

CHAPTER 9

SUBDIVISION ORDINANCE

(The purpose of this Chapter is to define standards and requirements for the subdivision of land that are consistent with the County General Plan and the Comprehensive Zoning Ordinance.)

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ARTICLE 1. GENERAL PROVISIONS

Sec. 9-1.1 Title.

This Chapter shall be known as and may be cited and referred to as the "Subdivision Ordinance For The County of Kauai." It is adopted to implement the intent and purposes of the adopted General Plan. (Ord. No. 175, July 3, 1973; Sec. 9-1.1, R.C.O. 1976)

Sec. 9-1.2 Application.

This Chapter applies to all subdivisions or parts of subdivisions made of land within the County of Kauai and to the preparation and approval of preliminary subdivision maps, construction plans, final subdivision maps, and improvements and dedications related thereto. The provisions of this Chapter shall not be applicable to any proposed subdivision, the preliminary subdivision map of which was approved by the Planning Commission prior to July 3, 1973 so long as a final map of the subdivision is approved and recorded within one (1) year after the effective date of this Ordinance. All preliminary subdivision maps and construction plans pending with the Planning Commission without preliminary approval on July 3, 1973 shall comply with all the provisions of this Chapter except to the provisions of Section 9-2.3(c) Street Right of Ways. All right of ways and pavement width requirements of the pending maps and plans may follow standards applicable before July 3, 1973. (Ord. No. 175, July 3, 1973; Ord. No. 200, November 27, 1973; Sec. 9-1.2, R.C.O. 1976)

Sec. 9-1.3 Requirements.

This Chapter imposes certain requirements and procedures relating to the subdivision of land. Other related requirements and procedures concerning subdivisions are contained in the Comprehensive Zoning Ordinance. The requirements of both Chapters shall apply to any subdivision made after July 3, 1973. (Ord. No. 175, July 3, 1973; Sec. 9-1.3, R.C.O. 1976)

Sec. 9-1.4 Administration.

In administering and applying the provisions of this Chapter, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-1.4, R.C.O. 1976)

Sec. 9-1.5 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

(1) "Agricultural Subdivision" means the subdivision of agricultural land within the Agricultural District as designated in the Comprehensive Zoning Ordinance, which is used primarily for agricultural purposes.

(2) "Alley" means a public or permanent private way less than fifteen (15) feet wide for the use of pedestrians or vehicles which has been permanently reserved and which affords, or is designed or intended to afford the secondary means of access to abutting property.

(3) "Approval" means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought, provided that where construction of a building or buildings is proposed without further subdividing an existing parcel of land, the term "approval" shall refer to the issuance of the building permit.

(4) "Block" means land on one (1) side of a street lying between intersecting or intercepting streets, or between streets and any railroad right-of-way, unsubdivided acreage, or body of water.

(5) "Center Line" See "Street Center Line."

(6) "Collector Street" means any street within a subdivision or adjacent thereto, which because of its location with reference to other streets or other sources of traffic, carries or will carry traffic from minor streets to major streets or thoroughfares; and includes the principal entrance streets of residence developments and streets for circulation of traffic within developments.

(7) "Comprehensive Zoning Ordinance" means the Comprehensive Zoning Ordinance of the County of Kauai.

(8) "County Engineer" means the County Engineer of the Department of Public Works of the County of Kauai.

(9) "Dead-End Street" means a street designed to have one (1) end permanently closed and having a turning area at the closed end.

(10) "Dedication" means a conveyance of land in fee simple or in the case of utilities, the utility facilities.

(11) "Density" means the number of dwelling units allowed on a particular unit of land area.

(12) "Department of Health" means the Department of Health of the State of Hawaii.

(13) "Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

(14) "Easement" means an acquired privilege or right of use or enjoyment which an individual, firm, corporation, unit of government, or group of individuals has in the land of another.

(15) "Fair Market Value" means the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used.

(16) "Frontage" means that portion of a parcel of property which abuts on a road, street or highway.

(17) "General Plan" means the General Plan of the County of Kauai.

(18) "Lodging Unit" means a room or rooms connected together constituting an independent housekeeping unit for a family which does not contain any kitchen.

(19) "Lot" means a portion of land shown as a unit on an approved and recorded subdivision map.

(20) "Lot Area" means the total of the area, measured in a horizontal plane, within the lot boundary lines.

(21) "Lot Length" means the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

(22) "Lot Width" means the average horizontal distance between the side lot lines measured at right angles to the line followed in measuring the lot depth.

(23) "Major Street" means a traffic artery which serves or is to serve between various communities within a regional area of the County.

(24) "Major Thoroughfare" means a traffic artery which serves or is to serve as a major connector of regional areas of the County.

(25) "Manager" means the Manager and Chief Engineer of the Department of Water of the County of Kauai.

(26) "Minor Street" means any street primarily for access to abutting owners.

(27) "Parcel" means an area of contiguous land owned by a person.

(28) "Parks and Playgrounds" means areas primarily used for active or passive recreational purposes, but not including golf courses.

(29) "Parks and Playground Facilities" means facilities including site improvements, structures and equipment primarily used for parks and playgrounds.

(30) "Planning Commission" means the Planning Commission of the County of Kauai.

(31) "Planning Director" means the Director of the Planning Department of the County of Kauai.

(32) "Private Street" means any parcel of land or non-exclusive easement not owned by the County or State of Hawaii, nor offered for dedication to the public, and which is used, or intended to be used for vehicular access to a lot or parcel.

(33) "Property Line" means any property line bounding a lot as defined in this Section.

(34) "Provide Land In Perpetuity" means the conveyance of land, improvements, easements, streets and facilities or any interest therein, to the County for a definite use and purpose, which shall be a perpetual and everlasting easement or dedication in fee simple title ownership.

(35) "Residential" means any home, house or dwelling unit including apartments and hotels.

(36) "School" means an institution with an organized curriculum offering instruction to children in the grade range, kindergarten through twelve, or any portion thereof.

(37) "Setback Line" means a line parallel to any property line and at a distance therefrom equal to the required minimum dimension from that property line, and extending the full length of the property line.

(38) "Slope" means a natural or artificial incline, as a hillside or terrace usually expressed as a ratio or percentage.

(39) "Street" or "Highway" means a way or place of whatever nature, open to the public for purposes of vehicular travel.

(40) "Street Center Line" means the center line of a street as established by official surveys or a recorded subdivision map. If not so established, the center line is mid-way between the right-of-way lines bounding the street.

(41) "Street Right-of-Way Line" means the boundary line right-of-way or easement and abutting property.

(42) "Subdivider" means 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 two (2) or more dwelling units or lodging units.

(43) "Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context shall relate to the process of dividing land. The term also includes a building or group of buildings, other than hotel containing or divided into two (2) or more dwelling units or lodging units.

(44) "Use Districts," "Special Treatment Districts," or "Constraint District" means those Districts contained in the Comprehensive Zoning Ordinance unless specifically referenced to the State Land Use Commission designations of Land Use Districts.

(45) "Used" means and includes "designed," "Intended," or "arranged to be used."

(46) "Utility Line" means the conduit, wire or pipe employed to conduct water, sewage, gas, electricity or other commodity from the source tank or facility for reduction of pressure, fire protection, or voltage or distribution. (Ord. No. 175, July 3, 1973; Ord. No. 271, December 22, 1975; Sec. 9-1.5, R.C.O. 1976)

ARTICLE 2. REQUIREMENTS AND STANDARDS FOR SUBDIVISIONS

Sec. 9-2.1 General Environmental Standards.

(a) Appearance.

(1) Subdivisions shall be planned, designed and constructed to preserve the natural environment and scenic beauty of the County.

(2) Specific consideration shall be given to preservation of natural topography such as drainage swales, rock out-croppings, slopes, areas of natural beauty particularly areas of scenic or environmental importance or value and areas of historic or scientific interest; to preservation of existing flora and fauna; to retention of major land forms, and to preservation of important vistas.

(3) Subdivisions shall be planned, designed and constructed to provide optimum open space to create man-made environment for use or occupance compatible and harmonious with the natural environment. (Ord. No. 175, July 3, 1973; Sec. 9-2.1, R.C.O. 1976)

Sec. 9-2.2 Land Alteration.

(a) Site.

(1) Subdivisions shall be planned, designed and constructed to require the minimum feasible amounts of land coverage, and the minimum feasible disturbance of soil and site by grading, excavation and other land alteration.

(2) Subdivisions shall be planned, designed and constructed to avoid probabilities of:

- (A) erosion;
- (B) pollution, contamination or siltation of rivers, streams or ocean waters;
- (C) damage to vegetation; and
- (D) injury to wildlife and fish habitats.

(3) All land alteration, including grading, filling, and excavating done in connection with any subdivision shall be in accordance with the requirements of the Grading Ordinance and the Constraint Districts of the Comprehensive Zoning Ordinance, and standards and regulations established by the Department of Public Works.

(b) Lots.

(1) The dimensions, shape and orientation of all lots shall be consistent with the requirements of the Comprehensive Zoning Ordinance and shall be determined with maximum regard to all natural terrain features, provision of open space, topography, landscaping, road access, off-street parking, circulation, design objectives, recreational potential, plotage advantages, and other relevant features including orientation to prevailing winds, relation of masses of structures to be erected, spaces between future buildings, light and air, setback variations, shadow patterns, and design elements intended to create identity and interest in the development.

(2) All building sites should relate useable and open areas suitable to the character and type of buildings contemplated, and to the various requirements of land use with maximum regard to minimum disturbance of the natural grade.

(3) The creation of building sites through mass pad grading and successive padding or terracing of building sites is prohibited in the Slope District as defined in the Comprehensive Zoning Ordinance and may not be permitted in other areas where a reasonable alternative exists.

(4) Buildings, structures, and other improvements or land alterations shall not be located within any Flood District or Drainage District as established in the Comprehensive Zoning Ordinance, except as provided in the regulations regarding those Districts. (Ord. No. 175, July 3, 1973; Sec. 9-2.2, R.C.O. 1976)

Sec. 9-2.3 Streets.

(a) General Standards for Streets. The location and alignment of streets within the subdivision shall conform to the County General Plan and Development Plans proposed by the Planning Commission and adopted by the Council.

(1) All streets shall be designed so as to:

(A) preserve natural features and topography and minimize need for protection of the natural environment;

(B) protect public health and safety;

(C) require adequate right-of-ways to serve the type and intensity of proposed land used within the subdivision, future traffic demand calculated according to vehicle type and anticipated volume, adequate access for public service vehicles, and adequate parking;

(D) require the creation of the minimum feasible amounts of land coverage and the minimum feasible disturbance to the soil;

(E) provide to the extent feasible for the separation of motor vehicular and pedestrian traffic;

(F) create conditions of proper drainage; and

(G) provide for proper landscaping.

(2) The street pattern in a subdivision shall make provision for the adjacent area, whether these streets are existing or proposed. Streets that are continuous shall bear the same name throughout their length.

(3) Where the preliminary subdivision map covers only a part of the subdivider's tract, a sketch of the future street system of the un-subdivided part shall be submitted.

(4) Where a tract is subdivided into parcels large enough for future resubdivision, the applicant shall show an arrangement of lots and streets that will permit later resubdivision in conformity with the street requirements of this Chapter.

(5) Cross type street intersections, intersections located on the inside of curves and intersections near crest vertical curves shall be avoided wherever possible.

(b) Reserve Strip and Access.

(1) There shall be no reserve strips controlling access to streets either existing or proposed, except where the control of strips is placed in the jurisdiction of the County. The subdividing of the land shall be such as to provide each lot, by means of either a public or private street of approved width, with satisfactory access to an existing public street.

(2) Whenever avoidable, no access to individual lots or parcels in a new residential subdivision shall be permitted from a major thoroughfare or a major street.

(3) Driveway access from collector streets within a residential subdivision may be limited as deemed necessary by the Planning Director.

(4) Driveway access from minor and dead-end streets shall be unlimited when consistent with other requirements of this Chapter and the Comprehensive Zoning Ordinance.

(5) The number of street intersections shall be kept to a minimum on major thoroughfares and streets and collector streets, consistent with the desirable block lengths or design factors.

(c) Street Right-of-Ways.

(1) The minimum street right-of-ways shall conform to the following requirements:

CLASSIFICATION	RIGHT-OF-WAY
Mayor Thoroughfare	undivided 80' divided 88'
Major Street	60'
Collector Street	56'
Minor Street	44'
Dead-End Street	40'

(2) Dead-End streets exceeding six hundred (600) feet in length shall be increased in width as required by the Planning Commission.

(3) A dead-end (cul-de-sac) street shall not be considered as a cul-de-sac when the end of the street is terminated at the property line adjacent to another property owner who may subdivide the adjacent property. In that case, this street shall be classified as a minor street, except when a proposed future subdivision will provide a connection between two (2) major streets, then the street shall be classified as a collector street. The street may also be classified as a collector street when a proposed future subdivision will provide a connection between two (2) collector streets.

(4) The minimum street right-of-way for agricultural subdivisions shall be forty-four (44) feet in width provided, that when the street length exceeds two thousand (2,000) feet, the minimum right-of-way shall be fifty-six (56) feet in width.

(5) The minimum street right-of-way for dead-end streets serving six (6) lots or less, excluding those lots also bounded by a public street, and not exceeding four hundred (400) feet in length, may be thirty (30) feet in width. This subsection shall apply only to subdivisions of lots of record existing prior to or on

July 3, 1973.

(d) Private Streets. All private streets shall conform to the requirements of the public streets.

(e) Improvements.

(1) All public and private streets, common driveways and parking areas shall be provided with all-weather surfaces.

(2) Pavement widths for the various classifications of streets shall conform to the standards established by the Department of Public Works.

(3) Curbs, gutters and sidewalks shall be provided on all proposed or existing streets within or abutting the subdivision in Commercial and Resort Districts and in Residential Districts where the density permitted is ten (10) units or more per acre.

(4) Street monuments shall be placed and properly coordinated with the government survey triangulation stations at all angle points, points of curvature in streets and at intermediate points as shall be required by the Department of Public Works.

(5) All traffic signs, street name signs and traffic stripes shall be provided by the subdivider as required by the Department of Public Works.

(6) All street design and improvements shall be constructed in accordance with the standards established by the Department of Public Works.

(f) Improving Existing Streets for Access.

(1) The Planning Commission may deny any subdivision if a traffic problem would be created due to the inadequacy of existing public streets to handle vehicles entering public streets. In denying a subdivision, the Planning Commission shall prepare a statement specifying the traffic problem presented by the subdivision. The subdivider shall have the right to make all necessary improvements to eliminate the problem at his own expense. Only upon completion of the required improvements, or upon executing an agreement with the County to provide improvements, may the Planning Commission approve the subdivision.

(2) In the event the Planning Commission determines that the existing street right-of-way width abutting a proposed subdivision is less than the width necessary for a street of the proper classification, the Planning Commission may require the subdivider to dedicate additional right-of-way to the County.

(g) Street Names.

(1) Authority to Name Streets. The authority to name streets and to approve the change of street names within the County of Kauai is hereby delegated to the Planning Department to be exercised in accordance with the standards as set forth herein.

(2) Definitions. When used in this subsection, the following words or phrases shall have the meaning given in this paragraph unless it shall be apparent from the context that a different meaning is intended:

(A) "Avenue" means a fully improved through-roadway serving local or minor collector traffic, landscaped and planted with trees.

(B) "Boulevard" means a major collector with or without a medial strip generally shorter than a highway, usually serving through-traffic on a continuous route.

(C) "Circle" means a roadway having a circular form with only one access point to the adjoining street.

(D) "Court" means a short roadway partially or wholly enclosed by buildings giving the impression of a small open square.

(E) "Drive" means a long winding collector roadway; usually through a valley, mountainous area or plateau, having scenic qualities.

(F) "Highway" means a roadway generally serving through traffic on a continuous route providing the primary access between communities. Whenever practicable, highways shall be named after Hawaiian royalty.

(G) "Lane" means a narrow and short roadway without curbs or sidewalks.

(H) "Loop" means a looped roadway having two (2) access points off the same roadway.

(I) "Mall" means a street or portions thereof on which vehicular traffic is to be restricted in whole or in part and which is to be used exclusively or primarily for pedestrian travel or promenade.

(J) "Parkway" means a major collector roadway usually containing a medial strip with landscaped setback parklike areas on each side of the right-of-way, generally heavily planted with trees for its entire length.

(K) "Place" means a cul-de-sac.

(L) "Road" means a collector roadway in the rural district. A roadway with the characteristics of a "road" or a "lane" shall be given a name only in circumstances where such a roadway is an extension of an already existing and named "road" or "lane."

(M) "Street" means the entire width between boundary lines of every roadway publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

(N) "Way" means a cul-de-sac which is off another cul-de-sac.

(3) Requirements Relative to Street Names. Street names within the County of Kauai shall comply with the following requirements:

(A) Street names selected shall consist of Hawaiian names, words or phrases, along with their proper spelling, meanings, and diacritical marks, and shall be selected with a view to the appropriateness of the name to historic, cultural, scenic and topographical features of the area; however, non-Hawaiian names may be selected based on justifications presented by the applicant.

(B) Street names selected shall not duplicate nor be similar to existing street names in spelling or sound.

(C) Street names selected shall fit the space limitation of a standard street name sign of the Department of Public Works.

(D) Streets that are a continuation of an existing street shall be given the same name as the existing street.

(E) Streets that are continuous shall bear the same name throughout.

(F) A street shall be entitled to a street name only if:

(i) The roadway has a legally defined right-of-way, by roadway lot or easement; however, street names shall be considered for subdivisions for which construction plans have been approved by the County;

(ii) The roadway has a minimum right-of-way of eighteen (18) feet and is paved; and

(iii) The roadway serves two (2) or more lots or units.

(G) Any street names adopted after the effective date of this subsection shall include appropriate diacritical marks, which shall appear on the street name sign prepared by the Department of Public Works. Appropriate diacritical marks shall also be required for all replacement signs for street names in effect on the effective date of this subsection and to all signs where a newly named street constitutes an extension of a street for which a name is in effect on the effective date of this subsection. The Planning Department and the Department of Public Works may take all steps necessary to redesignate the names of existing streets to include appropriate diacritical marks where such redesignation is found to be necessary or appropriate.

(4) Procedural Requirements.

(A) Any owner, including public agencies, of a street or lot fronting a street, may request a new street name or a change of an existing street name by submitting an application to the Planning Department.

(B) Street name applications shall include the following:

(i) A map showing the street for which a name or name change is sought and the surrounding streets and their names.

(ii) The street name proposed, and its meaning in English. The applicant may request the Planning Department to choose the name.

(iii) In the case of a request to name a street or to change an existing street name, other than as part of the subdivision process, the reasons for the proposed name or name change.

(iv) The names and addresses of all residents fronting the street.

(C) Notices that a street name or name change has been proposed shall be circulated by the applicant to all residents on the street.

(D) The Planning Director's approval of a name or name change shall be subject to the approval of a majority of the residents on the street.

(E) The applicant shall conduct a poll to determine the approval of residents on the street.

(5) Approval.

(A) The Planning Director shall approve or disapprove an application not later than forty five (45) days after its filing.

(B) The decision of the Planning Director may be appealed to the County Council not later than ten (10) days after mailing of the Planning Director's decision to the applicant.

(C) A street name shall become effective on the date of its approval.

(D) Upon approval of the street name, the applicant shall install street name signs for the naming of the streets. The sign shall conform to the standards of the Department of Public Works. The applicant shall bear the total cost of the purchase and installation of the sign and shall notify the Fire Department, Police Department and Post Office of such change. (Ord. No. 373, October 9, 1979)

(h) Bus Stops and Bus Shelters.

(1) Dedication. Every subdivider seeking subdivision approval for residential units, as a condition precedent to approval of the residential subdivision, may be required to provide land in perpetuity or dedicate land for bus stops with adequate exits or turnaround routes and to construct and assume all costs for the materials and construction of bus shelters thereon.

(2) Location and Design. The location of bus stops and design of bus shelters, including materials to be used, shall conform to the standards established by the appropriate agencies.

(3) Procedure. The Planning Director, after consulting with the Department of Accounting and General Services, the Department of Education, and the Department of Public Works, and in consideration of the nature, location, and size of the subdivision, the existing bus stops, the traffic circulation pattern, the distance to school, the climatic conditions, and other health, safety, and welfare reasons, may recommend to the Planning Commission that the subdivider of a residential subdivision be required to dedicate land for bus stops with adequate exits or turnaround routes and to construct and assume all costs for the materials and construction of bus shelters thereon. The improvement of the land dedicated for the bus stop and the construction of the bus shelter, if required, shall be completed prior to its acceptance by the County.

(4) The Planning Director may adopt rules and regulations pursuant to Chapter 91, H.R.S., necessary for the purposes of this section. (Ord. No. 175, July 3, 1973; Ord. No. 270, December 24, 1975; Sec. 9-2.3, R.C.O. 1976; Ord. No. 331, October 26, 1977; Sec. 9-2.3, 1978 Cumulative Supplement; Ord. No. 356, January 26, 1979; Ord. No. 373, October 9, 1979; Ord. No. 406, January 22, 1981)

Sec. 9-2.4 Water Supply And Distribution.

Water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water. (Ord. No. 175, July 3, 1973; Sec. 9-2.4, R.C.O. 1976)

Sec. 9-2.5 Sanitary Sewers.

(a) Sewage Service.

(1) All subdivisions accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with the standards established by the Department of Public Works.

(2) In subdivisions not accessible to public sewers, a private sewage disposal system that meets the requirements of the Department of Public Works and the requirements of the State and the State Department of Health may be permitted.

(b) Relation to Storm Drainage System. No storm drainage channel, line or facility shall be connected to a sanitary sewage system. (Ord. No. 175, July 3, 1973; Ord. No. 270, December 4, 1975; Sec. 9-2.5, R.C.O. 1976)

Sec. 9-2.6 Storm Drainage.

(a) General Standards for Drainage.

(1) Protect and preserve existing natural drainage channels to the greatest extent feasible.

(2) Protect the subdivision from flood hazards.

(3) Provide a system by which water within the subdivision will be removed without causing damage or harm to the natural environment, or to property or persons within the subdivision or to adjoining areas.

(4) Assure that waters drained from the subdivision are substantially free of pollutants, including sedimentary materials, of any greater quantity than would occur in the absence of subdivision and improvement, in order to protect the water courses and shorelines.

(5) Assure that waters are drained from the subdivision in 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 improvement, in order to protect the water courses and shorelines.

(6) Provide for the crossing of water courses by spanning rather than by culverts when possible, so that natural stream beds will not be altered where the alterations will cause undue environmental change.

(b) Easements and Right-of-Ways. In the event drainage improvements are made for a subdivision, adequate right-of-ways and easements for storm drainage purposes shall be provided.

(c) Oversize Drainage Facilities. The Department of Public Works may require that the applicant design and construct a drainage system that will serve adequately the entire drainage basin within which the subdivision is located when the basin is ultimately developed. (Ord. No. 175, July 3, 1973; Ord. No. 300, March 7, 1977; Ord. No. 416, November 4, 1981; Sec. 9-2.6, R.C.O. 1976)

Sec. 9-2.7 Utility Lines And Facilities.

(a) Electric and Other Utility Lines and Communication.

(1) Electrical service shall be provided for all subdivisions, provided that the subdivisions within the Agricultural and Open Use Districts outside of the Urban District as established by the State Land Use Commission may be exempted from this requirement if the subdivision used is to be primarily for agricultural purposes.

(2) Electric distribution lines and other utility and communication distribution lines shall be permitted overhead except as provided in this Section.

(3) All electrical services, street light wiring, and other utility and communications services shall be installed underground for all subdivisions within the Resort Districts and for residential subdivisions where the density of development is to be at ten (10) dwelling units or more per acre. The following types of lines and facilities may be exempted from the requirements of this Section:

(A) Poles without overhead lines used exclusively for fire or police alarm boxes, lighting purposes or traffic control, and equipment appurtenant to underground facilities.

(4) Street lights shall be provided within the subdivision of Commercial, R-2, R-4, R-6, R-10, R-20, RR-10 and RR-20 Use Districts. The construction of street lights shall conform to the standards established by the Department of Public Works.

(5) All new electric and other utility and communication services and facilities to be located within flood plain areas as determined by the County in subdivisions and new developments will be located and constructed in a manner which will minimize the risk and danger of flood damage. (Ord. No. 175, July 3, 1973; Ord. No. 300, March 7, 1977; Sec. 9-2.7, R.C.O. 1976; Sec. 9-2.7, 1978 Cumulative Supplement)

Sec. 9-2.8 Parks And Playgrounds.

(a) Authority. This Section is enacted pursuant to the authority granted by Section 46-6, H.R.S. as amended.

(b) Dedication. Every subdivider as a condition precedent to approval of a subdivision shall provide land in perpetuity or dedicate land for park and playground purposes, unless the Department of Public Works determines that it is unfeasible for the County to maintain such land for park and playground use. Where the Department of Public Works determines that it is unfeasible for the County to maintain such land for park and playground use, the Planning Commission shall require the subdivider to pay a fee in lieu of the land. Such fee shall be determined by the formula contained in Section 9-2.8(d). The park and playground requirement may be satisfied by a combination of land and fee in lieu of the land.

(c) Application.

(1) The provisions of this Section shall not apply to:

(A) Subdivision of land into two (2) or more lots only for the purpose of clarifying public records or adjustments of boundaries, provided that no additional lots will be developed for the purpose of building dwelling units thereon.

(B) Subdivisions for a public utility, public facility or of a public nature, and which will not be provided with or developed into dwelling units.

(C) Industrial and commercial use subdivisions.

(D) Subdivision of land into two (2) or more lots for agricultural purposes which will not be developed under this subdivision application, into dwelling or lodging units. The subdivider desiring such an exception shall file with the Planning Director a certified statement therefor, stating fully the grounds for the exception and that the subdivided land shall not be provided with dwelling or lodging units. These conditions shall run with the land.

(E) Subdivision of building, as defined in Section 9-1.5 of the Subdivision Ordinance, for which a Zoning Permit has been given in accordance with the provisions of the Comprehensive Zoning Ordinance, provided that a Building permit is secured within twelve (12) months from May 20, 1977.

(2) The Provisions of this Section shall apply to:

(A) Changes in use of building from hotel to residential dwelling use.

(B) Any additional dwelling or lodging units added to an existing building or lot.

(C) Any dwelling or lodging units of a building constructed in the stead of a building that is demolished, but only to the extent that such units exceed the number of units of the demolished building.

(D) All subdivisions except those excluded in Section 9-2.8(c)(1).

(E) Where zoning allows the construction of more than one (1) dwelling unit on a vacant lot, a fee as provided in Section 9-2.8(d) shall be assessed for all but one (1) dwelling unit at the time of Building permit action.

(d) Land Area Requirement to be Dedicated in Perpetuity.

(1) In the public interest, convenience, health, welfare and safety, subdividers, except as provided under Section 9-2.8(d)(4), shall provide a minimum ratio of one-and-three-fourths (1.75) acres of land for park and playground purposes for each one thousand (1,000) persons or fraction thereof.

(2) Population density for the purpose of this Section shall be:

(A) Single-family dwelling units and duplexes = 3.5 persons per dwelling unit; and

(B) Multi-family dwelling units = 2.1 persons per dwelling unit.

(3) Land required to be dedicated or provided in perpetuity by a subdivider pursuant to this Section shall be determined on the following basis:

(A) In subdivision of land, the basis for determining the total number of dwelling or lodging units for computation purposes shall be the number of such units permitted by the County in the subdivision as shown on the final subdivision map filed with the County.

(B) In Building permit applications, the total number of dwelling or lodging units for computation purposes shall be the total number of units as shown on the Building permit application.

(C) Land Dedication Formula. The land dedication formula shall be as follows:

$$\begin{array}{l} \text{=====} \\ C \times P = \text{AREA TO BE DEDICATED IN ACRES*} \\ \text{=====} \end{array}$$

Where,

$$C = \frac{1.75 \text{ ac}}{1000} = \text{Number of Park Acres Per 1000 Persons as Per Section 9-2.8(d)(1) which is determined by the following formula:}$$

$$P = [\text{Population Density**}] \times [\text{Total Number of Lots or Dwelling Units}]$$

P = Total Population Within the Subdivision or Dwelling Units

*To convert acres to square feet, multiply acres by 43,560.

**Population density as per Section 9-2.8 (d) (2).

(4) Land and building subdivisions of the first six (6) lots or units of subdivision of land or units falling within the provisions of Section 9-2.8(c) shall be assessed One Hundred Fifty Dollars (\$150) per lot or unit. Subdivision of all lots or units subsequent to the initial six (6) shall be assessed the full requirement applicable to the lots or units as provided in Section 9-2.8(d), regardless of the change in ownership of the lot or unit assessed since the initial assessment.

(e) Valuation.

(1) When an in lieu fee is to be paid for lands, the assessment shall be based upon the fair market value of the raw land prior to subdivision plus fifty percent (50%) of the difference between the fair market value of the subdivided land (including site improvements and utilities), and the fair market value of the raw land.

(2) If the County and the subdivider fail to agree on the fair market value of the land, the value shall be fixed and established by majority vote of three (3) land appraisers; one (1) shall be appointed by the subdivider, one (1) shall be appointed by the County, and the third appointed by the Fifth Circuit Court. The subdivider and the County shall equally bear the fees of appraisal and costs thereof.

(3) Fees paid pursuant to this Section shall be made directly to the Director of Finance and said fees shall be deposited in a 'park and recreational trust fund.' Payment may be in a lump sum at the time of final approval of the land subdivision or final plan approval for a building subdivision; or fifty percent (50%) at the time of preliminary approval of the land subdivision or preliminary plan approval of the building subdivision, and the balance paid at the time of final approval of the land subdivision or final plan approval of the building subdivision.

(A) All monies received shall be used for the acquisition and development of park and recreational facilities, facilities replacement and maintenance equipment to serve the district in which the subdivision is located. Monies received may be expended on neighborhood community facilities in reasonable proximity to the subdivision. Where a public park and playground presently serves a subdivision, such fees may be used for the purpose of providing additional facilities for that park or playground. The County Engineer shall determine the various park areas for funding purposes.

(B) When funds are needed for implementing a plan to provide or develop land and facilities or for preparing site plans such as design and

engineering work, the County Engineer shall submit a written request to the Planning Director and the Mayor for approval. Upon approval, the Finance Director shall be authorized to release monies from the fund.

(C) No refunds shall be made for any land and building subdivision which the Planning Commission has granted final approval, except that credit may be given to subsequent subdivisions of the same area.

(D) All monies, interests, and other forms of earnings resulting from the fee shall thereafter be the property of the County. The interests and earnings accrued from the fee shall be expended in the same manner as the fee itself.

(f) Credit for Private Park and Playground.

(1) Where land for a private park, playground or recreational area is provided in a subdivision, and the area is to be privately owned and maintained and used by the occupants in the subdivision, such land may be credited on an area for area basis against the land which would otherwise be required to be dedicated under Section 9-2.8(d); provided that, such credit shall not exceed fifty percent (50%) of the land that would otherwise be required to be dedicated under Section 9-2.8(d).

(2) The credit shall be subject to the following standards and requirements and subject to the approval of the Planning Commission upon consultation with the Department of Public Works.

(A) The park, playground or recreational area shall be clearly set aside as a recreational area.

(B) No credit shall be given for setback areas which are required by other State and County statutes, ordinances, and regulations.

(C) The use of the site is restricted for park, playground and recreational purposes by recorded covenants which shall run with the land for the use of all the purchasers or occupants in the subdivision. The covenant shall specify that the restricted use cannot be altered without the consent of the Planning Commission. The covenants shall also obligate all of the occupants of the subdivision to be mandatory members of the private park, playground or recreational area.

(D) There shall be adequate assurance for perpetual maintenance of the private parks and playgrounds by recorded covenant running with the land which shall include but not necessarily be limited to the following:

(i) Provisions obligating the subdividers, purchasers or occupants in the subdivision to maintain the private parks and playgrounds in perpetuity.

(ii) Provisions empowering the County to enforce the covenants to maintain the private parks and playgrounds and authorize the performance of maintenance work by the County Engineer in the event of failure by the subdivider, purchaser or occupant to perform such work and permit the subjecting of the land and properties in the subdivision to a lien until paid.

(E) Legal documents shall be drawn up by the subdivider to ensure the above-mentioned conditions and requirements and shall be subject to the review and approval of the County Attorney as to form and legality. The subdivider shall be required to file with the Bureau of Conveyances a declaration of the above-mentioned documents. A certified copy of the documents as issued by the Bureau of Conveyances shall be presented to the Planning Commission as evidence of recordation, prior to occupancy of any subdivision.

(F) Golf courses, marinas or other similar uses, as determined by the Planning Director, which serve only a certain group of individuals shall not be considered as credit for private parks.

(3) Where lands for park and playground were dedicated or provided in perpetuity prior to May 20, 1977, and the Planning Commission determines that the land satisfy the requirements of Section 9-2.8(f)(2), the land may be credited against the park land which would otherwise be required under Section 9-2.8(d); provided that, the credit shall not exceed fifty percent (50%) of the land that would otherwise be required under Section 9-2.8(d). The land shall be subject to the standards enumerated under Section 9-2.8(f)(2). (Ord. No. 175, July 3, 1973; Ord. No. 271, December 22, 1975; Sec. 9-2.8, R.C.O. 1976; Ord. No. 304, May 20, 1977; Sec. 9-2.8, 1978 Cumulative Supplement; Ord. No. 397, August 11, 1980)

Sec. 9-2.9 Public Access-Ways For Any Subdivision.

The Planning Commission shall require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right-of-way from a public highway to area in the mountains

where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding and other recreational purposes, and where there are existing mountain trails.

The Planning Commission may require dedication of public access as described above to areas where there are no existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding and other recreational purposes, and where there are no existing mountain trails.

The Planning Commission may also require similar public access in areas in which a subdivision abuts, encompasses, or is in close proximity to other public resources, recreational areas, parks, schools, or other public facilities.

(b) Designation of public access-ways shall be subject to the following requirements:

(1) "Standard" public access-ways shall be a minimum of ten (10) feet in width.

(2) The Planning Commission shall establish the preferred public access alignment with consideration of such factors as topography, approximate location to the nearest public street, and configuration of subdivision lots or development site.

(3) "Standard" public access-ways shall be designated at intervals of not less than three hundred (300) feet and not greater than fifteen hundred (1,500) feet. The Planning Commission may require that access-ways be consolidated to provide sufficient area for vehicular access, parking, development of shoreline or other recreational facilities, or other public purposes; or may modify "standard" public access-ways 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 conveyed shall not differ substantially from that which would be required by the provisions of "standard" public access-ways, unless additional areas and improvements are mutually agreed to by the subdivider and the appropriate County agencies.

(4) Public access-ways shall be designed to specifications approved by the Department of Public Works and the Planning Department.

(5) Where lands comprising a subdivision do not span the entire distance between public resources, recreational areas, parks, schools, or other public facilities to which it has been determined that public access is necessary, the Planning Commission shall require conveyance of those segments of the needed public access-way laying within the proposed subdivision. Partial access-way segments shall be conveyed to the County pursuant to requirements contained in Section 9-2.9(i). Partial access-way segments so designated need not be open to public access until the entire access-way is dedicated.

(6) Public access-ways shall be clearly designated on the final map(s) of the subdivision.

(7) The County shall indemnify the landowner from injury to members of the public who are injured within the access-way.

(8) Other specifications for improvements may include but not be limited to off-street parking requirements, turnarounds, grading, and greater access width.

(9) The County Engineer may restrict or prohibit passage over a public access-way if the County Engineer determines that:

- (A) the access-way is unsafe;
- (B) the area being accessed is hazardous; or
- (C) the area is being reserved by the County as a partial segment for a future public access-way.

(c) In cases where a subdivision is in close proximity to an existing access-way or where the County Engineer determines that an access-way is not feasible due to physical constraints or hazardous conditions, the Planning Commission may require the subdivider to improve existing access-ways within or in close proximity to the parcel being subdivided.

In cases where a subdivision is in close proximity to an existing access or where the County Engineer determines that an access is not feasible due to physical constraints or hazardous conditions, and where it has been determined that existing access-ways within or in close proximity to the parcel being subdivided cannot be improved, the Planning Commission may assess an in-lieu fee equivalent to the difference between the fair market value of the affected lot or lots without an access easement and the fair market value of the affected lot or lots with an access easement. The land area shall be calculated as a ten-foot (10') wide portion of the property extending from the location that the property boundary line fronts a public street to the boundary line abutting the public resource.

(1) Fees paid pursuant to this section shall be made directly to the Director of Finance and said fees shall be deposited in a separate 'Public Access Fund.' Payment may be made in a lump sum at the time of Final Subdivision Map approval, or fifty percent (50%) at the time of Preliminary Subdivision Map approval and the balance paid at the time of Final Subdivision Map approval.

(2) all monies received shall be used for the acquisition and development of public access-ways.

(3) If the County and the subdivider fail to agree on the fair market value of the land, the value shall be fixed and established by the majority vote of three (3) land appraisers; one (1) being appointed by the subdivider, one (1) being appointed by the County, and

the third (3rd) being appointed by the Fifth Circuit Court. The subdivider and the County shall equally bear the fees of appraisal and costs thereof.

(d) The Planning Commission may require a subdivider to improve an access-way in a subdivision prior to diction to the County. Upon dedication of land for a public access-way as required by this section and upon acceptance by the County, the County shall thereafter assume the costs of additional improvements for and maintenance of the access-way, and the subdivider shall accordingly be relieved from such costs.

(e) The Planning Commission may also require public access to and the preservation of all significant historic and archaeological sites known or discovered on the parcel to be subdivided, as determined by the Planning Commission after seeking and receiving input from affect agencies, and community and cultural groups.

(f) for the purposes of this section, "subdivision" means any land which is divided or is proposed to be divided for the purposes of disposition into six (6) or more lots, parcels, units, or interests and also includes any land whether contiguous or not, if six (6) or more lots are offered as part of a common promotional plan of advertising and sale. However, the Planning Commission may require access-ways to be conveyed to the County when the land is divided into less than six (6) lots, parcels, units or interest. For the purposes of this section, the definitions of lots, parcels, units or interests, shall be applicable to condominium property regime project created and established pursuant to Chapter 514A, Hawai'i Revised Statutes.

(g) The right of transit along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation of by the debris left by the wash of the waves. However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the Planning Commission may require the conveyance of a right-of-way or easement along the makai boundaries of the property lines public transit corridors which shall not less than ten feet wide. The Planning Commission may also require lateral access or transit ways in other situations where they determine it is in the public interest.

(h) The access-way shall be clearly designated on the final map of the subdivision or development.

(i) Upon approval of the final subdivision map and prior to receiving approval of the final subdivision map from the Planning Commission, the subdivider shall deposit conveyancing documents in fomr and content acceptable to public access free and clear of all encumbrances. Failure to timely submit such documents to the Planning Commission prior

to approval of the final subdivision map shall be sufficient grounds for disapproval of the final subdivision map. (Ord. No. 175, July 3, 1973; Sec. 9-2.9, R.C.O. 1976; Ord. No. 777, November 28, 2001)

Sec. 9-2.10 Lot Sizes.

Minimum lot area, minimum lot frontage and width, and lot width to depth ratios, shall conform to the provisions of the Comprehensive Zoning Ordinance. (Ord. No. 175, July 3, 1973; Sec. 9-2.10, R.C.O. 1976)

Sec. 9-2.11 Blocks.

The dimension, shape and orientation of blocks shall be determined with due regard to:

- (1) provision of building sites suitable to the use and type of buildings contemplated;
- (2) minimum site requirements, particularly as to site, slope, and dimensions;
- (3) control, safety and convenience of pedestrian and vehicular traffic;
- (4) topography and other land features;
- (5) orientation and scenic enhancement;
- (6) length of blocks shall not be more than one thousand eight hundred (1,800) feet;
- (7) and a pedestrian way of six (6) feet minimum width may be required through the center of any block longer than one thousand two hundred (1,200) feet. (Ord. No. 175, July 3, 1973; Sec. 9-2.11, R.C.O. 1976)

Sec. 9-2.12 Property Pins.

Prior to final acceptance of subdivision improvements, the subdivider shall provide property pin markers for all lots. (Ord. No. 175, July 3, 1973; Sec. 9-2.12, R.C.O. 1976)

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 map or document pertinent to the consolidation. The Planning Commission shall establish rules and fee for consolidation of lots. (Ord. No. 175, July 3, 1973; Sec. 9-2.13, R.C.O. 1976)

Sec. 9-2.14 Cemetery Lots.

Cemetery lots shall mean burial or other interment lots in cemeteries approved by the Department of Health. The standards relative to improvement requirements shall not apply to individual lots in a cemetery. (Ord. No. 175, July 3, 1973; Sec. 9-2.14, R.C.O. 1976)

ARTICLE 3. PROCEDURE FOR APPROVAL OF SUBDIVISIONS

Sec. 9-3.1 When Approval Necessary.

No person shall record a map of a subdivision or sell, lease or convey any lot, parcel or unit in a horizontal property regime within a subdivision unless the preliminary map, grading plans, construction plans, and final map of the subdivision have been approved as provided in this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.1, R.C.O. 1976)

Sec. 9-3.2 Application For Approval Of Preliminary Subdivision Maps.

(a) A preliminary subdivision map may be filed by the owner of the property sought to be subdivided, or by any person duly authorized by the owner. The preliminary subdivision map, wherever feasible, shall be filed together with one (1) application for the required zoning permit, as provided in the Comprehensive Zoning Ordinance, and two (2) applications, if any, for necessary use permits and variance permits, as provided in the Comprehensive Zoning Ordinance. Information required in the applications may be shown in the preliminary subdivision map, and the Planning Commission, to the extent feasible, shall act upon the preliminary subdivision map and all applications simultaneously.

(b) Filing Fees. Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of Three Dollars (\$3.00) for each lot shown on the preliminary subdivision map. (Ord. No. 175, July 3, 1973; Sec. 9-3.2, R.C.O. 1976)

Sec. 9-3.3 Form And Content Of Preliminary Subdivision Map.

Twelve (12) copies of a preliminary subdivision map shall be filed with the Planning Department. The map shall be clearly and legibly drawn and shall consist of a map and data to accompany the map as provided in this Article.

(a) Form and Contents of the Map. The map shall conform as to size and scale with the standard set forth in Section 502-19, H.R.S., or shall be contained on legal size paper. When more than one (1) sheet is required, an index sheet of the same size shall be filed which shows the entire subdivision on one (1) sheet, with block and lot numbers. The map shall contain the following information, except to the extent that the Planning Director waives the requirements.

(1) Name of the owner of record, subdivider, or his agent, and the registered surveyor or engineer who prepared the map.

(2) Date, north arrow, scale, tax map key and subdivision name.

(3) The names and locations of subdivisions adjoining; the locations, names, width of pavements and right-of-ways and other dimensions of existing and proposed streets; the approximate location of easements for utilities including drainage, sewer and water; parks and other public places or spaces on immediately adjoining properties.

(4) The approximate location in the adjoining streets or property of existing sewers, water mains, including hydrants and meters, culverts, water courses and storm drain lines and appurtenances, and electric lines proposed to be used by the property to be subdivided and invert elevations of sewers at points of proposed connection. All elevations shall be based on official government bench-marks. The approximate location of existing sewers and water mains and electric lines within the property to be subdivided shall also be shown.

(5) The location of existing cesspools, water courses, and the location of structures and improvements that are to be retained.

(6) The proposed lot and street layout with approximate area and dimensions of the lots, street right-of-ways, easements and setbacks and radius of curves along property lines or center lines of each street.

(7) A tabulation indicating the number and size of lots and the density showing conformance with the provisions of the Comprehensive Zoning Ordinance.

(8) The typical cross-section of the proposed streets when required by the Department of Public Works.

(9) The approximate location and the sizes of all parcels of land proposed to be dedicated to public use and the conditions of the dedication, if any.

(10) All maps shall show pertinent topographical information such as slopes and shapes of land, approximate elevations, watercourses and drainage ways, and other information affecting the design of the subdivision. In order to facilitate the review and evaluation of proposed subdivision improvements, the County Engineer or the Planning Director may require contours showing more exactly the terrain configuration and features. When contours are required the maps shall show existing contours at vertical intervals of five (5) feet where the slope is greater than ten per cent (10%), and not more than two (2) feet where the slope is less than ten per cent (10%).

(11) The Planning Director or the County Engineer may require preliminary profiles showing existing ground lines and proposed grades of streets, when it appears that grades of lots or portion of streets exceed ten per cent (10%) and also the preliminary plan of proposed sanitary sewers and storm drainage facilities with grades and sizes indicated.

(12) When the proposed subdivision is located in a Constraint District, the constraint zones shall be shown.

(13) In a subdivision which may reasonably be expected to be re-subdivided in whole or in part at

some future time, there shall be shown in dotted lines a plan of probable future streets and lotting.

(14) Indicate the estimated on-site and off-site storm drainage runoff quantity and drainage pattern and other pertinent information relative to the existing drainage condition.

(15) For residential subdivisions, the proposed location for bus stops showing possible exits or turnaround routes that may be required to be dedicated pursuant to Sec. 9-2.3(h).

(16) Identify the areas of flood or tsunami hazards, delineating the boundaries of the flood fringe, floodways, general flood plain, and coastal high hazard, and designating the base flood elevations.

(b) Data to Accompany Map. Data to accompany the tentative map shall include a written statement of information regarding:

(1) Existing and proposed use of the property and compliance with requirements of the Comprehensive Zoning Ordinance.

(2) Description of the proposed subdivision, including the number of lots, the density, average and minimum size and the nature of the development.

(3) The methods and techniques that will be used to satisfy the standards and regulations established in Article 3 of this Chapter regarding matters such as general environmental standards, streets, sanitary sewers, storm drainage, water supply and distribution, land alterations, utility lines and facilities, and parks and recreation.

(4) The types and general contents of proposed deed restrictions, if any, relating to any common area, park area, recreation area, or permanent open space area. (Ord. No. 175, July 3, 1973; Sec. 9-3.3, R.C.O. 1976; Ord. No. 406, January 22, 1981; Ord. No. 416, November 4, 1981)

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. 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:

	Column 1	Column 2
Various governmental agency review to Planning Director.	30 Calendar Days*	45 Calendar Days*
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.**	45 Calendar Days*	45 Calendar Days*

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. (Ord. No. 175, July 3, 1973; Sec. 9-3.4, R.C.O. 1976)

Sec. 9-3.5 Construction Plans.

(a) Following approval of the preliminary subdivision map by the Planning Commission, the subdivider shall prepare and submit to the Planning Department six (6) copies of grading plans, construction plans and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be constructed in the subdivision. The plans shall conform in size, scale, and detail to standards established by the Planning Department, Department of Water and the Department of Public Works. One (1) set of drainage data and information as specified in the Department of Public Works standards shall accompany the construction plans.

(b) The Planning Department shall forward copies of the grading plans, construction plans, and specifications to the Department of Public Works, the Department of Water and the State Department of Health. Any subsequent revisions necessary to make the construction plans in an acceptable standard ready for signature approval may be done between the agencies and the subdivider without being processed through the Planning Department.

Upon approval of construction plans by each department, the Planning Director shall review the plans. If the Planning Director determines that the plans conform to the approved preliminary subdivision map, as conditioned by the Planning Commission, he shall approve the plans. If the construction plans deviate from the approved preliminary subdivision map, as conditioned by the Planning Commission, the Planning Director may approve the construction plans if he determines that the deviations are not substantial. If the Planning Director determines that the deviations are substantial he shall disapprove the construction plans and return them to the subdivider with a written specification of changes required. If the subdivider disagrees with the Planning Director he may appeal the decision to the Planning Commission which will process the appeal in the same manner as provided for the review of a preliminary subdivision map.

(1) The various governmental agencies required to approve construction plans shall take action on the plans within sixty (60) calendar days of their submission by the applicant or within a longer period as may be agreed to by the applicant.

(2) After action is taken by the agencies, the Planning Director shall take action on the plans within fifteen (15) calendar days.

(3) If the agencies and the Planning Director fail to take action within the time limits prescribed in Section 9-3.4 the construction plans shall be deemed approved.

(c) The following signatures shall be required on the construction plans:

- (1) Representative of the Department of Health;
- (2) County Engineer, Department of Public Works;
- (3) Manager and Chief Engineer, Department of Water;
- (4) Planning Director, Planning Department;
- (5) And others as required by the Planning Director.

(d) Approval of construction plans shall not be construed as approval of the utility plans if the utilities are not under County jurisdiction.

(e) The approved construction plans shall be in effect for only one (1) year unless construction is started. If construction is not started within this one (1) year period, the construction plans shall be resubmitted for review and approval by all agencies.

(f) In case of a subdivision which does not involve any construction or widening of highways or streets, or drains, or the construction or extension of utilities, including water and sewer mains, the applicant may prepare a preliminary subdivision map, and a final subdivision map of the proposed subdivision without preparing construction plans. Final approval of the final map shall be granted as provided in this Chapter upon certification by the Planning Director, County Engineer, and Manager, that, where required, an adequate deposit has been made with proper agencies assuring the installation of necessary service laterals for water and sewer service and other conditional requirements.

(g) All construction plans shall be certified by a professional engineer having especially qualified in the civil branch. (Ord. No. 175, July 3, 1973; Sec. 9-3.5, R.C.O. 1976)

Sec. 9-3.6 Completion Of Improvements, Agreement And Bond.

After approval of the construction plan, the applicant may construct the required improvement prior to seeking approval of the final subdivision map, or the applicant may enter into an agreement with the County guaranteeing the construction of improvements at his own expense within a reasonable time period specified by the Planning Commission in which case he may seek approval of the final subdivision map prior to constructing the required improvements.

(a) Construction of Improvements Prior to Approval of Final Subdivision Map. The applicant may proceed with the construction of the required improvements and after completion of the required improvements, and approval by the Planning Commission, the applicant shall file for approval of the final subdivision map as provided in this Article.

(b) Agreement and Bond Prior to Approval of Final Subdivision Map. In the event that the applicant desires approval of the final subdivision map prior to constructing the required improvements, he shall file the following documents with the Planning Commission:

(1) A subdivision agreement, approved by the County Attorney, guaranteeing that the applicant will complete the construction of required improvements free of all liens within a time period specified by the Planning Commission and will make full payment therefor, and providing that if the applicant fails to so complete the improvements within the time specified, or an extension as may be mutually agreed upon, the County may complete the improvement and recover the full cost of expenses thereof from the applicant.

(2) A bond or security in one (1) of the following forms:

(A) A surety bond (other than personal surety) in the sum equal to the cost of all work required to be done by the applicant as estimated by the County Engineer and Manager pursuant to the subdivision agreement and conditioned upon the full and faithful performance of any and all work. The surety bond shall provide that should the applicant fail to complete as required within the time specified by the Planning Commission, the County may complete the work and recover the full cost and expense thereof from the surety. The surety bond, or any portion thereof, shall not be released until all improvements have been satisfactorily completed.

(B) Where the applicant has entered into a contract with a responsible contractor for the construction of improvements, one (1) copy of the following shall be submitted:

(i) A certified copy of his contracts;

(ii) A certified copy of the contractor's performance bond in a sum equal to at least fifty per cent (50%) of the cost of all work required; and

(iii) A surety bond (other than personal surety) in a sum equal to at least fifty per cent (50%) of the cost of all work required to be completed by the applicant as estimated by the County Engineer and Manager which bond shall be conditioned as set forth in Section 9-3.6(b)(2)(A). Surety bond or any portions thereof shall not be released until all improvements have been satisfactorily completed.

(C) Cash, negotiable bonds, or other securities acceptable to the Planning Commission in an amount equal to that prescribed for a surety bond under Section 9-3.6(b)(2)(A). (Ord. No. 175, July 3, 1973; Sec. 9-3.6, R.C.O. 1976)

Sec. 9-3.7 Construction Inspection.

(a) Notification. The applicant shall notify the Department of Public Works and the Department of Water at least five (5) days before commencement of construction of improvements.

(b) Inspection and Control of Work.

(1) All work done in constructing the improvements and all materials furnished shall be subject to the inspection of the Department of Public Works and the Department of Water.

(2) Departments shall have access to the work at all times during its construction and shall be furnished with every reasonable facility for ascertaining that the

materials used and the workmanship are in accordance with the requirements of this Chapter and the standards established by the departments.

(3) If any of the work on improvements is done by the applicant prior to the approval of the construction plans, or prior to the inspections of the improvements as required by the departments, the work may be rejected and shall be deemed to have been done at risk and peril of the applicant.

(c) Inspection Fee. Prior to commencement of construction, the applicant shall pay to the Department of Public Works the cost for the inspection of the work and checking and testing of the materials a sum equal to one-half of one per cent (1/2 of 1%) of the estimated construction cost exclusive of the cost of water facilities.

(d) Approval of Work. When all improvement work required by the construction plan is completed to the satisfaction of the Department of Public Works and the Department of Water, the departments shall issue certificates stating that the work has been satisfactorily completed and recommending approval by the Planning Commission. (Ord. No. 175, July 3, 1973; Sec. 9-3.7, R.C.O. 1976)

Sec. 9-3.8 Final Subdivision Map.

(a) If the final map is to be filed with the Land Court for recordation, it shall comply with the requirements specified under the rules of the Land Court for Land Court subdivisions. If the final map is not to be filed with the Land Court, it shall contain the following data:

(1) The final map of all registered land shall conform as to size and scale with the standards set forth in Section 502-19, H.R.S. Where the final map is not to be filed with the Land Court, it may be acceptable to the Planning Commission if it is legal size, eight and one-half by thirteen (8 1/2 x 13) inches, or of other size as it may be acceptable to the Planning Commission. 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.

(2) The final map shall show the following information:

(A) Name and address of the owner of record, subdivider or his agent, and of the registered surveyor who prepared the map.

(B) The date, title, north arrow, scale and tax key. The title shall include the name of the subdivision under which it is to be recorded.

(C) Locations of all proposed streets, easements, parks and other open spaces, reservations, lot lines, set-back lines; also names and lines of all adjoining or existing streets.

(D) The length and true azimuths of all straight lines, radii, chords, and central angles of all curves along the property lines of each street, all dimensions and true azimuths along the lines of each lot, and also any other data necessary for the location of all building lines proposed to be imposed by the subdivider, including set-back lines.

(E) All subdivisions shall be shown to have been accurately surveyed, coordinated to the Government survey triangulation stations and permanently monumented on the ground with approved survey monuments. The error of closure in traverse around the subdivision and around interior lots or blocks shall not exceed one (1) foot to ten thousand (10,000) feet of perimeter.

(F) Names of all subdivisions immediately adjoining; or when adjoining property is not a recorded subdivision, the names of the owners thereof.

(G) Boundary of the subdivided tract, with courses and distances marked thereon. The boundary shall be determined by survey in the field by a registered land surveyor and certified to be correct.

(H) Any conditional requirements imposed as a condition for subdivision by the respective agencies.

(b) Final Subdivision Map; Supplemental Documents. The final subdivision map shall be accompanied by the following documents:

(1) A certificate from registered surveyor attesting to the accuracy of the map.

(2) The preliminary prints shall be accompanied by a preliminary title report of the property shown on the map.

(3) The subdivision agreement and bonds provided for in Section 9-3.6(b) in cases in which the applicant seeks approval of the final subdivision map prior to constructing required improvements.

(4) The certificates provided for in Section 9-3.7 in cases in which the applicant has already constructed required improvements, together with deeds of conveyance conveying a warranty title to all the streets and other improvements and easements associated with the improvements within the subdivision which the applicant offers for dedication to the County.

(5) Cash payment, or proof of payment, for all checking and filing fees; facilities reserve charge and other charges as required by the Department of Water and other applicable fees or deposits.

(6) Deeds for easements or rights-of-way required

for road, drainage or other purposes which have not been dedicated on the final map.

(7) Written evidence acceptable to the County in the form of rights-of-entry or permanent easements across private property outside of the subdivision permitting or granting access to perform necessary construction work, permitting the maintenance of the facility, and providing access to the subdivision.

(8) Agreements acceptable to the County executed by the owners of existing utility easements within proposed road right-of-way consenting to the joint use of the right-of-way as may be required by the County for the public use and convenience of the road.

(9) Evidence of formation of legal entities when required to operate and perform all required maintenance and services.

(10) Deed restrictions relating to any common park or recreation area.

(c) Filing of Final Subdivision Map.

(1) The applicant shall file six (6) copies of the subdivision final map with the Planning Department within one (1) year after approval of the preliminary subdivision map. If no filing is made, the approval of the preliminary subdivision map and construction plan shall become void unless an extension of time is granted by the Planning Commission.

(2) An applicant may elect to file for approval of a final map covering only a portion of the approved preliminary map if he declares his intention at the time he files the preliminary map. Each partial final map shall apply to approval for a partial final map and the subdivision agreement required of the applicant shall provide for the construction of improvements as may be necessary to constitute a logical and orderly development of the whole subdivision by units.

(d) Action on Final Subdivision Map.

(1) Planning Director. After accepting the filing of the final subdivision map, the Planning Director shall send a report to the Planning Commission indicating whether the final map conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved by the Planning Commission and to the approved construction plans. The report shall incorporate written reports by the County Engineer and the Manager and shall also indicate whether the other requirements of this Chapter, other Ordinances and State law have been satisfied.

(2) Planning Commission. After the receipt of the report from the Planning Director, the Planning Commission shall determine whether the final subdivision map substantially conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved, and to the approved construction plans, and whether the applicant has satisfied all other requirements imposed by law. The Planning Commission shall accordingly approve or disapprove the final subdivision map.

(3) Time Limits. If the Planning Commission fails to take action on the final subdivision map within forty-five (45) calendar days from the date of acceptance, unless the applicant assents to a delay, the final subdivision map shall be deemed approved.

(4) Recordation. The final subdivision map or a metes and bounds description of the subdivision must be recorded prior to or at the time of conveyance of interest in any lot or parcel. If no such timely recordation is made, the approval of the preliminary subdivision map, the construction plans, and the final subdivision map shall become void.

(5) Errors and Discrepancies. The approval of the final subdivision map by the Planning Commission shall not relieve the applicant of the responsibility for any error in the dimensions or other discrepancies or oversights. Errors, discrepancies, or oversights shall be revised or corrected, upon request to the satisfaction of the Planning Commission. (Ord. No. 175, July 3, 1973; Sec. 9-3.8, R.C.O. 1976; Ord. No. 422, March 31, 1982)

Sec. 9-3.9 Approval Of Improvements Constructed After Approval Of Final Subdivision Map.

(a) The requirements and procedures provided in Section 9-3.7 shall apply to improvements required by a subdivision agreement where the applicant constructs improvements after the approval of the final subdivision map.

(b) The applicant shall prosecute the work to completion without undue delay except for inclement weather or other reasonable cause. Delay in completion of the work beyond the period stated in the Subdivision Agreement, unless an extension thereof is approved by the Planning Commission and the Surety Company, may result in forfeiture of the cash deposit and security, or a portion thereof, for the completion of the work.

(c) Upon the issuance of the certificates provided for in Section 9-3.7(d), the Planning Commission shall approve the improvements if they substantially conform to the construction plans. Any unexpended cash deposits not required for completion of the work shall be refunded.

(d) The applicant shall submit warranty deeds together with a certificate of title showing merchantable title to all the streets and other improvements, and easements associated with improvements within the subdivision which the applicant offers for dedication to the County. (Ord. No. 175, July 3, 1973; Sec. 9-3.9, R.C.O. 1976)

Sec. 9-3.10 Dedications.

(a) Subject to the provisions of Section 9-3.10(b), approval of improvements by the Planning Commission and acceptance of deeds by the Council submitted by the applicant pursuant to Section 9-3.8(b) and Section 9-3.9(d) shall constitute acceptance of dedication by the County.

As a condition for acceptance of deeds, the applicant shall submit two (2) sets of "As-Built" prints with the "As-Built" tracing of the complete construction plans plus additional tracings of that portion of the construction plans covering the water facilities.

(b) The County shall not take over, receive by dedication, or otherwise, or improve, grade or repair, or do any construction work upon streets or pavements, water lines, street lighting system, sewer repairs, or in any way accept as public highways and streets, avenues or alleys in any subdivision within the County opened or proposed to be opened, unless the street or way has been laid out, approved, and improved in accordance with the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.10, R.C.O. 1976)

Sec. 9-3.11 Other Permits.

No permit shall be issued to cut a curb, tap a water or sewer line, or install any water, lighting or sewer facilities in the area covered by a proposed subdivision until the subdivision has been approved as required by the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-3.11, R.C.O. 1976)

ARTICLE 4. MODIFICATIONS OF REQUIREMENTS

Sec. 9-4.1 Authority.

The Planning Commission may modify the requirements of this Chapter only in particular cases as provided in this Article. (Ord. No. 175, July 3, 1973; Sec. 9-4.1, R.C.O. 1976)

Sec. 9-4.2 Standards.

Modification of the requirements of this Chapter shall be made only if it is found that because of special circumstances applicable to the property sought to be subdivided, including size, shape, topography and location, the strict application of the regulations would deprive the applicant of privileges enjoyed by other property within the vicinity and would work a special hardship on the applicant. Where those conditions are found, the modification permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation and special hardship and will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences.

In no case may a modification be made that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the making of the modification. (Ord. No. 175, July 3, 1973; Sec. 9-4.2, R.C.O. 1976)

Sec. 9-4.3 Procedures.

An application for a modification in requirements will normally be considered by the Planning Commission at the time it considers whether to approve the preliminary subdivision map. If an applicant seeks a modification before or after that time, the variance procedures established in the Comprehensive Zoning Ordinance shall apply to the application. (Ord. No. 175, July 3, 1973; Sec. 9-4.3, R.C.O. 1976)

ARTICLE 5. ENFORCEMENT, LEGAL PROCEDURES AND PENALTIES

Sec. 9-5.1 Issuance Of Permit.

All departments, officials and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no permits or licenses for construction, development, uses, activities or other purposes where they would be in conflict with the provisions of this Chapter; any permits or licenses, if issued in conflict with the provisions of this Chapter shall be void. (Ord. No. 175, July 3, 1973; Sec. 9-5.1, R.C.O. 1976)

Sec. 9-5.2 Enforcement.

It shall be the duty of the Planning Commission and the Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions of this Chapter. (Ord. No. 175, July 3, 1973; Sec. 9-5.2, R.C.O. 1976)

Sec. 9-5.3 Appeal.

All decisions of the Planning Director in the interpretation or enforcement of the provisions of this Chapter may be appealed in writing to the Planning Commission within fifteen (15) days of the Director's decision. (Ord. No. 175, July 3, 1973; Sec. 9-5.3, R.C.O. 1976)

Sec. 9-5.4 Penalty.

Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500) for each offense. The continuance of any violation after conviction shall be deemed a new offense for each day of continuance. (Ord. No. 175, July 3, 1973; Sec. 9-5.4, R.C.O. 1976)