

Maui

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Danny A. Mateo

Director of Council Services
Ken Fukuoka



Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kauakea Medeiros
Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

September 18, 2009

RECEIVED
2009 SEP 18 PM 2:58
OFFICE OF THE
COUNTY CLERK

Honorable Danny A. Mateo, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

Dear Chair Mateo and Members:

SUBJECT: DEFERRAL AGREEMENTS (PAF 09-139)

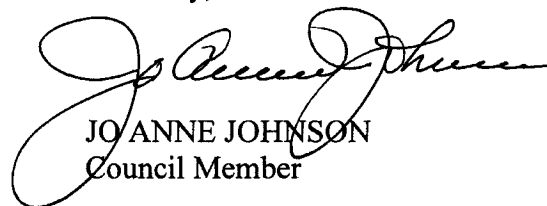
May I request that the matter relating to County practices concerning deferral agreements be referred to the appropriate standing committee for discussion and action. The term "deferral agreement" is intended to include agreements that provide for the deferred delivery of improvements or collection of in-lieu fees under Title 18, Maui County Code, relating to subdivisions.

Please find enclosed my correspondence dated August 3, 2009, to the Director of Public Works, on this subject matter, and his August 31, 2009 response.

Notably, the response states that the Department maintains individual subdivision files that are either stored in a storage facility or at the Development Services Administration's subdivision office. The Department does not have a tracking system in place specifically for deferral agreements. The response notes the need to manually search over 10,000 subdivision files for a comprehensive review.

I believe that it is important for the County to develop a means of efficiently monitoring compliance with deferral agreements.

Sincerely,


JO ANNE JOHNSON
Council Member

paf:cmn:09-139f
Enclosures

COUNTY COMMUNICATION NO. 09-276

Council Chair
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August 3, 2009

Mr. Milton Arakawa, Director
Department of Public Works
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Arakawa:

SUBJECT: DEFERRAL AGREEMENTS (PAF 09-139)

I am requesting information relating to deferral agreements entered into by the Department of Public Works or its predecessor departments, for improvements required as a part of the subdivision process or other processes. As used in this request, the term "deferral agreement" is intended to include agreements that provide for the deferred delivery of improvements or collection of in-lieu fees.

May I please request that you provide a written response, by **Friday, August 14, 2009**, to the following:

1. What are the legal bases for deferral agreements entered into by your Department? For example, it appears that three such bases are Section 18.16.270, Maui County Code (MCC), relating to large lot subdivisions; Section 18.20.280, MCC, relating to family subdivisions; and prior to the enactment of Ordinance No. 3513 (effective December 27, 2007), Section 18.20.040, MCC, relating to existing streets.
2. Where are these agreements maintained?
3. Are these agreements recorded against the properties they affect with the Bureau of Conveyances or the Land Court, State of Hawaii, as applicable?
4. How does your Department track these agreements?
5. What triggers the delivery of deferred improvements or collection of fees owed under these agreements?

August 3, 2009
Page 2

6. Provide any written departmental policies or administrative rules relating to deferral agreements, along with an indication of which of those policies or administrative rules are currently in effect.

May I further request that you provide a list of the deferral agreements that have been entered into by the Department of Public Works or its predecessor departments. At minimum, include the following for each deferral agreement on the list: location of the property; property owner; improvements or fees owed; the legal basis for the deferral agreement; the date of execution of the deferral agreement; whether the delivery or collection of the improvements or fees has been triggered, and if so, the status of their delivery or collection; and any penalties or enforcement actions that have been pursued. Please organize the list by community plan area or geographic region.

The list may be provided in phases, if necessary, with the first priority being the West Maui Community Plan area (or the Lahaina District). I would appreciate receiving your response to this first priority by **Friday, August 28, 2009**, with an estimate of the date by which the complete list will be provided.

To ensure efficient processing, please include the relevant PAF number in the subject line of your response.

Should you have any questions, please contact me, Legislative Attorney David Raatz at ext. 7663, or Legislative Attorney Carla Nakata at ext. 7659.

Sincerely,



JO ANNE JOHNSON
Council Member

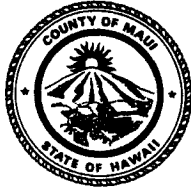
paf:cmn:09-139a

cc: Honorable Charmaine Tavares, Mayor
Kalbert Young, Director of Finance

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

SHAEL M. MIYAMOTO
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

RECEIVED

2009 SEP -2 AM 9:31

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE MAYOR
DEVELOPMENT SERVICES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

OFFICE OF THE
COUNTY COUNCIL

09 SEP -3 AM 1:39

August 31, 2009

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Jo Anne Johnson, Council Member
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

for Shui Morrison 9/2/09
Mayor Date

Dear Council Member Johnson:

SUBJECT: DEFERRAL AGREEMENTS (PAF 09-139)

This is in response to your August 3, 2009 request regarding deferral agreements entered into by the Department of Public Works and its predecessor departments. The review of your request was limited to those agreements entered into during the review of subdivision applications.

We offer the following comments in response to your questions.

1. **What are the legal bases for deferral agreements entered into by your Department? For example, it appears that three such bases are Section 18.16.270, Maui County Code (MCC), relating to large lot subdivisions; Section 18.20.280, MCC, relating to family subdivisions; and prior to the enactment of Ordinance No. 3515 (effective December 27, 2007), Section 18.20.040, MCC, relating to existing streets.**

The sections under Title 18 (Subdivisions), MCC, which allow the Department of Public Works (Department) to defer improvements are 18.16.270 (Large lots), 18.20.280 (Family subdivisions), and former 18.20.040 (Existing streets).

2. **Where are these agreements maintained?**

The Department has subdivision files for the individual subdivision applications that are submitted to the Department. The agreements are

Honorable Jo Anne Johnson, Council Member
SUBJECT: DEFERRAL AGREEMENTS (PAF 09-139)
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Page 3 of 3

stored in their respective files. The older subdivision files are stored in a storage facility. The more recent subdivision files are stored at the Department's Development Services Administration's subdivision office.

3. **Are these agreements recorded against the properties they affect with the Bureau of Conveyances or the Land Court, State of Hawaii, as applicable?**

Yes.

4. **How does your Department track these agreements?**

The agreements are stored in a file system as described in Response No. 2. If a question arises on an individual subdivision application or property, that specific file is reviewed. There is no database listing all the agreements.

5. **What triggers the delivery of deferred improvements or collection of fees owed under these agreements?**

In the case of a Large-Lot deferral agreements, further development of the property would trigger the improvements as described in Section 18.16.270 (Large lots), MCC. For Family subdivisions, improvements are triggered as described in Section 18.20.280 (Family subdivisions), MCC. For the Three Lots or Less agreements previously allowed under 18.20.040 (Existing streets), MCC, the subdivider agrees to pay a pro rata share of future improvements. The collection of the pro rata share would need to be determined and initiated by the County of Maui.

6. **Provide any written departmental policies or administrative rules relating to deferral agreements, along with an indication of which of those policies or administrative rules are currently in effect.**

The Department does not have such policies or administrative rules.

In addition to the aforementioned questions, you requested a list of deferral agreements that have been entered into by the Department or its predecessor departments, as well as the following information for each agreement: location of property; property owner; improvements or fees owed; legal basis for the deferral agreements; date of execution of the deferral agreement; whether delivery or collection of the improvements or fees has been triggered and, if so, the status of their delivery or collection; and any penalties or enforcement actions that have been pursued. You also requested that these agreements be organized by community plan area or geographic region.

As stated previously, the agreements are stored in their applicable subdivision files,

Honorable Jo Anne Johnson, Council Member
SUBJECT: DEFERRAL AGREEMENTS (PAF 09-139)
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which date back to 1951. There are approximately 4,900 subdivision files in the subdivision office and 5,800 files in the storage facility. Because each file would need to be searched individually to compile the basic information requested, approximately 15 minutes would be needed for each file. This is approximately 2,675 hours of time for one person which is equivalent to a full-time person doing research for 15 months. Our subdivision office has a staff of two a Civil Engineer and a subdivision clerk so this task would take years to complete and prevent our employees from assisting the public. Our files are open for public inspection, so if you are interested in obtaining selected data, we would be happy to make arrangements for your review.

If you have any further questions or concerns, please feel free to call me at Ext. 7845.

Sincerely,



MILTON M. ARAKAWA
Director of Public Works