

WR Committee

From: David Arakawa <darakawa@lurf.org>
Sent: Tuesday, June 14, 2016 11:47 PM
To: WR Committee; Kim Willenbrink
Cc: David Arakawa; Wynde Yamamoto
Subject: MAUI WR-19 Water Availability Policy - LURF Testimony in OPPOSITION to Dept. of Water Supply proposed bills relating to Water Availability and Relating to Definitions
Attachments: 160614 MAUI - WR-19 ORIGINAL BILL re Water Availability Policy_06-14-16.pdf; 160614 MAUI - WR-19 Proposed Bills (DWSMaui) re Water Availability Policy - LURF Testimony (wmy).pdf

Aloha Maui Council Water Resources Committee,

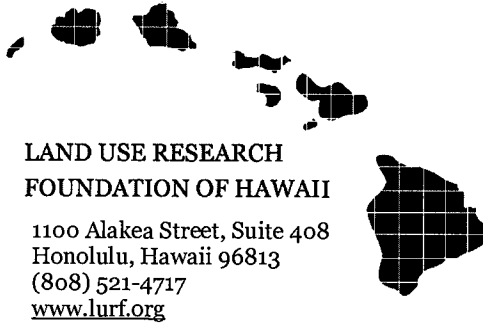
For your Water Resources Committee Meeting tomorrow, Wednesday, June 15, 2016, we would appreciate if you could file and distribute to the Council members the attached copies of the written testimony of the Land Use Research Foundation of Hawaii, in **OPPOSITION** to the Maui Department of Water Supply's two proposed ordinances:

- a. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.12, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY." The purpose of the proposed bill is to revise Chapter 14.12 of the County Water Code to allocate potable water based upon population projections noted in the General Plan and water system capacity projections.
- b. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 14.01.040, MAUI COUNTY CODE, RELATING TO DEFINITIONS." The purpose of the proposed bill is to revise Section 14.01.040 of the County Water Code to amend and insert definitions.

Please feel free to contact me if you have any questions.

Mahalo, Dave

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Via E-Mail

June 14, 2016

Honorable Gladys C. Baisa, Chair
Honorable Michael P. Victorino, Vice-Chair,
and Members of the Water Resources Committee
Council of the County of Maui
County of Maui
200 South High Street, 8th Floor
Wailuku, Maui, Hawaii

Testimony Regarding Proposed Bills - “A Bill for An Ordinance Amending Chapter 14.04, Maui County Code (MCC), Relating to Water Services” and “A Bill for An Ordinance Amending Section 14.01.040, MCC, Relating to Definitions” (WR-19)

Wednesday, June 15, 2016, at 9:00 a.m. in the Council Chamber, Kalana Pakui Building, 8th Floor, 250 South High Street, Wailuku, Hawaii 96793

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

For consideration before this Committee, are the following two bills proposed by the Maui Department of Water Supply (MDWS) (the two bills collectively referred to herein as the “MDWS Bills”), which reportedly incorporate recommendations from the Replacement Water Availability Ordinance Conceptual Framework (Response to WR-19) proffered by the MDWS via correspondence dated February 22, 2016, and presented at this Committee’s March 2, 2016 meeting:

1. A Bill for An Ordinance Amending Section 14.01.040, Maui County Code (“MCC”), Relating to Definitions; and
2. A Bill for An Ordinance Amending Chapter 14.12, MCC, Relating to Water Availability.

It is LURF’s position, however, that in order for any consideration to be given, or any action to be taken whatsoever by this Committee relating to amendments of the Water Availability Policy, the following bill originally introduced regarding this matter, which is currently pending before this Committee, must necessarily be included in the present review and discussion as well:

- A Bill for An Ordinance Relating to the Water Availability Policy, which proposes revisions to the Section 14.12.030, MCC (“WR-19” or the “Original Bill” – a copy of which is attached hereto).

This Committee is requested to note that WR-19 was THE subject of discussion at its March 2, 2016 meeting at which MDWS Executive Director, David Taylor, presented MDWS’ proposed framework for revisions IN RESPONSE to the Original Bill. At the conclusion of that meeting, this Committee stated that it would transmit the MDWS’ proposed framework to the Maui Board of Water Supply (MBWS) for review and comment, which it did, and a MBWS meeting was held on May 19, 2016 for that purpose.

The MDWS Bills have now made their way back before this Committee for review. Therefore, as part of this Committee’s consideration of the MDWS Bills, LURF believes it is critical that the Original Bill also be included in the review, as all proposals must be assessed, discussed and considered concurrently in order for this Committee to fully appreciate, understand, and take any action upon this very significant matter.

LURF’s Position. Having reviewed the alternative bills proposed, LURF supports the Original Bill, entitled “A Bill for an Ordinance Relating to the Water Availability Policy”, the purpose of which is to amend Section 14.12 (specifically, Subsections 14.12.030 and 14.12.040) of the MCC, to exempt residential subdivisions that are within the service area of the MDWS’ central or west Maui water system, provided that the subdivider has entered into a residential workforce housing agreement with the County pursuant to chapter 2.96 of the MCC.

Under the current “Show Me the Water” ordinance, the Director of the MDWS must provide written verification of a long-term, reliable source of water prior to approval of an applicable subdivision.¹ The Original Bill proposes that a

¹ Chapter 14.12, Maui County Code (MCC), Water Availability.

subdivision may be approved when the Director has provided written verification of either a County water meter or **conditional** water meter reservation.

The amendments proposed by the Original Bill would, in essence, allow exceptions to the current Policy which, under current water supply conditions, virtually places a *de facto* moratorium on housing and development in the County.

While still meeting the water needs of Maui residents, the Original Bill would address Maui's housing crisis by allowing much-needed affordable and market housing projects to proceed, thereby also stimulating the local construction industry, creating jobs, and improving the overall economy of the County and the State.

On the other hand, LURF believes that the MDWS Bills are unnecessarily convoluted and will likely create pointless confusion, red tape, and opportunities for legal challenges based on misinterpretation and misuse of new definitions and added administrative procedures which would overcomplicate existing processes.

LURF's support of the Original Bill is based in more detail, on the following:

1. Passage of the Original Bill Would Address Maui's Current Housing Crisis, and Promote Development and Sustained Growth of Maui's Construction and Agricultural Industries, as Well as its Overall Economy.

The County's lack of water source development and the current Policy have contributed to a *de facto* moratorium on housing and development in the County. LURF believes that the passage of the Original Bill would remove some of the obstacles to housing and development, together with the County's fulfillment of its responsibilities to develop adequate future water sources and water infrastructure consistent with the Maui County's Water Use and Development Plans ("WUDP"), would help to confront Maui's housing crisis by allowing housing projects to proceed, as well as promote development and sustained growth of Maui's construction industry and its overall economy.

2. The Original Bill Does Not Change the Current Basic Water Service Application Process, or Require the MDWS to Provide Any Assurances or Guarantees of Water Availability for Any Projects.

The Original Bill is simplistic in its approach and does not change the basic water service application process currently in effect at MDWS, nor does it affect the "first-come, first-served" policy by which the MDWS currently authorizes water service for projects. Provision of water under the Original Bill would continue to

be based strictly on water availability,² and would, in effect, level the playing field by giving all applicants for water services equal consideration.

3. The Conceptual Framework Proposed by the MDWS is a Continued, Misguided Attempt to Evade Responsibility for Development of Water Resources.

a. The MDWS is the Proper Party Responsible for Developing Water Resources Consistent with the WUDP and Providing Water Service to Lands Zoned for Urban Use and in Close Proximity to the County Water System.

LURF understands that studies show Maui has adequate water for its current and future population and agricultural industry, however, water sources and infrastructure must be developed to allow use of such supply. The WUDP include the responsibility of the MDWS to develop adequate future water sources and water infrastructure consistent with the WUDP, the Maui General Plan, and lands zoned for urban uses. However, since 2002, the County has failed to develop any new major water source.

The intent of the current ordinance was in fact to allow for a stop-gap measure to control water service availability until the MDWS could develop and implement its plan for the sourcing, storage, and transmission of water. During the period of time this ordinance has been effect (since late 2007, over eight years), MDWS has had more than ample opportunity to plan for and provide additional water resources, however, to date, no resources have been developed.

Instead, the MDWS conveniently, inappropriately, and unjustifiably continues to take the position that it is not responsible for such water resource development and attempts to simply assume a water rationing role. Such a role is unnecessary and pointless, however, where there is no sufficient supply of water to be allocated. LURF believes the recent proposal offered by the MDWS Director³ (which has been conceptually incorporated into the subject MDWS Bills), is nothing but an intentional, continued effort to shift focus away from the MDWS' responsibility to develop new resources required to meet the projections of the Maui General Plan, and its obligations under the WUDP.

² Section 14.04.010, MCC.

³ Correspondence from MDWS Director David Taylor to the Honorable Gladys C. Baisa, Chair, Water Resources Committee, regarding *Replacement Water Availability Ordinance Conceptual Framework (WR-19)*, dated February 22, 2016.

At this point in time, focus should be redirected to the MDWS and its pending charge to increase the amount of water in the system, rather than simply rationing the limited supply that is currently available. Instead of improperly casting the responsibility of developing water sources and infrastructure upon private parties, the County and the MDWS should collaborate to create a long-term sustainable water supply for Maui for current residents and future generations.

4. An Unintended Consequence of the Current Policy and MDWS' Proposed Bills is that Private Parties Are Left to Develop Water Resources Independently, on an Ad-Hoc Basis.

The current Policy requires the Director's written verification of long-term, reliable supply of water prior to the approval of subdivision construction plans pursuant to Section 18.20.108 of the MCC. Such written verification requirement must presently be satisfied by a County water meter or water meter reservation (virtually all of which water meter reservations contain conditions, making this hurdle virtually impossible), or verification of an approved engineering report for a non-County source. Subdividers are thus forced to bear the responsibility of developing their own private wells and water sources on a case-by-case basis.

Moreover, the untenable position continued to be improperly taken by MDWS that subdividers should be held responsible for providing their own water sources (as directly stated in the proposed framework submitted to the Council's Water Resources Committee), is impractical and unreasonable as it requires such developers of large projects with substantial public and economic benefits to additionally undertake water projects to independently develop their own water sources. Such undertakings are inconceivable, even for developers with most ample resources.

The passage of the Original Bill allowing the Director's verification of a long-term reliable supply of water to be provided based on a conditional water meter reservation, would not only ease current constraints on subdivision development, but would eliminate the need for ad hoc development of private water sources and encourage private parties and the County to work together to develop water resources which are consistent with the WUDP.

Based on the above, LURF once again respectfully urges this Committee to carefully consider all of the facts and circumstances relating to amendments proposed to be made to the Water Availability Policy, and to favorably consider the Original Bill, or at the very least, defer taking any action until all proposed bills and measures relating to this very significant issue have been thoroughly reviewed and vetted.

Honorable Gladys C. Baisa, Chair
Honorable Michael P. Victorino, Vice-Chair
and Members of the Water Resources Committee
June 14, 2016
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Thank you for the opportunity to provide comments regarding this matter.

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE RELATING TO THE WATER AVAILABILITY POLICY

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

SECTION 1. Section 14.12.030, Maui County Code, is amended to read as follows:

“14.12.030 Exemptions. This chapter shall not apply to:

A. Building permits as described in chapter 18.28 of this code, or other ministerial construction permits that do not require new or additional water services;

B. Subdivisions that do not require water service, such as, but not limited to, family subdivisions as defined in section 18.20.280 of this code, consolidations and concurrent re-subdivisions that do not create additional developable lots, road widening lots, utility lots, or easements for access or utility purposes;

C. Subdivisions that will not be regulated as a public water system pursuant to department of health rules, provided that this exemption shall not apply to any subsequent subdivision of any of the resulting parcels;

D. Infill development, provided that this exemption shall not apply to any subsequent development or subdivision of any resulting parcels;

E. Residential workforce housing units developed by a qualified housing provider pursuant to chapter 2.96 of this code, and are within the service area of the department's central or west Maui water system;

F. Residential [development projects with one hundred percent affordable housing units and are] subdivisions that are within the service area of the department's central or west Maui water system, provided that the subdivider has entered into a residential workforce housing agreement with the County pursuant to chapter 2.96 of this code; or

G. Public or quasi-public development projects as defined in section 19.04.040 of this code and related subdivisions that are within the service area of the department's central or west Maui water system.”

SECTION 2. Section 14.01.040, 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, 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 conditional water meter reservation; or (2) the receipt of an approved engineering report for a long-term, reliable supply of water for the subdivision.

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

SECTION 3. 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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

wr:misc:019abill01:kcw