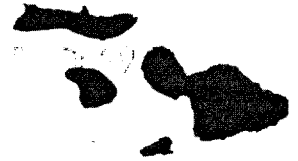
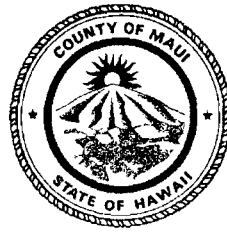


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November 12, 2020

TO: Yuki Lei K. Sugimura, Chair
Water, Infrastructure, and Transportation Committee

FROM: Jennifer M.P.E. Oana, Deputy Corporation Counsel *JPO*

RE: Water Use and Development Plan and Maui County Code Section
14.02.050

This memorandum is in response to your request of November 9, 2020 for legal advice to the following questions:

1. Section 14.02.050, Maui County Code, says that any amendment to the Water Use and Development Plan, or WUDP, "proposed by the council... shall be referred to the board for its review and recommendations," with the Board of Water Supply to then engage in proceedings, including a public hearing. Does Section 14.02.050, including its requirement for referral to the Board of Water Supply, apply to amendments to a proposed WUDP, a WUDP that has received final approval by the Commission on Water Resource Management, or both?
2. If Section 14.02.050 applies to a proposed WUDP, do the review deadlines in Section 14.02.040 reset if the Council refers the proposed WUDP back to the Board of Water Supply?

Short Answers:

1. Section 14.02.050, Maui County Code, applies to a Water Use and Development Plan or an update to the plan that has already been

accepted by the Commission on Water Resource Management and incorporated into the Hawaii Water Plan.

2. Section 14.02.050, Maui County Code, does not apply to a proposed update to the Water Use and Development Plan currently being reviewed by the Council.

This opinion is based on the plain language of the code. Section 14.02.050, Maui County Code, states as follows:

14.02.020 Amendment.

A. Any amendment to the plan proposed by the council, the director, or any agency shall be referred to the board for its review and recommendations. Upon receipt of a proposed amendment, the board, the director, and the council shall follow the procedures set forth in section 14.02.040 of this chapter.

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

The Council and the Water, Infrastructure, and Transportation Committee are currently considering a proposed update to the 1990 Water Use and Development Plan for the island of Maui, which has already been reviewed by the Board of Water Supply, which held multiple public hearings pursuant to Section 14.02.040. If Section 14.02.050.A required the Council or Committee's amendments to a proposed plan update be referred back to the Board of Water Supply for review and recommendation and additional public hearings, then the language would have stated that "any amendment to the plan or any amendment to a proposed update to plan proposed by the council... shall be referred to the board for its review and recommendations..." (emphasis added).

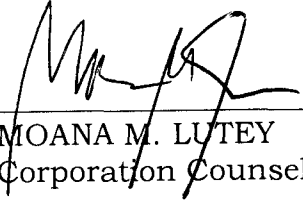
Furthermore, Section 14.02.040, which sets out the procedures for the update of the plan, clearly and consistently refers to an "update of the plan", a "proposed update", or a "plan update". If the Council intended that Section 14.02.050.A include the proposed update, this wording would have followed in that section as well. Instead, Section 14.02.050 consistently refers only to "the plan".

In conclusion, the amendment provision of Section 14.02.050 refers to amendments to the Water Use and Development Plan or the update of the plan already passed by ordinance of the Council, accepted by the Commission on

Yuki Lei K. Sugimura, Chair
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Water Resource Management, incorporated into the Hawaii Water Plan, and currently in effect.

APPROVED FOR TRANSMITTAL:



MOANA M. LUTEY
Corporation Counsel