

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 3:52 pm, Jan 29, 2026

Date: January 29, 2026
From: Tom Cook, Chair
Water and Infrastructure Committee

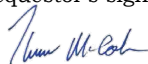
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Caleb P. Rowe, Esq.

Subject: BILL 1 (2026), AMENDING THE WATER AVAILABILITY POLICY ON SUBDIVISION CONSTRUCTION PLANS (WAI-21)

Background Data: Please see attached proposed CD1 version of Bill 1 (2026). At its January 26, 2026 meeting, the Committee deferred the bill pending further discussion. Please submit your response to wai.committee@mauicounty.us with a reference to WAI-21.

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY
☒ OTHER: Provide a legal opinion on whether the proposed CD1 version of Bill 1 (2026) is consistent with the Countywide Policy Plan, Section IV.I, Objective 1, Policy a (p. 70), which states, "Ensure that adequate supplies of water are available prior to approval of subdivision or construction documents." If not, please recommend any revisions necessary to ensure consistency.

Requestor's signature  Tom Cook, Chair	Contact Person <u>Keone J. Hurdle or Carla M. Nakata</u> (Telephone Extension: 7659 or 5519, respectively)
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☒ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

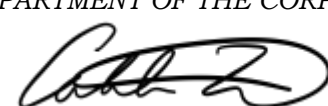
FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: CPR	ASSIGNMENT NO. 2025-0173	BY: jap
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☒ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____
Memo provided

Date 2/27/26

DEPARTMENT OF THE CORPORATION COUNSEL
By 

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. 1, CD1 (2026)

A BILL FOR AN ORDINANCE AMENDING THE WATER AVAILABILITY POLICY
AND SUBDIVISION ORDINANCE ON SUBDIVISION CONSTRUCTION PLANS

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

SECTION 1. The County's Water Availability Policy requires verification of a long-term, reliable water supply before any subdivision is approved. This Ordinance's purpose is to allow the Department of Water Supply to review subdivision construction plans, at the subdivider's risk of water availability, before a private or public long-term supply of water is verified.

SECTION 2. Section 14.12.040, Maui County Code, is amended to read as follows:

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

B. A subdivider, at its own risk of water availability, may submit subdivision construction plans for review by the department prior to written verification of water availability. Upon receipt of subdivision construction plans, the department must review the plans. If all requested revisions, deficiencies, and additional requirements are satisfied, the department must approve the subdivision construction plans under section 18.20.160, regardless of whether the director has provided written verification of water. This approval of subdivision construction plans by the department will not constitute a guarantee of water availability for the subdivision.

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

SECTION 3. Section 18.20.160, Maui County Code, is amended to read as follows:

"18.20.160 Construction plans—approval. A. The subdivider [shall] must submit copies of the construction plans in the amount requested to the director. The director [shall] will furnish one copy of the construction plans to the reviewing agencies for their consideration and approval. [Such] The construction plans [shall] will be considered approved for construction purposes when the construction plans bear the approval of the director, and, if applicable, the director of water supply, the sanitary engineer, and the district engineer[, and the director]. Construction plans must also be approved by the directors of [said] the reviewing agencies.

B. The subdivider [shall] must be notified of any changes or deficiencies or additional requirements in the construction plans within [forty-five] 45 calendar days of submission to the director. If no action is taken by the director within this period, or [such] within a longer period [as may have been] if agreed upon in writing, then the plans [shall] will be deemed approved as submitted and [it shall be the duty of] the director [to] must affix the director's approval [thereon.] on the plans.

C. [The approval] Approval of the construction plans by the director [shall] does not relieve the subdivider [nor] or the engineer of the responsibility for any and all defects that may become evident subsequent to the plan's approval. [Should] If there [be] are any errors or omissions, [then] the construction plans and construction work [shall] must be revised as requested by the director.

D. Under subsection 14.12.040(B), approval of construction plans under this section may occur before the director of water supply provides written verification of a long-term reliable source of water."

SECTION 4. Section 18.20.180, Maui County Code, is amended to read as follows:

"18.20.180 Completion of construction—final approval. When the construction drawings bear the approval of the director and, if applicable, the director of water supply, the sanitary engineer, and the

district engineer, and should be approved by any director of a reviewing agency, as required under sections [14.12.040,] 18.20.150, 18.20.160, and 18.20.170 [of this code], the subdivider may proceed with the construction of the improvements and utilities. Before final subdivision approval is granted, the director of water supply must provide the written verification required by subsection 14.12.040(A). After completion of [same] construction in accordance with the requirements of this title, the director [shall] must grant approval for recordation of the subdivider's final plat. [Where] If construction extends into the state highway right-of-way, the contractor [shall] must obtain a permit from the district engineer [prior to] before commencement of work within the state highway right-of-way."

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

wai:misc:021abill01:kjh

INTRODUCED BY:

A handwritten signature in blue ink, appearing to read "Tom Cook", is written over a horizontal line.

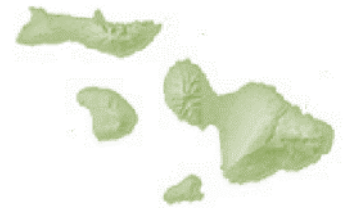
TOM COOK

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



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February 27, 2026

MEMORANDUM

To: WAI Committee
From: Caleb P. Rowe, Deputy Corporation Counsel 
Re: Bill 1, WAI-21 Response to Questions

I have received your Request for Legal Services dated January 29, 2026 and respond to your questions as follows:

Question: “Provide a legal opinion on whether the proposed CD1 version of Bill 1 (2026) is consistent with the Countywide Policy Plan, Section IV.I, Objective 1, Policy a (p. 70), which states, “Ensure that adequate supplies of water are available prior to approval of subdivision or construction documents.”

Response: Pursuant to Maui County Code (“MCC”) Section 2.80B.030(B), “[a]ll agencies shall comply with the general plan, and administrative actions by agencies shall conform to the general plan, except for ministerial permits or approvals including, but not limited to, building permits, grading permits, plumbing permits, and electrical permits.” In addition, pursuant to MCC § 2.80B.010, portions of the general plan “are meant to be policy guidelines” while others “are intended to have the force and effect of law.” The Countywide Policy plan has identified that “[c]umulatively, Section IV contains all of the **mandatory** elements of the Countywide Policy Plan under Chapter 2.80B.” *Countywide Policy Plan*, p. 43 (emphasis added). As the potentially conflicting provision referenced in this question falls within Section IV, it is intended to have the force and effect of law, and all agencies are mandated to comply with it.

Section IV.I, Objective I, Policy a of the Countywide Policy Plan states that agencies should ensure that “adequate supplies of water are available prior to approval of subdivision **or construction documents**” (emphasis added). It references approval of documents broadly and includes both subdivision documents as well as construction documents. Accordingly, approval of construction plans without verification of water availability would appear to conflict with this mandate of the Countywide Policy Plan, notwithstanding the fact that such verification is still required prior to final subdivision approval.

Question: “If not, please recommend any revisions.”

Response: The conflict between the proposed ordinance and the Countywide Policy Plan could be addressed by allowing DWS to undertake “conditional processing” of subdivision construction plans prior to a showing adequate water availability rather than mandating review and approval. “Conditional processing” should be defined under both Section 14.01.040 and Chapter 18.04, Part II, to make clear that processing does not reflect any formal entitlement, but rather is an interim procedure allowing for review and processing of construction plans by DWS and other agencies, and that any approval is contingent upon showing of an adequate supply of water pursuant to MCC § 14.12.040. The proposed changes to MCC §§ 14.12.040(B) and 18.20.160(D) in Bill 1 should then make clear that the review by DWS would be “conditional processing” of construction plans rather than “approval.” A change to the proposed amendment to MCC § 18.20.180 stating that approval of construction plans and final subdivision approval require written verification of a long term, reliable source of water, is also recommended.

WAI Committee

From: Caleb P. Rowe <Caleb.Rowe@co.maui.hi.us>
Sent: Friday, February 27, 2026 1:45 PM
To: WAI Committee
Cc: June A. Pacubas; Keone J. Hurdle; Carla M. Nakata
Subject: WAI-21
Attachments: WAI-21 Response.PDF; 2026-01-29 RFLS Hurdle Request provide legal opinion on propsed Bill 1 CD1 Version.pdf

Please see attached response.