# AGENDA

1. **ROLL CALL**

2. **ACCEPTANCE OF AGENDA**

3. **OLD BUSINESS**
   

4. **ADJOURNMENT**
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10. Revision to Part III, Section XII – Modification of Requirements. MAD. 5-9-12 Page 32
MANAGER’S REPORT NO. 11-24:

September 9, 2010

Re: Committee Discussion and Possible Action on Part III Rule Amendments – Establishing Standards for Subdivision Water Systems

RECOMMENDATION
It is recommended that the Board amend the Part III Standards for Subdivision Water Systems noted in the attached rule change.

BACKGROUND

The rule currently allows the Manager to make changes and various Managers have exempted various subdivisions. I would prefer to have regulation established by rule rather than by the current thought or even changing thoughts of the Manager.

The goal of these changes is twofold:

1. To allow subdivisions for governmental purposes to move forward provided water is not needed for the lot. There is always the portion of land that will stay in the hands of the current owner or some other owner. This non-government piece will have whatever rights it had prior to the subdivision. The action may result in a higher cost per sq foot to meet DOW water requirements. In the end it is a decision of the land owner to require or not the government to put in infrastructure improvements before a particular piece of land is subdivided for either purchase or through donation to the government.

2. Allow subdividers with existing locked lots or boundary changes that do not affect water demand to relocate them to more convenient locations. In this case we limit the changes to lots that are buildable. In other words if they are in a gulch or in a stream or other such non-buildable site we would not allow the change.

Respectfully submitted,

[Signature]

David R. Craddick, P.E.
Manager and Chief Engineer

cab
Attachments
Mgrp/Rule Amendment: Part III - Establishing Standards for Subdivision Water Systems (9-16-10)/cab

---4338 Pua Lake Street, Ulu'e, Kauai, Hawaii 96765-5700---
Phone No. (808) 245-5400 --- Administration FAX No. (808) 245-5428 --- Engineering/Fiscal/Shop FAX No. (808) 245-5813
Board Policy 22 – Budget and Contract Award process. (This Policy is added for completeness and is not relevant to the request being made and nothing will be changed with this policy.)

Procedural processes that are suggested to be affected by Policy 15A, if approved by the Board, are enclosed for your review.

Approval of this request will allow the finance committee and Board to focus on financial issues that are not ministerial in duty. The Board could require a personal Bond for the Manager which would be paid by the Board which could protect the Board from fraudulent acts.

The recommended Board of Water Supply Policy 15A was provided.

Mr. Oyama moved to receive and refer Manager’s Report No. 11-23 to the Rules Committee, seconded by Mr. Costa.

Manager Craddick noted that the existing Board Policy No. 15 will be replaced by Board Policy 15 A. There was no modification of Board Policy No. 3 unless the Board wanted to modify it.

The motion was amended to receive and refer Manager’s Report No. 11-23 to the Rules Committee for consideration, and to look at Board Policy No. 3 to see if any changes are necessary.

With no further discussion; by a unanimous vote; motion was carried.

Re: Manager’s Report No. 11-24 – Committee Discussion and Possible Action on Part III Rule Amendments – Establishing Standards for Subdivision Water Systems

RECOMMENDATION
It was recommended that the Board amend the Part III Standards for Subdivision Water Systems noted in the attached rule change.

BACKGROUND
The rule currently allows the Manager to make changes and various Managers have exempted various subdivisions. I would prefer to have regulation established by rule rather than by the current thought or even changing thoughts of the Manager.

The goal of these changes is twofold:

1. To allow subdivisions for governmental purposes to move forward provided water is not needed for the lot. There is always the portion of land that will stay in the hands of the current owner or some other owner. This non-government piece will have whatever rights it had prior to the subdivision. The action may result in a higher cost per square foot to meet DOW water requirements. In the end it is a decision of the land owner to require or not require the government to put in infrastructure improvements before a particular piece of land is subdivided for either purchase or through donation to the government.
2. Allow subdividers with existing land locked lots or boundary changes that do not affect water demand to relocate them to more convenient locations. In this case we limit the changes to lots that are buildable. In other words if they are in a gulch or in a stream or other such non-buildable site we would not allow the change.

Manager Craddick noted that we have additional material as a handout on what the Council is doing on the same matter, and we should see how it fits in with what we are proposing.

Mr. Oyama moved to receive Manager’s Report No. 11-24 and refer the draft Rule Amendments to the Rules Committee for the October meeting, with the staff providing the proposed language, seconded by Mr. Costa; by a unanimous vote; motion was carried.

Re: Manager’s Report No. 11-25 – Memorandum of Agreement, Job No. 05-05, PLII-30, Nawiliwili, Niumalu and Kupolo Pipeline Replacement, Lihu’e Water System

RECOMMENDATION:
It was recommended that the Board approve the Memorandum of Agreement (MOA) document; whereby, the Board of Water Supply, County of Kauai, agrees to abandon existing waterline facilities within certain County roads located as specified above in the Nawiliwili and Lihu’e Districts, Kauai, Hawaii. The MOA binds the Board to remove the abandoned waterlines should the Department of Public Works require its removal in the future.

BACKGROUND:
Construction plans call for the abandoning of all existing water facilities as required during the Nawiliwili-Kupolo Mainline Replacement installation. The Department of Public Works, County of Kauai, has asked the Department of Water to enter into the Memorandum of Agreement in order to leave existing water facilities abandoned in place. The MOA binds the Board to remove the abandoned waterline in the County Right-of-Ways should the Department of Public Works require its removal in the future.

Mr. K. Fujimoto noted that the MOA has been signed by the County but we are still waiting for the State to reply on our request for the same.

Mr. Costa moved to approve the Memorandum of Agreement for Job No. 05-05, seconded by Mr. Oyama; by a unanimous vote; motion was carried.

Re: Manager’s Report No. 11-26 – Dedication Deed for Water Tank Site and Water Well Sites from Alexander & Baldwin, Inc., and McBryde Sugar Company Limited, TMK: 2-5-001:002(port) and 001(port), Omao, Koloa District, Kaua‘i, Hawaii

It was recommended that the Dedication Deed for TMK: 2-5-001:002(port) and 011(port), Omao, Koloa District, Kauai, Hawaii be approved; whereby Alexander & Baldwin, Inc. and McBryde Sugar Company, Limited, both Hawaii Corporations, hereby dedicate, grant and convey unto the Board of Water Supply, the real property described as Lot C-1-B, Lot C-1-C and Lot C-1-D, and further described in exhibit “A”.

Manager Craddick indicated that Kukuiula wants an agreement for water allocation. That agreement will be forthcoming once we get it.
SECTION I – DEFINITIONS

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows.

1. The word "DEPARTMENT" shall mean the Department of Water, County of Kauai, consisting of a board of water supply, a manager and chief engineer and the necessary staff.

2. The word "BOARD" shall mean the Board of Water Supply of the Department.

3. The term "MANAGER [AND CHIEF ENGINEER]" shall mean the person holding the office of Manager and Chief Engineer of the Department.

4. The word "SUBdivider" shall mean a 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.

5. The word "SUBDIVISION" shall mean improved or unimproved land or lands divided or proposed to be 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 of such parcels, and shall include re-subdivision, and when appropriate to the context shall related to the process of subdividing of the land or territory subdivided and shall include horizontal or vertical condominium regime.

6. The word "COMMISSION" shall mean the Planning Commission of the Planning Department, County of Kauai.

7. The words "PUBLIC WATER SYSTEM" shall mean the water system owned and operated by the Board.

8. The words "SUBDIVISION WATER SYSTEM" shall mean the water system, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water and fire protection for such subdivision and, where necessary, sources of supply.

9. The word "DIRECTOR" shall mean the person holding the office of the Planning Director of the Planning Department, County of Kauai.

10. The term "FACILITIES RESERVE CHARGE" shall mean the fee to be paid by subdivisions or, when applicable, new customers as their proportionate share in improvements to the Department's Public Water System.

11. The word "MAIN" or "MAIN PIPE" shall mean the Public Water System Department's supply or distribution pipe to which service and hydrant connections are made.

12. The term "PRESSURE ZONE" shall mean the elevation served from forty pounds per square inch below a storage tank to a pressure regulation valve, pressure regulator valve to pressure regulator valve or from pressure regulator to storage tank.
13. The term "SERVICE CONNECTION" shall mean the main tap, pipe fittings, meter and valve from the water main to and including the shut-off valve on the consumer's side of the meter.

14. The term "SERVICE AREA" shall mean the area served by the continuous connection from source to service.

SECTION II - AVAILABILITY OF WATER AND APPROVAL OF SUBDIVISION MAP

1. Extensions from and connections to the public water system for subdivisions will be approved by the Department Manager where pressure conditions permit, provided the following have been met:

   a. The Department Public Water System has a sufficient source, storage, transmission and distribution pipelines water-system developed for domestic public use and, if required by the Department, a sufficient water system for fire protection. The determination of sufficiency will be based on application of the Water System Standards applied at the proposed connection location and pressure zone where the additional water service demand is proposed and established engineering practices.

   b. The additional water service demand on the existing Public Water System will not be detrimental to people already being served in that the service areas as determined by the Manager. In order for the Manager to determine if the additional service will be detrimental to people already being served in the service area, present consumers, the department may require the subdivider to estimate the amount of water demand needed to be consumed by the proposed subdivision water system. The subdivider may use the subdivision water demand calculator found in the Departments web site www.kauaiwater.org.

   c. The subdivision water system complies with the rules and regulations, and is designed and constructed in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai'i and the County of Kauai, and (2) the 2002 Water System Standards ("Standards") developed by Hawai'i's four county departments of water, as amended by the Department's 2005 Amendments ("2005 Amendments") to the Standards. The Standards and the 2005 Amendments are hereby incorporated by reference into the Department's rules. The Manager and Chief-Engineer may, for good cause shown and based on established engineering practices, permit departure from the Standards or 2005 Amendments, or both.

   d. The facilities reserve charge due payment for the subdivision has been paid, or a bond posted in lieu thereof, as provided under Section XIII of this Part.

2. In areas where there is no Public Water System available or where large quantities of water are required or a large investment is necessary to provide service the subdivider will be informed as to the conditions under which the subdivision may be approved and, where appropriate, refunds made.

3. After the Director submits the subdivision map to the Department, the Department Manager will inform the Director in writing of its approval, requirements for approval, or its disapproval of a subdivision map after taking the above into consideration.

SECTION III - FACILITIES RESERVE CHARGE

1. The subdivider shall pay to the Department the facilities reserve charge due payment established in Part 4 of the Rules and Regulations of the Department, for each (additional) parcel created by the subdivision, including the first lot, except for (as provided below) when facilities reserve charges have already been paid by the developer or subdivider.
2. No facilities reserve charge will be made zero for lots created by the subdivision which, by representation of the subdivider, will not be served by the Department's Public Water System. In the event that the Department determines subdivision representation that the subdivision will not be served by the Department's Public Water System, but later water service is requested, full payment of the then applicable facilities reserve charge must be paid. A statement to this effect shall be clearly lettered on the subdivision map.

3. Facilities reserve charge will be zero made for any parcel which is already serviced from the Public Water System by an existing meter.

4. Facilities reserve charge will be zero for any parcel which was serviced from the Public Water System or which was served by a meter within 365 days prior to formal submittal of the subdivision request to the Planning Department.

45. The subdivider shall pay the facilities reserve charge to the Department prior to subdivision approval by the Department Manager, except that subdivision approval may be given prior to construction of required improvements or the payment of the facilities reserve charge by the posting of a bond for the down payment, as described in Section XIII of this Part.

56. In the event the facilities reserve charge down payment has been paid for a subdivision and subsequently the subdivision is consolidated or otherwise reduced in initially approved size, the facilities reserve charge will be returned provided the consolidation is completed within 365 days following the prior-subdivision approval before the facilities reserve charge payment made has been encumbered for a project to serve the development or else the subdivider must wait until water requests are approved that use the portion of the facilities reserve charge that was to have covered the additional lots or density less an administrative fee of two percent.

SECTION IV - EXTENSIONS TO SUBDIVISION

1. **General Requirement.** The subdivider shall install and pay for the subdivision water system required from the public water system to the subdivision. All such subdivision water systems shall be designed and located in accordance with the Water System Standards of the Department. The subdivider may be required to improve the public water system if the public water system is inadequate to serve the subdivision.

2. **Increase in Size of Water Main or Transmission Line Extensions Within 100' of Proposed Subdivision for Service to Other Areas.** Whenever the Department Manager finds it necessary that the existing water mains or transmission lines proposed are within 100 feet of the proposed subdivision and are to be used to deliver water to a proposed subdivision and are should be of a greater capacity than is required to provide adequate service and fire protection for such subdivision, in order to supply water and fire protection to other property not in the subdivision currently served by the public water system, the Department shall require the subdivider to install mains of such greater capacity to the proposed subdivision property boundary along the road fronting the proposed subdivision to allow other connections or extensions to the lines located past the proposed subdivision.

3. **Increase in Size of Water Main or Transmission Line Extensions Beyond 100' of Proposed Subdivision for Service to Other Areas.** Whenever the Manager finds that existing water mains or transmission lines are beyond 100 feet of the proposed subdivision and are needed to deliver water to a proposed subdivision and are of a greater or lesser capacity than is required to provide adequate service and fire protection for such subdivision, in order to supply water and fire protection to other property currently or not served by the public water system, the Department shall require the subdivider to install mains of such greater capacity to the proposed subdivision property boundary along the road fronting the proposed subdivision to allow other connections or extensions to the lines located past the proposed subdivision.

34. **Reimbursement to Subdivider for Additional Costs of Water Mains or Transmission Lines beyond 100' of the Proposed Subdivision to Subdivisions.** When the subdivider is required to install a larger sized water main or transmission line for the reasons set forth in the preceding paragraph, the Department
Board will reimburse the subdivider for improvement work that was done according to State procurement laws and approved by the Board, as soon as practicable after the acceptance by the Department-Manager of the completed work improvements, the additional cost of the installation over and above the cost of the mains that would have been required, provided, that reimbursement will not be made to the subdivider where such larger mains or mains will serve only areas under the same ownership as the subdivision under consideration.

Before the subdivider enters into a contract where a reimbursement to the subdivider for additional costs of mains to the subdivision will be made, the Department-Board shall review and either approve or disapprove the contract for amounts over five hundred thousand dollars ($500,000). The Manager shall review and either approve or disapprove the contract for amounts less than five hundred thousand dollars ($500,000). If the contract is disapproved, the subdivider shall revise the contract until its form and content is acceptable to the Department-Board for cases over $500,000 or Manager in cases less than $500,000.

After the installation has been completed, payments or fund transfer provided, and accepted by the Department-Manager, the subdivider shall furnish the Department-Manager with an affidavit itemizing the costs incurred by him in the installation of the said larger mains or transmission lines before final reimbursement is made. The said additional costs shall be determined by the Department-Manager.

SECTION V - INSTALLATIONS WITHIN SUBDIVISION

1. General Requirement: The subdivider shall install in accordance with these rules and regulations and the standards of the Department and pay for the subdivision water system required within a subdivision.

2. Increase in Size of Water Mains or Transmission Lines with Subdivisions for Benefit of Other Areas: Whenever, in order to provide for existing or future services beyond the boundaries of a subdivision, the Department-Manager finds that the mains to be installed within the subdivision should be of greater capacity than would be required to provide adequate service within such subdivision, the Department-Manager will require the subdivider to make installations of such greater capacity.

3. Reimbursement to Subdivider for Additional Costs of Water Mains or Transmission Lines within Subdivisions: When the subdivider is required to install a larger sized water main or transmission line for the reasons set forth in the preceding paragraph, the Board will reimburse the subdivider for improvement work that was done according to State procurement laws and approved by the Board, as soon as practicable after the acceptance by the Manager of the completed work improvements, the additional cost of the installation over and above the cost of the mains that would have been required, provided, that reimbursement will not be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

Before the subdivider enters into a contract where a reimbursement to the subdivider for additional costs of mains to the subdivision will be made, the Board shall review and either approve or disapprove the contract for amounts over five hundred thousand dollars ($500,000). The Manager shall review and either approve or disapprove the contract for amounts less than five hundred thousand dollars ($500,000). If the contract is disapproved, the subdivider shall revise the contract until its form and content is acceptable to the Board for cases over $500,000 or Manager in cases less than $500,000.
SECTION VI - SIZES OF MAINS, HYDRANT SPACING

FIRE PROTECTION

1. **Sizes of Mains.** Any subdivision, except where fire protection facilities are not required by the Department, hereinafter to be laid out within the County shall provide 6-inch minimum water mains or larger in residential districts and 812-inch water mains or larger in business, industrial and hotel and apartment districts. Sizing of mains within agricultural subdivisions and subdivisions where fire protection facilities are not required shall be determined by the Department.

2. **Hydrant Spacing.** Fire hydrants shall be spaced not more than 350 feet in business, industrial, hotel and apartment districts, 500 feet in urban residential districts and 600 feet in rural residential district (Urban and rural refer to boundaries established by the State Land Use Commission). Fire hydrants may not be required in agricultural subdivisions as determined by the Department. The Department Manager will determine the location of all hydrants. All fire hydrants required for adequate fire protection of a subdivision will normally be located within the subdivision.

If, in the interest of better fire protection, it is determined that one or more of the required hydrants will serve the subdivision to better advantage if located outside the subdivision, they may be so located and the cost shall be borne by the subdivider, subject to the limitation that the cost to the subdivider shall not exceed the cost to him which would have resulted had all the hydrants been located inside the limits of the subdivision.

3. **Fire Protection.** In fixing the standards for fire protection insofar as water supply is concerned, the Department will be guided by the standards of the National Board of Fire Underwriters in "G guides Cities and Towns of the United States with Reference to Their Fire Defenses and Physical Conditions" and by any specific recommendations made by the said National Board with respect to the County.

SECTION VIII - SERVICE CONNECTIONS, DEAD-ENDS, ALTERATIONS TO PUBLIC WATER SYSTEMS, CONTOURS

1. **Service Connections.** Where water main construction is necessary, the subdivider shall provide each lot in a subdivision with a service connection from the water main to the property line adjacent to the lot or as directed by the Department's Manager. As an alternate, one multiple service connection may be installed for each two or more lots served from a single location provided the lateral is properly sized.

Where the lots to be created front along an existing water main, a service connection as required above shall be paid for by the subdivider and installed by the Board/Department staff or subdivider when inspected by the Department staff, except that the service connection installation may be deferred and paid for by the consumer at the time the request for water service is made for agricultural-lots and other subdivisions for which the Department determines that it is impractical to require such installations prior to the request for water service.

2. **Dead-Ends.** Where water mains proposed by a subdivider would result in dead-ends, the subdivider shall correct the condition by the installation of such interconnections as may be required by the Board.

3. **Alterations to Public Water System.** All work and materials in connection with the change in location or grade of any part of the existing public water system made necessary by the subdivision shall be at the expense of the subdivider.
4. **Contours.** When required by the Board Manager, contours or elevations shall be furnished by the subdivider, based upon mean sea level.

**SECTION IX - PREPARATION OF PLANS, INFORMATION ON PLANS, ELEVATION AGREEMENT, APPROVAL OF PLANS, DELAYS IN CONSTRUCTION**

1. **Preparation of Plans.** All construction plans shall be prepared by a registered engineer to the extent of his professional qualifications under the laws of the State. Preliminary maps and final maps of subdivisions to be reviewed by the Department staff shall fully conform to the definitions and requirements of the Rules and Regulations of the Commission.

2. **Information to be shown on Construction Plans.** The construction plans, insofar as the water system is concerned, shall show the following on County of Kauai standard size sheet or sheets:
   a. Name of subdivision, name of subdivider, name of engineer and location of subdivision.
   b. Date, north arrow, scale, tax key.
   c. The proposed subdivision water system complete, in both plan and profile, and its inter-relationship with street lines, lot lines, curb grades, sewers and drains, both existing and proposed, as well as any other features natural or artificial necessary for a complete understanding of the water system design.
   d. Plan and profile views drawn to a scale of one inch equals 40 feet and one inch equals 5 feet, respectively, or as approved by the Department Manager. Manhole, fire hydrant, lateral and other details drawn to a scale of one-half inch equals one foot or larger.
   e. The designation, including alignment and width, of all easements for parts of the water system which will not be in street areas to be dedicated to the public.
   f. A general layout map showing the locations of lots and streets within the subdivision and its near vicinity together with existing and proposed water system.
   g. A small key location inset or vicinity map showing the proposed subdivision in relationship to streets and water mains in the area.
   h. Review submittals should show all utilities and easements lines in plan and profile with different colors for ease of review. Colors to be set by standard drawing convention as directed by Department staff. Drawing not submitted in this manner will remain on the bottom of the review priority list until all other reviews are complete.
   i. In cases in which the owner or subdivider also owns areas contiguous to the proposed subdivision, or separated therefrom by a street, a sketch of the future street and lot pattern and the water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.

3. **Elevation Agreement.** Whenever a lot or lots within a subdivision are at such an elevation that they cannot be served by a dependable forty pounds per square inch during normal flows of water supply, the approval of the construction drawings will be subject to each owner of such lot or lots signing an "elevation agreement" whereby such lot owner agrees to accept such water service as the Department is able to render, and such owner agrees to construct, if necessary, and maintain at his expense, a tank or a pump with a tank, all in accordance with the standards and requirements of the Department, of sufficient capacity to furnish a supply of water at such times as the pressure in the water mains may be insufficient to supply such lot or lots with water.
When required, a statement as to this conditional approval will be clearly lettered on the subdivision map and as a deed restriction on the lot deed.

4. **Approval of Plans.** No construction of a subdivision water system, or any portion thereof, shall be undertaken prior to approval of the final construction plans by the Manager and Chief Engineer, the Director, the County Engineer of the Department of Public Works, and the State Department of Health. After said approval, the subdivider shall transmit four sets of all final construction plans to the Manager and Chief Engineer. Color may be eliminated from these drawings.

In areas where there is no public water supply available to serve the subdivision, plans and specifications for the development of water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenances structures and devices, shall be in conformance with the standards of the Department and shall be approved by the Department Manager in their entirety prior to the construction.

5. **Delays in Construction.** If any period exceeding one year or such extension as may be granted passes without substantial progress in the construction of the water facilities, after approval of plans by the Department, the plans thereof shall be resubmitted to the Department for review and for making such changes as it deems proper because of changed conditions or revision of standards or rejection because of system adequacy.

### SECTION X - MATERIALS AND CONSTRUCTION STANDARDS.

#### INSTALLATION OF WATER SERVICE, INSPECTION OF WORK

1. **Materials and Construction Standards.** All materials, design and construction procedures, and workmanship, with respect to any subdivision water system, or any portion thereof, shall be in accordance with the requirements of the "Standard Specifications for Waterworks Construction" of the Board of Water Supply, County of Kauai, dated 10/1/63 or as later amended and with the requirements of the State Department of Health and all applicable laws. The Manager and Chief Engineer shall determine the capacity and location of any of the component parts of the subdivision water system.

2. **Installation of Water Service.** No water service will be approved until the subdivision water system has been completed and accepted by the Department Board and the PRC has been paid to the Department. Temporary Service for subdivision construction purposes such as site work and roadways (including construction work for individual lots) not to exceed one year may be approved when not detrimental to the service of existing customers.

3. **Inspection of Work.** The Manager and Chief Engineer or any Department staff employee delegated representing authority, shall have free access at all times to all installations made for the subdivision and shall be given any assistance required and every facility, information and means of thoroughly inspecting the work to be done and the materials used or to be used.

### SECTION XI - OWNERSHIP OF INSTALLED WATER SYSTEM

Before the Department Manager will provide water service within the subdivision, the subdivider shall convey the subdivision water system to the Department Board and said subdivision water system thereafter will be maintained and operated as a part of the public water system; provided, however, that the Department Board may refuse to operate and maintain facilities installed without the Department's prior approval. Prior to the commencement of water service, and as a prerequisite to such service, the subdivider shall also deliver to the Department perpetual easements for all portions of the subdivision water system installed in other than publicly owned property. The subdivider shall also convey to the Department Board fee simple title to all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the subdivider and connected to the public water system together with easements for ingress and egress along the influent and effluent lines. The
subdivider shall also convey to the Department Manager an affidavit with a breakdown of costs of the subdivision water system on forms provided by the Department Manager.

SECTION XII – MODIFICATION OF REQUIREMENTS AND EXCEPTIONS

1. Modification of Requirements. When conditions pertaining to any subdivision are such that the public may be properly served with potable water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department Board.

2. Exempt Subdivisions. The following described subdivisions ("Exempt Subdivisions") shall be exempt from the provisions of this Part 3 when they are not in need of water now or in the next ten years, or are part of a master planned development:
   a. Subdivisions requested by any governmental agency;
   b. Subdivisions resulting from the construction of public improvements by governmental action;
   c. Subdivisions requested for public utility purposes;
   d. Consolidations and resubdivisions of properties where no additional lots or parcels are created, provided that the resulting properties would not permit greater density and they are buildable in the current location.

SECTION XIII – CONSTRUCTION AGREEMENT AND BOND

To secure final approval prior to construction of the required improvements in a subdivision, the subdivider shall enter into a written agreement with the County and the Department to make, install and complete all of the required improvements within a specified time. In addition thereto, a Surety Bond or other security as hereinafter specified shall be filed with and attached to the agreement by the subdivider.

A. Construction Agreement:
   (1) The Agreement shall specify that the subdivider will complete the subdivision to the satisfaction of the Manager and Chief Engineer.
   (2) The Agreement shall further specify that the Department may complete the work at the expense of the subdivider where the subdivider fails to complete the work to the satisfaction of the Manager and Chief Engineer, or fails to complete the work within the time specified.

B. Surety Bond:
   (1) The Surety Bond shall be filed with the agreement and shall be for the following purposes:
      (a) The Surety Bond shall assure to the County and the Department that the actual construction and installation of the improvements and utilities specified will be carried out.
      (b) The Surety Bond shall further assure to the Department that the facilities reserve charge down payment will be paid, if said charge is not already paid.
The Surety Bond shall be executed by the subdivider as principal and the surety shall be a company authorized to transact a surety business in the State of Hawaii.

The bond or other security shall be one of the following:

(a) A Surety Bond in a sum equal to the cost of the work required to be done as estimated by the Manager and Chief Engineer, payable to the County and the Department, and shall be conditioned upon the faithful performance of all water improvement work required to be done by the subdivider, and shall be further conditioned to the effect that should the subdivider fail to complete all work required to be done within a specified reasonable time, the Department Manager may cause all required work which is not finished to be completed, and the parties executing the bond shall be jointly bound for the payment of all necessary costs, therefore; or

(b) Where the subdivider has entered into a contract with a reputable contractor, and has filed with the Director all three of the following: 1) a certified copy of his said contract and specifications; 2) a certified copy of the performance bond of his said contractor; and 3) a surety bond in a sum equal to at least 30 per cent of the cost of all work required to be done by the subdivider as estimated by the Manager and Chief Engineer, and shall be payable and conditioned as above set forth; or

(c) The subdivider shall make a deposit of money with the Director as agent of the County and the Department, in an amount equal to the cost of the construction of said improvements as estimated by the Manager and Chief Engineer. Under this arrangement, the agreement may provide for progress payments to be made to the contractor for materials used and services and labor performed, out of said deposit as the work progresses; provided that said progress payments shall not at any time exceed the value of the completed portion of said improvements as determined by the Manager and Chief Engineer and the County Engineer of the County; or

(d) In lieu of said surety bond or deposit in escrow mentioned in Paragraphs 3 (a) (b) (c) above, the subdivider may deposit with the Director bonds or other negotiable securities in the amount as provided by Paragraphs 3 (a) (b) (c) respectively of this Section and acceptable to the Manager and Chief Engineer.

Facilities Reserve Charge. All bonds or other securities as provided in Paragraphs 3 (a) (b) (c) (d) above shall include the assurance of payment of the facilities reserve charge down payment except for the following:

(a) This paragraph shall not be applied where the facilities reserve charge has already been paid.

(b) A separate bond primarily for the purpose of paying the facilities reserve charge down payment may be filed by the subdivider.

All bonds or securities posted under this Section shall not be canceled except with approval of the County and the Department Manager.

SECTION XIV - NON-DEVELOPMENT AGREEMENTS

1. Purpose. The purpose of this section is to assist families who wish to transfer interests in real property between themselves without immediately complying with Departmental rules and construction standards and specifications imposed when family members request subdivision approval.

2. Definitions. As used within this section: "Development" includes, but is not limited to:

Part III - Establishing Standards for Subdivision Water Systems 9 of 12 Revised: September 14, 2010
(1) the construction, reconstruction, alteration, remodeling, renovation, or repairing of single-family residences, additional dwelling units, or any other dwelling, building, or structure of any kind on or within the property being subdivided, or
(2) the construction of additions or extensions to any dwelling, structure, or building existing as of the date of this agreement, or
(3) the construction, reconstruction, installation, alteration, or repair of piping, waste-water systems, landscaping or irrigation systems.

which result in increased fire protection requirements arising because of the property's development, increased consumption of water upon the property being subdivided, calculated from the date of the agreement described in this section, or which may, in the Department's judgment, possibly contaminate existing potable water wells located in the vicinity of the property being subdivided.

"Hanai child" means a person for whom an adult once provided food, nourishment, and support for a minimum period of at least one year prior to the time that the applicant applied for subdivision approval and who is generally acknowledged as the adult's child among friends, relatives, and the community.

"H.R.S" means Hawaii Revised Statutes, as amended.

"Non-development agreement" means the agreement required to be executed under this section.

"Rule" or "Rules" mean the Rules and Regulations of the County of Kauai Department of Water.

"Water System Facilities" means all water infrastructure of the Department determines to be necessary to provide adequate residential water service and fire protection for the property being subdivided and shall include, but not be limited to, any and all necessary wells, pumps, storage tanks, water transmission and distribution lines and related meters, valves, and other water system improvements and equipment.

3. Authorization to defer subdivision improvements under certain terms and conditions. The Manager and Chief Engineer may approve requests for subdivision approval and temporarily defer subdivision requirements imposed by the Department's Rules and construction standards and specifications for the sole and limited purpose of allowing a subdivision applicant to transfer interests in real property from the applicant to others, provided the applicant satisfies or complies with the following conditions:

a. Property interests may be transferred only between: natural persons who are related to the applicant by birth, blood, adoption, marriage, or prior marriage. Eligible transferees are limited to:

   - Spouse,
   - Ex-spouse,
   - Parents,
   - Grandparents,
   - Children,
   - Hanai children,
   - Grandchildren,
   - Brothers, and
   - Sisters.

The preceding list of terms shall be understood according to their most widely-known and usual significance, without attending so much to the literal and strictly grammatical construction as to their general, ordinary, or popular use or meaning.

b. The Manager and Chief Engineer shall not approve subdivision requests under this section if development will occur as a result of the subdivision.
c. With respect to the property being subdivided, the Department Manager shall not approve further subdivision requests, requests for water service when apartments within the property have been created pursuant to Chapter 514A, H.R.S., or development of any kind, unless and until adequate water system facilities, as may be determined by the Department Manager when development occurs, are constructed, in place and complete, to provide adequate residential water service and fire protection for the property being subdivided.

d. The Department Manager shall not approve residential building permits for any property which is subject to a non-development agreement unless adequate water system facilities are constructed pursuant to subparagraph 3.c. of this section or is combined with a lot with water and development rights.

If the Department Manager erroneously or inadvertently approves a building permit before necessary water system facilities are constructed, the Department Manager shall rescind upon learning of its action, immediately rescind its approval.

e. If, before necessary water system facilities are constructed to service the property being subdivided, the Department Manager erroneously or inadvertently approves the issuance of a building permit for any development within the subdivision and development occurs, the developer shall either construct the necessary water system facilities or remove the development at the developer's own cost and expense.

Should the Department Board be required to enforce the provisions of this subparagraph through civil court action, the developer shall pay to the Department Board and be jointly and severally liable for any and all attorneys’ fees, court costs, and other related fees, costs, and expenses necessary to prosecute and defend such an action.

f. The subdivision applicant and all persons to whom an interest in the property may be transferred shall release the Department of any and all liability arising from the Department's decision to recommend subdivision approval under this section.

The applicant and all persons to whom an interest in the property may be transferred shall also forever indemnify, defend, save, and hold harmless the Department from and against any and all injury to persons and damage to property, deaths, claims, fines, suits, actions, economic and non-economic damages, costs, losses, and liabilities of every nature and kind arising or growing out of the Department's decision to recommend subdivision approval of the applicant's property under this section.

g. The provisions of this section shall be implemented through an agreement executed between 1) the Manager and Chief Engineer, and 2) the subdivision applicant and all persons to whom an interest in the property may be transferred. The agreement shall contain terms and conditions determined to be necessary by the Manager and Chief Engineer and, as advised by the County Attorney. The covenants and restrictions created by the agreement shall constitute covenants which shall run with the land and constitute notice to all who may claim an interest in the property being subdivided.

Any subdivision approval granted under this section shall be null, void, and of no legal effect unless 1) the Department receives a non-development agreement containing original signatures executed by all of the parties to the agreement, and 2) the agreement has been recorded in the State of Hawaii Land Court or Bureau of Conveyances.

h. The documents conveying title or an interest in real property shall specifically incorporate by reference the non-development agreement. Further, the agreement shall be attached to the conveyance documents as an exhibit.
i. The final subdivision map shall contain a brief and concise statement stating that the lots created by the subdivision are subject to a non-development agreement. The statement shall further summarize the major terms and conditions of the agreement.

4. **Applicability.** This section shall apply only to subdivisions served by County Public Water Systems, and not to private water systems not served by the County Public Water System.

5. **Fees, Charges, and costs under this section.** Notwithstanding any other section or provision in the Rules to the contrary including, but not limited to, Paragraph 1, Section III, Part 3 of the Rules, any and all applicable Departmental fees, charges, and costs, including facilities reserve charges, shall be paid at such future time that development occurs at the amount in effect at the time that development occurs, and not at the time that the non-development agreement is entered into by the County.

6. **Changed development conditions.** The applicant or subsequent transferees of the applicant shall be responsible for checking confirming in writing with the Manager/Department, and determining whether water infrastructure development requirements have to be changed such that necessary water system facilities no longer need to be constructed. The Manager/Department shall not be responsible for informing the applicant or subsequent transferees of the applicant of such changed development conditions.

**SECTION XV - SEVERABILITY**

If any rule, section, sentence, clause, or phrase of these rules and regulations or its application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The Department hereby declares that it would have adopted these rules and regulations and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION XVI - PENALTIES**

Any person, firm or corporation which violates any rule or regulation herein shall be fined not more than $500.00, except that in cases where the offense shall be of a continuing nature, each day’s continuance of the same, shall constitute a separate offense.
Beardmore, Carol

From: Julie Mararagan [JGM@Kauai-law.com]
Sent: Tuesday, August 17, 2010 12:00 PM
To: Beardmore, Carol
Subject: RE: Max's Draft DOW Rule

Thank you.

Aloha,

Julieta Ganotisi Mararagan
Secretary to Max W. J. Graham, Jr.
Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766
Phone: (808) 245-6962
Fax: (808) 245-3277
Email: jgm@kauai-law.com
AMENDMENTS TO THE RULES AND REGULATIONS, AS AMENDED, 
OF THE BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, STATE OF HAWAII

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY OF THE COUNTY OF KAUA'I,
STATE OF HAWAII:

SECTION 1. This amendment to the Rules and Regulations of the County of Kauai
Department of Water (hereafter "Rules") is made pursuant to Section 17.03C and D of the Kauai
County Charter 1984, as amended, Part 1, Section II of the Rules, as amended, and Chapter 91,

SECTION 2. This amendment to the Rules amends Part 3, Section XII.

SECTION 3. Now, therefore, Part 3, Section XII of the Rules is hereby amended as
follows:

SECTION XII – MODIFICATION OF REQUIREMENTS AND EXCEPTIONS

1. Modification of Requirements. When conditions pertaining to any subdivision
are such that the public may be properly served with water and with fire protection without full
and strict compliance with these rules and regulations, or where the subdivision site or layout is
such that the public interest will be adequately protected, such modification thereof as is
reasonably necessary or expedient, and not contrary to law or the intent and purposes of these
rules and regulations, may be made by the Department.

2. Exempt Subdivisions. The following described subdivisions ("Exempt
Subdivisions") shall be exempt from the provisions of this Part 3:

a. Subdivisions requested by any governmental agency;

b. Subdivisions resulting from the construction of public improvements by
governmental action;

c. Subdivisions requested for public utility purposes;

d. Consolidations and resubdivisions of properties where no additional lots
or parcels are created, provided that the resulting properties would not permit greater density.

SECTION 4. Administrative rule material to be repealed is bracketed. New material is
underscored. In printing this rule amendment, the brackets, bracketed material, underscoring
need not be included.
SECTION 5. If any provision of this rule amendment or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule amendment, which can be given effect without the invalid provision, or application, and to this end the provisions of this rule amendment are severable.

SECTION 6. This rule amendment shall be effective ten (10) days after it is filed with the County Clerk of the County of Kauai.

BOARD OF WATER SUPPLY
COUNTY OF KAUAI

______________________________
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:

______________________________
County Attorney

Received this ___ day of
_______________, 2010

______________________________
Approved this ___ day of
_______________, 2010

Peter Nakamura
County Clerk, County of Kauai

Bernard P. Carvalho, Jr.
Mayor, County of Kauai
October 21, 2010

Mr. Randy Nishimura, Chairman
Board of Water Supply, County of Kauai
P.O. Box 1706
Lihue, HI 96766

Dear Chairman Nishimura:

Subject: Part III Rule Amendments – Establishing Standards for Subdivision Water Systems

For the October 21, 2010 Board of Water Supply meeting, we wish to submit the enclosed testimony for Agenda Item F.2.b. We received an electronic word document version of the Department of Water, County of Kauai Rules and Regulations Part 3 Establishing Standards for Subdivision Water Systems. The document included proposed changes by Manager, David Craddick. His proposed changes are in blue. Using the Track Changes function, we made our proposed changes in red.

We support the proposed changes and are hopeful that our proposed changes will also be incorporated. If you have any questions or concerns please contact me at 632-2528.

Sincerely,

Michael H. Tresler
Senior Vice President.
may refuse to operate and maintain facilities installed without the Department’s prior approval. Prior to
the commencement of water service, and as a prerequisite to such service, the subdivider shall also
deliver to the Department perpetual easements for all portions of the subdivision water system installed in
other than publicly owned property. The subdivider shall also convey to the Department fee simple title to
all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the
subdivider and connected to the public water system together with easements for ingress and egress.
The subdivider shall also convey to the Department a breakdown of costs of the subdivision water system
on forms provided by the Department.

SECTION XII - MODIFICATION OF REQUIREMENTS

1. Modification of Requirements. When conditions pertaining to any subdivision are such that
the public may be properly served with water and with fire protection without full and strict
compliance with these rules and regulations, or where the subdivision site or layout is such that
the public interest will be adequately protected, such modification thereof as is reasonably
necessary or expedient, and not contrary to law or the intent and purposes of these rules and
regulations, may be made by the Department.

2. Exempt Subdivisions. The following described subdivisions ("Exempt Subdivisions")
shall be exempt from the provisions of this Part 3: when there is a reasonable expectation
of no additional water demand on the water system and the:

a. Subdivision is requested by any governmental agency;

b. Subdivision is requested for the construction of public improvements by
governmental action or to be turned over to the government;

c. Subdivision is requested for public utility purposes;

d. Consolidations and resubdivision of properties, that can be built on in their current
location, where no additional lots or parcels are created provided that the resulting
properties would not permit greater density.

e. The subdivisions into of large-lots of such a size that it is reasonable to expect
further development ("Large Lots"), including but not limited to, subdivision, use
permit, or zoning permit applications, with full and strict compliance with these
rules. In the case where a subdivision includes both Large Lots and lots that do
not require further development ("Small Lots"), the subdivision shall be exempt
provided the Large Lots account for at least 50% of the land area, not including
roadways and utilities, and the Subdivider executes a Waiver and Release
Agreement for the Small Lots. In all cases, the Subdivider shall execute an
agreement with the Manager and Chief Engineer to determine when full and strict
compliance with these rules and regulations shall occur, if not already agreed to or
set forth in a master plan. The Manager and Chief Engineer shall require a Waiver
and Release agreement to run with the land until there is full and strict compliance
with these rules and regulations if the lot is less than ten acres in size.
ORDINANCE NO. ____________  BILL NO. ________

A BILL FOR AN ORDINANCE TO
AMEND CHAPTER 9, KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO THE SUBDIVISION ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWA'I:

SECTION 1. Findings and Purpose:

(a) The Council finds that county agencies, at times impose infrastructure requirements not in rough proportionality to the impact of a proposed subdivision application.

(b) The "rough proportionality" takings argument has been successfully argued at the U.S. Supreme Court to overturn local government exactions (Dolan vs. City of Tigard) where the degree of the exactions required by the local agency does not bear the required relationship to the projected impact of the proposed development.

(c) For the County of Kaua'i, this is especially true with smaller applications where the applicant is required to upgrade substantial portions of offsite county infrastructure.

(d) There has been instances where an applicant, in order to provide for their children a buildable lot and an affordable home, applies for a subdivision that proposes no additional lots or additional residential density than what is already allowed, are stopped because of off-site infrastructure requirements imposed.

(e) The purpose of this amendment is to clarify the extent to which County agencies impose off-site infrastructure requirements and to allow subdivisions that create no additional lots or additional residential density to proceed without unwarranted conditions or requirements.

(f) Thresholds already exist in the CZO that allow exemptions to development standards:

(1) CZO Sec. 8-7.4(c)(4) allows an exemption from one time subdivision provision in the Agriculture District where: Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.”
(2) Sec. 8-3.7 of the CZO allows up to four houses to be served by a driveway, without the requirement of a County standard road.

(g) Conditions requiring infrastructure improvements that are normally applied to subdivisions resulting in an increase in density and places additional demands on the existing public infrastructure, should not apply to consolidations and re-subdivisions where no additional density or demands on the public infrastructure are created.

SECTION 2. Section 9-2.13 of the Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

"Sec.9-2.13 Consolidation of Lots

All consolidation of lots, shall be processed through the Planning Commission and shall require its approval before recordation of any maps or documents pertinent to the consolidation. Consolidation involving not more than four (4) existing lots or parcels of record and re-subdivision where no additional lots or density are created by the resultant properties, shall not be required to provide any off-site county infrastructure improvements, except as needed to connect to an adjacent roadway or utility line. If the resulting lots or parcels do not place an increased demand on public infrastructure, then the Planning Commission shall not impose additional conditions pursuant to Section 9-3.4(b). The Planning Commission shall establish rules and fee for consolidation of lots."

SECTION 3. Section 9-3.4 of the Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 9-3.4 Approval Of Preliminary Subdivision Map.

(a) Compliance and Distribution.

(1) The Planning Department within ten (10) calendar days shall check for compliance of form and contents of the map. If the form and contents are found not to be in compliance, it shall be rejected and returned to the applicant in writing.

(2) After the maps have been preliminarily accepted, the Planning Department shall forward copies to the Department of Public Works, the Department of Water, the State Department of Health, and other affected agencies, departments and utility companies, as the Planning Director determines for comment or approval[.], except for consolidation and re-subdivision of lots exempted by Sec. 9-2.13.
Accompanying application, if any, for required zoning permits, shall also be referred.

(b) Review. After the preliminary subdivision maps have been preliminarily accepted as to form and contents, the following review schedule shall apply:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various governmental agency review to Planning Director.</td>
<td>30 Calendar Days*</td>
</tr>
<tr>
<td>After receipt of the agency reviews, the Planning Director shall prepare a report to the Planning Commission. The Planning Commission shall approve, approve with condition or disapprove preliminary subdivision map.**</td>
<td>45 Calendar Days*</td>
</tr>
</tbody>
</table>

Column 1: For subdivisions not including streets and improvements where the number of lots to be created is twenty (20) or less.

Column 2: For subdivisions requiring new streets and improvements.

* Or within a longer period as may be agreed to by the applicant.

** If the Planning Commission fails to take action within the time limit prescribed in this Section, unless the applicant assents to a delay, the preliminary subdivision map shall be deemed approved.*

SECTION 4. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced By:

DEREK S. K. KAWAKAMI

Date of Introduction:

Līhu‘e, Kaua‘i, Hawai‘i
DATE: November 24, 2010

TO: Planning Department
    Ian K. Costa, Director (Dale)

SUBJECT: Zoning Amendment Permit Application ZA-2011-2, Proposed Draft Bill (No. 2380) – A Bill for an Ordinance to Amend Chapter 9, Kauai County Code 1987, as amended, relating to the Subdivision Ordinance = County of Kauai

DOW COMMENTS:

The Department of Water offers the following comments to Proposed Bill (No. 2380) as follows:

1. The bill does not set a limit on the total number of residential units that is based on the existing density of the consolidation/re-subdivision. Proposed Bill “Section. 9-2.13 Consolidation of Lots” states that “Consolidation involving not more than four (4) lots or parcels of record and re-subdivision where no additional lots or density are created by the resulting properties shall not be required to provide any off-site county infrastructure improvements…”

   a) If the intent of the Bill is to limit the number of resulting lots and corresponding residential density to a total of not more than 4 lots and/or 4 dwelling units, then the density of the resulting properties should be restricted or limited such that the total resulting number of dwelling units does not exceed the four (4) lot/dwelling unit intended limit. Based on higher CZO zoning designations and resulting lot size, despite the bill’s provision for “no additional density”, there is a potential that the actual residential development may result in a larger number of single family or multi-family units that will be exempted from providing necessary off-site infrastructure improvements under this proposed bill.

   b) How will the proposed bill apply to subdivisions of resulting properties that include non-residential zoning designations such as public, commercial, or industrial?

   c) If off-site county improvements are not required for the resulting consolidation and re-subdivision under the proposed bill, then can off-site infrastructure improvements be required as a condition for actual development of the resulting properties that may require zoning/use permit, building permit, or water meter service connection application approval? What happens in the case where there are no County water lines or the system is inadequate? Current rules of the Water Department do not allow service when the system is inadequate. Just as a matter of fact if there are no offsite improvements they may not be able to get service.

   d) Is there a definition for “off-site infrastructure improvements”?

   e) Our suggestion is that the system before lot changes must be able to service the lot. This does not mean they can’t do the subdivision it just means they may not be able to get water service if none is available.


David R. Craddick, P. E.
Manager & Chief Engineer

ED/G/DC:loo
ZA-2011-2, Proposed Draft Bill (No. 2380)

Date 12/3/10
A BILL FOR AN ORDINANCE TO
AMEND CHAPTER 9, KAUAʻI COUNTY CODE 1987, AS AMENDED,
RELATING TO THE SUBDIVISION ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAʻI, STATE
OF HAWAII:

SECTION 1. Findings and Purpose:

(a) The Council finds that county agencies, at times impose infrastructure
requirements not in rough proportionality to the impact of a proposed subdivision
application.

(b) The "rough proportionality" takings argument has been successfully
argued at the U.S. Supreme Court to overturn local government exactions
(Dolan vs. City of Tigard) where the degree of the exactions required by the local
city agency does not bear the required relationship to the projected impact of the
proposed development.

(c) For the County of Kauaʻi, this is especially true with smaller
applications where the applicant is required to upgrade substantial portions of
offsite county infrastructure.

(d) There has been instances where an applicant, in order to provide for
their children a buildable lot and an affordable home, applies for a subdivision that
proposes no additional lots or additional residential density than what is already
allowed, are stopped because of off-site infrastructure requirements imposed.

(e) The purpose of this amendment is to clarify the extent to which County
agencies impose off-site infrastructure requirements and to allow subdivisions that
create no additional lots or additional residential density to proceed without
unwarranted conditions or requirements.

(f) Thresholds already exist in the CZO that allow exemptions to
development standards:

1) CZO Sec. 8-7.4(c)(4) allows an exemption from one time
subdivision provision in the Agriculture District where: Consolidation and
resubdivision of properties where no additional lots or parcels are created
provided that the resulting properties would not permit greater density."

2) Sec. 8-3.7 of the CZO allows up to four houses to be served by a
driveway, without the requirement of a County standard road.

(g) Conditions requiring infrastructure improvements that are normally
applied to subdivisions resulting in an increase in density and places additional
demands on the existing public infrastructure, should not apply to consolidations
and re-subdivisions where no additional density or demands on the public
infrastructure are created.
SECTION 2.  Section 9-2.13 of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec.9-2.13 Consolidation of Lots
All consolidation of lots, shall be processed through the Planning Commission and shall require its approval before recordation of any maps or documents pertinent to the consolidation. Consolidation involving not more than four (4) existing lots or parcels of record and re-subdivision where no additional lots or density are created by the resultant properties, shall not be required to provide any off-site county infrastructure improvements, except as needed to connect to an adjacent roadway or utility line. If the resulting lots or parcels do not result in an increase in density, then the Planning Commission shall not impose additional conditions pursuant to Section 9-3.4(b). The Planning Commission shall establish rules and fee for consolidation of lots."

SECTION 3.  Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 4.  Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring need not be included.

SECTION 5.  This Ordinance shall take effect upon its approval.

INTRODUCED BY:

Nadine K. Nakamura
(By Request)

Date of Introduction:
March 23, 2011
Līhu'e, Kaua'i, Hawai'i
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2401, Draft 2, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on May 4, 2011, by the following vote:

FOR ADOPTION: Bynum, Chang, Kualiʻi, Nakamura, Rapozo, Furfaro
AGAINST ADOPTION: Yukimura
EXCUSED & NOT VOTING: None
RECEIVED & NOT VOTING: None

TOTAL - 6, TOTAL - 1, TOTAL - 0, TOTAL - 0.

Līhuʻe, Hawaiʻi
May 4, 2011

Peter A. Nakamura
County Clerk, County of Kauaʻi

ATTEST:

Jay Furfaro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

May 5, 2011

Approved this day of , 2011.

__________________________________________
Bernard P. Carvalho Jr.
Mayor
County of Kauaʻi
ORDINANCE NO. ___________  BILL NO. 2401, Draft 2

A BILL FOR AN ORDINANCE TO
AMEND CHAPTER 9, KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO THE SUBDIVISION ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose:

(a) The Council finds that county agencies, at times impose infrastructure requirements not in rough proportionality to the impact of a proposed subdivision application.

(b) The “rough proportionality” takings argument has been successfully argued at the U.S. Supreme Court to overturn local government exactions (Dolan vs. City of Tigard) where the degree of the exactions required by the local agency does not bear the required relationship to the projected impact of the proposed development.

(c) For the County of Kauai, this is especially true with smaller applications where the applicant is required to upgrade substantial portions of offsite county infrastructure.

(d) There has been instances where an applicant, in order to provide for their children a buildable lot and an affordable home, applies for a subdivision that proposes no additional lots or additional residential density than what is already allowed, are stopped because of off-site infrastructure requirements imposed.

(e) The purpose of this amendment is to remove unwarranted off-site infrastructure requirements where proposed subdivisions create no additional lots or additional residential density.

(f) Thresholds already exist in the CZO that allow exemptions to development standards:

   (1) CZO Sec. 8-7.4(c)(4) allows an exemption from one time subdivision provision in the Agriculture District where: Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.”

   (2) Sec. 8-3.7 of the CZO allows up to four houses to be served by a driveway, without the requirement of a County standard road.

(g) Conditions requiring infrastructure improvements that are normally applied to subdivisions resulting in an increase in density and places additional demands on the existing public infrastructure, should not apply to consolidations and re-subdivisions where no additional density or demands on the public infrastructure are created.
SECTION 2. Section 9-2.13 of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec.9-2.13 Consolidation of Lots

[All] The consolidation of lots, including Kuleana lots, shall be processed through the Planning Commission and shall require its approval before recordation of any maps or documents pertinent to the consolidation. Consolidation involving not more than four (4) existing lots of record and re-subdivision where no additional lots or density are created by the resultant properties, shall not be required to provide any off-site infrastructure improvements, except as needed to connect to an adjacent roadway or utility line. If the resulting lots do not result in an increase in density, the Planning Commission shall not impose additional conditions pursuant to Section 9-3.4(d). The Planning Commission shall establish rules and [fee] fees for consolidation of lots."

SECTION 3. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, the brackets, bracketed material, and underscoring need not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ Nadine K. Nakamura

Date of Introduction:
March 23, 2011
Līhu'e, Kaua'i, Hawai'i
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2401, which was passed on first reading and ordered to print by the Council of the County of Kaua‘i at its meeting held on March 23, 2011, by the following vote:

FOR PASSAGE: Bynum, Chang, Kawakami, Nakamura, Rapozo, TOTAL – 6,
Furfaro
AGAINST PASSAGE: None TOTAL – 0,
EXCUSED & NOT VOTING: Yukimura TOTAL – 1,
RECUSED & NOT VOTING: None TOTAL – 0.

Līhuʻe, Hawaiʻi
March 23, 2011

[Signature]

Peter A. Nakamura
County Clerk, County of Kaua‘i
SECTION XII - MODIFICATION OF REQUIREMENTS

When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department.

The Manager may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest, and when the Manager finds that:
1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Manager would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations

The Board by a two thirds vote of the entire voting membership may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest, and when the Board finds that:
1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations; and
4. In cases of exemption from or reduction of the FRC fee, the resulting financial impact upon the Department and future consumers is acceptable to the Board.
SECTION XII - MODIFICATION OF REQUIREMENTS

When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected:

The Manager and Chief Engineer may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest, and when the Manager and Chief Engineer finds that:

1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Manager and Chief Engineer would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations.
4. In cases of exemption from or reduction of the FRC fee, the request must be brought to the Board for approval.

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report to the Board, and the Board has not chosen to deny or modify the Manager and Chief Engineer's decision by a two-thirds vote.

Should the Manager and Chief Engineer decline to waive or modify the requirements, an applicant may ask the Board to waive or modify requirements of these rules when not contrary to the purpose of the rule or the public interest. The Board must find that:

1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations; and
4. In cases of exemption from or reduction of the FRC fee, the resulting financial impact would not unduly impede or impaire the financial health of the Department.