

**SUMMARY OF AMENDMENTS**  
**BILL 373 DRAFT 2**  
**(CHAPTER 10 EROSION AND SEDIMENTATION CONTROL)**

**MAJOR CHANGES:**

- New provisions for Agricultural Operations.
- New provisions for sedimentation control (Best Management Practices - BMPs).
- New provisions for penalties and enforcement (Administrative Enforcement).
- All grading plans to be prepared by a licensed engineer or land surveyor.
- Erosions control plans required prepared by a licensed engineer or land surveyor for grading greater than 15,000 sq. ft. and grubbing more than 1 acre.
- New fee structure.
- New provisions requiring bonding of large projects.
- New provision requiring the posting of the permit at the job site.
- Deleted provisions for extension of time.

**DETAILED LISTING OF CHANGES:**

(Does not include grammatical corrections, renumbering and related changes.)

- New Section 10-1. Purpose. Existing code does not have a purpose section.
- Section 10-2 (formerly 10-1). Definitions.
  - “Agriculture” or Agricultural operations” ..New, for Section 10-5. Agricultural Operations.
  - “Best management practices” or “BMP” ..New, for Section 10-3. Minimum BMPs.
  - “Burial site” .....New, for Section 10-7. Application, additional information.
  - “Conservation plan” .....New, for Section 10-5. Agricultural Operations.
  - “Conservationist” .....New, for Section 10-5. Agricultural Operations.
  - “Contractor” .....New, existing code has no definition.
  - “Engineer” .....Replaced “registered” with “licensed.”
  - “Engineer’s Soils report” .....Clarifies content of report.
  - “Excavation,” “cut” or borrow” .....Deleted last sentence, no reason for inclusion.
  - “Fill” .....Deleted last sentence, no reason for inclusion.
  - “Grubbing” .....Clarifies definition.
  - “Historic and archaeological sites” .....Replaces “Designated historic and archaeological sites.”

“Land Surveyor” .....Replaced “registered” with “licensed.”“  
 “Maximum extent practicable” .....New, for Section 10-3, Minimum BMPs.  
 “Permittee” .....Clarifies who is a permittee.  
 “Person” .....New, existing code has no definition.  
 “Public utility” .....New, existing code has no definition.

- New Section 10-3. Minimum BMPs. Similar to NPDES permit sedimentation control requirements. All grading/grading/grubbing/stockpiling should have BMPs whether a permit is needed or not.
- Section 10-4 (formerly 10-2). Hazardous conditions. Added “grubbed vegetation” to list; deleted written notification requirement.
- New Section 10-5. Agricultural Operations. Requires all agricultural operations to have a conservation plan prepared by an engineer or conservationist and approved by the appropriate Soil and Water Conservation District (SWCD). This section does not apply construction work that must comply with other applicable County State or Federal regulations such as Building and Zoning Codes and State NPDES permit requirements.
- Section 10-6 (formerly 10-3). Exclusions.
  - (a) Added reference to minimum BMPs (Section 10-3). Note: Reference to 10-38 is in error should be 10-29 (Erosion & Sedimentation Control Standards and Guidelines).
  - (b)(2) Replaced “Grading” with “Excavation” to limit exclusion to excavation for structures under an approved building permit. Filling within building lines is no longer excluded.
  - (b)(4) Deleted “rubbish dump” and referenced to solid waste facilities.
  - (b)(8) All subsurface testing involving less than 50 cubic yards is excluded provided DPW Director is given written notification at least 10-days prior to start of work.
  - (b)(9) Exclusion to cover installation and maintenance of all underground and overhead public utilities including street lights, traffic signals, septic tanks, drywells and BMPs.
  - (b)(10) Excluded work regulated wholly by other permits.
  - (b)(11) Grubbing of trails for survey lines and soil exploratory equipment was formerly found under Section 10.10(c).
  - Deleted exclusion for agricultural operations. See new Section 10-5.
- Former Sections 10-4, 10-6 through 10-8 replaced with new Article 5.
- Former Sections 10-5, Waivers, replaced with new Article 4, Variances.
- Section 10-7 (formerly 10-9). Required.
  - Former Section 10-9(b) that has been replaced with new Section 10-8(a)(4) and (5).

- (c) Revised to state that a stockpiling permit is not required when work is covered by a grading permit.
- Section 10-8 (formerly 10-10). Application
  - (a) Clarifies who can apply for a permit.
  - (a)(4) New section requiring SHPD review and approval.
  - (a)(5) New section requiring Planning Director's review and approval. Work must be a legal use of the property.
  - (b) Grading plans and specifications must be prepared by an engineer or surveyor. Increased number of sets of grading plans and specs from 2 to 3. Deleted "licensed in the State of Hawaii" as it is unnecessary.
  - (b)(1)(C) Added new site information requirements to assist SHPD review. Last phrase moved to item (b)(1)(D).
  - (b)(1)(D) New item to locate buildings on adjacent properties within 15 feet of grading work.
  - (b)(1)(E) Revised to clarifying content of a grading plan.
  - (b)(1)(G) New requirement to locate known watercourses.
  - (b)(1)(H) New requirement to locate temporary and permanent BMPs.
  - (b)(2) Erosion control plan, prepared by a engineer or land surveyor, required for grading more than 15,000 square feet.
  - (c) Increased number of sets of plot plans for grubbing permits from 2 to 3. Erosion control plan, prepared by a engineer or land surveyor, required for grubbing more than 1 acre.
  - (d) Increased number of sets of plot plans for stockpiling permits from 2 to 3.
  - (e) 30 days to begin after submission of a completed application with approval from SHPD and the Planning Department.
- Section 10-9 (formerly 10-11). Fees. Increases fees for all permits to be comparable to other counties.
- New Section 10-10. Grading, grubbing or stockpiling without a permit. This section expands former section 10-11(d). New provisions include:
  - Minimum penalty of \$200.
  - Subject to penalties found in Article 2 of this chapter.
  - Performance bond will be required if violator fails to perform restoration work.
- New Section 10-11. Bonding. Requires a performance bond before issuing a permit for grading or stockpiling that has more than 1,000 cubic yards of work or when excavation or fill more than 15 feet in vertical height or for incremental work.
- Section 10-12. Conditions and limitations.
  - (b) Stating applicant's responsibility to get state permits required by HRS 6E, 205, 205A and 343.

- (c) Clarifies that an NPDES permit may be obtained after receiving a grading permit; and that in case of conflict the more restrictive shall apply.
- (d) New requirement to post the permit on-site while work is being done.
- Section 10-13. Expiration. Extending permit duration to 2-years and deleted provision for extensions.
- Section 10-14. Denial. Item (a) - Reworded to clarify that denial is based on a hazardous condition; deleted “undesirable surface runoff” from the list factors of consideration as it is too subjective.
- Section 10-16. Construction prohibited prior to grading. Revised to allow construction of structures to start upon issuance of a grading permit, rather than completion of grading work unless otherwise allowed by the Director of Public Works.
- Section 10-17. Inspections.
  - (b) Notification based on working days so weekends are excluded.
  - (c) Reference made to section 10-35, Administrative enforcement.
  - (d) Reference made to section 10-35, Administrative enforcement.
- Section 10-19. Distance from property line of cut or fill slope. Item (b) - Added language to allow for changes in the Building Code for retaining walls; deleted “professional” as it is unnecessary.
- Section 10-20. Maximum cleared area - Reduced to maximum area to 15 acres; non-contiguous areas may be cleared if it is allowed by an NPDES permit; added erosion, sedimentation and/or other requirements for the clearing of additional land.
- Section 10-21. Fill materials.
  - (a) Clarifies density requirement by adding “minimum”.
  - (b) Language is from 10-22(a) and added “Hazardous materials shall not be stockpiled.”
- Section 10-22. Vegetation. Changed title by deleting “Preparation of ground surface”.
- New Section 10-23. Debris prohibited. Grading work shall not cause rocks, soil or debris to enter adjoining properties, streets or watercourses.
- New Section 10-24. Dust control. To be controlled in compliance with HAR 10-60.
- New Section 10-25. Noise control. To be controlled in compliance with HAR 11-46.
- New Section 10-26. Water quality standards. To comply with HAR 11-54 and 55.
- Section 10-27 (formerly 10-24). Special Conditions and requirements.
  - (c) Reference made to section 10-35, Administrative enforcement and added language to clarify remedial action by the County.
  - (d) Deleted reference to director in the last sentence.
  - Deleted Item (e), this is addressed by new Section 10-24.

- Section 10-28 (formerly 10-25). Drainage.
  - (a) Deleted “street” as a street may or may not have an adequate storm drain system. Deleted last sentence, it is unnecessary and makes the County liable for the work being required.
  - (b) Added “public safety” to define type of hazard; and deleted “nuisance” as it too subjective.
- Section 10-29 (formerly 10-26). Erosion and Sedimentation Control - Added reference to HRS 342D (Water Pollution).
- Section 10-30 (formerly 10-23). Report after grading; notification on completion. Item (a) - Clarifies that the report is to be prepared by an engineer and the report shall include monitoring data.
- New Article 4 (formerly 10-5). Variances. Establishes procedures to request variances from the requirements of the Chapter.
- New Article 5 (formerly 10-4, 10-6 through 10-8). Violations, Penalties, Enforcement. Incorporates administrative enforcement provisions similar to those found in the Building Code to be the primary means of enforcement. Significant provisions include:
  - Section 10-35 Violations may be issued to all persons who performs or causes to be performed the violation, including the contractor and equipment operator; violations may be issued to more than one person.
  - Section 10-35(a) Work without a permit would also be a violation subject to fines and other remedies of this Article.
  - Section 10-35(d) Fines may continue to accumulate during an appeal process.
- Section 10-40. Adoption of rules - New section giving DPW Director the authority to promulgate rules pursuant to HRS 91.