

OPPOSING BILL 1 (2026) – AMENDING THE WATER AVAILABILITY POLICY ON SUBDIVISION CONSTRUCTION PLANS (WAI-21)

Members of the Water and Infrastructure Committee,

I submit this testimony in opposition to Bill 1 (2026), not because I oppose housing, rebuilding, or efficiency in government review, but because this bill fundamentally **reorders land-use planning in a way that weakens water protections, increases speculative development pressure, and shifts risk away from applicants and onto the County and the public.**

At its core, this bill allows subdivision construction plans to be reviewed and approved **before long-term water availability is verified**, with the caveat that the subdivider proceeds “at their own risk.” While that language may sound cautious, in practice it does not protect the County, our water resources, or our communities.

1. This bill changes a foundational planning principle

Maui’s current framework is simple and sound:
water first, development second.

Bill 1 reverses that order.

Under this bill, a subdivision can move substantially forward—triggering agency review, approvals, timelines, and expectations—**without verified water**. Water becomes something to be resolved later, after time, money, and political momentum are already invested.

That is not a procedural tweak. It is a policy shift.

On an island with finite water, unresolved water rights, post-fire rebuilding needs, and increasing climate stress, this inversion is not prudent.

2. “At the subdivider’s risk” is legally neat but practically hollow

The bill repeatedly emphasizes that early review occurs “at the subdivider’s risk” and does not guarantee water availability. However, this framing misunderstands how land-use decisions actually play out.

Once construction plans are approved:

- Agencies have already spent public resources reviewing them
- The project gains perceived legitimacy

- Denying water later becomes politically and emotionally harder
- Pressure increases on the Department of Water Supply to accommodate the project

This is not speculation—it is human and institutional reality.

The risk does not stay neatly with the applicant. It migrates to the County through political pressure, fairness arguments, and expectations of follow-through.

3. The bill creates a speculation and resale loophole

One of the most serious flaws in this ordinance is what it **does not address**.

There is **no provision** requiring re-review or re-verification if the property is sold after the subdivision process has begun.

That means a developer can:

1. Submit subdivision construction plans without water
2. Obtain early approvals
3. Sell the property mid-process
4. Transfer those approvals to a new owner
5. Leave the County holding a partially entitled project with no water

The approvals run with the land, not the original applicant.

The review clocks do not reset.

The political pressure does not disappear.

This enables **land banking, entitlement flipping, and speculative resale**, not the delivery of housing.

4. This bill favors large, well-capitalized developers

Large developers can absorb sunk costs, hold land, and wait out uncertainty.

Local families, small builders, and incremental housing efforts cannot.

By allowing projects to advance without water certainty, this bill:

- Rewards those who can afford to speculate
- Penalizes those who need certainty before proceeding
- Concentrates advantage in fewer hands

This is not a neutral policy outcome, even if unintended.

5. The bill is not tied to rebuilding priorities or public benefit

Maui is still recovering from catastrophic fires. Lahaina, in particular, requires **focused redevelopment, not expanded speculative pipelines elsewhere.**

Yet this bill:

- Is not limited to fire-impacted areas
- Is not restricted to rebuilding or replacement housing
- Does not prioritize existing approved projects
- Does not require affordability or workforce housing commitments

If the true goal were to **finish Lahaina, complete existing pipelines, and remove bottlenecks for approved projects**, this bill would be narrowly crafted to do exactly that.

It is not.

Instead, it opens the door to **new subdivision activity without water**, at the very moment when the County should be concentrating its limited capacity on rebuilding what was lost.

6. Context matters: this bill reflects a builder's perspective, not a water-first planning framework

It is relevant to note that this policy proposal reflects the perspective of someone with a construction background—someone whose professional experience emphasizes **building new projects**, rather than **completing, redeveloping, or finishing existing ones.**

There is nothing improper about that perspective. Builders play an essential role.

But water policy should not be driven primarily by construction sequencing convenience. It must be driven by **resource protection, long-term planning, and public trust obligations.**

Maui does not need more half-entitled projects without water.

Maui needs to **finish what has already been approved**, rebuild what was destroyed, and ensure water decisions are made deliberately and transparently.

7. The absence of safeguards is striking

If the Committee is inclined to move this bill forward despite these concerns, it is important to recognize what is missing:

- No sunset clause
- No pilot or temporary limitation
- No project size threshold
- No resale or transfer restrictions
- No requirement to prioritize rebuilding or affordability
- No reporting or accountability mechanism

In other words, this is a **permanent policy change with no guardrails.**

8. Conclusion

This bill does not create water.
It does not guarantee housing.
It does not prioritize rebuilding Lahaina.

What it does is **shift leverage, normalize planning without water certainty, and increase speculative pressure on a finite resource.**

That is not the direction Maui should be moving.

For these reasons, I respectfully urge the Committee to **defer or file Bill 1 (2026)** and, if reform is still desired, return with a narrowly tailored proposal that:

- Puts water certainty first
- Finishes existing and fire-impacted projects
- Prevents speculation and resale abuse
- Protects the public interest

Mahalo for the opportunity to testify.

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