

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 9,
KAUAI COUNTY CODE 1987, RELATING TO PUBLIC ACCESS-WAYS**

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

SECTION 1. Findings and purpose. The Kaua'i County Council finds that our community's resources such as shoreline, waters, and inland recreational resources have become increasingly inaccessible as development adjacent to these areas increases. The absence of public access-ways *mauka* and *makai* diminishes the quality of life and constitutes an infringement upon the historic rights of the people to enjoy these integral privileges. It must also be recognized that there is a balance to be struck when permitting access through private property which may conflict with the exclusivity traditionally associated with fee simple ownership of land. Therefore, this section is enacted within the context of our understanding of the traditional Hawaiian way of life in which cooperation and non-interference with the well-being of other residents were fundamental parts of the culture. The purpose of this section is to guarantee the provision of public access-ways to the sea, shoreline, and inland recreational areas of the island.

SECTION 2. Chapter 9, Article 2, Section 9-2.9 of the Kauai County Code 1987 as amended, is hereby amended as follows:

"Sec. 9-2.9 Public Access-Ways for Any Subdivision.

(a) 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 for pedestrian travel laterally along the shoreline to connect existing & proposed shoreline accesses within the subdivision, and to dedicate land for public access by right of way from a public highway to areas in the mountains where there are existing facilities for hiking, 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 provision 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 dedication 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 affected 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 purpose 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 projects 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 or 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 be 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 preliminary subdivision map and prior to receiving approval of the final subdivision map from the Planning Commission, the subdivider shall deposit conveyancing documents in form 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."

SECTION 3. If any provision of this ordinance, or the application thereof to any person or circumstances 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. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kauai County Code 1987, the brackets, bracketed material, and underscoring need not be included.

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

INTRODUCED BY:

Joann A. Yukimura
(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i