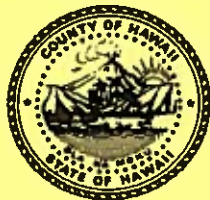


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

June 8, 2001

Edward K. Harada, Vice President
M&E Pacific, Inc.
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Harada:

SUBDIVIDER: KI'ILAE ESTATES LLC
Proposed Consolidation of TMK: 8-5-5:22, 26, & 27
Being portions of L.C. Aw. 8521-B, Ap. 3
And TMK: 8-5-5:19, being a portion of Grant 1575
And All of Grant 3708, and L.C. Aw. 9458:1
And Resubdivision of Said Consolidation
Into Lots 1 to 139, Inclusive
Ki'ilae & Kauleoli, South Kona, Island of Hawaii, Hawaii
TMK: 8-5-005:019, 022, 026 & 027 (SUB 2000-0158)

The Planning Department is implementing Chapter 34 of the Hawaii County Code (HCC), Public Access. This was enacted as Ordinance No. 96-17 in 1996. Copies are enclosed for your information.

This applies to all proposed subdivisions of six (6) lots or more situated generally between shoreline and mountain areas and public streets and highways. Chapter 34 applies to this proposed subdivision, and requires the dedication of public access to the shoreline as a condition precedent to final subdivision approval.

Chapter 34 discusses the adoption of rules to implement Chapter 34. The Planning Department is working on draft rules, but rather than delay further processing of this subdivision pending adoption of rules, we are sending this letter to invite your comments and suggestions on the location of the required public access or accesses. Under HCC §34-5(a)(3), the desired spacing of the public access for the subject subdivision is 1500'-2500' apart. Wider spacing can be approved with the approval of the director and by county council resolution. See §34-5(a)(6).

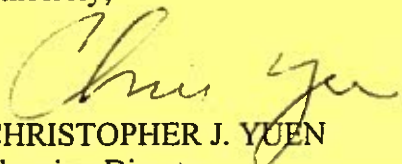
005123

JUN 12 2001

Edward K. Harada, Vice President
M&E Pacific, Inc.
Page 2
June 8, 2001

If you have any questions, contact me at the above address or phone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

CJY:lnm

P:\WP60\SUBDIV\SUB\Subc2001-2\2000158kiilaePUBACC.doc

Encs.- Chapter 34 & Ordinance No. 96 17

xc: Ki'ilae Estates LLC
Roy Takemoto, Deputy Planning Director
Ed Cheplic, Planner

COUNTY OF HAWAII

STATE OF HAWAII

BILL NO. 535

(Draft 10)

ORDINANCE NO. 96 17

AN ORDINANCE PROVIDING FOR PUBLIC ACCESS TO THE SHORELINE AND MOUNTAIN AREAS, BY ADDING A NEW CHAPTER TO THE HAWAII COUNTY CODE.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1 . Findings and Purpose. Through its findings, as enacted in 1973 by Act 143, the legislature has found that there was a great need for the establishment and the preservation of public access to many areas in the State. The legislature also found that miles of shorelines, coastal waters and mountain areas under the jurisdiction of the State of Hawaii are inaccessible to the general public due to the absence of public rights-of-way; that the population of the county is increasing while presently accessible beach, shoreline and mountain areas remain fixed; and that the absence of public access to the county's shoreline and mountain areas constitutes an infringement upon the fundamental right of free movement in public space and access to and use of these public coastal and mountain recreational areas.

There is also the need to insure the preservation of our island's heritage and the availability to the shorelines, conservation lands, inland trails and other limited resources for our future generations, that access to these coastal and mountain areas has been an essential historic element for food, transporting of goods and recreational purposes for many of our island's ancestors.

The purpose of this chapter is to fulfill the right of public access to the ocean, shorelines and mountain areas by requiring the dedication of land for such public rights-of-way by fee or easement as a condition precedent to final subdivision approval or the issuance of a building permit for a multiple-family development where adequate public access is not already provided.

The council recognizes that virtually all publicly owned mountain areas and trails are owned or held in trust by the State of Hawaii and are managed by its department of land and natural resources. The council also recognizes that most of these state-held public mountain areas comprise a complex, sensitive mix of natural resources, including feral game animals, endangered species of plants and animals, and a wide range of serious alien plant control problems which require active intervention and management measures, including eradication, culling, re-implantation, isolation, and carefully controlled monitoring. The council is also aware that in many cases, the private owners who are committed to sound stewardship of their lands flanking such public areas share many of the same circumstances and problems and are concerned about the environmental impacts of the improper placement of public accesses alongside or through their properties. Accordingly, the council finds it essential that public access be provided to state-held lands in locations, and subject to restrictions, which comply with and further the objectives of the State in effecting sound stewardship of the natural resources of such mountain areas. Through integrating their respective approaches to site management and public access design in mountain areas for recreational activities, the county and state can minimize expenditures, direct access to where it is needed, and further the protection and enjoyment of our natural resources for the people of Hawaii County.

SECTION 2. A new chapter is added to the Hawaii County Code and shall read as follows:

"CHAPTER

Public Access

Article 1. General Provisions.

Section . Title. This chapter may be cited as the Public Access Code.

Section . Statutory Authority. This chapter is enacted pursuant to the authority granted by Section 46-6.5, Hawaii Revised Statutes, as amended.

Section . Definitions.

(a) For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words used herein are defined as follows:

(1) '**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 for a multiple-family development is proposed without further subdividing an existing parcel of land, the term "approval" shall refer to the issuance of the building permit.

(2) '**Dedication**' means the conveyance of land, including any improvements, fixtures and facilities appurtenant, or any interest therein, in fee simple or easement.

(3) '**Director**' means the Planning Director of the County of Hawaii.

(4) '**Easement**' means the grant of the right to use a strip of land for specific public access purposes.

(5) '**Lot**' means a building site or a parcel of land shown as a unit on an approved and recorded subdivision as defined in the Hawaii County Subdivision Control Code.

(6) '**Mountain**' means those lands situated above the 1,000-foot elevation above sea level.

(7) '**Multiple-family development**' or '**development**' means buildings or structures containing six or more dwelling units on one lot.

(8) '**Public Access**' means a public right-of-way in fee or easement for pedestrian traffic and may also be used as a bikeway, utility easement or for restricted vehicular traffic.

(9) '**Public mountain area**' means lands publicly owned or privately owned subject to written grants of easements allowing public access and use.

(10) '**Public Shoreline area**' means lands fronting a shoreline which are publicly owned or privately owned subject to written grants of easements allowing public access and use.

(11) **'Public street'** and **'public highway'** means a publicly-owned street or highway or a privately-owned street or highway over which rights of public use or access have been granted and duly accepted by the state or county.

(12) **'Recreational activity'** includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, and viewing or enjoying historical, archaeological, scenic or scientific sites, but excludes any and all commercial activity.

(13) **'Shoreline'** means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or where there is no vegetation in the immediate vicinity, or the upper limit of the debris left by the wash of the waves, pursuant to Chapter 205A, HRS, as may be further amended.

(14) **'Subdivision'** for the purpose of this chapter, means any improved or unimproved land or lands divided or proposed to be divided for the purpose of disposition into six or more lots or parcels.

Article 2. Administration

Section . Application.

(a) The provisions of this chapter shall apply to applications for all subdivisions and multiple-family developments situated generally between (1) shoreline or mountain areas; and (2) public streets and highways, as the case may be. The director shall determine the applicability of this chapter to particular lots and building sites in conjunction with determining the location and frequency of public accesses as set forth in sub-section (c) of this section. A subdivider or developer of a multiple-family development shall, as a condition precedent to final approval of a subdivision or issuance of a building permit for a multiple-family development,

dedicate land by right-of-way in fee or easement for public access from a public highway or public street to the following:

- (1) Public shoreline areas and the land below the shoreline; and
- (2) Public mountain areas where there are existing facilities for hiking, hunting, fruit picking, ti-leaf sliding, other recreational purposes and where there are existing public mountain trails.

(b) The location of public shoreline and mountain areas and existing shoreline, coastal and public mountain trails shall be determined by the director in consultation with the state department of land and natural resources and the department of parks and recreation and shall be established by rule pursuant to chapter 91, Hawaii Revised Statutes. The director shall solicit such information from such agencies upon adoption of this ordinance and from time to time thereafter. Such rules shall include maps depicting the public-owned areas and the approximate location of the existing public trails, and may provide for supplementation of listed areas and trails upon publication of notice in lieu of rule amendment. Provided, that the rules shall be amended not less than every five years to incorporate any supplemental changes made since prior rule adoption and to allow public comments on practices and procedures established under such rules.

(c) The location and frequency of public access shall be established by the director or the planning commission, as respectively authorized under Chapter 23 and 25 of the Hawaii County Code, subject to the provisions of Article 3 of this chapter. The director shall establish the preferred public access alignment with consideration of such factors as topography, approximate location along the nearest public street and configuration of the subdivision lots or development site.

(d) Where the lands comprising a proposed subdivision or development do not span the entire distance between a public street and a shoreline or mountain area to which the County has determined by the director that public access is necessary, the director shall require dedication of

those segments of the needed public accessway laying within the proposed subdivision or development.

(e) Except as provided in sub-section (f) herein below, a multiple-family development approved prior to the effective date of this chapter shall be subject to the provisions of this chapter when six or more dwelling units are added or proposed to be added thereto.

(f) The provisions of this chapter shall not apply to subdivisions or multiple-family developments sanctioned, approved or permitted by a development agreement pursuant to the development agreement code, a change of zone ordinance, or a valid special management area (SMA) permit issued prior to the effective date of this ordinance when:

(1) such agreement, ordinance or SMA permit includes requirements for the dedication of public access to the shoreline, provision of related improvements or a cash payment in lieu thereof; or

(2) the director determines that the provisions of the agreement, ordinance or SMA permit, together with one or more related agreements, zoning ordinances or SMA permits covering adjacent lands, was intended by the council or the planning commission, respectively, to comprise an integrated shoreline access system for the lands subject to such related agreements, ordinances or SMA permits; and

(3) the permittee is in compliance with the terms of such agreement, ordinance, and SMA permit.

Provided, this exception shall not apply to any application to amend a SMA permit to allow an increased number of dwelling units or more than a nominal increase in commercial or resort activities, as the director shall determine. When applying the standards of this chapter to applications for amendment or replacement of a valid SMA permit which are not excepted herefrom, the director and the planning commission shall take into account any prior, appurtenant dedications or contributions of land, improvements or cash for public access or shoreline area improvements.

(g) Where a lot or building is subject to a valid Conservation District Use Permit, the director may waive provisions of this chapter which conflict with such permit.

Article 3. Requirements.

Section . Subdivision and development of land. The following standards for public access shall apply:

(a) Shoreline access.

(1) for lands in the RS, RD, RM, V, CO, CN, and CV districts, the desired spacing of public accesses shall be from eight hundred to one thousand feet apart.

(2) for lands within a destination resort community or a major, intermediate or minor resort area as defined in the General Plan and determined by the director, regardless of the zone district designation(s), the desired spacing shall be from one thousand to two thousand feet apart, provided that the planning commission may extend the spacing to a maximum of two thousand five hundred feet where deemed warranted by site conditions, the particular development plan, or when other special accommodations are provided the public with regard to public access, convenience and comfort.

(3) for lands within the A districts, the desired spacing of public access shall be one thousand to one thousand five hundred feet apart for lands zoned A-1a, and one thousand five hundred to two thousand five hundred feet apart for all other zoned districts.

(4) for lands in the O and U districts, the desired spacing shall be two thousand to two thousand five hundred feet apart.

(5) The desired spacing shall not be applicable along sections of shoreline where the director has determined that:

(A) the shoreline is inaccessible by land approach due to extremely hazardous or impassable conditions, such as steep cliffs or other dangerously unstable terrain where no practical remedy is feasible; and

(B) no public coastal trail exists inland of such intervening hazardous or impassable lands and which leads to an accessible shoreline or public shoreline area within five thousand feet of the subdivision or development.

(6) a spacing of public access(es) further apart than as set forth in subsections (a)(1) through (a)(4) of this article or the determination of inaccessibility pursuant to subsection (a)(5) of this article shall be approved by resolution of the county council.

(b) Mountain Access.

(1) for all zone districts, the desired spacing shall be determined by the director so as to provide reasonable means to access public trail sections and public facilities, respectively, as the case may be.

(2) Provided, no access shall be established:

(A) to state-owned land which is not designated by rule pursuant to article 2, section__(b) of this chapter; or

(B) to state-owned land which is designated but has not been approved by the state department of land and natural resources.

For mountain lands designated pursuant to article 2, section__(b) of this chapter, the director may make a provisional determination of the necessity of public access and the alignment therefor, but such provisional determination shall expire and be void unless the director has made final determination, with the final approval of the state department of land and natural resources within one hundred eighty (180) days thereafter.

(c) The location of public access in the vicinity of the subdivision or development, whether existing committed under agreements between landowners and the county, or planned pursuant to an officially adopted plan of the county or state, shall be considered by the director or planning commission, as appropriate, when establishing the required location and alignment of public access(es). Provided, that notwithstanding any officially adopted plan to provide public

access, no subdivision within an area lacking public access at the appropriate location or desired spacing shall be exempted from the requirements of this chapter.

(d) The director shall implement these standards in a manner consistent with article 3, chapter 23 of the Hawaii County Code.

Section . Multiple-family development. All applications for multiple-family development building permits shall be reviewed by the director, in consultation with the director of parks and recreation and the chief engineer to determine the necessity of the public access requirement.

(a) When it is determined by the director that adequate public access already exists or has been secured from the applicant, the director shall notify the applicant, the director of parks and recreation, and the chief engineer so that the building permit may be approved.

Section . Width of Public Access. The public access shall have a minimum width of ten (10) feet.

Article 4.

Dedication of Access.

Section . Subdivision of land.

(a) Upon review of a subdivision application, when it is determined that public access must be provided, the subdivider shall file the executed documents for dedication of the public access, free and clear of all encumbrances with the director.

(b) Prior to final subdivision approval, the dedication documents shall be reviewed and approved as to its form and content by the appropriate agencies. The director may thereafter grant approval to the subdivision in accordance with the subdivision rules and regulations of the county.

(c) The public access shall be clearly designated on the final map of the subdivision in accordance with the subdivision rules and regulations.

Section . Multiple-family development.

(a) When it is determined that public access must be provided upon review of a multiple-family development, the developer shall file a subdivision application to create the public access right-of-way in accordance with the subdivision code if the developer elects to provide the access in fee simple. Public access shall be designated on the plot plan and specified in the final plan approval

(b) The developer shall file the executed deeds or grants of easement for dedication of the public access, free and clear of all encumbrances with the director.

(c) Prior to final plan approval, the documents shall be reviewed and approved as to its form and content by the appropriate agencies.

(d) The public access right-of-way shall be clearly designated on the multiple-family development plan.

Section . Upon the acceptance of the dedication of land for a right-of-way for public access by the county, the county shall thereafter assume the cost of improvements for and the maintenance of the public access, unless the subdivider or developer agrees to assume such cost and maintenance. Provided that when a right-of-way is to be dedicated for public access pursuant to article 2, section__(d) of this chapter, the county shall not be obligated to maintain the public access until the entire length of the desired access has been dedicated to the County.

Article 5. Use of Public Accesses.

Section . Regulation of use. The director, in consultation with the director of parks and recreation and the state department of land and natural resources shall promulgate rules regulating the use of public accesses. Such rules may restrict the hours or days of use and may require the issuance of a permit from the appropriate government agency or a contracted permitting agent for public use in rural areas where the director has determined that site

conditions or lack of supervision necessitates special education, direction or control of public users. Provided, that no permitting agent shall be contracted for a term exceeding three years.

Section . Abuse of a public access. A person commits the offense of abuse of a public access if the person:

- (a) engages in commercial activity within or upon a public access, or
- (b) uses a public access other than for transit to and from a recreational activity.

For the purpose of this section, a "person" means an individual, corporation, trust, estate, partnership, association or any other legal entity, and "commercial activity" means the solicitation of a person for the sale or rental of goods or services or any transaction whereby a person receives any benefit or a promise to receive a benefit by providing goods or services to another person.

Section . Penalties. Any person who violates this chapter shall, upon conviction, be subject to a fine not exceeding \$500. The continuance of any such violation shall be deemed a new violation for each day of such violation.

Section . Maintenance and Protection. Prior to opening any non-urban public access for general usage, the director, in consultation with the director of parks and recreation shall adopt rules to provide for the management of environmental, health and safety impacts thereof, including reasonable educational and maintenance measures to minimize littering, erosion, spreading of plant pest, and trespass upon adjacent private lands.

Article 6. Appeal Procedures.

Section . Any person aggrieved by any action taken by the director in the administration of this chapter may file an appeal within thirty (30) days of the action complained of, with the board of appeals."

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or

applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. Rules. The director may promulgate rules to generally implement the provisions of this chapter.

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

INTRODUCED BY:

Ishahi Domingo
COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii
Date of Introduction: January 22, 1992
Date of 1st Reading: December 15, 1995
Date of 2nd Reading: February 21, 1996
Effective Date: March 4, 1996

APPROVED AS TO FORM AND LEGALITY

Patricia K. O'Leary
CORPORATION COUNSEL

DEPUTY

DATE FEB 27 1996

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

RECEIVED

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OFFICE OF COUNTY CLERK
COUNTY OF HAWAII

(DRAFT 5)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Bonk-Abramson	X			
Childs	X			
De Lima	X			
Domingo	X			
Osorio	X			
Rath	X			
Ray	X			
Smith	X			
	9	0	0	0

Introduced By: Takashi Domingo
 Date Introduced: January 22, 1992
 First Reading: December 15, 1995
 Published: December 22, 1995

REMARKS:
01/22/92 - Refer to Planning Department

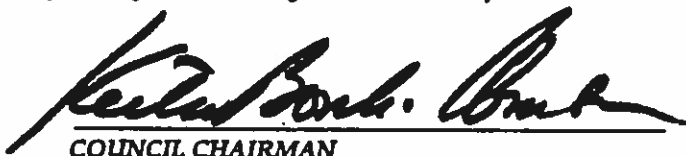
(DRAFT 10)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Bonk-Abramson	X			
Childs	X			
De Lima	X			
Domingo			X	
Osorio	X			
Rath	X			
Ray			X	
Smith	X			
	7	0	2	0

Second Reading: February 21, 1996
 To Mayor: February 23, 1996
 Returned: March 5, 1996
 Effective: March 4, 1996
 Published: March 12, 1996

REMARKS:
01/19/96 - Deferred on Council level

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council and published as indicated above.


 COUNCIL CHAIRMAN


 COUNTY CLERK

Approved / Disapproved this 4 day
 of March, 1996.


 MAYOR, COUNTY OF HAWAII

Bill No.: 535 (Draft 10)
 Reference: C-3100/1992/C-339/PC-89
 Ord. No.: 96 17