

GET Committee

From: Kelly King
Sent: Thursday, May 02, 2019 8:29 AM
To: GET Committee
Subject: Fw: Questions for Moana Lutey
Attachments: Ord 1907 deferral agreements 1990.PDF; Ord 0789_p39.pdf; Corp Counsel Hopper.pdf

With Aloha,



Office of Council Chair Kelly T. King

South Maui Residency
Office: 808.270.7108
200 South High Street, 7th Fl
Wailuku HI 96793
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From: Chris Salem <chrissalem8@yahoo.com>
Sent: Wednesday, May 1, 2019 9:41 AM
To: Mike J. Molina
Cc: Kelly King; Tasha A. Kama; Shane M. Sinenci; Keani N. Rawlins; Tamara A. Paltin; David M. Raatz
Subject: Questions for Moana Lutey

Members of the Maui County Council;

Through a unanimous vote of the Maui County Council, the County Auditor has establish an Audit of the unaccounted for developer deferral agreements executed by Corporation Counsel and the Department of Public Works.

In 2016, the County Charter was amended to allow the Council to seek legal advice from a Council Services attorney when reasonable minds would conclude a conflict of interest exists with the Department of Corporation Counsel.

There are many questions surrounding Corporation Counsel's role in drafting overlapping deferral agreements on the same

"3 Lots or Less" parent parcels. This practice appears to have allowed developers to circumvent their obligations to complete roadway infrastructure on 4 lot subdivisions which has been in the code since 1974.

Former Director Goode stated his research found the quantity of overlapping "one time" developer deferral agreements to have gotten "CRAZY".

FIRST QUESTION FOR MOANA LUTEY

Do you feel the Department of Corporation Counsel should recuse themselves from advising or representing the County of Maui on proposed legislation and / or all legal matters surrounding these developer deferral agreements until the Audit is complete?

SECOND QUESTION FOR MOANA LUTEY

Can you explain why Deputy attorney Hopper failed and refused to respond to the attached letter regarding overlapping deferral agreements on an oceanfront parcel along South Kihei Road?

Please see support for these questions below.

----- Forwarded Message -----

From: Chris Salem <chrissalem8@yahoo.com>

To: David M. Raatz <david.raatz@mauicounty.us>

Cc: alice.lee@mauicounty.us <alice.lee@mauicounty.us>; Kelly King <kelly.king@mauicounty.us>; county.auditor@mauicounty.us <county.auditor@mauicounty.us>

Sent: Wednesday, May 1, 2019, 7:58:21 AM HST

Subject: Goode Representations of Law

5/1/19

Maui County Council
Office of Council Services

Good Morning David;

Through the request of Mayor Victorino, we will be moving forward with an updated draft of the Fairness Bill. (PC-17) Item #32 is currently in the Infrastructure Committee under Council Member Alice Lee. As it turns out, Council Member Lee was on the Council when the deferral amendments were adopted in the 90's.

That being said, To accomplish this goal, we truly need your professional input on a few representations of the Maui County Code by former Director David Goode.

This is the original deferral ordinance adopted in 1974

1974

(1) Improvements on existing streets. No improvements shall be required upon existing streets for a subdivision containing three (3) lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to participate in an improvement district when and if such improvement district is proposed. **In subdivisions containing four (4) lots or**

more, improvements conforming to the requirements specified in the preceding sections shall be constructed as follows:

Goode Representation

In a recent communication, Director Goode made the following representation; (See Below)

*"So I believe I was correct in what I stated (except it started in 1974 not 1979) that prior to 1990, **multiple deferrals was allowed by law.**"*

Facts

Both the 1974 ordinance and 1990 amendment include a specific reference to 4 lot subdivisions being required to construct roadway improvements.

Legislative Question

Do you find any adopted language in the Maui County Code in 1974 to 1990 which statues multiple deferrals on the same parent "3 Lot or Less" parcels was allowed **"by law"** ?

Conclusion

Multiple Deferrals and re subdivisions of the same parent parcel would result in more than 4 lots or more.

Request for Public Records

Please see if you can find a section of the Maui County Code which supports Director Goode's conclusion **"of law"**. If none exists, please confirm.

For transparency, please provide Corporation Counsel the opportunity to provide **"a law"** which allows multiple deferrals.

On a prior communication, we requested public records to support David Goode's statements that Corporation Counsel deemed the prior Fairness Bill to be unlawful. We would appreciate a parallel inquiry to Acting Director Lutey to support this legal conclusion.

Thanks for your help and consideration.

Chris Salem

PS: For the record, the attached letter to Deputy Corporation Counsel Hopper regarding overlapping deferrals on a oceanfront subdivision along South Kihei Road was never responded to.

-----Original Message-----

From: David Goode <David.Goode@co.maui.hi.us>

Sent: Tue, Oct 9, 2018 4:06 pm

Attached is the ordinance from 1974 to 1990, ordinance 789 (see page 39). Note it has different code section numbers as the entire Maui County Code was renumbered a few years later. In ordinance 789 there is no language regarding applying the deferral again.

Also attached is ordinance 1907 (1990) where you can see in the ramseyer notation that the language regarding no future three lot deferrals for the same property was added (underlined) in 1990.

So I believe I was correct in what I stated (except it started in 1974 not 1979) that prior to 1990, **multiple deferrals was allowed by law.**

As to the Kihei ones, we would have to do some research, but based on the above, the answer may simply be that the first deferral did not have restrictions on subsequent deferrals.

Hope this helps.

Dave

>>> <10/5/2018 11:34 PM >>>

Mr. Goode,

I asked you about the multiple overlapping deferral agreements throughout the County of Maui that are the subject of County Audit.

You stated to me that you did not believe that the 1979 deferral law in Maui County included a one-time only deferral condition until later, sometime, in the 1990's.

That implied that the multiple overlapping agreements took place during that time. But, neither appears to be the case, hence, my further query to you.

First, it is my understanding that Title 18.20.040, in 1979, stated that:

The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.

Please correct me if I am incorrect.

Second, as to multiple overlapping agreements, which you stated (in County Minutes) had become "crazy":

On South Kihei Road, in 1984, a parent underlying parcel (Luca File 3.1026) was subdivided and an 3 Lot or Less Roadway Improvement deferral agreement was executed (Doc # 17681523)

When you were the Public Works Director In 2002, one of the two resulting subdivided parcels was further divided into a 3 Lot subdivision.(Luca File 3.1871) A second 3 Lot deferral agreement was executed (Doc # 2002-055168)

In 2005, the other resulting parcel was further divided into a 3 Lot subdivision (Luca 3.2119) A third 3 Lot deferral agreement was executed (Doc # 2005-034849)

Since 1974, the Maui Code required subdivisions of 4 lots to install roadway and drainage improvements to their subdivision frontages. Neither were park fees paid on any of the 3 overlapping subdivisions.

The original oceanfront parcel was divided into 6 oceanfront parcels.

Kindly, please explain what appears as a discrepancy in your statements to me in Kihei, and the records cited to above.

Thank you.

ORDINANCE NO. 1907

BILL NO. 34 (1990)

A BILL FOR AN ORDINANCE AMENDING
SECTION 18.20.040 OF THE MAUI COUNTY CODE,
PERTAINING TO EXISTING STREETS

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

SECTION 1. Section 18.20.040 of the Maui County Code is amended to read as follows:

"18.20.040 Existing streets. A. No improvements shall be required upon existing streets for a subdivision containing three lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to [participate in an improvement district when and if such improvement district is proposed] pay their pro rata share of the cost of road improvements upon the existing street pursuant to the terms of the ordinance authorizing said improvements by the county or to a formula determined by the county, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to, pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.

B. In subdivisions containing four lots or more, improvements conforming to the requirements specified in this chapter constructed as follows:

1. Where substandard existing streets are within the boundaries of a subdivision, all improvements shall be constructed upon those portions of the streets within the subdivision,

2. Where existing streets are adjacent to the subdivision, improvements as may be required by the director shall be constructed on one-half of those portions of the streets adjacent to the subdivision; provided, that the portions of the streets shall have a minimum of twenty feet of pavement,

3. Where pavement on existing streets providing access to a subdivision is substandard in width or nonexistent, the subdivider shall:

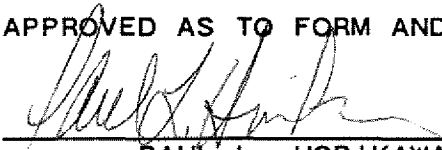
a. Install pavement to a minimum width of twenty feet in areas zoned residential, rural or agricultural and to a minimum width of twenty-four feet in areas zoned apartment, business, hotel or industrial. Shoulder areas shall be graded where necessary in residential, rural and agricultural areas, and in other areas the director may require such additional improvements as may be practicable, up to and including curbs gutters and sidewalks;

b. In lieu of the requirements of subdivision 3a of this subsection, deposit with the director a sum equal to five hundred dollars multiplied by the number of lots in the subdivision minus one; provided, however, that where in the director's opinion existing access streets to the subdivision are so inadequate as to imperil the public health, safety or general welfare, the subdivider is required to comply with subdivision 3a of this subsection or the director shall deny the subdivision."

SECTION 2. 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 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



PAUL L. HORIKAWA
First Deputy Corporation Counsel
County of Maui
streets/ords/c(cs)

WE HEREBY CERTIFY that the foregoing BILL NO. 34 (1990)

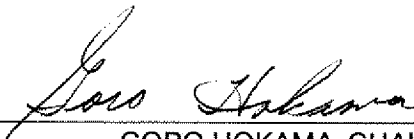
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of April, 1990, by the following votes:

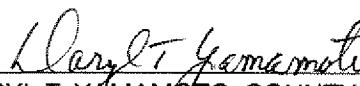
Linda CROCKETT LINGLE	Goro HOKAMA Chairman	Patrick S. KAWANO	Howard S. KIHUNE Vice-Chairman	Alice L. LEE	Ricardo MEDINA	Wayne K. NISHIKI	Velma M. SANTOS	Joe S. TANAKA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of April, 1990.


DATED AT WAILUKU, MAUI, HAWAII, this 20th day of April, 1990.

RECEIVED
1990 APR 20 PM 4:28
OFFICE OF THE MAYOR


GORO HOKAMA, CHAIRMAN
Council of the County of Maui

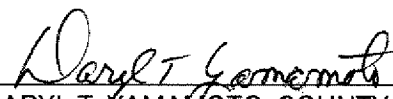

DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 4th DAY OF May, 1990.


HANNIBAL TAVARES, MAYOR,
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 1907 of the County of Maui, State of Hawaii.

Passed First Reading on April 6, 1990.
Effective date of Ordinance May 4, 1990.


DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

RECEIVED
1990 MAY -4 PM 2:00
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1907, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ORDINANCE NO. 789

BILL NO. 18 (1974)

AN ORDINANCE AMENDING THE SUBDIVISION ORDINANCE,
ARTICLE I OF CHAPTER 11 OF THE PERMANENT ORDINANCES
OF THE COUNTY OF MAUI, 1971, IN ITS ENTIRETY.

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI, STATE OF
HAWAII:

SECTION 1. The Subdivision Ordinance, Article I of Chapter
11 of the Permanent Ordinances of the County of Maui, 1971, is hereby
amended in its entirety to read as follows:

"CHAPTER 11
SUBDIVISIONS

Article 1. Subdivision Ordinance.

- § 11-1.1. Title.
- § 11-1.2. Administration.
- § 11-1.3. Definitions.
- § 11-1.4. Scope Of Regulations.
- § 11-1.5. Fees.
- § 11-1.6. Preliminary Plat.
- § 11-1.7. Preliminary Plat Review.
- § 11-1.8. Approval Of Preliminary Plat.
- § 11-1.9. Design Standards And Requirements Of Subdivision.
- § 11-1.10. Improvements Required.
- § 11-1.11. Construction Plans.
- § 11-1.12. Completion Of Improvement Requirements For Final
Plat Approval -- Bonding.
- § 11-1.13. Inspection And Certification.
- § 11-1.14. Final Plat.

- § 11-1.15. Filing Of Final Plat.
- § 11-1.16. Technical Review, Action On Final Plat, And Filing Of Plat.
- § 11-1.17. Final Approval Of Improvements And Release Of Surety.
- § 11-1.18. Issuance Of Building Permits For Erection Of Buildings In Proposed Subdivisions.
- § 11-1.19. Consolidation Required Prior To Issuance Of Building Permits.
- § 11-1.20. Standards Committee.
- § 11-1.21. County Not To Receive Dedication Of Highways Unless Constructed In Conformity With Ordinance.
- § 11-1.22. Large Scale Planned Development.
- § 11-1.23. Variances.
- § 11-1.24. Appeal.
- § 11-1.25. Repeal, Conflict And Validity.
- § 11-1.26. Violations, Penalties And Remedies.
- § 11-1.27. Effective Date.

Article 1. Subdivision Ordinance.

Sec. 11-1.1. Title.

This ordinance shall be known as the subdivision ordinance.

Sec. 11-1.2. Administration.

This ordinance shall be applied and administered within the framework of the "County General Plan" which is a long range, comprehensive, general plan prepared or being prepared to guide the overall future development of the county.

Said "County General Plan" shall consist of that portion of the "State General Plan" that applies to the county, or such lesser portion thereof as the county may adopt, together with those "Comprehensive or General Plans" for sections of the county which may hereafter be adopted as amendments to or portions of the "County General Plan".

Sec. 11-1.3. Definitions.

The following words and phrases, unless the context otherwise requires, shall mean:

Agricultural -- Areas designated agricultural by the State land use commission.

Arterial -- A street of considerable continuity, which is primarily a traffic artery for intercommunication between or through large areas.

Block -- That distance from street centerline to street centerline measured along that street on which the lots front. It includes parks, recreational areas, school sites, community or public building sites and off-street parking spaces.

Building line -- A line on a plat indicating the limit beyond which buildings or structures may not be erected.

Bureau of conveyances -- A division of the department of land and natural resources, State of Hawaii, where legal documents of any kind entitled to recordation may be filed.

Consolidation -- The combining of two or more lots into one lot.

Cul-de-sac (Dead-end street) -- A street designed with only one end open to traffic.

Director -- The person who holds the office of the planning director of the county of Maui.

Director of public works -- The person who holds the office of the director of the department of public works of the county of Maui.

District engineer -- The district engineer of the division of highways of the State department of transportation for the county of Maui.

Easement -- A grant of the right to use a strip of land for specific purposes.

Engineer -- A person duly registered as a professional engineer in the State of Hawaii.

Final plat -- A map accurately surveyed and prepared by a registered land surveyor in accordance with the provisions of this ordinance which is designed to be placed on record in the office of the bureau of conveyances, State department of taxation, or the assistant registrar of the land court.

General plan -- The general plans or master plans of the county of Maui, extended or changed or parts thereof, as adopted pursuant to article 1 of chapter 7 of the permanent ordinances of the county of Maui.

Improvements -- Grading, street surfacing, curbs and gutters, sidewalks, crosswalks, water systems and appurtenances, sanitary sewers, storm sewers, culverts, bridges, street lights and other appropriate items including private utilities, electricity, gas and telephone, with appurtenant construction.

Lot -- A parcel of land intended as a unit for transfer of ownership or for development.

Lot area -- The total horizontal area within the lot lines of a lot, exclusive of portions subject to easement or right-of-way for ingress and egress in favor of other

lots or land, but including portions subject to easements for water, sewer and other public utility purposes.

Lot frontage -- The horizontal distance between the side lot lines measured along the street property line.

Lot width -- The least horizontal distance between lot lines measured through the midpoint of the lot. The midpoint shall be construed to be the midpoint between the opposite lot lines, except for "flag lots" where the "stem" shall not be considered.

Director of water supply -- The person who holds the office of the director of the department of water supply of the county of Maui.

Parkway -- Any road, street or highway that provides for traffic movement in opposite directions on either side of a dividing island or medial strip.

Partition -- A separation between joint owners or tenants in common of their respective interests in land and setting apart such interest so that they may enjoy or possess the same in severalty. For purposes of this ordinance, partitions are considered to be subdivisions.

Pedestrian way -- A public right-of-way through a block between lots for pedestrian traffic, which may also be used as a utility easement.

Planned development -- A development with or without subdivision containing a planned arrangement of land uses, density of population, structures, streets and facilities, all of which have been approved by the county of Maui planning commission.

Preliminary plat -- A map or drawing made for the purpose of showing the layout and design of a proposed

subdivision or consolidation and of the existing conditions in and around it.

Public open space -- Land which may be dedicated or reserved for acquisition or dedication for general use by the public.

Reserve strip -- A non-access reservation, placed under public control with conditions approved by the director of planning, for future public use.

Right-of-way -- The area between property boundary lines for use as a street or as a drainage or utility easement.

Roadway width or pavement width -- The paved portion of the street available for vehicular traffic, and where curbs are laid, the portion between curbs.

Rural -- Areas designated rural by the State land use commission.

Sanitary engineer -- The person who is the executive officer of the environmental health division, State department of health.

Sidewalk -- A surfaced walkway for pedestrian traffic.

Street -- The entire width between the property lines, bounding every way of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, expressway, road, avenue, boulevard, lane, drive, place or however otherwise designated.

Street, business or industrial -- Any street providing primary access to business or industrial lots.

Street, collector -- Any street supplementary to the arterial street system which is a means of intercommunication between the arterial and smaller areas, used to some extent for through traffic and to some extent for access to abutting properties.

Street, half -- A portion of the width of a street, usually along the edge of a subdivision, where the remaining portion of the street is to be provided in another subdivision.

Street, marginal access (Service road) -- A minor street, parallel and adjacent to an arterial, providing access to abutting properties, but protected from through traffic.

Street, minor -- A street intended exclusively for access to abutting property.

Street, private -- Any street providing primary access to land, retained in private ownership.

Street plug -- A reservation for street purposes, placed under public control under conditions approved by the director, for the extension of streets from a subdivision into adjacent lands that may be subdivided in the future.

Subdivider -- Any person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof who or which causes land to be divided into a subdivision for himself, itself, or for others.

Subdivision -- Improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or

future, of sale, lease, rental, transfer of title to or interest in, any or all such parcels, and shall include re-subdivision, and when appropriate to the context shall relate to the process of subdividing of the land or territory subdivided. Easements for roadway or access purposes shall be construed as subdivided land.

Surveyor -- A person duly registered as a professional land surveyor in the State of Hawaii.

Urban -- Areas which are designated urban by the State land use commission.

Sec. 11-1.4. Scope Of Regulations.

As authorized by sec. 8-6.3 of the charter of the county of Maui, all subdivisions and consolidations, and all streets or ways within the county of Maui created for the purpose of subdividing land, shall be approved by the director in accordance with these regulations.

Any person desiring to subdivide or consolidate land shall submit plans and documents for approval as provided by this ordinance. No subdivision plat may be filed with the bureau of conveyances or land court or State department of taxation until submitted to and approved by the director. Land shall not be offered for sale, lease or rent in any subdivision, nor shall options or agreements for the purchase, sale, lease or rental of land in any subdivision be made until approval for recordation of the final plat is granted by the director as provided herein.

Sec. 11-1.5. Fees.

(a) Filing fees. Each application for a subdivision is subject to the payment of the following fee: Fifteen dollars (\$15.00) plus three dollars (\$3.00) for each lot noted on the initial preliminary plat or planned development sketch plan and for each additional lot resulting from any subsequent amendment of the preliminary plat exclusive of any lots set aside for roadway or easement purposes or lands dedicated for public use.

A filing fee of fifteen dollars (\$15.00) shall be required for any consolidation of lots. Where such consolidation is re-subdivided, a fee of three dollars (\$3.00) for each lot in excess of that which originally existed shall be required.

The foregoing fees are not required for subdivisions by or on behalf of any governmental agency.

(b) The above-prescribed fees shall not apply to subdivision of land into burial or crematory lots; provided, however, that a processing fee of one hundred dollars (\$100.00) per acre and proportionate fee for fraction of an acre shall be filed.

(c) The payment of the fees shall be made at the office of the department of planning and made payable to the director of finance, county of Maui.

Said fees shall not be refunded.

Sec. 11-1.6. Preliminary Plat.

(a) Initial steps. A subdivider may call at the office of the department of planning for information

regarding procedures and general information that may have a direct influence on the proposed subdivision.

(b) Submission. The subdivider shall have prepared by an engineer or surveyor a preliminary plat, together with such improvement plans and other supplementary material required to indicate the general program and objectives of the project. Nine (9) copies, or more if requested, of the preliminary plat and other supplementary material shall be submitted to the office of the department of planning.

Where the area to be subdivided is only a part of a larger tract owned or controlled by the subdivider, the director may require a sketch of a tentative layout for streets in the unsubdivided portion.

(c) Plat size and scale. The preliminary plat shall be drawn according to size and scale as provided in section 502-18 of the Hawaii Revised Statutes, or on a sheet size of eight and one-half (8 1/2) inches by thirteen (13) inches. When more than one (1) sheet is required, an index sheet of the same size shall be filed to show the entire subdivision on one (1) sheet, with block and lot numbers. All pertinent information on the preliminary plat shall be drawn to scale.

(d) Information. Information required on the preliminary plat shall be as follows:

(1) General information.

(a) Proposed name of the subdivision, not to duplicate nor resemble the name of another subdivision in the county of Maui. It shall be subject to approval by the director.

(b) Date, northpoint and scale of drawing.

(c) Tax key number or numbers and other information to sufficiently describe and define the location and boundaries of the proposed subdivision according to the real property records of the State tax office.

(d) Names and addresses of the owner or owners, subdivider, and engineer, or surveyor who prepared the plat.

(e) The approximate lot layout and the approximate dimensions and area of each lot.

(f) Acreage of proposed subdivision and number of lots.

(g) Should the submittal of the subdivision be by a person or firm other than the legal property owner, a letter of authorization from such property owner shall accompany the application.

(2) Existing conditions.

(a) Location, width and names of all existing or platted streets and other public ways within or adjacent to the tract, together with easements, other rights-of-way, and other important features, such as corners, property boundary lines, and control of access lines adjacent to State highways.

(b) When required by the director, contours at vertical intervals of two (2) feet, and of five (5) feet where the slope is greater than ten (10) per cent. Elevations shall be marked on such contours based on an established bench mark or assumed datum. In addition, such contours as may be

required by the department of water supply, State department of health and department of public works shall be shown.

(c) The location and direction of all water courses and approximate location of areas subject to inundation or storm water overflow.

(d) Existing uses of property, including location of all existing structures, wells, cisterns, private sewage disposal systems, utilities, etc.

(3) Proposed plan of land subdivision.

The following information shall be included on the preliminary plat:

(a) Streets showing location, widths, proposed names, approximate radii of curves. The relationship of all streets to projected streets shown on the general plan, or if there is no complete general plan, projected streets suggested by the director to assure adequate traffic circulation in the area.

(b) Existing and proposed easements, showing width and purpose.

(c) Lots, showing approximate dimensions, minimum lot size and proposed lot and block numbers.

(d) Sites, if any, allocated for purposes other than single family dwellings.

(4) Explanatory information.

The following information shall be submitted with the preliminary plat. If it cannot be shown practicably

on the preliminary plat, it shall be submitted in separate statements accompanying the preliminary plat:

(a) A vicinity map at a small scale, showing existing subdivided land ownerships adjacent to the proposed subdivision, and showing how proposed streets may be extended to connect with existing streets.

(b) Proposed deed restrictions, if any, in outline form.

(c) The approximate location within the subdivision and in the adjoining streets and property of existing sewers and water mains, culverts and drain pipes, electric and communication conduits or lines proposed to be used on the property to be subdivided and invert elevations of sewers at points of proposed connections.

(d) Statement regarding water system to be installed. Should a private water system be proposed, statement on source, quality and quantity of water shall also be included.

(e) Provisions for sewage disposal, drainage and flood control which are proposed.

(f) Parcels of land proposed to be dedicated to public use, and the conditions of such dedication.

(g) Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with objectives of this

ordinance, State laws and other applicable county ordinances.

Sec. 11-1.7. Preliminary Plat Review.

Within five (5) days after the information hereinbefore required are submitted by the subdivider, the director shall furnish one (1) copy of the preliminary plat and supplemental materials to the director of water supply, director of public works, and sanitary engineer, and in addition, the district engineer, when a subdivision is adjacent to a State highway or proposed State highway.

The above-listed officers shall review the preliminary plat and indicate their approval or recommendations thereon within the time limit established by the director.

Sec. 11-1.8. Approval Of Preliminary Plat.

(a) Within forty-five (45) days after submission of the preliminary plat, the director shall review the plan and may give approval of the preliminary plat as submitted or as it may be modified or may disapprove the same and shall express the disapproval and the reasons therefor in writing.

The director may also defer consideration of the preliminary plat pending receipt of additional information, in which case the running of time is suspended.

Approval of the preliminary plat shall indicate the director's directive to prepare detailed drawings on the plat submitted, provided there is no change in the plan of subdivision as shown on the preliminary plat and there is full compliance with all requirements of this ordinance. The action of the director with reference to any attached

documents describing any conditions shall be noted on two (2) copies of the preliminary plat. One (1) copy shall be returned to the subdivider and the other retained by the director. At such time the director shall stamp the above two (2) preliminary plats:

"Subdivider authorized to prepare detailed drawings on plat as submitted including corrections noted."

"Recordation with the Bureau of Conveyances, State of Hawaii, or State Department of Taxation, not authorized until approved for recordation at a later date."

(b) If no action (approval, disapproval, modification or deferral) is taken by the director within forty-five (45) days after submission of the preliminary plat, or such longer period as may have been agreed upon in writing, the preliminary plat shall be deemed approved, and it shall be the duty of the director to endorse his approval of the preliminary plat upon the face thereof. Such approval by the director shall not exempt the subdivider from compliance with the mandatory requirements of this ordinance.

Sec. 11-1.9. Design Standards And Requirements Of Subdivision.

Each subdivision and the map thereof shall conform to the following standards:

(a) Principles of acceptability.

Subdivisions shall conform to the general plan and shall take into consideration preliminary plans made in anticipation thereof. Subdivisions shall conform to the requirements of State law, department of public works, State

department of health, State department of transportation, and board of water supply requirements and the standards established by this ordinance.

(b) Creation of streets.

The creation of streets shall be in compliance with the requirements of this ordinance.

(c) Streets.

(1) General.

The location, width and grade of all streets shall conform to the general plan and shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and in their appropriate relation to the proposed use of land to be served by such streets. Where location is not shown in a general plan, the arrangement of streets in a subdivision shall either:

(a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or

(b) Conform to a plan for the neighborhood which has been approved or adopted by the director to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

(2) Minimum right-of-way and pavement widths.

Unless otherwise indicated on the general plan, the widths of streets and pavements in feet shall not be less than the minimums shown in the following table:

Type of Street	Right-of-way Width	Pavement Width*	Areas or Zone
Parkway	100'	State Highway Standards	Urban
Primary Arterials	80'	State Highway Standards	Urban, Rural & Agricultural
Secondary Arterials	80'	State Highway Standards	Urban, Rural & Agricultural
Business, Industrial, Hotel & Apartment Streets	56'	36'	Urban
Collector Streets	56'	36'	Urban
	50'	24'	Rural
	48'	22'	Agricultural
Minor Streets	44'	28'	Urban
	40'	22'	Rural
	40'	20'	Agricultural
Cul-de-sac	44'	28'	Urban
	40'	22'	Rural
	40'	20'	Agricultural
Radius for cul-de-sac	43'R	35'	Urban, Rural & Agricultural
Deadend street serving not more than eight lots and 300' long	40'	28'	Urban
	400' long	22'	Rural
	800' long	20'	Agricultural
Private street serving not more than three lots	24'	16'	All districts
Private street serving not more than two lots	20'	8'	All districts
Private street serving one lot	12'	8'	All districts

*Pavement widths curb-to-curb where curbs required, and computed for speed limits not exceeding 25 miles per hour upon the following:

Traffic lane	10 feet
Parking lane	8 feet
Shoulders	8 feet

(3) Reserve strip.

Reserve strips shall be required when the Director determines such strips to be necessary for the orderly future development of the community according to either the general plan or projected future development in the area surrounding the subdivision. The land composing such strips shall be reserved for future use and development under conditions approved by the director.

(4) Alignment.

As far as practical, all streets shall be in alignment with existing streets by continuations of the center lines thereof. The staggering of streets making "T" intersections shall be so designed and adjusted with curves and diagonals that jogs are not less than one hundred fifty (150) feet measured along the center line of the through street. Staggered streets shall not be used as a device to circumvent orderly street layouts.

If it is not possible to align the streets of a new subdivision with existing roads of an adjacent tract, short jogs may be avoided by establishing reverse curves in the road alignment within the block. Such jogs shall be separated from the existing road right-of-way by a tangent, a minimum of fifty (50) feet along to the beginning or end of the curve. Although such reverse curves are not objectionable in residential areas, they shall be avoided in commercial and industrial districts.

(5) Street plugs.

Where necessary to give access to, or permit a satisfactory subdivision of adjoining land, streets shall be extended to the boundary of the subdivision, and all improvements constructed up to the point of termination of such streets. Temporary turn-arounds at resulting dead-end streets may be required by the director when they are needed to fit the requirements of the particular situation.

Either street plugs or reserve strips shall be required to preserve the objectives of street extensions according to the general plan or a plan for the neighborhood. The director shall determine whether street plugs or reserve strips will be required in a particular location. In making his determination the director shall consider all of the following criteria:

(a) An equitable distribution of street extension costs between subdividers of adjoining subdivisions.

(b) The primary beneficiary of a future street extension should bear the major share of the costs of installation of improvements.

(c) Where subdivisions of adjoining lands is unlikely in the immediate future, reserve strips are preferred.

(6) Intersection angles.

Streets shall be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case less

than seventy-five (75) degrees unless there is a special intersection design. Intersections which are not at right angles shall have a minimum corner radius of twenty-five (25) feet along the right-of-way lines of the acute angle. All right-of-way lines at intersections shall have minimum corner radii as follows: fifteen (15) feet for twelve (12) and twenty (20) foot private streets; twenty (20) feet for minor and cul-de-sac streets; and thirty (30) feet for collector and higher classification streets.

All intersections shall be designed to generally-accepted engineering practices and constructed to provide minimum stopping sight distances for the designated design speed so as to minimize hazards to the public.

(7) Widening of existing streets rights-of-way.

When existing streets within, adjacent to, or providing access to, a subdivision do not meet county width requirements, additional rights-of-way shall be provided as follows:

(a) Where substandard existing streets are within the boundaries of a subdivision, the subdivider shall provide additional rights-of-way according to county standards for those portions of said substandard streets within the subdivision.

(b) Where substandard existing streets are adjacent to a subdivision, the subdivider shall provide additional rights-of-way for those portions of said streets adjacent to the subdivision such

that the distances from the center lines of said streets to the boundaries of the subdivided lots fronting said streets are equal to one-half of the rights-of-way widths as required by the general plan or county standards.

(c) Where existing streets providing access to a subdivision have rights-of-way of at least forty (40) feet, no additional rights-of-way are required. A subdivision shall not be allowed unless the director is satisfied that the rights-of-way of access streets are, or will be, at least twenty-four (24) feet. Where, in the director's opinion, the public health, safety, or the general welfare of the community requires more than the minimum right-of-way, the subdivider shall acquire and dedicate additional rights-of-way as the director may require. Nothing in this section shall prohibit the subdivider from widening existing streets to county standards. Should the subdivider be unable to acquire additional rights-of-way required herein, the director shall deny subdivision approval.

(8) Half streets.

Half streets may be permitted only when it is determined by the director that such half streets are essential to the reasonable development of a subdivision, and a reasonable probability exists for the future subdivision of the adjoining parcel or parcels. Half

streets shall serve no more than twelve (12) lots, provided that the proposed subdivision is in conformance with all other provisions of this ordinance. When parcels adjoining an existing half street are proposed to be subdivided, the director shall require that the remainder of the street be platted and constructed in such a manner as to provide a full street which meets all requirements of this ordinance. Reserve strips and street plugs may be required as necessary to preserve the objectives of half streets.

Half streets shall have a minimum right-of-way width of twenty-four (24) feet, and a minimum pavement width of eighteen (18) feet.

All half streets shall remain as private streets until the second halves are completed and improved to county standards.

(9) Cul-de-sacs (Dead-end streets).

A cul-de-sac shall be as short as possible and shall not be more than eight hundred (800) feet in agricultural areas and no more than five hundred fifty (550) feet in other areas, nor serve more than twenty (20) lots, provided that longer streets may be approved by the director when unusual topographical conditions exist. All cul-de-sacs shall terminate with a circular turn-around of forty-three (43) feet radius, except that a T-turn around or other suitable turn-around may be permitted, if in the opinion of the director, this

type of turn-around meets the requirements of the situation.

(10) Street names.

No street names shall be used which may duplicate or may be confused with the names of existing streets within the county, provided that identical or similar names may be used to name extensions of existing streets. Street names shall conform to the established pattern in the county and shall be subject to the approval of the street naming commission and adoption of same by the county council. All street names shall be approved prior to the filing of the final plat with the director.

(11) Grades and curves.

Grades of all streets shall not be less than one-quarter of one percent (0.25%). Grades in excess of twelve percent (12%) shall be permitted when existing topographic conditions do not allow lesser street grades, and appropriate engineered designs are provided.

Vertical and horizontal curves shall be designed to the standards on file at the Department of Public Works. Said standards shall incorporate minimum stopping sight distances and offer safety, ease of operation, a pleasing appearance with the practical limits of the terrain and shall be appropriately designed consistent with generally accepted engineering standards.

(12) Marginal access streets (Service road).

Where a subdivision abuts or contains an existing or proposed arterial street, the director may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

(13) Private streets.

Upon a finding by the director that unusual geographical conditions exist in a subdivision, private streets serving no more than three (3) lots may be permitted unless other parts of this ordinance specifically provide otherwise. Private streets shall not be a means for circumventing the need for a standard street. Private streets shall not be dedicated and the county is hereby prohibited from accepting such streets. County services shall be provided at the intersecting public street, and the owners of the private street shall be responsible for its maintenance. Private streets shall be improved to the minimum width specified in sec. 11-1.9(c)(2) of this ordinance, in accordance with the following standards:

Urban District.....	Pavement or equivalent
Rural District.....	Pavement or equivalent
Agricultural District..	Gravel, Asphalt, Oil or equivalent

(d) Blocks.

(1) General.

The lengths, widths and shapes of blocks shall be designed with regard to providing adequate building sites suitable to the use contemplated, needs for convenient access, circulation, control and safety of street traffic, and limitations and opportunities of topography.

(2) Sizes.

Blocks shall not exceed two (2) tiers or lots in width and eighteen hundred (1,800) feet in length, except blocks adjacent to arterial streets or unless the previous adjacent layout or topographical conditions justify a variation. Blocks shall not be less than four hundred (400) feet in length. Long blocks shall be provided adjacent to arterial streets to reduce the number of intersections. The recommended minimum distance between intersections on arterial streets is eighteen hundred (1,800) feet. Longer blocks shall be used when possible. The desired length for normal residential blocks is from eight hundred (800) to one thousand (1,000) feet. When the layout is such that sewers will be installed or easements for future sewer lines are provided along rear lot lines, the block should not exceed eight hundred (800) feet in length.

(3) Easements and rights-of-way.

(a) Natural water courses.

Where a subdivision is traversed by a natural water course, drainage way, channel or stream,

there shall be provided a drainage easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width as will be adequate for the purpose. Drainage easements or rights-of-way requested by the county shall be in favor of or dedicated to the county. Streets or parkways parallel to water courses may be required.

(b) Pedestrian ways.

In any block over seven hundred fifty (750) feet in length, the director may require creation of a pedestrian way at or near the middle of the block. If unusual conditions require blocks longer than eighteen hundred (1,800) feet, two (2) pedestrian ways shall be required. Said pedestrian ways shall be dedicated for public use and shall have a minimum width of ten (10) feet.

(c) Beach and other access rights-of-way.

Where a subdivision fronts along the shoreline or other public use or recreational areas, rights-of-way to these areas shall be created at intervals of not greater than fifteen hundred (1,500) feet, except as provided below. Said rights-of-way shall be dedicated for public use and shall have a minimum width of fifteen (15) feet. The location of such rights-of-way shall be as agreed to by the subdivider and the director. The director may require that rights-of-way be consolidated, to provide sufficient

area for vehicular access, parking, development of shoreline or other recreational facilities, or other public purposes, or may modify the standard rights-of-way to take into consideration terrain features, length of frontage, uses of the parcel to be subdivided and other pertinent factors; provided, however, that the total area to be dedicated shall not differ substantially from that which would be required by the provision of standard rights-of-way, unless additional areas and improvements are mutually agreed to by the subdivider and director.

(e) Lots.

(1) Size and shape.

The lot size, width, shape and orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision, the type of development and uses contemplated and in conformance with the provisions of the zoning ordinance. Corner lots shall be five (5) feet wider than the minimum lot width and applied to R-1 zoning only. No additional lot width will be required for corner lots in any other zoning than R-1 noted above.

In the creation of any new lots under the subdivision ordinance the depth of any lot shall not exceed an average ratio of four to one of the lot frontage,

except for just cause, the director may waive to increase the ratio.

(2) Minimum lot sizes.

The minimum sizes of various types of lots shall be in conformance with the provisions of the zoning ordinance and shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(3) Access.

Each and every subdivided lot shall abut upon a public street or approved private street. No lots shall be platted without access on a street. The director may indicate the side or sides of any lots from which driveway access shall be permitted or prohibited.

(4) Lot side lines.

The side lines of lots shall run at right angles to streets upon which the lots face, or on curved streets they shall be radial to the curve, as far as practicable.

(5) Through lots.

A lot having frontage on two parallel or approximately parallel streets other than alleys and access being derived from either of the two streets known as through streets shall be avoided except where essential to provide separation of residential development from major traffic arteries or adjacent non-residential activities, or to overcome specific disadvantages of topography or orientation.

A planting screen easement of at least ten (10) feet, across which there shall be no right of access,

may be required along lot lines abutting such a traffic artery or other disadvantageous use. A through lot with planting screens shall have a minimum average depth of one hundred (100) feet in areas zoned R-1, one hundred ten (110) feet in areas zoned R-2, and one hundred twenty (120) feet in areas zoned R-3. The subdivision covenants or deed restrictions shall specify that either the property owner or a homeowner's association shall be responsible for the maintenance of the planting easement. The covenants, deed, or subdivision map shall require a minimum building setback of twenty (20) feet from said boundary line abutting the traffic artery or other disadvantageous use.

(6) Suitable for intended use.

All lots shall be suitable for the purposes for which they are intended to be sold and no dangerous areas subject to periodic inundation in such a manner as to endanger the health or safety of the occupants thereof, may be subdivided for residential purposes.

All lots within a subdivision must be of adequate grade to support structures for the intended use of the lots, in conformity with current architectural and engineering standards, and the soil conditions within the subdivision. The director may require certified reports to confirm the soil conditions and the adequacy of architectural and engineering design.

(f) Large lot subdivision.

A large lot shall be defined as a parcel of land that is resubdividable into four or more lots within the requirements of the county zoning ordinance.

In subdividing tracts into large lots which at some future time are likely to be resubdivided, the director may require that the blocks be of such size and shape, be so divided into lots and contain such building site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent subdivision of any large lot.

For large lots, improvements may be deferred with the approval of the director, provided that the subdivider or owner, his heirs and assigns agree to provide all deferred improvements upon actual development or future resubdivision of the large lots, and observe the following building restrictions:

(1) For residential, rural or agricultural zoned areas, no more than one dwelling per lot; and

(2) For business, industrial, hotel and apartment zoned areas, no structures will be built.

These restrictions would terminate upon installation of all improvements required by this ordinance.

Utilities such as water, sewer and electricity will be required for all lots. However, for large lots, the size of utilities may be based on the minimum requirement of one dwelling per lot. Park and other assessments shall be based on the number of newly created lots only and not the ultimate development.

The requirements of this ordinance shall apply to all lots not defined as large lots in the subdivision.

(g) Building lines.

If building setback lines which differ from the provisions of the zoning ordinance or the general plan are

established in a subdivision, they shall be shown on the subdivision plat. Provisions for enforcement of such special setback lines shall be included in the deed restrictions, and the county shall not bear the responsibility for enforcement of setback lines other than those established by county ordinance.

(h) Monuments.

Monuments approved by the director of public works shall be placed and properly coordinated with the State survey triangulation stations at all angle points or points of curvature in streets and at such intermediate points as shall be required by the director of public works. All lot and block corners shall be properly established and marked with one-half (1/2) inch round galvanized pipe or equivalent and firmly and permanently set in the ground.

(i) Location of utilities.

In general, all utilities shall be located within the road right-of-way and shall conform with standards of the "Maui County Utilities Representative Association and Standards" on file with the utility companies and the department of public works.

If in the opinion of the director, the director of public works, the director of water supply and the utility companies the most suitable and reasonable location for any of the utilities, such as sewers, storm drains, water and gas pipes, electric and telephone pole lines and conduits, which are likely to be required within a subdivision, either for the service thereof or for the service of areas in the surrounding territory, do not lie wholly within the street width, the director may require provisions to be made for

the location as mutually agreed with the subdivider of such utilities on routes elsewhere than within said street width. The subdivider shall designate the required area or areas for all such utility locations outside of the street width and shall deliver proper easements for the same.

Easements or rights-of-way for sewers, storm drains, public utilities (gas, electrical, and communications), and government-owned water facilities shall be not less than fifteen (15) feet in width and centered on or along rear or side lot lines except for guywire tie-back easements, which shall be five (5) feet wide by twenty (20) feet long along lot lines at change of direction points of easements, except that this width may be modified where the director of public works or the board of water supply, or public utilities, whichever is appropriate, finds that a greater or lesser width is necessary or satisfactory for the purpose of the use of the area. Easements or rights-of-way for all government-owned utilities including storm drains except those under the jurisdiction of the board of water supply shall be conveyed to the county of Maui and documents shall be delivered to the county council for acceptance. Easements or rights-of-way for water facilities which are under the jurisdiction of the board of water supply and the documents shall be delivered to the board of water supply for acceptance.

(j) Parks and playgrounds.

For purposes of this part, certain terms used herein shall be defined as follows:

Dwelling unit -- a room or rooms connected together, constituting an independent housekeeping unit for a family with or without a kitchen.

Parks and playgrounds -- areas used for active or passive recreational pursuits.

Subdivider -- any person who divides land as specified under the definition of subdivision or who constructs a building or group of buildings containing or divided into three or more dwelling units.

Subdivision -- the division of improved or unimproved land into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to, or interest in, any or all such lots, parcels, sites, or division of land. The term includes resubdivision, and when appropriate to the context, shall relate to the land subdivided. The term also includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units.

Each subdivider of lands or buildings within the county's urban areas where dwelling units are allowed, or within urban areas under interim zoning, shall dedicate or provide in perpetuity, lands for park or playground purposes. The area of such lands shall be the number of lots in the subdivision minus one, multiplied by two hundred forty-five (245) square feet. Prior to acceptance of the land by the county, the director, director of public works and director of parks and recreation shall first determine whether the location, grade and condition of the site is suitable and acceptable for park or playground use. Upon acceptance of such site by the county, the county shall assume responsibility for the improvement, care and maintenance of said site.

In lieu of providing lands for park, or playground purposes, the director may permit the subdivider to either:

(1) Pay to the county a sum of money equal to the number of lots or dwelling units in the subdivision minus one, multiplied by the fair market value of the land prior to subdivision per square foot as determined by the State department of taxation, multiplied by two hundred forty-five (245) square feet; or

(2) Pay to the county a sum of money equal to the number of lots or dwelling units in the subdivision minus one, multiplied by one hundred dollars (\$100.00).

Sec. 11-1.10. Improvements Required.

(a) Water supply.

Any subdivision hereafter to be laid out within the county of Maui shall be provided with water in accordance with the rules and regulations of the board of water supply, enacted in conformity with chapter 8 of the Maui county charter, and all amendments thereto.

(b) Sewage disposal.

(1) In any subdivision hereafter to be laid out in the area of an existing public sewer system, sewer lines shall be installed by the subdivider and connected to the existing public sewer system. Said sewer lines shall conform to the requirements of the department of public works.

(2) In subdivisions where sewer connections cannot be made to an existing sewer system the subdivider shall meet the requirements of the State health department and the director of public works relating to sewage disposal.

(3) Where a subdivision is within an area proposed to be served by public sewer system as indicated by a proposed master plan for sewer development on file in the department of public works, and where such public sewer system is listed in the county's capital budget or capital improvements program, sewer lines shall be installed for all lots, and connected to a community cesspool system, subject to meeting the minimum requirements of the State health department. However, where such public sewer system is listed only in the county's capital improvements program, the director may exempt the subdivider from conforming with these requirements.

(c) Pavement of streets.

The subdivider shall grade, drain and surface all streets shown on his plat, except reserve strips for future street purposes, so as to provide access for vehicular traffic to each lot of the subdivision. All streets shall be constructed in accordance with the specifications hereinafter set forth and those on file with the department of public works. The director of public works, when he deems it necessary, may require soil analysis and recommendations from the subdivider by an engineer experienced in soil mechanics and/or pavement design.

(d) Sidewalks.

Concrete sidewalks four (4) feet wide may be required by the director on one side of the street in all areas zoned residential, duplex, or in the county's interim zone. Concrete sidewalks six (6) feet wide on both sides of the street shall be required within areas zoned apartment, hotel, business and industrial. The director may waive

the requirement for sidewalks in M-2 heavy industrial districts should be deemed such sidewalks not required for the public welfare or safety. Sidewalks shall be required on one side of the street within one-half (1/2) mile of any elementary, intermediate or high school, or college. Sidewalks shall be constructed to the standard specifications on file in the department of public works.

(e) Pedestrian ways.

Pedestrian ways shall be graded to their full width and planted with grass or other suitable finish as determined by the director. The director may require a four (4) foot concrete sidewalk to be constructed in the center of said pedestrian ways. Sidewalks, where required, shall be constructed to the standard specifications on file in the department of public works.

(f) Beach or other rights-of-way.

The entire length of the rights-of-way shall be graded to its full width and planted with grass or other suitable finish as determined by the director.

(g) Driveways.

The number and location of driveways shall be as determined by the director of public works and shall conform to the driveway ordinance and standards on file in the department of public works.

(h) Curbs and gutters.

Concrete curbs and gutters shall be constructed on all streets within the urban areas to the standard specifications on file in the department of public works.

(i) Street lights.

Street lights shall be constructed within all subdivisions. The street lights shall conform to the standard

specifications on file with the county department of public works. The construction of underground street lighting systems shall be made a part of the contract for subdivision improvement and installed coincident with other required improvements.

(j) Utility lines and facilities.

Electrical service for all improved lots shall be required and shall be provided for, coincident with other required improvements; provided, however, that the director may waive this requirement for agricultural subdivisions where it can be shown that the specific intended use would not require such service.

Utility lines, including but not limited to those required for electric, telephone, street lighting, cable television services and other related facilities, shall be installed underground in all subdivisions laid out within the industrial, business, hotel, apartment and duplex areas in accordance with the applicable standards and methods employed for such underground installation by the public utility companies involved; provided, however, where a subdivision consists of three (3) lots or less, the subdivider may, upon approval of the director, arrange to have such utility lines and related facilities installed overhead in accordance with the standards and methods employed for such overhead installation by the public utility companies. The director may require the installation of underground utilities serving the subdivision in other urban areas in order to assure compatibility with neighboring developments. The subdivider shall be responsible for making the necessary arrangements with government agencies and the public utility companies

concerned for the installation of such utility lines and related facilities in accordance with the requirements of this section.

Exception. The provisions of this section shall not apply to the following types of utility lines and related facilities:

(1) Pedestals used exclusively for police and fire alarm boxes, traffic control facilities, street lighting, or similar equipment belonging to or operated by either the State or the county;

(2) Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location on the same building or to an adjacent building without crossing any street or alley;

(3) Electric distribution or transmission system in excess of 15 kilovolts;

(4) Electric distribution transformers and related switching and protective equipment mounted on pads;

(5) Electric distribution circuits of the 12 kilovolt class supported by metal poles without cross-arm; and

(6) Communication distribution terminals and television cable apparatuses mounted on pads or above ground pedestals.

Modification. Whenever the strict application of the requirements of this section would be impractical because of the nature of the surface, subsurface or topographical conditions of the property to be subdivided, the board of

adjustment and appeals may approve such modification thereof as is reasonably necessary in the interest of the public and not contrary to the intent and purposes of this article. Before making any such modification, the board of adjustment and appeals shall refer the request for any such modification to the director of public works and the director for their recommendations.

(k) Swales and channels.

All swale areas of streets without curb and gutters that exceed five percent (5%) in grade shall be planted in grass or designed to prevent erosion according to the standards on file in the department of public works. No open ditches or channels, other than normal roadside swales, shall be permitted within the street right-of-way. Where necessary within the subdivision, drainage ditches and channels shall be designed to meet existing and surrounding conditions; otherwise, the flow should be kept as natural as possible.

(l) Improvements on existing streets.

No improvements shall be required upon existing streets for a subdivision containing three (3) lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to participate in an improvement district when and if such improvement district is proposed.

In subdivisions containing four (4) lots or more, improvements conforming to the requirements specified in the preceding sections shall be constructed as follows:

(a) Where substandard existing streets are within the boundaries of a subdivision, all improvements shall be constructed upon those portions of said streets within the subdivision;

(b) Where existing streets are adjacent to the subdivision, improvements as may be required by the director shall be constructed on one-half (1/2) of those portions of said streets adjacent to the subdivision, provided that said portions of said streets shall have a minimum of twenty (20) feet of pavement;

(c) Where pavement on existing streets providing access to a subdivision is substandard in width or nonexisting, the subdivider shall:

(1) Install pavement to a minimum width of twenty (20) feet in areas zoned residential, rural or agricultural and to a minimum width of twenty-four (24) feet in areas zoned apartment, business, hotel or industrial. Shoulder areas shall be graded where necessary in residential, rural and agricultural areas and in other areas the director may require such additional improvements as may be practicable, up to and including curbs, gutters and sidewalks.

(2) In lieu of the above, deposit with the director a sum equal to five hundred dollars (\$500.00) multiplied by the number of lots in the subdivision minus one; provided, however, that where in the director's opinion existing access streets to the subdivision are so inadequate as to imperil the public health, safety or general welfare, the subdivider is required to comply with subsection (1) above or the director shall deny the subdivision.

(m) Street name and traffic signs.

Street name signs showing the names of intersecting streets shall be installed by the subdivider at each street intersection. The type and location of street name and traffic signs which shall be installed by the subdivider shall be subject to the approval of the director of public works and shall conform to the standard specifications on file at the department of public works. Street name and traffic signs shall be installed prior to final approval of the subdivision.

(n) Zoning restrictions.

The director shall disapprove a preliminary plat or a subdivision map where the subdivider has failed to comply with the provisions of the zoning ordinance.

(o) Drainage.

Drainage systems in all subdivisions shall be planned, designed, and constructed in accordance with standards of the department of public works or consistent with generally accepted engineering practices certified by an engineer so as to meet the following:

(1) Protect and preserve existing natural drainage ways to the extent feasible;

(2) Design a drainage system to be compatible with surrounding conditions;

(3) Provide a system by which water within the subdivision will be removed using the natural drainage area where feasible with a minimum disruption to existing drainage patterns and without causing unnecessary harm to adjoining areas;

(4) Analyze drainage requirements for each subdivision individually and take every means to insure the ability to subdivide the land within its zoning;

(5) Assure that waters are drained from the subdivision in such a manner that they will not cause erosion outside of the subdivision to any greater extent than would occur in the absence of subdivision and improvements thereto;

(6) Provide for the crossing of water courses by culverts rather than spanning where possible;

Where interior drainage systems within an area are improved, a storm drainage system shall be required in all subdivisions within that area where surface run-off cannot be adequately conveyed. Where open channels are used, the subdivider shall provide total right-of-way, including a ten (10) foot wide maintenance road along both banks where the top channel width exceeds fifty (50) feet, and along one bank where the top width is fifty (50) feet or less. The director may require that maintenance roads along the channel be topped with six (6) inches of crushed coral or base course and treated with bituminous material. In lieu of a maintenance road, for normally dry channels, access ramps or other suitable alternative measures to facilitate maintenance may be provided. Underground systems shall have a minimum easement width of fifteen (15) feet.

Sec. 11-1.11. Construction Plans.

(a) After the subdivider has secured approval of his preliminary plat of the subdivision from the director, and

before beginning construction of the improvements therein, the subdivider shall prepare and submit to the director construction plans and specifications showing details of road construction, drainage structures, sewers, water mains, electrical and other utility facilities proposed to be installed in the subdivision.

The subdivider shall indicate the location of required traffic signs on the construction plans. The construction plans shall also clearly indicate that the power to stop construction work is vested with the county of Maui through the director of public works or the director of water supply. The construction plans shall be drawn on acceptable tracing medium to county standards as to size and general drafting practice. Included with the construction plans shall be a general layout map showing the location of lots and streets, and the location of water lines, sewer mains and drainage systems and other utility lines. Plans shall be prepared by an engineer registered under the laws of Hawaii.

(b) The subdivider shall submit eight (8) copies or more, if requested, of the constructions plans and specifications to the director. The director shall furnish one (1) copy of the construction plans and specifications to the director of water supply, the director of public works, the sanitary engineer and, in addition, the district engineer when the subdivision is adjacent to a State highway or a proposed State highway, for their consideration and approval. Such construction plans and specifications shall be considered approved for construction purposes when the construction plan tracings and specifications bear the approval of

the director of public works, the director of water supply, the sanitary engineer, the district engineer and the director.

The subdivider shall 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 longer period as may have been agreed upon in writing, then the plans shall be deemed approved as submitted and it shall be the duty of the director, the director of public works and the director of water supply to affix their approval thereon.

The approval of the construction plans by the director shall not relieve the subdivider nor the engineer of the responsibility for any and all defects that may become evident subsequent to the plan's approval. Should there be any errors or omissions, then the construction plans and construction work shall be modified as requested by the director of public works and/or the director of water supply.

(c) The subdivider shall prepare the construction plan and submit the same to the director, noting the limitation of time required for the submission of the final plat in sec. 11-1.14. If preliminary construction plans are not submitted within one year, the subdivision shall be deemed null and void. The subdivider, prior to the expiration date, may write to the director with valid reasons for any extension of reasonable time.

Sec. 11-1.12. Completion Of Improvement Requirements For
Final Plat Approval - Bonding.

(a) Construction prior to final approval.

When the construction drawings and specifications bear the approval of the director, the director of public works, the director of water supply, the sanitary engineer and the district engineer as required under sec. 11-1.11, the subdivider may proceed with the construction of the improvements and utilities. After completion of same in accordance with the requirements of this ordinance, the director shall grant approval for recordation of his final plat. Where construction extends into the State highway right-of-way, the contractor shall obtain a permit from the district engineer prior to commencement of work within the State right-of-way. No bond or security need be posted with the department of public works and/or the board of water supply for that portion of work with the State right-of-way.

(b) Bond and final approval prior to construction.

A subdivider may secure final approval prior to completion of construction by entering into an agreement with the county, signed by the director and the department of public works and/or board of water supply wherein the subdivider agrees to make, install and complete all required improvements within a specified time (not to exceed one year) and file with the county a surety bond or other security as hereinafter specified, to assure the county the actual construction and installation of the improvements and utilities shown on the approved construction drawings and specifications. The director shall, after the execution and acceptance of the agreement and bond,

grant approval of the final plat. The subdivider may then proceed to record the final plat and sell the lots or transfer any interest therein prior to completion of said improvements.

(1) Agreement.

The owner or owners of the subdivision shall submit an agreement to the director who shall refer said document to the county attorney for approval as to form and legality. Said agreement shall specify that the subdivider shall complete all improvements and utilities to the satisfaction of the director of public works and/or the board of water supply, and shall provide that if the subdivider shall fail to so complete such work or any portion thereof within the time specified or such extension of time under specified conditions or for the termination of the agreement and upon a reversion of the subdivision or part thereof to its original acreage, the department of public works and/or the board of water supply may complete the same and recover the full cost and expense thereof from the subdivider.

This agreement shall allow partial acceptance of improvements and partial release of surety where the director is satisfied that the public interest is not prejudiced thereby.

(2) Bond.

The agreement as specified in sec. 11-1.12(b)(1), shall be secured by a good and sufficient surety bond (other than personal surety), certified check or other security acceptable to the director and approved by

the county attorney, in a sum equal to the cost of all the work required to be done by the subdivider as estimated by the director of public works and the director of water supply, if the subdivision is within the scope of the board of water supply requirements. Said surety bond shall be payable to the county of Maui and also to the board of water supply if the subdivision is within the scope of the board of water supply requirements and shall be conditioned upon the faithful performance of any and all work required to be done by the subdivider.

Said security shall be filed with the director and deposited with the county director of finance as a realization in whole or part for the completion, correction of any defective work, or improper work called for in the original plan.

(c) Warranty of improvements.

The subdivider will warrant and guarantee the improvements free from any defects in material or workmanship for a period of one year after final approval of improvements according to sec. 11-1.17 of this ordinance.

Sec. 11-1.13. Inspection and certification.

(a) The director of public works shall inspect all construction of improvements and other work in any subdivision that is or may come within his jurisdiction. The director of water supply shall inspect all construction and improvements relating to water systems. Representatives of privately owned public utilities such as gas, telephone and electric companies shall be responsible for inspection of

construction and installation of improvements within their respective interests.

The subdivider may request that all inspections herein be coordinated through the director so as to minimize disruptions or interruptions of construction work.

A list of discrepancies revealed by inspections shall be given to the subdivider within a reasonable time after said inspection.

(b) Inspection fees.

For inspecting the construction of improvements on Saturdays, Sundays and holidays, the subdivider shall be charged ten dollars (\$10.00) per hour, and a minimum fee of twenty dollars (\$20.00). Subdividers must notify the director of public works that the contractor will be working on the improvement in writing, messenger or telephone twenty-four (24) hours before commencing work on the above-mentioned days. The director of public works shall bill the subdivider.

Before starting any construction work, the subdivider shall give written notice at least one (1) week in advance to the director of public works and/or the director of water supply (if construction involves a water supply system), the name of the contractor and any other pertinent information, and shall file three (3) prints of approved construction drawings and specifications with the department of public works and/or the board of water supply (if construction involves a water supply system).

During construction of improvements and installation of facilities and utilities and the carrying on of other work

in any subdivision, the work shall at all times be subject to inspection by the director of public works and/or the director of water supply, or their representatives.

The director of public works and the director of water supply are hereby authorized to stop any or all construction work in a subdivision which is contrary to the approved construction plans or detrimental to the public interest.

(c) Certification.

Subdivision improvements shall not be considered complete and acceptable for final approval by the director until such improvements are so certified in writing to be complete and of acceptable standards by the director of public works and/or the director of water supply. Construction with the State highway right-of-way shall be subject to inspection by the district engineer or his representative.

Sec. 11-1.14. Final Plat.

(a) Time limit.

The final plat shall be prepared and completed within one (1) year following the approval given on the preliminary plat or construction plans. If the final plat has not been filed within this period, the preliminary plat shall be deemed null and void. Time extension, for good cause, may be granted as provided under sec. 11-1.15.

(b) Drafting of final plat.

In preparing the final plat, all surveying work shall be made by or under the supervision of a surveyor, and shall meet all requirements for any subsequent recordation.

If the final plat, following approval by the director, is to be filed with the land court for recordation, it shall

comply with all requirements specified under the rules of the land court for land court subdivisions. The scales and sheet sizes utilized on this drawing shall be the same as required under sec. 11-1.6, of this ordinance, and dedication or other written material shall be submitted on supplemental sheets.

(c) Information required on final plat.

The following information shall be shown on the final plat and supplemental sheets in addition to any other information required to be shown thereon under provisions of any State statute or county ordinance.

- (1) Date, northpoint and scale of drawing.
- (2) Legal description of the tract boundaries, except file plans and land court plans.
- (3) Name and address of the owner or owners, subdivider, and the surveyor who prepared the plat.
- (4) Approved street names on dedicable streets.
- (5) Reference points of existing surveys identified, related to the plat by distances and azimuths, and reference to a field book or map as follows:
 - (a) All stakes, monuments or other evidence found on the ground and used to determine the boundaries of the subdivision.
 - (b) Adjoining corners of all adjoining subdivisions.
 - (c) Boundary lines and grants within and adjacent to the plat.
 - (d) Whenever the county has established the center line of a street, adjacent to or within the proposed subdivision, the location of this line and monuments found or reset.

(e) All other monuments found or established in making the survey of the subdivision or required to be installed by provisions of this ordinance.

(f) Tract boundary lines, right-of-way lines and center lines of streets; lot and block lines with dimensions, azimuths or deflection angles and radii, arcs, points of curvature and tangent azimuth shall be shown.

(g) The width of the portion of streets being dedicated, the width of any existing right-of-way and the widths each side of the center line. For streets and curvature, all curvature, all curve data shall be based on the street center line and, in addition to center line dimensions, shall indicate thereon the central angle.

(h) All easements denoted by fine broken lines, clearly identified and if already on record, its recorded reference; if any easement is not definitely located of record, a statement of such easement. The widths of the easement and the lengths and azimuths of the lines thereof and sufficient ties thereto to definitely locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.

(i) Lot and block identification shall be according to good surveying practices.

(j) Land parcels to be dedicated for any purpose, public or private, to be distinguished from lots intended for sale and their use indicated.

(k) Minimum building setback lines, where not otherwise fixed by a building code or county ordinance.

(1) The following certification may be combined where appropriate:

(1) A certificate signed and acknowledged by all parties having any record title interest in the land subdivided consenting to the preparation and recording of the plat when required by the director.

(2) A certificate signed and acknowledged as above, when dedicating all parcels of land shown on the final map and intended for any public use except those parcels which are intended for the exclusive use of the lot owners in the subdivision, their licensees, visitors, tenants and servants.

(3) A certificate with the seal of, and signed by the surveyor responsible for the survey and final draft.

(4) All other certificates now or hereafter required by law. All control of access lines adjacent to existing limited access State highways shall be denoted by the State highways division standard symbol of semi-circles on the control of access line.

(m) All writing, including signatures on the final plat shall be made in black india ink.

(d) Supplemental information with final plat.

The following data shall be submitted with the final plat:

(1) A complete title report issued by a licensed title company in the name of the owner of the land, showing all parties whose consent is necessary and their interests in the premises when required by the director.

(2) Five (5) copies of any deed restrictions or covenants applicable to the subdivision.

(3) Written proof that all taxes and assessments on the tract are paid to date.

(e) Subdivision not involving streets, drains and/or utilities.

In case a subdivision which involves no streets, drains or utilities, the preliminary plat may be approved by the director for recordation provided the preliminary plat meets all of the requirements of a final plat.

Sec. 11-1.15. Filing Of Final Plat.

The subdivider shall submit to the director ten (10) copies of the final plat, prepared in conformity with these regulations. For good cause, the director may grant to the subdivider an extension of time within which he may file such final plat, provided that the subdivider has made an application in writing to the director for such purpose at least fifteen (15) days before the expiration of said period of one (1) year.

The time of filing of the final plat shall be taken to mean the time at which the same, together with all required data, is received by the director. The director shall indicate the date of filing on all copies of the final plat and accompanying data.

Sec. 11-1.16. Technical Review, Action On Final Plat,
And Filing Of Plat.

(a) Technical review.

After the final plat and other data are filed, the director shall transmit copies of the final plat and other data to the director of public works, the director of water supply, the sanitary engineer and the district engineer for review. Final plat shall be examined as to whether it is substantially similar to the approved preliminary plat, that the plat is technically correct, as well as to verify the information on the final plat by entering upon the respective subdivisions. If there are any errors or omissions, the subdivider shall be advised by the director within twenty (20) days of filing of the changes or additions that must be made and afforded an opportunity to make corrections. Where only minor corrections are required, the director may grant approval on condition that those minor corrections are made and the final plat is resubmitted within seven (7) days.

(b) Action on final plat.

Upon final approval of improvements according to sec. 11-1.17 or upon entry into an agreement according to sec. 11-1.12, the subdivider may apply for approval of the final plat for recordation.

If the director disapproves said plat, the grounds for disapproval shall be filed in the records of the office of the department of planning, and a copy forwarded to the subdivider. No plat shall be disapproved by the director without affording the subdivider a hearing thereon. Upon final approval, the director shall stamp three (3) copies of the final plat:

"Subdivision Number _____ Approved
For Recordation with the Bureau of Con-
veyances and Department of Taxation,
State of Hawaii."

and such approval shall bear the signature of the director. The office of the planning department shall then retain one (1) copy of the final plat, forward one (1) copy of the final plat to the State tax office, and one (1) copy of the final plat to the subdivider. The approval of the final plat by the director shall not be deemed to constitute or effect an acceptance by the county of the dedication of any street or other easement or way shown on the plat.

(1) No change in a subdivision, or in the plan of a subdivision, already approved, shall be made without the approval of the director.

(2) Land shall not be offered for sale, lease or rent in any subdivision, nor options or agreements for the purchase, sale, leasing or rental of land made until approval for recordation of the final plat is granted by the director.

(3) The approval for recordation of the final plat by the director shall not relieve the subdivider of the responsibility for any error or errors in the dimensions or other discrepancies. Such errors or

discrepancies shall be revised, or corrected, upon request, to the satisfaction of the director.

Sec. 11-1.17. Final Approval Of Improvements And Release Of Surety.

Upon completion of the improvements and utilities in such subdivision as required by this ordinance and certification thereof as provided by sec. 11-1.13, and after the subdivider shall have filed with the department of public works, State department of health and the board of water supply (if applicable) one (1) set of construction plans as actually modified to meet construction requirements, the department of public works, State department of health and the board of water supply (if applicable) shall approve such performance and thereupon discharge the subdivider and surety (in whole or in part according to the terms of his agreement, if any) from the obligation of any bonds and release to him any security posted by him, or authorize and direct such discharge and release by the appropriate agency or agencies, subject to the provisions of sec. 11-1.12(c).

Sec. 11-1.18. Issuance Of Building Permits For Erection Of Buildings In Proposed Subdivisions.

(a) Building permits for the erection of buildings in a subdivision will be issued upon the final approval of improvements required by sec. 11-1.17.

(b) Building permits for the erection of buildings in a subdivision where only minor improvements are required may be issued prior to final approval of improvements required by sec. 11-1.17, where the director is satisfied all of the following conditions are met:

(1) The lot is serviced by a street adequate to provide access thereto, and,

(2) The lot may be adequately served by the existing water system and existing sewer or other sanitary system, and

(3) Service laterals for water, sewer and electricity as well as sidewalks, curbs and gutter and other minor improvements as required will be completed within three (3) months from the issuance of a building permit, or within a longer period where the subdivider shows by a construction schedule or otherwise that more than three (3) months is required for the erection of said building, and

(4) The construction of subdivision improvements is bonded pursuant to sec. 11-1.12.

(c) Building permits for the erection of buildings in a subdivision where major improvements are required may be issued prior to the final approval of improvements required by sec. 11-1.17, in the following situations:

(1) For a building to be used as a model home.

(2) For buildings to be constructed by or on behalf of the subdivider and intended to be sold, leased or rented together with the lot.

(3) Where the director is satisfied by the construction schedule of the subdivider or otherwise, that the building will not be completed before improvements to the subdivision are completed and all subdivision improvements are bonded pursuant to sec. 11-1.12.

(d) Occupancy of any building in a subdivision will not be allowed until and after final approval of improvements required by sec. 11-1.17 is given; provided, however,

that where the director, the director of public works, the director of water supply, the sanitary engineer and other involved officials are satisfied that there will be no detriment to the public health, safety or general welfare, and an occupancy permit has been issued, buildings may be occupied prior to final approval of improvements required by sec. 11-1.17.

Sec. 11-1.19. Consolidation Required Prior To Issuance Of Building Permits.

When a building or a group of buildings forming a singular development is contemplated in two (2) or more contiguous lots in a manner that the common boundary line is disregarded, or when any one (1) of the lots is substandard in size or width, then a consolidation map shall be filed prior to the issuance of a building permit. Improvements shall not be required for the approval of the consolidation; provided, however, should the consolidation be followed by a resubdivision establishing more lots than in existence prior to the consolidation, then improvements according to this ordinance shall be required.

The director may approve the building permit should the preliminary consolidation plat conform basically to the requirements of the final plat; revisions to the consolidation plat for strict conformance of the final plat shall be made by the subdivider and filed with and approved by the director prior to the occupancy of the building.

Sec. 11-1.20. Standards Committee.

(a) There shall be a subdivision engineering standards committee which shall consist of seven (7) members appointed by the mayor with the approval of the council for terms of five (5) years. The director of planning, director of public works and the director of water supply shall be ex-officio members of the committee. Not less than three (3) voting members of said committee shall be registered professional engineers.

(b) The subdivision engineering standards committee shall:

(1) Review all engineering standards and specifications relating to subdivisions which are adopted and kept on file by the department of public works and the department of water supply;

(2) Review proposed modifications, deletions or additions to such existing engineering standards and specifications and transmit the same with recommendations thereon to the respective departments;

(3) Propose the adoption of specifications and standards where none heretofore existed and transmit the same with recommendations thereon to the respective departments; and

(4) Have power to request its ex-officio members to submit for review all engineering standards and specifications relating to subdivisions within their control.

(c) No changes shall be made to any engineering standards and specifications relating to subdivisions which

have been reviewed by this committee, adopted and kept on file with the respective departments, without the committee having first reviewed the proposed changes and transmitted the same with their recommendations thereon to the respective departments.

Sec. 11-1.21. County Not To Receive Dedication Of
Highways Unless Constructed In
Conformity With Ordinance.

The county of Maui shall not take over, receive by dedication, do any repair or construction work upon streets or pavements, water lines, street lighting systems, sewer lines or drainage system, or in any way accept as public highways any street, avenue or alley, in any subdivision hereafter opened or platted in the county of Maui, or any existing street, avenue or alley in the county of Maui, except upon full compliance with the provisions of this ordinance.

Sec. 11-1.22. Large Scale Planned Development.

Exceptions from specific compliances with the provisions of this ordinance may be provided by the director where a plan and program for a complete community, a neighborhood unit, a large-scale shopping center, large industrial area development, or large agricultural area development provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated and covenants or other legal provisions are provided to assure conformity to and achievement of the plan. These developments must be approved pursuant to requirements for

planned developments under the zoning ordinance of the county of Maui. The county shall not accept or receive by dedication any improvements within planned developments which do not conform in all respects to the provisions of this ordinance; provided, further, that the county shall not accept or receive by dedication any underground improvements unless open areas free from structures or vegetation other than grass, are provided and maintained within ten (10) feet from both sides of said improvements.

Sec. 11-1.23. Variances.

Application for a variance from provisions of this ordinance by a subdivider shall state the facts relied upon by the petitioner. Such petition shall be filed with the preliminary plat of the subdivisions. No variance shall be granted unless the board of adjustment and appeals finds the following facts:

(1) That there are special geographical or physical circumstances or conditions affecting said property that are not common to all property in the area.

(2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this ordinance because of the special geographical or physical circumstances or conditions affecting the property.

(3) That said special circumstances or conditions affecting said property are not the result of previous actions pertaining to said subdivision.

(4) That the granting of the variance shall not be detrimental to the public health, safety or welfare or injurious to other property in the vicinity of said property.

Sec. 11-1.24. Appeal.

(a) Appeal may be made to the board of adjustment and appeals from any decision, determination or requirement of the director or any department regarding this ordinance by filing notice thereof in writing to the office of the department of planning within fifteen (15) days after such decision or determination or requirement is made. Such notice shall set forth in detail the action and the grounds upon which the subdivider deems himself aggrieved.

(b) The board of adjustment and appeals, following the filing of said appeal, shall set a time within thirty (30) days for a hearing on the appeal, and such hearings may, for good cause, be continued by order of the board. Upon determination by the board that the decision, determination or requirement of the director or any department regarding this ordinance was in error, the board may modify or overrule the decision, determination or requirement appealed from, and may enter any order or orders in harmony with the spirit and purpose of these regulations. Where no error in the decision, determination or requirement appealed from is determined to exist, the board shall approve the actions of the director or department regarding this ordinance. Action of the board regarding such appeal shall be final.

Sec. 11-1.25. Repeal, Conflict And Validity.

(a) Article 1 of chapter 11 of the permanent ordinances of the county of Maui, as amended, is repealed upon the effective date of this ordinance.

(b) All ordinances and parts of ordinances of the county of Maui in conflict with this ordinance are to the extent of such conflict and no further, hereby repealed.

(c) If any provision of this ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining portion.

Sec. 11-1.26. Violations, Penalties, Remedies.

Any person, firm, or corporation which knowingly violates this ordinance shall be fined not more than one thousand dollars (\$1,000.00). The continuance of any such violation shall be deemed a new violation for each day of such continuance. In addition the county attorney may institute an action to prevent, restrain, correct, or abate any violation of this ordinance and seek such relief by way of injunction or otherwise, as may be proper under the facts and circumstances of the case, in order fully to effectuate the purposes of this ordinance.

In any illegal subdivision, the director may require such improvements as would reasonably comply with the provisions of this ordinance. Such remedial improvements by the director shall be applicable to the subdivider, if he may be found, or the owners of lots in the illegal subdivision at the time of discovery, or both.

Sec. 11-1.27. Effective Date.

This ordinance shall take effect upon its approval; provided, however, that the provisions hereof shall not be applicable to any proposed subdivision that has received preliminary approval prior to the final passage of this ordinance, and provided, further, that any such subdivision that has been granted such preliminary approval shall comply with the applicable ordinance of the county of Maui existing at the time of such preliminary approval."

SECTION 2. This ordinance shall take effect upon its approval.

WE HEREBY CERTIFY that the foregoing Ordinance No. 789 (Bill No. 18 - 19 74):

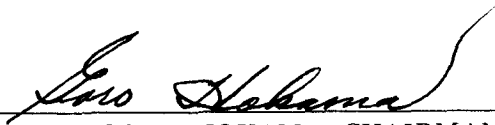
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 17th day of May, 1974, by the following votes:


AYES: Councilmen Joseph E. Bulgo, E. Loy Cluney, Harry N. Kobayashi, Marco M. Meyer, Manuel S. Molina, Lanny H. Morisaki, Bernard H. Tokunaga, Doris K. Yamaguchi, and Chairman Goro Hokama.

NOES: None.

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 17th day of May, 1974.

Dated at Wailuku, Maui, Hawaii, this 17th day of May, 1974.


GORO HOKAMA, CHAIRMAN,
Council of the County of Maui


JAMES S. USHIJIMA, COUNTY CLERK,
County of Maui

The foregoing Ordinance is hereby approved this 20th day of May, 1974.


ELMER F. CRAVALHO, MAYOR,
County of Maui

Passed First Reading on May 3, 1974.

Effective date of Ordinance: May 20, 1974

I HEREBY CERTIFY that the foregoing is a true and correct copy of ORDINANCE No. 789, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Maui, Hawaii on

County Clerk, County of Maui



"3 Lots or Less"
Subdivision Agreements
County of Maui
21 Notebooks
10,000 Pages



"3 Lots or Less"
Subdivision Agreements
Kihei

Chris Salem
February 2, 2014

5106 Lower Honoapiilani Road
Lahaina, HI 96761

County of Maui
Department of Corporation Counsel
200 South High Street
Wailuku, Hawaii 96793

Attention: Attorney Michael Hopper

RE: Disclosure to the Maui County Council

Dear Mr. Hopper;

On June 17, 2013, at the scheduled meeting of the Council of Maui County Infrastructure and Environmental Management Committee, an oceanfront 3 lot subdivision on South Kihei Road was grandfathered into a "deferral" of the developer's roadway frontage improvement obligations.

Public Works Director David Goode stated to the Council Members that the "deferral" of the developer's financial obligations was in accordance with the ordinance and was approved by Corporation Counsel. The submission included a request for acceptance of the dedication of the subdivision frontage road widening lot along Phase IV of South Kihei Road.

I question whether full disclosure on the history of this oceanfront subdivision was submitted to the Council Members to allow them to decide whether grandfathering of the "deferral" ordinance was warranted, lawful, or in the public interest.

Since 1974, Title 18 of the Maui County Code states that subdivisions of land into 4 parcels or more requires full roadway and drainage improvements with no exceptions. Under the specific language of the Maui County Code, Section 18.20.040, the deferral of developer's roadway and drainage obligations for "3 Lots or Less" subdivisions was a onetime event. Further divisions of the parent parcel do not qualify for developers to defer their financial obligations.

"The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels. "

The public documents indicate that Corporation Counsel and the Department of Public Works may not have provided the full disclosure to the Maui County Council of the historic facts relating to the prior divisions of the parent parcel which include multiple recorded subdivision agreements drafted and recorded by the Department of Corporation Counsel.

Attached is a map that exhibits the land division history on this oceanfront land along with the recorded agreements;

- 1) In 1984, the underlying parent parcel was subdivided (Luca File #3.1206) and the Department of Corporation Counsel executed and recorded a "3 Lots or Less" roadway improvement deferral agreement. (Document #17681523)

The developer was represented by Attorney Paul Mancini of the Law Firm of Case, Kay, and Lynch. For the record, Attorney Mancini is a former Attorney with the Department of Corporation Counsel.

- 2) In 2002, one of the two resulting oceanfront parcels of the 1984 subdivision was further divided by Hawaii Marketing Ventures into a 3 lot subdivision. (Luca File#3.1871) The Department of Corporation Counsel executed and recorded a second "one time", "3 Lots or Less" roadway improvement deferral agreement. (Document #2002-055168)

In 2002, on behalf of Public Works Director David Goode, former Deputy Director Milton Arakawa of the Department of Public Works signed off on the 3 lot re subdivision of the oceanfront parcels originally divided in 1984.

The original parent parcel was now divided into 4 oceanfront parcels.

- 3) In 2005, the other resulting oceanfront parcel of the 1984 subdivision was further divided in a 3 lot subdivision. (Luca File 3.2119) Attorney Michael Hopper of the Department of Corporation Counsel executed and recorded a third "one time", "3 Lots or Less" roadway improvement deferral agreement. (Document #2005-034849)

In 2005, on behalf of Public Works Director Gil Agaran, former Deputy Director Milton Arakawa of the Department of Public Works signed off on the re subdivision of the oceanfront parcel originally divided in 1984.

The original parent parcel was now divided into 6 oceanfront parcels.

Summary

Since 1974, the Maui County code required subdivisions of more than four lots to install full roadway and drainage improvements to their subdivision frontages. The original oceanfront parent parcel along South Kihei Road has been subdivided 3 times resulting in 6 oceanfront parcels. Three separate overlapping "one time" "3 Lots or Less" Subdivision Agreements have been drafted and recorded by Corporation Counsel.

- If history repeats itself, County and Federal taxpayer funds will be used to pay for oceanfront developers' subdivision entitlement obligations along Phase IV of South Kihei Road. The length of the development frontage along South Kihei Road is 423 lineal feet. Engineering studies indicate that similar frontage improvement costs range from \$300 to \$1,000 per linear foot.

The purpose and intent of this letter is to provide you the opportunity to explain why these historic facts are not a part of the June 17, 2013 public record and submission to the Maui County Council? Of equal concern, the public records indicate that no Park Fees were paid on either of the 3 overlapping oceanfront subdivisions.

Chris Salem
February 2, 2014

5106 Lower Honoapiilani Road
Lahaina, HI 96761

Conclusion

The Administration and Corporation Counsel has never proposed to the Maui County Council any system or formula for assessment of these "deferred" developer financial obligations. There are no records or ledgers with the Department of Finance to track the monies owed. There has never been an anticipated revenue submitted by the Department of Public Works for any County Budget that the Council has approved. Reasonable minds agree with Public Works Director Goode that the whole "deferral" history spanning many decades has become "crazy".

To further this point, the developers of 3 separate oceanfront subdivisions resulting in 6 multimillion dollar homes will end up paying nothing for their development rewards. There is every indication that this abuse of the "3 Lots or Less" ordinances has now expanded to the Park Fee category and SMA Permits.

To substantiate this claim and investigation, I would like to inform you that we now have in our possession over 10,000 pages of Corporation Counsel developer contractual agreements that have been concealed from the public and the Maui County Council for over 13 years. At immense personal expense, each and every "deferral" agreement has been plotted on Google maps and cataloged in 21 notebooks by location, parcel number, and frontage linear feet of "deferred" financial obligations.

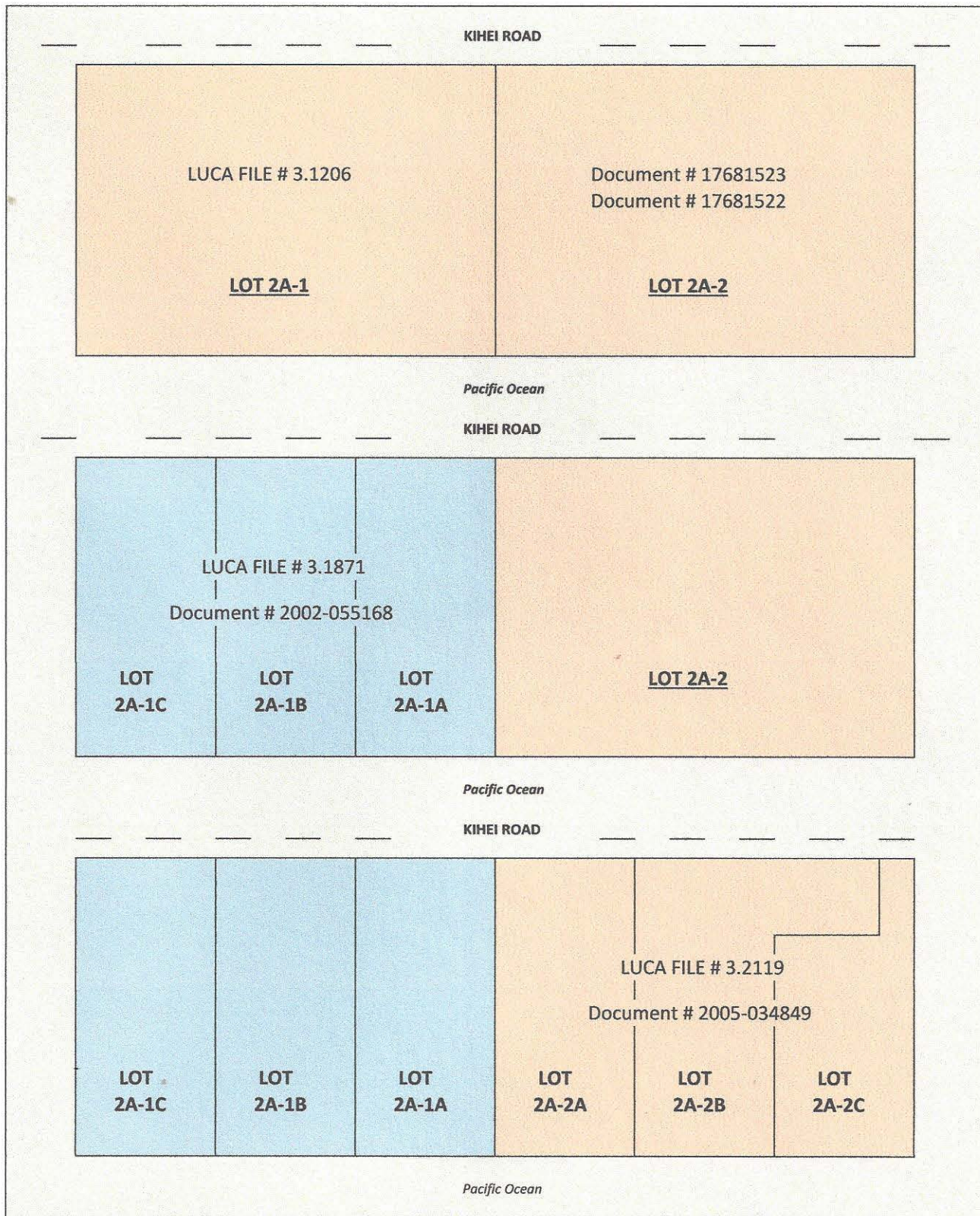
The degree of manipulation of this ordinance is overwhelming. Commercial developments, multi family developments, and overlapping "3 Lots or Less" agreements approved to form and legality by the Department of Corporation Counsel are executed all over the islands of Maui County. I have attached a photo of the 21 notebooks containing the previously concealed deferral agreements along with a sample plot of just one of the aerial maps. The South Kihei Road Phase IV subdivision referenced above is "M-N-O".

My estimates, which will be supported by engineering data, concludes that developers of multimillion dollar developments have shifted tens of millions of dollars of their entitlement obligations to the taxpayers. In many instances, the developers were represented by Attorneys previously employed by the Department of Corporation Counsel. In the case of my personal home and subdivision, the developer's attorney was employed simultaneously by Corporation Counsel and the Developer and failed to inform the Maui County Council and the public of this fact during the procurement process.

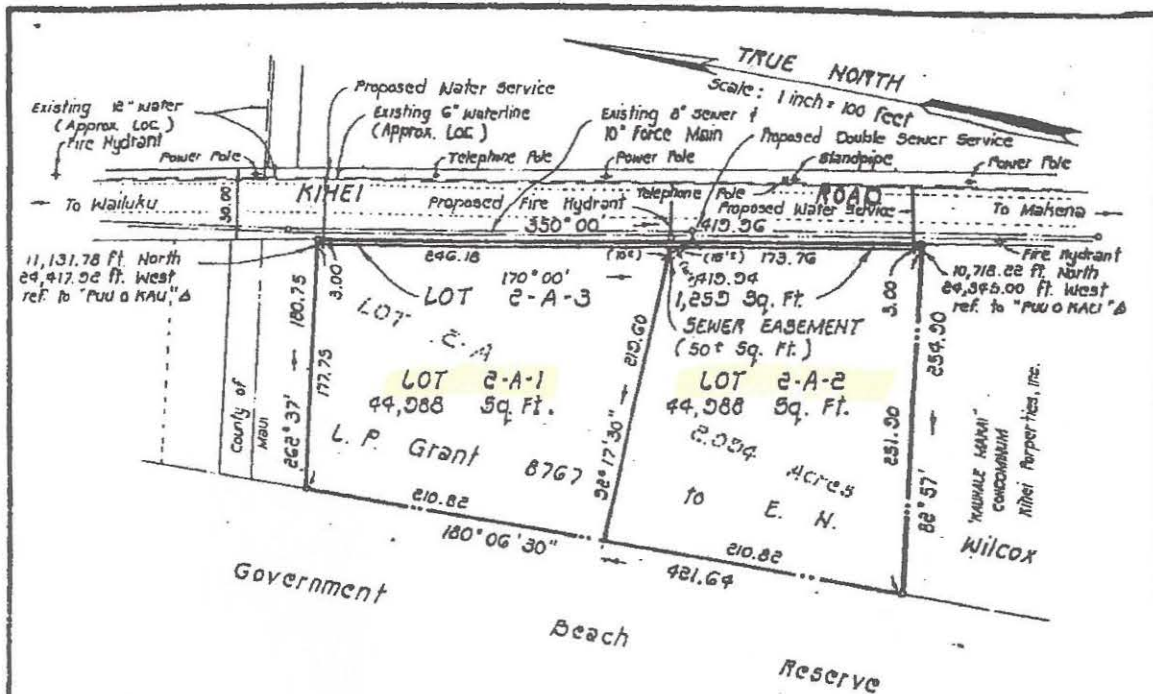
In closing, the Department of Corporation Counsel is hereby noticed to respect the Maui County Charter and allow the Maui County Council to independently investigate these findings without influence, intimidation, or continuing character assassinations. My attorney David Cain will address this request in further detail directly to the Maui County Council.

Sincerely;

Chris Salem



"3 Lots or Less"
South Kihei Road



WAIHOLI - KEOKEA BEACH HOMESTEADS

SUBDIVISION OF LOT 2-A INTO LOTS 2-A-1, 2-A-2 AND 2-A-3 AND DESIGNATION OF A SEWER EASEMENT

Being a portion of L. P. Grant 8767 to E. N. Wilcox

WAIHOLI, WAILUKU, (KULA), MAUI, HAWAII

OWNERS: Joseph G. Kealoha Jr.

Edwin T. Ige

Elsie A. Ige

Edwin T. Ige Jr.

Prepared at the request of owners:

MILOLANI HUI

250 Waiolu Beach Rd.

Wailuku, HI. 96793

FINAL SUBDIVISION APPROVAL

3.1206

Approved for Recordation with the Bureau of Conveyances and Department of Taxation, State of Hawaii

SCALE: 1 inch = 100 feet

DATE: January 12, 1983

REVISED: March 3, 1983

REVISED: August 16, 1983

REVISED: December 29, 1983

Prepared by:

NORMAN SAITO

ENGINEERING CONSULTANTS, INC.

Kahului, HI. 96732

NOTES:

1. Sewer Easement for lateral purposes in favor of Lot 2-A-1.
2. All bearings and record coordinates refer to Government Survey Triangulation Station "PUU O KAU".
3. Owners of adjoining land parcels taken from Tax Maps.
4. All lot corners marked with 1/4" inch pipe unless otherwise noted.
5. Lot 2-A-3 is a 3-ft. wide road widening lot, to be dedicated to the County of Maui.

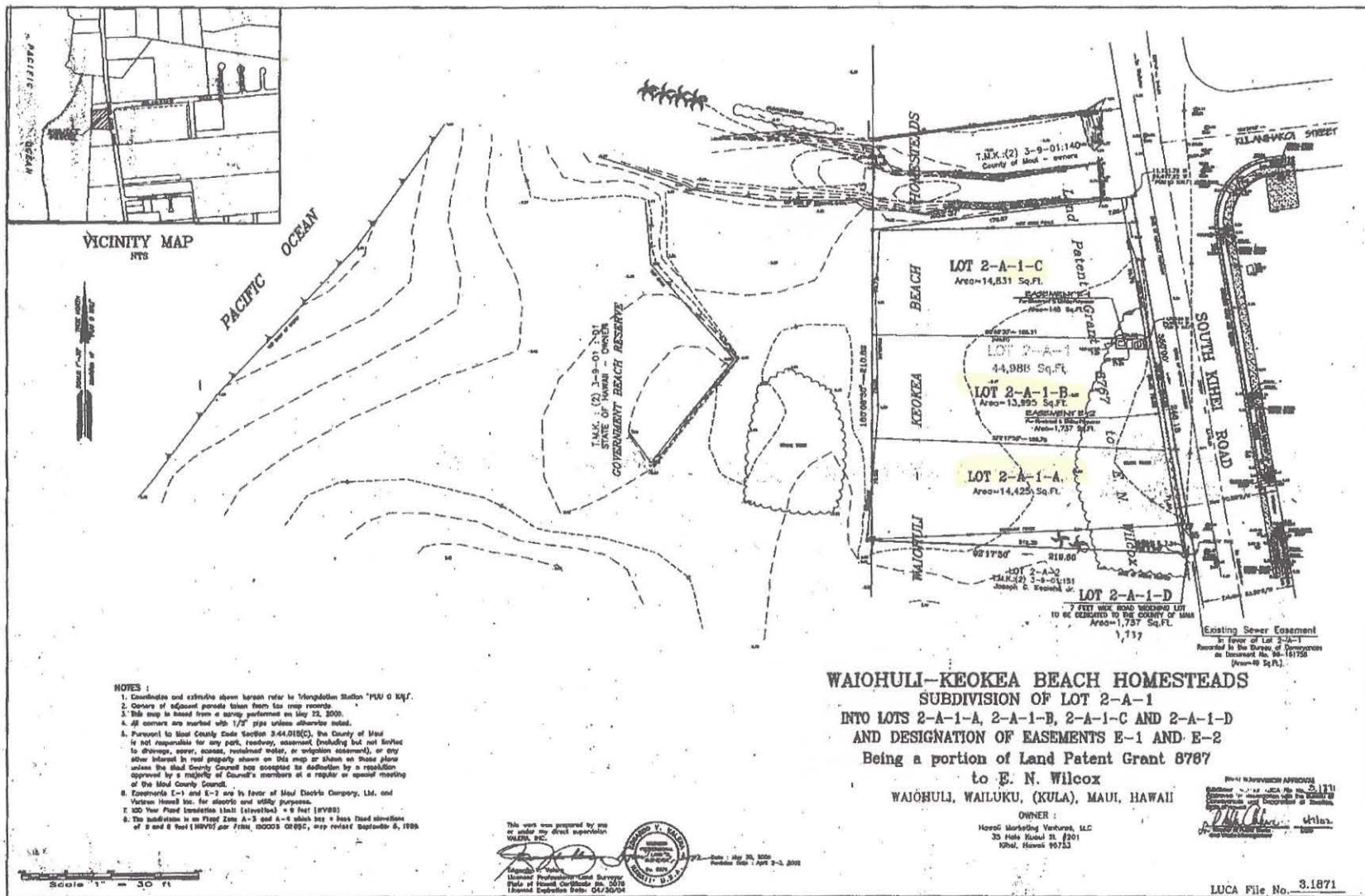
Director of Public Works

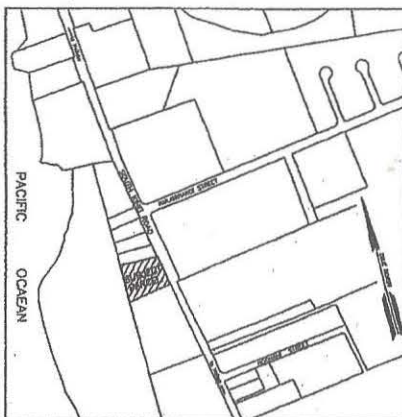
date

This work was prepared by me or under my direct supervision.

George F. Newcomer

George F. Newcomer
Registered Professional
Land Surveyor No. 2715-3
LUCA File No. 3.1206



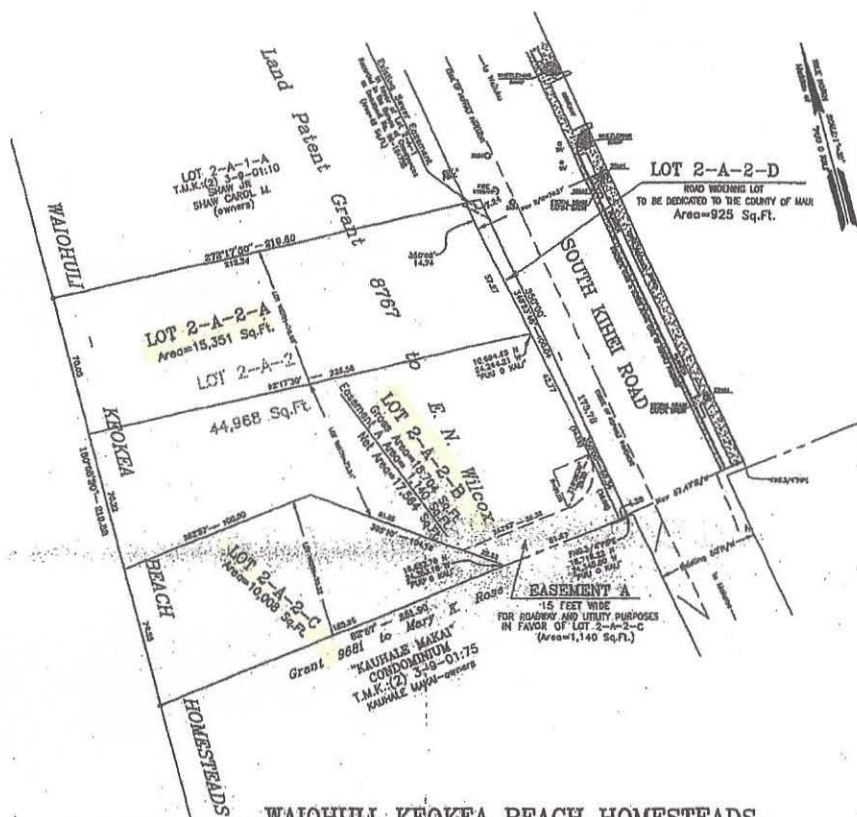


VICINITY MAP
NTS

NOTES :

1. Coordinates and azimuths shown herein refer to Triangulation Station "PUU O KOLE".
2. Owners of adjacent parcels taken from tax map records.
3. This map is based from a survey performed on November 7, 1995 and May 22, 2006.
4. All corners are marked with 1/2" pins unless otherwise noted.
5. Easement A is a 15 feet wide for roadway and utility purposes in favor of Lot 2-A-2-C affecting Lot 2-A-2-B.
6. Pursuant to Maui County Code Section 3.44.015(C), the County of Maui is not responsible for any park, road-way, easement (including but not limited to drainage, sewer, access, reclaimed water, or irrigation easement), or any other interest in real property shown on this map or shown on these plans unless the Maui County Council has accepted its dedication by a resolution approved by a majority of Council's members at a regular or special meeting of the Maui County Council.
7. Lots are located on Flood Zone AE with a base flood elevation of 7' above mean sea level datum.
8. Lot 2-A-2-D is a road widening lot to be dedicated to the County of Maui.
9. Existing Sewer Easement affecting Lots 2-A-2-A and 2-A-2-B for sewer purposes, varying width, 49 square feet in favor of Lot 2-A-1 is recorded in the Bureau of Conveyances on Document No. 98-161750.

T.M.K. (2) 3-9-01 : 01
STATE OF HAWAII - OWNER
GOVERNMENT BEACH RESERVE



WAIHOLI-KEOKEA BEACH HOMESTEADS
SUBDIVISION OF LOT 2-A-2
INTO LOTS 2-A-2-A, 2-A-2-B, 2-A-2-C AND 2-A-2-D
AND DESIGNATION OF EASEMENT A
Being a portion of Land Patent Grant 8767
to E. N. Wilcox
WAIHOLI, WAILUKU, (KULA), MAUI, HAWAII

This work was prepared by me
or under my direct supervision
and I am a duly Licensed Professional Land Surveyor
State of Hawaii Certificate No. 5075

Date : August 5, 1998
Revised : October 13, 1998
Revised : September 17, 2004
Revised : April 6, 2012
Revised : December 20, 2012
Revised : November 27, 2013
Revised : March 11, 2015

OWNER :
Joseph G. Keoloha Jr.
P.O. Box 1142
Wailuku, Maui, Hawaii 96793

FINAL SUBDIVISION APPROVAL
Subdivision File Number : 3-2117
Approved for Recordation with the Bureau of Conveyances and Department of Taxation, State of Hawaii.
Director of Public Works : [Signature]
Date : 01/27/15

T.M.K.(2) 3-9-01:151

Scale 1" = 30 ft

LUCA File No. 3.2119



R-250

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 22, 2005 08:01 AM

Doc No(s) 2005-034849

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 23

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X)

PICK-UP ()

Development Services Administration

TG A. 351474C

County of Maui

200 South High Street

RS

Wailuku, Maui, Hawaii 96793

S:\CLERICAL\KAO\FW\Master Templates\3lotsRev.wpd(4/03)

Total Pages (10)

TMK No. (2) 3-9-001:151

Total No. of Pages: 10

Subdivision File No. 3.2119

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)THIS AGREEMENT is made and entered into this 1st day
of February, 2005, by and between Joseph G. Kealoha Jr._____, whose principal place
of business is 409 Liholiho St., Wailuku, Maui, Hawaii 96793

_____ and whose mailing address is _____

_____, ("Owner"), and the

COUNTY OF MAUI, through its Department of Public Works and
Environmental Management, a body politic and corporate, and a
political subdivision of the State of Hawaii, having its principal
place of business and mailing address at 200 South High Street,
Wailuku, Maui, Hawaii 96793.



R-1655 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 28, 2002 08:02 AM
Doc No(s) 2002-055168



/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT 01 REGULAR SYSTEM
AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()
Land Use and Codes Administration
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

A:\FORMS\3lotsRev.wpd(9/00)

8 pages

TMK No. (2) 3-9-001:010

LUCA File No. 3.1871

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, HAWAII MARKETING VENTURES, LLC,
a Hawaii limited liability company, whose residence
address/principal place of business is 35 Hale Kuai Street,
Suite 201, Kihei, Hawaii 96753 and whose
mailing address is 35 Hale Kuai Street, Suite 201, Kihei,
Hawaii 96753, ("the Owner"), is/are the owner(s) of a
certain parcel of real property identified and described in Land
Use and Codes Administration File No. 3.1871,
incorporated herein by reference and made a part hereof, and
situate at Waiohuli, Wailuku, Kula, Maui, Hawaii,

TG- Ige / Kealoha

RECORDATION REQUESTED BY:

84- 21588

APR 22 AM 01

17681 522

AFTER RECORDATION RETURN TO:

Paul R. Mancini, Esq.
Case, Kay & Lynch
33 Lono Avenue, Suite 470
Kahului, HI 96732

RETURN BY: MAIL () PICK-UP ()

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, Edwin T. Ige, Elsie A. Ige, Edwin T. Ige, Jr. (the "Iges"), and Joseph G. Kealoha, Jr. ("Kealoha") are the owners, as cotenants, of that certain 2.22 acre parcel of land, portion of the land described in and covered by Land Patent Grant Number 8767 to Mrs. Eleanor N. Wilcox, situate, lying and being at Waiohuli-Keokea, in the District of Wailuku, Island and County of Maui, State of Hawaii, being Lot Number Two-A (2-A) of the "Waiohuli-Keokea Beach Homesteads" (the "Property"), also referred to by tax map key as 3-9-01:10, which is shown as Exhibit "A" attached hereto and by this reference incorporated herein;

WHEREAS, by an "Order Dividing Property And Referring Partition Plan To The County Of Maui", entered January 25, 1983, by the Second Circuit Court of the State of Hawaii (the "Court"), in a partition action entitled Ige v. Kealoha, Civil No. 6440(2), the Court approved a plan for the partition of the Property into "Lot 2-A-1", which the Court allotted to the Iges, and Lot 2-A-2, which the Court allotted to Kealoha (the "Partition" and the "Partition Plan").

WHEREAS, the County of Maui (the "County") is a body politic and corporate, and a political subdivision of the

Chris Salem

December 2, 2013

5106 Lower Honoapiilani Road

Lahaina, HI 96761

County of Maui
250 South High Street
Wailuku, HI 96793

Attention: Public Works Director David Goode

RE: Subdivision Parks Fees

Dear Mr. Goode;

The Department of Parks & Recreation has confirmed they have no records of park fees being paid on Subdivision file #3.2119, #3.1871, and #4.805. Please confirm these findings are accurate.

Thank You.

Sincerely;

Chris Salem

Cc: Parks & Recreation

Cell 808 280-6050
Chrissalem8@yahoo.com