

Proposed amendments to County grading code Hawaii County Code, Chapter 10 Erosion and Sedimentation Control

**Fact Sheet
Updated September 9, 2008**

For a copy of the proposed ordinance and a summary of the proposed changes go online to the County website at www.co.hawaii.hi.us. Click on Projects Update and scroll to County of Hawaii.

What is the purpose of Chapter 10 of the Hawaii County Code?

This is a new section to reflect the ordinance's emphasis on the protection of water quality. "The purpose of this chapter is to provide minimum standards to protect property, promote public health, safety and welfare, and to preserve and enhance the natural environment, including water quality, by regulating grubbing and grading operations and controlling soil erosion and sedimentation in construction and in agricultural operations within the County."

How did these changes originate?

A team of individuals from the State Dept of Health, Hawaii Coast Zone Management program, and County agencies, members of the Outdoor Circle, the Hawaii Society of Professional Engineers, members of the Soil and Water Conservation District and Natural Resources Conservation Service staff assisted Wilson Okamoto Corporation, a planning and engineering consulting firm in developing these revisions.

They met in March, May and July in 2005 to review Chapter 10. Additional changes and revisions were made and appear in the summary. The last revision to Chapter 10 was done in 1975.

The proposed changes would require:

- Conservation plans prepared by a registered engineer or a conservationist for Ag operations. No exemptions.
- For urban construction, not Ag operations:
 - Best management practices prevent or reduce pollution to state waters.
 - Permits posted at the job site.
 - The permit is limited to only 2 years with no extensions.
 - Erosion control plans would be prepared by a licensed engineer or land surveyor would be required for grading more than 15,000 sq. ft and grubbing more than an acre.
 - Equipment operators, contractors and property owners could be held responsible for violating the law under proposed penalties and enforcement rules.

- Permit applications would also require approval by the Planning dept to comply with the General Plan and accepted land use regulations. This is in addition to the State Historic Preservation Division approvals.
- Grading permit applications submitted to the County must be prepared by an engineer or land surveyor licensed in the State of Hawaii.
- A new fee increase of 30% or more in permit fees.
- Bond required for larger projects to complete grading more than 500 cubic yards, excavations or fill more than 15- sq. feet in height and incremental work of 500 cubic yard or less.
- Withholds building construction until a grading permit for the required area is issued by Public Works.

If an Ag operation violates the grubbing and grading law, under this proposal, can they be fined?

Under the proposed changes, if the Ag operation is not conforming to the approved conservation plan, the soil and water conservation district directors will notify the director of public works. A notice of violation will be issued and enforcement applicable to provisions of Article 2 of this chapter will be applied. *See page 7 in the Amended Chapter 10 for details on the violations.*

What if I don't agree with the violation?

You may appeal it before the County board of appeals

What is a Conservation Plan?

Natural Resources Conservation Service (NRCS) defines the plan as a list of scheduled activities to help private land owners and managers conserve their soil, water, and other natural resources. For a copy of the NRCS Strategic Plan, click on <http://landcare.sc.egov.usda.gov/> or call 1-888-LANDCARE.

Who approves farm, or ranching activities?

Soil and Water Conservation Districts, are a group of volunteers, farmers and ranchers themselves, who meet monthly to approve conservation plans for agricultural operations. They also seek federal funds and work closely with NRCS. The districts are under State jurisdiction and under State law must serve Agricultural operations for the County.

What if my application is not Ag related?

You file an application with the County of Hawaii, engineering division.

How will these changes affect us?

All agricultural operations will be required to have a conservation plan. Conservation plans for farms and ranch operations must be reviewed every five years by the soil and water conservation districts. This is to insure the entity is confirming to the practice, if not then soil and water conservation districts may terminate the plan. Public Works would follow up with a violation notice and appropriate action under these proposed changes.

Grading, grubbing and or stockpiling applications not covered by a conservation plan will be required to have Best Management Practices (BMP), regardless if a permit is required or not.

Is the County requiring a license for a bulldozer operator?

Equipment operators and the property owner could be held responsible for violating the law under proposed penalties and enforcement rules.

What are the impacts?

Tougher enforcement and stiffer penalties directed to the property owner and the person or firm doing the work.

The County can recover costs for corrective work if the violation becomes an imminent danger to public health and safety.

Are flooding and drainage problems addressed in Chapter 10?

No. Chapter 10 does not address existing or pending flood or drainage problems. Neither does this ordinance address pin-to-pin land clearing, which is a land use issue.

**SUMMARY OF PROPOSED AMENDMENTS
CHAPTER 10
(EROSION AND SEDIMENTATION CONTROL)
August 19, 2008**

MAJOR CHANGES:

- New provisions for Agricultural Operations.
- New provisions for penalties and enforcement (Administrative Enforcement)
- New provisions for urban construction:
 - New provisions for sedimentation control (Best Management Practices - BMPs).
 - 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:

(This does not include renumbering and related changes.)

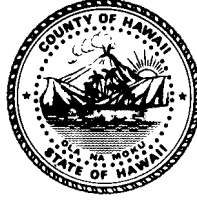
- Section 10-1. Purpose – New. Current code does not have a purpose section.
- Section 10-2. Definitions.
 - “Agriculture” or Agricultural operations” .. New. Section 10-5. Agricultural Operations.
 - “Best management practices” or “BMP” .New Section 10-3. Minimum BMPs.
 - “Burial site” New Section 10-7. Application, additional information.
 - “Conservation plan” New, Section 10-5. Agricultural Operations.
 - “Conservationist” New. Section 10-5. Agricultural Operations.
 - “Contractor” New. Current code has no definition.
 - “Engineer’s Soils report” Clarifies content of report.
 - “Excavation,” “cut” or borrow” Deleted last sentence, could find no reason for inclusion.
 - “Fill” Deleted last sentence, could find no reason for inclusion.
 - “Grubbing” Clarifies definition.
 - “Historic and archaeological sites” Replaces “Designated historic and archaeological sites.”
 - “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.
- Section 10-3. Minimum BMPs - New, 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. Hazardous conditions - Added “grubbed vegetation” to list.
- Section 10-5. Agricultural Operations – New. 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).

- Section 10-6. Exclusions.
 - (a) Added reference to minimum BMPs (Section 10-3); renumbered reference to Erosion & Sedimentation Control Standards and Guidelines (Section 10-37).
 - (b)(2) Exclusion limited to excavation of basements and footing. Fill within building lines is no longer excluded.
 - (b)(4) Updated terminology and reference to solid waste facilities.
 - [(b) (5)] Exclusion for agricultural operations is deleted. See new Section 10-5.
 - (b)(8) Clarifies that subsurface testing not required by Public Works director. A minimum 10-day written notification prior to start date added.
 - (b)(9) Clarified exclusion to include maintenance work. Exclusion to cover underground and overhead public utilities and added street lights, traffic signals, septic tanks, drywells and BMPs.
 - (b)(10) Excluded work regulated wholly by other permits.
 - (b)(11) This exclusion was formerly found under Section 10.10(c).
- [Former Sections 10-4 through 10-8 replaced with new Article 2.]
- Article 2. Violations, Penalties, Enforcement, sections 10-8 through 10-15 - New Article similar to provisions in Chapter 5 and 22. Violations and orders may be issued to all persons who perform or causes to be performed the violation, including the contractor and equipment operator, i.e. violations may be issued to more than one person.
- Section 10-16. Required, Item (c) - Stockpiling permit is not required when work is covered by a grading permit.
- [Former Section 10-9(b) replaced with Section 10-17(a) (4) and (5).]
- Section 10-17. Application.
 - (a) Clarifies who may apply for a permit.
 - (a)(4) Requires State Historic Preservation Dept., (SHPD) review and approval.
 - (a)(5) Requires Planning Director's review and approval.
 - (b) Requires three (3)-sets of grading plans and specs prepared by a licensed engineer or land surveyor.
 - (b)(1)(C) New requirements to assist SHPD review. Last phrase moved to item (b) (1) (D).
 - (b)(1)(D) New item from last phrase of item (b) (1) (C).
 - (b)(1)(E) Reworded to clarify contents in grading plans.

- (b)(1)(F) Last sentence is unnecessary. Grading plans will be required and prepared by a licensed engineer or land surveyor.
 - (b)(1)(G) New requirement.
 - (b)(1)(H) New requirement.
 - (b)(2) Erosion control plan, prepared by a licensed engineer or land surveyor, is required for grading more than 15,000 sq. ft. or grubbing more than 1 acre.
 - (c) Requires 3-sets of plot plans for grubbing permits.
 - (d) Requires 3-sets of plot plans for stockpiling permits.
 - (e) 30 days to begin after submission of a completed application with approval from SHPD and the Planning Department.
- Section 10-18. Fees - New fee structure.
 - Section 10-19. Grading, grubbing or stockpiling without a permit - Minimum penalty is \$200; in addition to penalties found in Article 2 of this chapter. Failure to correct also triggers a bond requirement.
 - Section 10-20. Bonding - Requires a bond before issuing a permit for grading or stockpiling that has more than 500 cubic yards of work or when excavation or fill more than 15 feet in vertical height or for incremental work.
 - Section 10-21. Conditions and limitations.
 - (b) Expanded permittees' responsibility to get required federal and state permits.
 - (c) New requirement to post the permit on-site while work is being done.
 - Section 10-22. Expiration - Extending permit duration to 2-years and deleted provision for extensions.
 - Section 10-23. Denial, Item (a) - Defines hazardous condition; deleted "undesirable surface runoff" as it is subjective and is addressed by "flood hazards."
 - Section 10-25. Construction prohibited prior to grading - Clarifies areas requiring a grading permit. Construction of structures within these areas shall not start until a grading permit is issued, unless otherwise allowed by the Director of Public Works.
 - Section 10-26. Inspections.
 - (b) Clarifies that weekends do not count toward notification.
 - (c) Cross referenced to section 10-8, Administrative enforcement.
 - (d) Cross referenced to section 10-8, Administrative enforcement.

- Section 10-28. Distance from property line of cut or fill slope, Item (b) - Added language to allow for changes in the Building Code.
- Section 10-29. Maximum cleared area - Reduced to 15 acres; added erosion, sedimentation and/or other requirements for the clearing of additional land.
- Section 10-30. Fill materials.
 - (a) Clarifies density requirement by adding “minimum.”
 - (b) Language from former section 10-22(a).
- [Former Section 10-22 replaced with Section 10-30(b) and Section 10-31.]
- Section 10-31. Vegetation - Language from former section 10-22(b).
- Section 10-32. Debris prohibited - New requirement.
- Section 10-33. Dust control - New requirement.
- Section 10-34. Noise control - New requirement.
- Section 10-36. Special Conditions and requirements.
 - (c) Cross referenced to section 10-8, Administrative enforcement; added clarifying language.
 - (d) Corrected typo (“sold”); deleted reference to director to minimize liability.
 - (e) Deleted section, DPW has no regulatory requirements or standards. Refer to Section 10-33.
- Section 10-37. Drainage.
 - (a) Deleted “street” as a street may or may not have an adequate storm drain system. Deleted last sentence, County is not liable for the work being required.
 - (b) Clarifies type of hazard. Deleted “nuisance,” it is too subjective.
 - (d) New requirement to be consistent with Chapter 23, 25 and 27.
- Section 10-38. Erosion and Sedimentation Control - Added reference to Hawaii Revised Statutes (HRS) 342D (water Pollution).
- Section 10-39. Report after grading; notification on inspection, Item (a) - Clarifies that report is to be prepared by a licensed engineer and the report shall include monitoring data.
- Section 10-40. Adoption of rules - New section giving Public Works director the authority to promulgate rules pursuant to HRS 91.

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, EROSION AND SEDIMENTATION CONTROL, HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED).

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 10, Hawai'i County Code 1983 (2005 edition, as amended), is amended, to read as follows:

“Chapter 10

EROSION AND SEDIMENTATION CONTROL

Article 1. General Provisions.

Section 10-1. Purpose.

The purpose of this chapter is to provide minimum standards to protect property, promote public health, safety and welfare, and to preserve and enhance the natural environment, including water quality, by regulating grubbing and grading operations and controlling soil erosion and sedimentation in construction and in agricultural operations within the County.

Section [~~10-1.~~] 10-2. Definitions.

[~~(a)~~] Whenever used in this chapter, the following words shall have the meaning indicated:

“Agriculture” or “Agricultural operations” means the care and production of livestock, livestock products, poultry or poultry products, aquaculture or aquaculture products, apiary, horticultural, agronomical or floricultural products or the planting, cultivating and harvesting of crops or trees, including tree farms to produce the same. Agricultural production may include but not be limited to land preparation in accordance with acceptable conservation practices.

“Best management practices” or “BMPs” mean schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices include treatment requirements, operating procedures, and practices to control site runoff.

“Burial site” means any burial site, as defined in section 6E-2, Hawai'i Revised Statutes, which has been recorded in an archaeological survey of the property or is otherwise known to the owner.

“Conservation Plan” means a document submitted by a landowner or land user, containing information for the conservation of soil, water, vegetation and other applicable natural resources for an area of land to be used for agricultural operations, and not adversely affecting

the watershed. The conservation plan shall include appropriate monitoring and reporting provisions for the scheduled activities.

“Conservationist” means an employee of the U. S. Department of Agriculture Natural Resources Conservation Service (NRCS) or the soil and water conservation district or an NRCS certified Technical Service Provider with background and training to recommend conservation practices on agricultural land under the guidance of the local NRCS engineer.

“Contractor” means any individual, firm, corporation, partnership or other responsible legal entity who performs grading, grubbing or stockpiling work under a contract.

~~[(1) “Designated historic and archaeological sites” means those sites listed with the County general plan or the Hawai‘i register of historic places.]~~

[(2)] “Engineer” means a professional engineer (civil or structural) ~~[registered]~~ licensed in the State of Hawai‘i.

[(3)] “Engineer’s soils report” means a report ~~[on soils]~~ that describes soil conditions with grading and construction recommendations applicable to the soil conditions and other pertinent information relevant to this chapter prepared by an engineer experienced in the practice of soil mechanics and ~~[foundations]~~ foundation engineering.

[(4)] “Erosion” means the wearing away of the ground surface as a result of action by wind and/or water.

[(5)] “Excavation,” “cut” or “borrow” means any act by which soil, sand, gravel, rock or any similar material is cut into, dug, uncovered, removed, displaced, relocated or bulldozed. ~~[State land use commission and County zoning and other agencies’ regulations on shoreline improvements are made a part hereof by reference.]~~

[(6)] “Fill” means any act by which soil, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported, or moved to a new location. ~~[State land use commission and County zoning and other agencies’ regulations on shoreline improvements are made a part hereof by reference.]~~

[(7)] “Grading” means any excavation or fill or any combination thereof.

[(8)] “Grubbing” means any act by which vegetation, including trees, timber, shrubbery and plants, is ~~[removed,]~~ dislodged[;] or uprooted ~~[or cleared]~~ from the surface ~~[of the]~~ exposing bare ground.

“Historic and archaeological sites” mean those sites listed with the County general plan, the Hawai‘i Register of Historic Places, any historic property, as defined in section 6E-2, Hawai‘i Revised Statutes, which has been recorded in an archaeological survey of the property or is otherwise known to the owner.

[(9)] “Land surveyor” means a person duly ~~[registered]~~ licensed as a professional land surveyor in the State.

“Maximum extent practicable” means economically achievable measures for the control of the addition of pollutants from non-point sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available non-point pollution control practices, technologies, processes, siting criteria, operating methods or other alternatives.

[(10)] “Overburden” means a soil material overlaying another geologic formation.

[(11)] “Permittee” means the person or party to whom the permit is issued and shall ~~[include but not]~~ be ~~[limited to]~~ the property owner~~[-, his lessee,]~~ and/or developer~~[-, agent, or attorney in fact.]~~ of the property including but not limited to any lessee, attorney-in-fact or other

person, firm, corporation, partnership, limited liability company, or other legal entity with the right to use and occupy the property.

“Person” means an individual, firm, corporation, partnership or other responsible legal entity.

[(12)] “Plasticity” means the property of a soil which allows it to be deformed beyond the point of recovery without cracking or appreciable volume change.

“Public utility” means any utility regulated by the State Public Utilities Commission.

[(13)] “Sedimentation” means the deposition of erosional debris-soil sediment displaced by erosion and transported by water from a high elevation to an area of lower gradient where sediments are deposited as a result of slack water.

[(14)] “Soil and water conservation districts” means the legal subdivisions of the State of Hawai‘i authorized under chapter 180, Hawai‘i Revised Statutes.

[(15)] “Stockpiling” means the temporary storage of soil, sand, gravel, rock or other similar material in excess of five hundred cubic yards upon any premises for the purpose of using the material as fill material at some future time.

Section 10-3. Minimum BMPs.

Regardless of whether a permit is required pursuant to this chapter, all grading, grubbing and stockpiling activities shall provide BMPs to the maximum extent practicable to prevent damage by sedimentation to streams, watercourses, natural areas and the property of others. It shall be the permittee’s and/or the property owner’s and/or contractor’s responsibility to ensure that the BMPs are satisfactorily implemented and maintained.

- (a) Runoff control. On-site runoff shall be managed in such a way so as to control erosion to prevent damage to downstream properties and to return waters to the natural drainage course to the maximum extent practicable.
- (b) Dust control. All work areas within and without the actual grading area shall be maintained free from dust which will cause a nuisance or hazard to others.
- (c) Vegetation. Whenever feasible, natural vegetation, especially grasses, should be retained. If it is necessary to be removed, trees, timber, plants, shrubbery and other woody vegetation, after being uprooted, displaced or dislodged from the ground by excavation, clearing or grubbing, shall not be stored in or deposited along the banks of any stream, river or natural watercourse.
- (d) Erosion controls. All disturbed areas shall be stabilized with erosion control measures that may include: staging construction; clearing only areas essential for construction; locating potential non-point pollutant sources away from steep slopes, water bodies, and critical areas; routing construction traffic to avoid existing or newly planted vegetation; protecting natural vegetation with fencing, tree armoring, and retaining walls or tree wells; stockpiling topsoil, covering the stockpile to prevent dust, and reapplying the topsoil; covering or stabilizing all soil stockpiles; using wind erosion control; intercepting runoff above disturbed slopes and conveying it to a permanent channel or storm drain; constructing benches, terraces, or ditches at regular intervals to intercept runoff on long or steep disturbed or man-made slopes; providing linings or other method to prevent erosion of storm water conveyance channels; using check dams where needed to slow flow velocities; using seeding and fertilizing, mulching, sodding, matting, blankets, bonded fiber matrices, or other effective soil erosion control technique; and providing vehicle wheel wash facilities for vehicles before they leave the site.

- (e) Sediment control. In addition to the erosion control measures above, provide practices to capture sediment that is transported in runoff to prevent the sediment from leaving the site. Filtration and detention (gravitational settling) are the main processes used to remove sediment from construction site runoff. Sediment control measures include sediment basins; sediment traps; filter fabric silt fences; straw bale, sand bag, or gravel bag barriers; inlet protection; stabilized construction entrances, and other measure to minimize off-site tracking of sediment by construction vehicles; and vegetated filter strips.
- (f) Material and waste management. Measures to insure the proper storage of toxic material and prevent the discharge of pollutants associated with construction materials and wastes shall be implemented.
- (g) Timing of control measure implementation. Timing of control measure implementation shall be in accordance with the approved erosion control plan if such plan is required. At a minimum, disturbed areas of a construction site that will not be redisturbed for 21 days or more will be stabilized (grasses or graveled) by no later than the 14th day after last disturbance.

Section ~~10-2,~~ 10-4. Hazardous conditions.

- (a) Whenever the director of public works determines that any existing excavation, fill, grubbing, ~~[or]~~ stockpiling or grubbed vegetation has become a hazard to property, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation, fill, grubbing or stockpiling is located, or other person or agent in control of said property, upon receipt of notice in writing from the director of public works shall within the period specified therein repair or eliminate the hazard and be in conformance with the requirements of this chapter.
- (b) The director of public works or the director's authorized representatives are hereby authorized to enter any property to determine or to enforce the provisions of this chapter.

Section 10-5. Agricultural Operations.

- (a) Agricultural operations, including ranching incidental to or in conjunction with crop or livestock production shall conform with soil conservation practices and in accordance with an actively pursued comprehensive conservation plan prepared by a registered engineer or conservationist shall be exempt from the provisions of this chapter provided:
 - (1) Such operations do not alter the general and localized drainage patterns with respect to abutting properties based on best available information.
 - (2) The conservation plan for the affected properties have been reviewed and approved by the applicable soil and water conservation district directors.
 - (3) The conservation plan, including any approved modifications, is reviewed and reapproved by the applicable soil and water conservation district directors not less than once every five years.
 - (4) The conservation plan for a property shall terminate upon transfer of ownership of the property unless the new owner applies to and is accepted as a cooperator by the applicable soil and water conservation district.
- (b) This section shall not exempt construction of permanent agriculturally related infrastructure, including access roads, buildings, and other similar improvements from

complying with applicable provisions of this chapter and any other county, state or federal requirements.

- (c) Should the soil and water conservation district directors find that an agricultural operation is not in conformance with its approved conservation plan, the district directors shall immediately notify the director of public works. Upon receipt of the notification, the director of public works shall issue a notice of violation and implement applicable provisions of Article 2 of this chapter, to enforce compliance with this section.

Section ~~[10-3.]~~ 10-6. Exclusions.

- (a) All work in this section must conform to the provisions of ~~[section 10-26]~~ sections 10-3 and 10-38 to be considered for exclusion.
- (b) This chapter shall not apply to the following:
- (1) Mining or quarrying operations regulated by other County ordinance or governmental agencies.
 - (2) ~~[Grading]~~ Excavation within the building lines for basements and footings of a building, retaining wall, or other structure, authorized by a valid building permit.
 - (3) Grading and grubbing on individual cemetery plots.
 - (4) Sanitary land filling ~~[and operation of rubbish dumps.]~~ and similar solid waste disposal facilities with an approved operating permit from the State of Hawai'i Department of Health.
 - ~~[(5)]~~ (5) ~~Agricultural operations, including ranching incidental to or in conjunction with crop or livestock production and all other operations that are in conformance with soil conservation practices acceptable to the applicable soil and water conservation district directors and in accordance with an actively pursued comprehensive conservation program, providing:~~
 - ~~(A) — Such operations do not alter the general and localized drainage patterns with respect to abutting properties.~~
 - ~~(B) — A conservation program for the affected properties acceptable to and approved by the applicable soil and water conservation district directors is filed with the soil conservation district.~~
 - ~~(C) — The conservation program, with appropriate modifications, is reviewed and reapproved by the soil and water conservation district directors periodically but not less than once every five years.]~~
 - ~~[(6)]~~ (5) ~~Excavation which does not alter the general drainage pattern with respect to abutting properties, which does not exceed one hundred cubic yards of material on any one site, and does not exceed five feet in vertical height at its highest point; provided that the cut meets the cut slopes and the distance from property lines requirements in article [3] 4 of this chapter.]~~
 - ~~[(7)]~~ (6) ~~Fill which does not alter the general drainage pattern with respect to abutting properties, which does not exceed one hundred cubic yards of material on any one site and does not exceed five feet in vertical depth at its deepest point, provided that the fill meets the fill slopes and distance from property lines requirements in article [3] 4 of this chapter.~~
 - ~~[(8)]~~ (7) ~~Grubbing which does not alter the general and localized drainage pattern with respect to abutting properties and does not exceed a total area of one acre.~~

~~[(9)]~~ (8) Exploratory excavations not to exceed fifty cubic yards under the direction of an engineer for the purpose of subsurface ~~[investigations required by the director of public works and]~~ testing provided that the director of public works has been advised in writing a minimum of ten calendar days prior to the start of such excavation.

~~[(10)]~~ (9) Clearing, excavation and filling required in conjunction with the installation and/or maintenance of ~~[pole lines by electric, telephone and public utilities.]~~ utility trenches, septic tanks, dry wells, poles for overhead public utilities, street lighting, traffic signal systems and trenching for underground public utilities, public water and sewer systems and BMPs.

(10) Developments wholly regulated by any of the following permits: Stream channel alteration permit; Department of the Army permit; and well drilling permits.

(11) Grubbing of trails for survey lines and access for soil exploration equipment.

[Section 10-4. Completion by County; recovery of cost.

(a) In the event that any permittee under this chapter fails to:

(1) ~~Comply with all the terms and conditions of the permit to the satisfaction of the director of public works;~~

(2) ~~Complete all of the work authorized under the permit within the time limit specified in the permit;~~

(3) ~~Comply with all special precautions enumerated in section 10-24 and with all the requirements of the director of public works pursuant to section 10-24; or~~

(4) ~~Proceed under section 10-15(b); within thirty days after a permittee has been served with written notice thereof, either by mail or personal service, the council may order the permittee to be prosecuted as a violator of the provisions of this chapter and may order the director of public works to proceed with the work specified in such notice. A statement of the cost of such work shall be transmitted to the council who shall cause the same to be paid. Such cost shall be charged to the permittee or owner or both of the premises involved.~~

(b) ~~The County may enforce payment of such cost in any manner provided by law, including proceedings under chapter 507, part II, Hawai'i Revised Statutes. For the purposes of the operation of part II of chapter 507, Hawai'i Revised Statutes, the permittee shall be deemed to come within the definition of "owner" as defined in said chapter; the County shall be deemed to come within the definition of "general contractor" as defined in that chapter and the execution of work specified in the notice shall be deemed a contract between the permittee and the County.]~~

Article 2. Violations, Penalties, Enforcement.

Section 10-7. Violations.

(a) Failure to comply with any provision of this chapter or with any rule adopted pursuant to this chapter or with conditions imposed as part of any permit, approval or waiver under the provisions of this chapter, shall constitute a violation of this chapter.

(b) Violations of State of Hawai'i Administrative Rules and statutes referenced in this chapter shall be as determined by final order, after exhaustion of administrative appeals

State rules or statutes, unless otherwise provided by law.

Section 10-8. Administrative enforcement.

It shall be unlawful for any person and/or contractor to perform or cause to be performed any grubbing, grading, or stockpiling on any property contrary to any provision of this chapter, or to use or maintain such property in an unlawfully graded condition, or to commit any other act prohibited by this chapter. This prohibition shall apply to any person operating grading or clearing equipment or otherwise performing work for hire.

- (a) In lieu of or in addition to enforcement pursuant to any other provisions of this chapter, if the director of public works determines that any person is violating any provision of this chapter, any rule adopted pursuant to this chapter or any conditions imposed as part of any permit, approval or waiver under the provisions of this chapter, the director shall serve the person with a notice of violation and order pursuant to this section. Service may be accomplished through personal service or by certified mail. The director of public works may also post a copy of the notice of violation and order at the site of the violation.
- (b) The notice of violation shall state with reasonable specificity the nature of the violation, and include at least the following information:
 - (1) Date of the notice.
 - (2) Name and address of the person noticed.
 - (3) Section number of the provision and/or permit that was violated.
 - (4) Nature of the violation.
 - (5) Location and date of the violation.
- (c) The order may require the person to do any or all of the following:
 - (1) Cease and desist from the violation.
 - (2) Correct the violation at the person's own expense before a date specified in the order.
 - (3) Reimburse the County for costs incurred during the course of performing any corrective work.
 - (4) Pay a civil fine not exceeding \$1,000 in the manner, at the place, and before the date specified in the order.
 - (5) Pay a civil fine not exceeding \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order. Each day a violation persists will be considered a separate violation.
- (d) The provisions of the order issued by the director of public works under this section shall become final thirty days after the receipt of the order, unless the director's action is appealed to the County board of appeals as provided in this section. All fines, penalties, costs or other monetary charges imposed under this chapter shall be due and payable thirty days after the notice of such charges is served, unless the director's action is appealed to the County board of appeals as provided in this section. Whenever an appeal is filed with the board of appeals as provided herein, any monetary charges so appealed shall only become due and payable upon completion of all board of appeals proceedings and issuance of a final board of appeals order confirming the monetary charges in whole or in part.

- (e) Any person adversely affected by any order issued under this section may within thirty days after the service of the order, appeal the order to the County board of appeals. An appeal to the County board of appeals shall stay the provisions of the director's order pending the final decision of the board, except as ordered under sections 10-10 and 10-11. All work by the person cited shall stop during this appeal process except as may be required to correct an imminent peril to public health or safety. The appeal hearing before the board of appeals shall be conducted as a contested case under chapter 91, Hawai'i Revised Statutes. If, after a hearing held pursuant to this section, the board of appeals finds that a violation or violations have occurred, the board shall affirm or modify any penalties imposed or may modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation, or for the taking of other corrective action as may be appropriate, consistent with the director's authority under this chapter. If, after a hearing held pursuant to this section, the board of appeals finds that no violation has occurred or is occurring, the board of appeals shall rescind the order or penalty. Any order issued by the board of appeals after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.
- (f) If any party is aggrieved by the decision of the board of appeals, the party may appeal the board's decision to the circuit court in the manner provided by chapter 91, Hawai'i Revised Statutes; provided that the operation of a cease and desist order or other corrective or remedial order affirmed or issued by the board of appeals shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.
- (g) The director of public works may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine, recover County costs, or both, as imposed by final order, the director of public works need only show that:
- (1) The notice of violation and order were served.
 - (2) That a civil fine, County costs, or both were imposed.
 - (3) The amount of the civil fine, County costs, or both imposed.
 - (4) That the fine, County costs, or both imposed have not been paid.
- (h) The director of public works may work cooperatively with the planning department to allow the planning department to conduct inspections and draft citation orders on behalf of the department of public works.

Section 10-9. Criminal prosecution.

- (a) Any person, 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 violation, and upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not to exceed one year, or both, for each offense. Each day of each violation shall constitute a separate offense.
- (b) After a conviction for a first violation under this chapter, each further day of violation shall constitute a separate offense if the violation is a continuance of the subject of the first conviction.

- (c) The imposition of a fine under this section shall be controlled by the provisions of the Hawai'i Penal Code relating to fines, sections 706-640 through 706-649, Hawai'i Revised Statutes.
- (d) Any authorized personnel may issue a summons or citation to an alleged violator in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by penal summons, by complaint, by warrant or such other judicial process as is permitted by statute or rule of court.
- (e) Any authorized personnel issuing a summons or citation for a violation of this article may take the name and address of the alleged violator and shall issue to the alleged violator a written summons or citation notifying the alleged violator to answer at a place and at a time provided in the summons or citation.
- (f) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of this article which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid under the laws and regulations of the State of Hawai'i and the County of Hawai'i.
- (g) In every case when a citation is issued, the original of the same shall be given to the violator, provided that the administrative judge of the district court may prescribe the giving to the violator of a carbon copy of the citation and provide for the disposition of the original and any other copies.
- (h) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

Section 10-10. Injunctive action.

The County of Hawai'i may maintain an action for an injunction to restrain any violation of the provisions of this article and may take any other lawful action to prevent or remedy any violation.

Section 10-11. Emergency powers; procedures.

- (a) Notwithstanding any other law to the contrary, if the director of public works determines that a violation of this chapter will cause imminent peril to the public health and safety, the director, without a public hearing, may order the responsible persons to immediately cease their activities, and may perform all necessary work and other actions as may be necessary to correct the violation. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before a hearing officer appointed by the director of public works.
- (b) Nothing in this section shall be construed to limit any power authorized by law which the director of public works or any other County official may have to declare an emergency and act on the basis of such declaration.

Section 10-12. Corrective work by the County; costs.

- (a) When the director of public works determines that a violation of this chapter will cause imminent peril to the public health and/or safety, the department of public works may

perform all necessary work to correct the violation. This work may include, but may not be limited to, clearing or removing of encroachments and obstructions, installation of erosion and sediment control measures, completion of authorized work, and restoration and revegetation of the site.

- (b) All costs incurred during the course of performing any corrective work shall be paid by the violator. The department of public works shall give, by certified mail, a bill to the violator. The violator shall then have thirty days from the date of mailing to pay the bill.
- (c) Should the violator fail to make full legal payment within thirty days, the County may use all legal means available to recover its expenses and costs by any action allowed in law or equity.

Section 10-13. Liability.

The provisions of this chapter shall not be construed to relieve or alleviate the liability of any person for damages resulting from performing, or causing to be performed, any grading, grubbing or stockpiling operation. The authorized personnel charged with the enforcement of this article, acting in good faith and without malice in the discharge of the duties required by this article or other pertinent law or ordinance, shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the authorized personnel because of such act or omission performed by the authorized personnel in the enforcement of any provision of this article or other pertinent laws or ordinances implemented through the enforcement of this article shall be defended by the County of Hawai'i until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by the County.

Section 10-14. Remedies cumulative.

The remedies provided in this article shall be cumulative and not exclusive.

Section [10-5.] 10-15. Waivers.

In all applicable cases, if a permittee, supported by accompanied engineer's report, finds that strict adherence to the provisions of this chapter causes undue hardship or practical difficulty, the permittee may seek waivers from these provisions and the director of public works may grant a waiver with conditions if the director finds that the request will not likely create any problems to the adjoining properties nor endanger any life or limb nor be in conflict with existing ordinances and statutes.

[Section 10-6. Appeals.

~~Any person aggrieved by the decision of the director of public works in the administration or application of this chapter, may, within thirty days after the director of public works' decision, appeal the decision to the board of appeals. The board of appeals may affirm the decision of the director of public works or it may reverse or modify the decision if the decision is:~~

- ~~(a) In violation of this chapter or other applicable law;~~
- ~~(b) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or~~
- ~~(c) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.~~

~~The board of appeals shall adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, necessary for the purposes of this section.~~

Section ~~10-7.~~ Liability.

~~The provisions of this chapter shall not be construed to relieve or alleviate the liability of any person for damages resulting from performing, or causing to be performed, any grading, grubbing or stockpiling operation. The director of public works or any employee charged with the enforcement of this chapter, acting in good faith and without malice for the County in the discharge of their duties, shall not thereby render themselves liable personally and they are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any required act or omission in the discharge of their duties.~~

Section ~~10-8.~~ Violations and penalty.

- ~~(a) No person shall do any act forbidden, or fail to perform any act required by the provisions of this chapter.~~
- ~~(b) The failure to comply with the requirements set forth under the provisions of this chapter shall be deemed a new offense for each day of such noncompliance.~~
- ~~(c) Any person violating any of the provisions of this chapter shall, upon conviction, be punished by a fine not to exceed \$500, or by imprisonment not to exceed fifty days, or both, for each offense.]~~

Article ~~[2.]~~ 3. Permits.

Section ~~[10-9.]~~ 10-16. Required.

~~[(a)]~~ Except as excluded in section ~~[10-3:]~~ 10-5:

- ~~[(1)]~~ (a) No grading work shall be commenced or performed without a grading permit.
 - ~~[(2)]~~ (b) No grubbing work shall be commenced or performed without a grubbing permit except where grubbing concerns land for which a grading permit has been issued.
 - ~~[(3)]~~ (c) No stockpiling work shall be commenced or performed without a stockpiling permit[-], except where stockpiling is on land for which a grading permit has been issued and stockpiling areas are shown on the approved grading plan.
- ~~[(b) No grading, grubbing, or stockpiling permit shall be issued without the director of public works' review of the applicant's compliance with the County general plan or with chapters 6E, 205 and 343, Hawai'i Revised Statutes.]~~

Section ~~[10-10.]~~ 10-17. Application.

- (a) An applicant for a grading, grubbing, or stockpiling permit shall first file an application on a form furnished by the County department of public works. An application may be made on behalf of the prospective permittee by its contractor or other authorized agent. Each application shall:

- (1) Describe by tax map key number or street address the land on which the proposed work is to be done;
 - (2) State the estimated dates for the starting and completion of the proposed work; and
 - (3) Show the name of the permittee and owner including engineer, if applicable, who shall be responsible for the work to be performed by the engineer, the engineer's contractors and employees and for requesting the inspections required herein.
 - (4) Be reviewed and approved by the State of Hawai'i Historic Preservation Division for compliance with chapter 6E, Hawai'i Revised Statutes, and other applicable regulations and laws.
 - (5) Be reviewed and approved by the County of Hawai'i planning department for compliance with the County general plan and applicable land use regulations and laws. No approval will be granted unless the proposed work implements a legal use of the property or is a remedial action as determined by the director of the planning department.
- (b) Each application for a grading permit shall also be accompanied by ~~two~~ three sets of plans and specifications~~[-]~~ prepared by an engineer or land surveyor licensed in the State of Hawai'i, including:
- (1) For all areas:
 - (A) A vicinity sketch or other data adequately indicating the site location;
 - (B) Boundary lines of the property on which the work is to be performed;
 - (C) Location of any previous grading and grubbing sites, buildings, structures, ~~[or]~~ designated and known historic, burial and archaeological sites, large trees, definable rock outcroppings, lava tubes, and other significant topographic features on the property where the work is to be performed~~[and location of any building or structure on land of adjacent property which is within fifteen feet of the property to be graded when the grading may affect the buildings, structures, or designated historic and archaeological sites];~~
 - (D) Location of any buildings, structures, designated and known historic, burial and archaeological sites on adjacent property which is within fifteen feet of the area to be graded;
 - (E) Contours, elevations and cross-sections showing the topography of the land before and after the completion of the proposed grading.
 - ~~[(D)]~~ (F) Contours showing the topography of the existing ground ~~[and]~~ extending five feet into adjacent property when required by the director of public works. ~~[The scale and contour are to be appropriate to the work in question;~~
 - ~~[(E)]~~ Elevations, dimensions, location, extent and the slopes of all proposed grading shown by contours and other means;
 - (G) Location of water courses;
 - (H) Location of temporary and permanent BMPs;
 - ~~[(F)]~~ (I) The area in square feet of the land to be graded and the quantities of excavation and fill involved; and
 - ~~[(G)]~~ (J) Any additional plans, drawings, or calculations required by the director of public works.

- (2) For grading of areas of more than fifteen thousand square feet or grubbing more than one acre, ~~[a contour map]~~ an erosion control plan prepared by an engineer or land surveyor and approved by the director of public works ~~[and showing the contours and elevations of the land before and after the completion of the proposed grading]~~. This ~~[map]~~ plan shall include ~~[the location of existing large trees, designated historic and archaeological sites, and definable rock outcroppings, lava tubes,]~~ detailed plans, and specifications of all drainage devices and utilities, including bank protection, walls, cribbing, dams, silting or sediment basins, landscaping, screen planting, erosion control planting, or other BMPs or protective devices to be construed in connection with, or as a part of the proposed work, together with a map showing the drainage area and estimated runoff of the area served by any drains.
- (3) Where a proposed cut or fill is greater than fifteen feet in height, or on land with slopes exceeding fifteen percent in an area with high plasticity soils, or when any fill is to be placed over a swamp, pond, gully, or lake, the permittee shall submit an engineer's soils report which shall include data regarding the nature, distribution and strength of existing soils and substantiating data from an engineer regarding the safety of the proposed grading, the fill, and the material to be used, and describing the cut sections showing the height, cut slope, benches, and material composing the cut bank.
- (c) An applicant for a grubbing permit shall furnish ~~[two]~~ three sets of plot plans showing the location, the property boundaries, and any other pertinent information as may be required by the director of public works. Grubbing or land clearing by bulldozer for the purpose of making topographic survey shall not be permitted without an authorized grubbing permit. ~~[No permit will be required for cutting or bulldozing of trails for survey lines and access for soil exploration equipment.]~~
- (d) An applicant for a stockpiling permit shall furnish ~~[two]~~ three sets of plot plans showing the property lines and the location of the proposed stockpile, quantities, height of stockpile, duration of stockpile, source, and type of the material to be stockpiled and furnish any other pertinent information as may be required by the director of public works to control the creation of dust, drainage, or sedimentation problems. The plot plan for stockpiling shall be approved by the director of public works.
- (e) If no action (approval, disapproval, deferral, or modification) is taken by the director of public works within thirty days after submittal of the ~~[initial request]~~ completed application (including approvals from other agencies as needed), the permit shall be deemed approved.

Section ~~[10-11,]~~ 10-18. Fees.

- (a) Before issuing a grading permit, the director of public works shall collect a permit fee for grading on the same site based on the volume of excavation or fill, whichever is greater, according to the following schedule:

| Volume of Material | Permit Fee |
|--------------------------------------|------------|
| [0-100 cubic yards | \$5] |

| | |
|-----------------------------------|--|
| [404] 0 – 1,000 cubic yards | [\$5 for the first] <u>\$15</u> per 100 cubic yards [plus \$2 for each additional 100 cubic yards or fraction thereof]. |
| 1,001 – 10,000 cubic yards | [\$25] <u>\$150</u> for the first 1,000 cubic yards plus [\$2] <u>\$15</u> for each additional 1,000 cubic yards or fraction thereof. |
| 10,001 cubic yards or more | [\$41] <u>\$285</u> for the first 10,000 cubic yards plus [\$2] <u>\$9</u> per 1,000 cubic yards or fraction thereof. |

- (b) Before issuing a grubbing permit, the director of public works shall collect a permit fee of ~~[\$5]~~ \$30 for grubbing in excess of one acre, plus ~~[\$2]~~ \$20 for each additional ~~[five acres]~~ acre or fraction thereof.
- (c) Before issuing a stockpiling permit, the director of public works shall collect a permit fee of ~~[\$5]~~ \$15 for stockpiling in excess of the first ~~[five]~~ one hundred cubic yards, plus ~~[\$2]~~ \$3 for each additional one thousand cubic yards or fraction thereof.
- ~~[(d) Where work for which a permit is required by this chapter is started or proceeded prior to obtaining the permit, the fees specified shall be doubled, but the payment of such double fee shall not relieve any person from fully complying with the requirements of this chapter in the execution of the work nor from any other penalties prescribed herein.~~
- ~~(e)~~ (d) When grading, grubbing, or stockpiling is performed by or on behalf of the County, State, or Federal government, the director of public works shall waive the collection of any permit fee required in subsections (a), (b), and (c) above.
- ~~[(f)]~~ (e) All permit fees shall be deposited in the general fund.

Section 10-19. Grading, grubbing or stockpiling without a permit.

- (a) Where work for which a grading, grubbing or stockpiling permit is required by this chapter is started or proceeded with before obtaining the permit, the fees shall be doubled or increased by an additional \$200, whichever is greater, as a minimum penalty for noncompliance with the permit requirements of this chapter. Payment of this penalty shall not relieve any person from fully complying with the requirements of this chapter in the execution of the work nor from any other penalties prescribed herein.
- (b) The owner and developer of the property or the person or persons responsible for the initiation of grading, grubbing or stockpiling shall be responsible for correcting any damages done by the grading, grubbing or stockpiling on-site or off-site.
 - (1) Off-site corrections and restoration shall include, but not be limited to, repair of damages to improvements within the public right-of-way, to any portions of the County-owned or privately owned storm drainage systems or natural resources such as streams, wetlands, or reefs and will include the removal of any sediment and debris from these areas.
 - (2) On-site corrections and restoration shall include covering of exposed soil surfaces with planting, and correction of improper grading, grubbing or stockpiling, and drainage.
- (c) In the event that the person or persons responsible do not or cannot satisfactorily perform restoration to comply with the provisions of this chapter, they shall post a performance bond in an amount sufficient, as determined by the director of public works, to ensure

payment of all costs of restoring the land to its original condition, and for repair of any damages which may have occurred to any improvements in the public right-of-way. Such performance bond shall be subject to the requirements of section 10-20, paragraphs (c) to (f). No certificate of completion for said work shall be issued by the director of public works without satisfactory completion of the restoration work.

Section 10-20. Bond.

- (a) Bond required. A grading or stockpiling permit shall not be issued for any cut, fill or stockpiling involving quantities more than five hundred cubic yards or for excavations or fills over fifteen feet in vertical height, or for work being done in increments of five hundred cubic yards or less, which is part of a larger development unless the permittee shall first file a bond for the benefit of the County of Hawai'i; provided that if the proposed grading or stockpiling is to be performed under an approved subdivision final map and a subdivision agreement or bond or other security has been approved and accepted by the County under its subdivision rules and regulations, or a contractor's performance bond accepted by the County, then the director of public works shall not require a bond for grading or stockpiling. A copy of the approved and accepted subdivision bond or other security shall be presented as evidence by the applicant for a grading or stockpiling permit. At the option of the applicant, the applicant may either file a bond guaranteed by a surety company duly authorized to transact business within the State, or the applicant may deposit cash or letter of credit in lieu of a bond. No interest shall be paid by the County on such cash deposit. The provisions herein relating to a surety bond shall be equally applicable to a cash deposit pledged as a bond.
- (b) Amount of bond. The amount of the bond shall be based on the number of cubic yards of material in excavation, fill, or stockpiling, whichever is the greatest volume. The amount of the bond shall be computed as set forth in the following schedule:

| <u>Volume of Material</u> | <u>Permit Bond</u> |
|--|---|
| <u>10,000 cubic yards or less</u> | <u>\$8 per cubic yard.</u> |
| <u>Over 10,000 – 100,000 cubic yards</u> | <u>\$80,000 plus \$3 per cubic yard for each additional cubic yard in excess of 10,000.</u> |
| <u>Over 100,000 cubic yards</u> | <u>\$350,000 plus \$1 per cubic yard in excess of 100,000.</u> |

- (c) At the option of the applicant, the applicant may file a bond in an amount equal to the cost of all work and services required to complete all of the work under the grading or stockpiling permit as approved by the director of public works. Cost estimates prepared by the permittee shall be subject to approval of the director of public works to determine the exact amount of the bond.
- (d) Conditions. The bond shall be conditioned to be payable to the County upon failure of the permittee to complete all of the required work within the specified time. The director of public works shall collect the moneys from the bond and complete the necessary work to control soil erosion and sedimentation or all unfinished work required by the permit. The parties executing the bond shall be firmly bound to pay for this entire cost. Any remaining sum should be returned to permittee.

- (e) Additional conditions. Each bond shall provide that the surety shall be held and firmly bound unto the County for so long as the following conditions have not been met:
 - (1) The permittee shall comply with all of the terms and conditions of the permit to the satisfaction of the director of public works;
 - (2) The permittee shall complete all of the work authorized under the permit within the time limit specified in the permit; and
 - (3) The surety company shall not terminate or cancel said bond until notified in writing by the director of public works of any termination or cancellation.
- (f) Period and termination of bond. The term of each bond shall begin upon the date of issuance of the permit and shall remain in effect for a period of one year after the date of completion of the work to the satisfaction of the director of public works. Such completion shall be evidenced by a certificate signed by the director of public works. In the event of failure to complete the work or failure to comply with all of the conditions and terms of the permit, the director of public works may order the work to be completed as required by the permit and to the satisfaction of the director of public works. The surety executing such bond or the cash depositor, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County, in causing any and all of such required work to be done, and said surety and the permittee assents to the completion of the work even though it is performed after the time allowed in the permit. Upon completion of such work by the County, the bond shall be terminated. In the case of a cash deposit, such a deposit or any unused portion thereof not required to complete the work authorized by the permit shall be refunded to the permittee.

Section ~~[10-12.]~~ 10-21. Conditions and limitations.

- (a) The issuance of a grading permit shall constitute an authorization to do only that work which is described on the permit and on the plans and specifications approved by the director of public works.
- (b) Permits issued under the requirements of this chapter shall not relieve the ~~[owner]~~ permittee of the responsibility for securing required permits for work to be done which is regulated by any other ~~[code, department or division of the governing]~~ County, State, or Federal agency[-], including approvals of permits which may be required under chapters 6E, 205 and 343, Hawai'i Revised Statutes.
- (c) A copy of the permit issued shall be posted in a conspicuous place on the site at or near the property boundary adjacent to an accessible road bordering the property during the progress of work.
- ~~[(e)]~~ (d) In granting any permit under this chapter, the director of public works may attach such conditions as may be reasonably necessary to prevent creation of a nuisance or hazard to public or private property. Such conditions may include, but shall not be limited to:
 - (1) Improvement of any existing grading to bring it up to the standards of this chapter;
 - (2) Requirements for fencing of excavations or fills which otherwise would be hazardous;
 - (3) Screen planting, landscaping, erosion control planting, or other treatments to maintain good appearance of graded area and reduce the detrimental impact on adjacent properties of the community;

- (4) Cleaning up the area; and
- (5) Days and hours of operation.

Section ~~[10-13.]~~ 10-22. Expiration.

~~[(a)]~~ Every grading~~[or],~~ grubbing or stockpiling permit shall expire and become void ~~[unless the work permitted herein is started within ninety days after the date of issuance or within ninety days after the completion date specified thereon but not]~~ no later than ~~[one year]~~ two years after the date of issuance. All stockpiled material temporarily stored on the premises shall be removed from the premises or used on the premises as fill material under a grading permit for fill prior to the expiration date. ~~[Extension of time may be granted if, in the judgment of the director of public works, the work authorized under the permit would not be exceeded. In such cases, no additional fee will be imposed.]~~

~~(b) Every stockpiling permit shall expire and become void one year after the date of issuance. All stockpiled material temporarily stored on the premises shall be removed from the premises or used on the premises as fill material under a grading permit for fill prior to the expiration date. Extension of time may be granted if, in the judgment of the director of public works, the work authorized under the permit would not be exceeded. In such cases, no additional fee will be imposed.]~~

Section ~~[10-14.]~~ 10-23. Denial.

- (a) If the director of public works finds that the work as proposed by the applicant is likely to cause hazardous conditions that may endanger any property or public way or structure or endanger the public health or welfare, the director shall deny the grading, grubbing or stockpiling permit. Factors to be considered in determining probability of hazardous conditions shall include, but not be limited to, possible geological instability caused by saturation of the ground by rains, earth movements, geological or flood hazards, ~~[undesirable surface water runoff,]~~ subsurface conditions such as the stratification and faulting of rock and the nature and type of soil or rock.
- (b) Failure of the director of public works to observe or recognize hazardous conditions or the director's failure to deny the grading, grubbing or stockpiling permit shall not relieve the permittee or the permittee's agent from being responsible, or cause the County, its officers or agents, to be held responsible for the conditions or damages resulting therefrom.

Section ~~[10-15.]~~ 10-24. Suspension or revocation.

- (a) The director of public works may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever:
 - (1) The permit has been issued on the basis of incorrect or insufficient information supplied by the permittee;
 - (2) The grading, grubbing, or stockpiling is not being performed in accordance with the terms and provisions of the permit; or
 - (3) The grading, grubbing, or stockpiling discloses objectionable or unsafe conditions.
- (b) When a permit has been suspended or revoked, the permittee ~~[may]~~ shall submit detailed plans and proposals for compliance with the provisions of this chapter and for correcting the objectionable or unsafe conditions. Upon approval of such plans

and proposals by the director of public works, the director may authorize the permittee in writing, to proceed with the work.

Section ~~[10-16.]~~ 10-25. Construction prohibited prior to grading.

Whenever a grading permit is required by this chapter, ~~[No]~~ construction of any structure ~~[upon]~~ within the ~~[premises involved]~~ graded area shall ~~[be permitted until]~~ not commence until a grading permit has been issued in accordance with this chapter or the director of public works has ~~[received the notice of completion that the grading, grubbing, or stockpile work has been completed in accordance with the grading permit.]~~ otherwise authorized portions of construction to proceed.

Section ~~[10-17.]~~ 10-26. Inspections.

- (a) Each permit issued under this chapter shall be deemed to include the right of the director of public works or the director's authorized representatives to enter upon and to inspect the grading, grubbing, or stockpiling operations.
- (b) The permittee shall notify the director of public works at least two working days before the permittee or the permittee's agent begins any grading, grubbing or stockpiling. A copy of the permit, approved plans and specifications for grading, grubbing, or stockpiling shall be maintained at the site during the progress of any work. Where it is found by inspection that the soil or other conditions are not the same as stated or shown in the application for grading, grubbing, or stockpiling permit, the director of public works may stop the grading, grubbing, or stockpiling until revised plans, based upon the existing conditions, are submitted by the permittee and approved by the director of public works. Approval or disapproval of applicant's revised plan shall be made within fourteen days from the date of receipt by the director of public works.
- (c) If the director of public works or the director's representative finds that the work is not being done in conformance with this chapter or the plans and specifications approved by the director of public works, the director shall immediately notify the person in charge of the grading work of the nonconformity and immediately notify the responsible party of need for corrective measures to be taken pursuant to section 10-8. Grading operations shall cease until corrective measures satisfactory to the director of public works have been taken.
- (d) When a permittee has been served with a written notice, either by mail or personal service for failure to comply with any provisions of this chapter pursuant to section 10-8, or when a permittee has had the permittee's permit suspended or revoked by the director of public works, the permittee and any person connected with execution of the work authorized by the permit shall be denied a grading, grubbing, or stockpiling permit for such work until the permittee has complied and initiated action satisfactory to the director of public works to comply with the provisions of this chapter.

Article ~~[3.]~~ 4. Conditions and Specifications.

Section ~~[10-18.]~~ 10-27. Conditions of permit.

(a) The requirements of this section may be waived by the director of public works after the permittee submits an engineer's soils report substantiating data regarding the stability of the cut or fill slopes without complying with any of the requirements therein.

(1) Height. Where a cut or fill is greater than fifteen feet in height, terraces or benches shall be constructed at vertical intervals of fifteen feet except that where only one bench is required, it shall be at the midpoint. The minimum width of such terraces or benches shall be eight feet or as determined by the director of public works, based upon the type of material encountered and shall have suitable drainage provisions to control erosion on the slope face.

(2) Cut slopes. Under the following soil conditions, no cut may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below:

- ½ horizontal to 1 vertical in unweathered rock;
- 1½ horizontal to 1 vertical in decomposed rocks or rock and soil mixture;
- 2 horizontal to 1 vertical in low plasticity soils;
- 3 horizontal to 1 vertical in high plasticity soils for cuts up to five feet in vertical depths.

Slopes for cuts exceeding this depth shall be as recommended in the engineer's soils report.

(3) Fill slopes. Under the following soil conditions, no fill may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below:

- 1½ horizontal to 1 vertical in rock and soil mixture;
- 2 horizontal to 1 vertical in low plasticity soils;
- 3 horizontal to 1 vertical in high plasticity soils for fills up to five feet in vertical height.

Slopes for fills exceeding this height shall be as recommended in the engineer's soils report.

Section ~~[10-19.]~~ 10-28. Distance from property line of cut or fill slope.

(a) The horizontal distance from the top of a cut slope or the bottom of a fill slope to the adjoining property line shall be as follows:

| Height of Cut or Fill | Distance from Property Line (in feet) |
|-----------------------------|--|
| Zero feet to 4 feet | 2 |
| More than 4 feet to 8 feet | 4 |
| More than 8 feet to 15 feet | 6 |
| More than 15 feet | 8 |

These requirements may be modified by the director of public works when cuts or fills are supported by retaining walls, approved by the ~~[building department]~~ director, or when the permittee submits an engineer's soils report stating that the soil conditions will permit a lesser horizontal distance without causing damage or danger to the adjoining property.

(b) A retaining wall of six feet and over, or as otherwise provided by the County building code, shall be designed by a professional engineer when deemed necessary by the

director of public works. Setback requirements of the County zoning ordinance are referenced herein and the State land use commission and County zoning ordinance and other agencies' requirements on shoreline improvements shall be complied with.

Section ~~[10-20.]~~ 10-29. Maximum cleared area.

The maximum area of land that may be cleared for grading or grubbing is ~~[twenty]~~ fifteen acres. Noncontiguous increments may be worked on concurrently provided that no single graded area exceeds fifteen acres. The area of land that may be cleared may be ~~[increased or]~~ reduced by the director of public works to control pollution and minimize storm damage. However, if soils, hydrologic, climatic and construction conditions warrant, and adequate erosion and sedimentation control measures are taken, the director of public works may authorize additional area to be opened. Additional area shall not be cleared for grading or grubbing until erosion and sedimentation control measures to prevent dust or erosion problems in the area already graded or grubbed have been ~~[completed.]~~ undertaken to the satisfaction of the director of public works.

Section ~~[10-21.]~~ 10-30. Fill materials.

- (a) The fill material may consist of rock, gravel, sand, soil, or a mixture thereof. Except for slopes, the fill shall be compacted to minimum ninety percent of maximum density as determined by the ASTM soil compaction test D1557, as amended. The director of public works shall inspect the work and may require adequate inspection and compaction control substantiated by test results by an engineer qualified to prepare an engineer's soils report. These requirements may be modified by the director of public works if the permittee submits an engineer's soils report substantiating with appropriate investigation and analysis that the required ninety percent compaction density may be lowered without causing excessive settlement, creep, or stability problems.
- (b) Before placing fill or stockpiling, the natural ground surface shall be prepared and, if required by the director of public works, shall be keyed by a series of benches. No fill shall be placed over any water spring, marsh, refuse dump, nor upon a soggy or springy foundation, provided that this requirement may be waived by the director of public works if the permittee submits an engineer's soils report substantiating data regarding the safety of the fill. Hazardous materials shall not be stockpiled.

~~[Section 10-22. Preparation of ground surface; vegetation.~~

- (a) ~~Before placing fill or stockpiling, the natural ground surface shall be prepared by removing the vegetation and, if required by the director of public works, shall be keyed by a series of benches. No fill shall be placed over any water spring, marsh, refuse dump, or upon a soggy or springy foundation, provided that this requirement may be waived by the director of public works if the permittee submits an engineer's soils report substantiating data regarding the safety of the fill.~~
- (b) ~~Whenever feasible natural vegetation should be retained. If removed, trees, timber, plants, shrubbery, and other vegetation, after being uprooted, displaced, or dislodged from the ground by excavation, clearing, or grubbing, shall not be stored or deposited along the banks of any stream, river, or natural water course. After being uprooted, displaced or dislodged, such vegetation shall be disposed of and removed from the site~~

~~within a reasonable time, but not to exceed three months. Exceptions providing for burial in open areas may be allowed as determined by the director of public works.]~~

Section 10-31. Vegetation.

Whenever feasible, natural vegetation should be retained by becoming part of the erosion control plan during construction or part of the permanent landscaping plan if applicable. If removed, trees, timber, plants, shrubbery, and other vegetation, after being uprooted, displaced, or dislodged from the ground by excavation, clearing, or grubbing, shall not be stored or deposited along the banks of any stream, river, or natural water course. After being uprooted, displaced or dislodged, such vegetation shall be disposed of and removed from the site. Exceptions providing for burial in open areas may be allowed as determined by the director of public works.

Section 10-32. Debris prohibited.

No person shall perform any grading operation so as to cause falling rocks, soil or debris in any form to fall, slide, or flow onto adjoining properties, streets or natural watercourses.

Section 10-33. Dust control.

All work areas within and beyond the actual grading area shall be maintained free from fugitive dust which will cause a nuisance or hazard to others and in conformance with the air pollution control standards contained in Hawai'i Administrative Rules, chapter 11-60, "Air Pollution Control," as may be amended.

Section 10-34. Noise control.

All grading, grubbing and stockpiling operations authorized under this chapter shall be performed in conformance with the applicable provisions of the noise rules contained in Hawai'i Administrative Rules, chapter 11-46, "Community Noise Control," as may be amended.

Section 10-35. Water quality standards.

All grading, grubbing and stockpiling operations authorized under this chapter shall be performed in conformance with the applicable provisions of the water pollution control and water quality standards contained in Hawai'i Administrative Rules, chapter 11-55, "Water Pollution Control," as may be amended, and chapter 11-54, "Water Quality Standards," as may be amended.

Section [10-24.] 10-36. Special conditions and requirements.

- (a) Any person performing or causing to be performed an excavation or fill shall, at that person's own expense, provide the necessary means to prevent the movement of earth of the adjoining properties, to protect the improvements thereon, and to maintain the existing natural grade of adjoining properties.
- (b) Any person performing or causing to be performed, any excavation or fill shall be responsible for the maintenance or restoration of street pavements, sidewalks, curbs, and improvements of public utilities which may be affected. The maintenance or restoration of street pavements, sidewalks and curbs shall be performed in accordance with the requirements of the County and the maintenance and restoration of improvements of public utilities shall be in conformity with the standards of the public utilities companies affected.

- (c) Any person depositing or causing to be deposited, any silt or other debris in ditches, water courses, drainage facilities, and public roadways, shall remove such silt or other debris. In case such person shall fail, neglect, or refuse to ~~[eomply]~~ commence remedial work for compliance with the provisions of this section within forty-eight hours after written notice, served upon the person, ~~[either by mail or by personal service,]~~ pursuant to section 10-8, the director of public works, upon a determination of imminent peril, may proceed to remove the silt and other debris or to take any other action the director deems appropriate. ~~[The]~~ A notice of violation shall be issued and the costs incurred for any action taken by the director of public works shall be paid by such person.
- (d) At any stage of the grading, grubbing or stockpiling work, if the director of public works finds that further work as authorized by an existing permit is likely to create soil erosion problems or to endanger any life, limb, or property, the director may require safety precautions, which may include but shall not be limited to the construction of more gradual slopes, the construction of additional silting or sediment basins, drainage facilities or benches, the removal of rocks, boulders, debris, and other dangerous objects which, if dislodged, are likely to cause injury or damage, the construction of fences or other suitable protective barriers, the planting and sodding of slopes and bare areas and the performance of additional ~~[soil]~~ soil compaction. All planted or sodded areas shall be maintained. An irrigation system or watering facilities ~~[may be required by the director of public works]~~ shall be provided as necessary to ensure proper maintenance.
- ~~[(e) At any stage of the grading, grubbing, or stockpiling operations, if the director of public works finds that further work as authorized by an existing permit is likely to create dust problems which may jeopardize health, property, or the public welfare, the director of public works may require additional dust control precautions and, if these additional precautions are not effective in controlling dust, may stop all operations. These additional dust control measures may include such items as sprinkling water, applying mulch treated with bituminous material, or applying hydro mulch.]~~

Section ~~[10-25.]~~ 10-37. Drainage.

- (a) Adequate provisions shall be made to prevent surface waters from damaging the cut face of an excavation or the sloping surfaces of a fill. All drainage provisions shall be designed to carry surface waters to a ~~[street,]~~ storm drain[er] system, natural watercourse, or other area approved by the director of public works as a safe place to deposit and receive such waters. ~~[The director of public works may require such drainage structures and pipes to be constructed or installed, which in his opinion, are necessary to prevent erosion damage and to satisfactorily carry off surface waters].~~
- (b) Whenever the surface of a lot is excavated or filled, positive drainage shall be provided to prevent the accumulation or retention of surface water in pits, gullies, holes, or similar depressions which may create a public safety hazard~~[or nuisance].~~
- (c) The flow of any existing and known natural underground drainage shall not be impeded or changed so as to cause damage to adjoining property.
- (d) Development-generated runoff shall not be directed off-site.

Section ~~[10-26.]~~ 10-38. Erosion and sedimentation control.

All grading, grubbing, and stockpiling permits and operations shall conform to the erosion and sedimentation control standards and guidelines established by the department

of public works in conformity with [~~chapter~~] chapters 180C[7] and 342D of the Hawai'i Revised Statutes.

Section [~~10-23.] 10-39. Report after grading; notification on completion.~~

- (a) When grading involves cuts or fills for which an engineer's soils report is required, the permittee shall submit a report by a licensed engineer summarizing the construction technique, monitoring, and inspection data as well as a statement regarding conformity to this chapter and the project specifications.
- (b) The permittee or the permittee's agent shall notify the director of public works or the director's representative when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage structures and their protective devices have been completed and the required reports have been submitted.

Section 10-40. Adoption of rules.

This chapter is intended to be self-executing to the extent permitted by law. The director of public works is authorized to promulgate rules pursuant to chapter 91 of the Hawai'i Revised Statutes as may be necessary for implementation of this chapter."

SECTION 2. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material and underscoring need not be included.

SECTION 3. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall 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 declared to be severable.

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date: