceed the five years because the duration of such reservation shall not exceed five years provided the water service capacity is available.

COUNCILMEMBER PALTIN: Oh, because somebody might have gotten a one year extension, then it may exceed five years is what you’re saying?

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. Also, this is January 1st, 2025 and if we’re going back to July, 2019, that’s like six months more also, so I think it’s

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to kind of anticipate variations and not demanding that it only be five years, but it be variations of a duration, I guess, is my understanding. I could be wrong, but that's why I didn't second your motion.

COUNCILMEMBER PALTIN: Okay, that makes sense to me, I'll withdraw my motion.

CHAIR COOK: Okay. So, now we're back to...

MR. PASCUAL: Chair, you're at the motion to substitute. So, at this time you can entertain further amendments or go with a voice vote or roll call vote.

CHAIR COOK: Okay, I'd like to go for a voice vote, if Members are in agreement?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COOK: Okay. All Members in agreement, say "aye".

COUNCILMEMBERS: Aye.

MR. PASCUAL: Chair, you have nine "ayes," zero "noes," motion passes. You are back to the main motion as amended.

**VOTE: AYES: Chair Cook, Vice-Chair Sugimura, and
 Councilmembers Johnson, Kama, Lee, Paltin,
 Rawlins-Fernandez, Sinenci, and U'u-Hodgins.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: SUBSTITUTE BILL 130, CD1 (2024).

CHAIR COOK: Okay. Can we vote on that? You guys ready?

VICE-CHAIR SUGIMURA: Yeah.

CHAIR COOK: Okay. All in favor of the main motion as amended?

COUNCILMEMBERS: Aye.

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CERTIFICATION

I, Terianne L. Arreola, hereby certify that pages 1 through 43 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 26th day of October 2024, in Makawao, Hawai'i.

A handwritten signature in black ink, appearing to read 'Terianne Arreola', written over a horizontal line.

Terianne Arreola