

**DEPARTMENT OF THE CORPORATION COUNSEL**

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November 5, 2004

MEMO TO: Gilbert S. Coloma-Agaran, Director  
Department of Public Works and Environmental Management

F R O M: Cindy Y. Young, Deputy Corporation Counsel

SUBJECT: *Cindy Y. Young*  
**Deferral of Improvements for William Goo Estate Family  
Subdivision**

**I. INTRODUCTION**

This responds to your inquiry regarding whether the Director of the Department of Public Works and Environmental Management may approve a request for approval of a family subdivision where the applicant seeks deferral of construction of water and roadway improvements requested by the Department of Fire and Public Safety.

**II. SUMMARY OF FACTS**

James and Barbara Goo ("Applicant") have submitted an application for the William Goo Estate Family Subdivision pursuant to Section 18.20.280, Maui County Code ("MCC"), pertaining to family subdivisions. The application was transmitted by letter from Meyer M. Ueoka to Charles Jencks, Director, dated April 1, 1999.

According to Mr. Ueoka's April 1, 1999 letter, the purpose of the proposed family subdivision is "to authorize the owners of the property to transfer interest in their property to family members without immediate compliance with the requirements for subdivision improvements pursuant to Section 18.20.280 of the Maui County Code." The April 1, 1999 letter further states:

Said parcel will be subdivided into Lots 1 to 4. Lot 3 will be retained by James Goo and Barbara Goo, husband and wife. Lot 2 will be conveyed by James Goo and Barbara Goo to Clarence Goo and Madeleine Goo, husband and wife (Clarence Goo being the brother of James Goo). Lot 1 will be conveyed by James Goo and Barbara Goo to Ernest Goo, single, who is the brother of James Goo.

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The Applicant has submitted a map of the proposed subdivision, a copy of the deed to the property, copies of birth certificates of the proposed transferees, James Goo, Clarence Goo, Ernest Goo, and Madeleine Goo, and the marriage certificate of James and Barbara Goo. To date, the Applicant has not submitted the agreement required by Section 18.20.280(C), MCC,<sup>1</sup> and the conveyance documents to the intended transferees required by Section 18.20.280(D), MCC<sup>2</sup>.

The map of the William Goo Estate Subdivision shows one existing house on the property. The house is located on Lot 3 of the proposed subdivision.

We have been informed by the Development Services Administration, Department of Public Works and Environmental Management, that the Applicant has met the criteria contained in Section 18.20.280(B), MCC, to qualify as a family subdivision.

The Department of Fire and Public Safety is of the position that the water and roadway improvements required under Chapter 16.04A, MCC, must be provided prior to final subdivision approval.

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<sup>1</sup>Section 18.20.280(C) provides:

The provisions of this section shall be implemented through an agreement between the department of public works, the department of water supply, the owners of the property and the transferee(s), and the conditions imposed by this section shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors and other persons who claim an interest in the subject property. The agreement shall be in recordable form and recorded with the bureau of conveyances of the State of Hawaii or the land court of the State of Hawaii, or both. The subdivision map shows one single-family dwelling on Lot 3 of the proposed subdivision.

<sup>2</sup>Section 18.20.280(D) provides:

The conveyance document(s) to the intended transferee(s) shall be submitted to the county prior to final subdivision approval. The document(s) shall contain a reference to the agreement required by this section, including a specific reference to the prohibition on the issuance of building permits and water meters.

In a letter to Glen Ueno dated October 24, 2002, Lt. Scott English, Fire Plans Examiner, stated:

At this time the Fire Prevention Bureau would request that a water supply for fire protection shall be provided prior to the location and construction of buildings. Water supply for fire protection shall have a minimum flow of 1000 gallons per minute for a two hour duration with hydrant spacing a maximum of 350 feet between hydrants. Service roads to proposed properties shall have a clear width of 20 feet, all turns and required turnarounds shall have an outside turning radius of 40.5 feet.

However, Lance Nakamura has informed us that Lt. English has orally revised the Department of Fire and Public Safety's comments regarding water supply for fire protection. It is the Department of Fire and Public Safety's current position that the Department of Fire and Public Safety will not recommend approval of the subdivision unless water supply for fire protection is installed prior to final subdivision approval.

### III. RELEVANT ORDINANCES

Section 18.20.280, MCC, pertaining to family subdivisions, provides in relevant part:

A. Purpose. The purpose of this section is to authorize owners of property to transfer interests of their property to family members without immediate compliance with the requirements for subdivision improvements.

B. Deferral of Subdivision Requirements. The director of public works **shall approve a request for subdivision approval and temporarily defer subdivision requirements required by this chapter** for the sole and limited purpose of authorizing a transfer of interest or title from the subdivision applicants to the other person(s) under the following conditions:

1. The applicant must be an owner of real property who is:
  - a. A parent who intends to transfer property to a spouse or children; or
  - b. Siblings who intend to divide among themselves property received from a parent or grandparent.

2. The transfer shall be immediate and shall be limited to the following persons who are related to the applicant by blood, adoption or marriage: spouse, children, brothers and sisters. The intended transferee(s) shall be designated by the applicant(s) at the time of the application. Proof of the relationship shall be required by the director of public works.

3. The purpose of the transfer shall not be to provide housing or other uses.

4. No building permit or additional water service shall be requested by the applicants, transferees, subsequent grantees or vendees, assignees, lienors, or other persons claiming interest in the subject property without full compliance with all subdivision requirements then in effect and all rules of the department of water supply; compliance with the subdivision requirements and the rules of water supply shall mean compliance relative to the parcel of land prior to subdivision and not to the parcels created pursuant to the deferral granted by this section. The director of public works shall not issue a building permit, and the director of water supply shall not approve of water service, for the subject property or any subdivided parcel thereof unless the requirements set forth in this chapter are fully complied with. (Emphasis added.)

Section 10.601(a), Uniform Fire Code, states, in part:

(a) General. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. (Emphasis added.)

Section 10.401(b), Uniform Fire Code, states, in part:

(b) Where Required. Fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction ... (Emphasis added.)

Section 10.401(m), Uniform Fire Code, states:

(m) Plans. Plans for fire apparatus access roadways shall be submitted to the fire department for review and approval prior to construction. (Emphasis added.)

Section 16.04A.611, MCC, states:

**16.04A.611 NFPA 1141, Standard for fire protection in planned groups, incorporated.** National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, is adopted. (Emphasis supplied.)

Chapter 2, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, defines "planned building groups" as follows:

Planned Building Groups. Multiple structures constructed on a parcel of land, excluding farmland, under the ownership, control, or development by an individual, a corporation, a partnership or firm.

Section 4-1.1, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, states:

Means of access for fire department apparatus shall consist of roadways, fire lanes, parking lot lanes, or a combination thereof, and shall be provided to all structures.

Section 4-1.2, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, states:

Access to the property of a planned building group shall be provided by a minimum of two distinctly separate routes of ingress and egress, each located as remotely from the other as possible.

Section 7-2.1, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, states:

When the infrastructure is being installed, and prior to the location and construction of buildings or portions thereof, the water supply for fire protection, either temporary or permanent and acceptable to the authority having jurisdiction, shall be made available prior to delivery of combustible materials.

Section A-1-2, Appendix A, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, states:

The requirements of this standard can be used for developments having distinguished features similar to planned building groups including but not limited to subdivisions, recreations camps, and farms.

#### IV. ANALYSIS

Section 18.20.280, MCC, requires the Director of Public Works and Environmental Management to temporarily defer subdivision requirements imposed under Chapter 18.20, MCC,<sup>3</sup> for family subdivisions that meet the criteria set forth in Section 18.20.280(B), MCC. Under Section 18.20.280(B), MCC, the Director of Public Works and Environmental Management has no discretion to require completion of improvements prior to final subdivision approval for applications qualifying for treatment as family subdivisions. Section 18.20.280, MCC, does not, however, preclude the Department of Public Works and Environmental Management from requiring completion of improvements required under Chapter 16.04A, MCC, prior to the issuance of a building permit.<sup>4</sup>

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<sup>3</sup>Subdivision requirements imposed under Chapter 18.20, MCC, include road improvements, street name and traffic signs, street lights, sidewalks, curbs and gutters, driveways, pedestrian ways, traffic calming elements, rights-of-way, and drainage, but do not expressly include fire safety improvements referenced in the National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups.

<sup>4</sup>Maui County Code Chapters 18.08 (pertaining to preliminary plat), 18.12 (pertaining to final plat), and 18.20 (pertaining to improvements), do not require Department of Fire and Public Safety approval of the subdivision plat. Rather, Section 18.08.090, MCC, provides:

It is questionable as to whether the William Goo Estate Family Subdivision is a "planned building group", as defined in Chapter 2, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups. The property currently consists of one house, not "multiple structures", and no additional structures will be constructed prior to final subdivision approval. Further, although current owners, James and Barbara Goo, are obviously individuals, the lots in the William Goo Estate Family Subdivision will be owned separately by different parties (including James and Barbara Goo, Clarence and Madeleine Goo, and Ernest Goo), and not by "an individual, a corporation, a partnership or firm."

Indeed, other provisions of the Uniform Fire Code are consistent in requiring improvements prior to construction, not subdivision approval. For example, Sections 10.401(b) and 10.401(m), Uniform Fire Code, quoted above, regarding fire apparatus access roads, require that such roadways be reviewed, approved, and provided in conjunction with the proposed construction of a building or facility. Section 10.601(a), Uniform

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A. Within five days after the information required in Sections 18.08.040 through 18.08.080 is submitted by the subdivider, the director shall furnish one copy of the preliminary plat and supplemental materials to the director of water supply, director of public works and sanitary engineer, and in addition, the district engineer, when a subdivision is adjacent to a state highway or proposed state highway.

B. The officers listed in subsection A of this section shall review the preliminary plat and indicate their approval or recommendation thereon within the time limit established by the director.

Additionally, Section 18.20.180, MCC, provides in relevant part:

When the construction drawings and specifications bear the approval of the [planning] director, the director of public works, the director of water supply, the sanitary engineer and the district engineer as required under Section 18.20.150 through 18.20.170 the subdivider may proceed with construction of the improvements and utilities. After completion of same in accordance with the requirements of this title, the director shall grant approval for recordation of his final plat.

Fire Code, quoted above, requires that water supply for fire protection be provided "to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into ..."

Even assuming, for the sake of argument, that the William Goo Estate Family Subdivision is a "planned building group", we do not believe, for the reasons discussed below, that fire-related improvements would be required prior to subdivision approval.

The requirement that "[a]ccess to the property of a planned building group shall be provided by a minimum of two distinctly separate routes of ingress and egress, each located as remotely from the other as possible", as set forth in Section 4-1.2, National Fire Protection Association 1998 Edition of NFPA 141, Standard for Fire Protection in Planned Building Groups, is not triggered by the mere subdivision of property without the building of structures on the subdivided property. Further, the requirement relating to access for fire department apparatus in Section 4-1.1, National Fire Protection Association 1998 Edition of NFPA 141, Standard for Fire Protection in Planned Building Groups, applies to "structures", and not to the subdivision of land without any associated construction. Further, water supply for fire protection is required for a planned building group "prior to delivery of combustible materials" and "prior to the location and construction of buildings or portions thereof."<sup>5</sup>

The only reference to subdivisions in the Uniform Fire Code is in Section A-1-2, Appendix A, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, which states:

The requirements of this standard can be used for developments having distinguishing features similar to planned building groups including but not limited to subdivisions, recreation camps, and farms.

In this context, the term "subdivisions" refers to developed subdivisions and would not include the mere subdivision of land without any associated construction of buildings or structures. Section A-1-2, Appendix A, National Fire Protection Association 1998 Edition of NFPA 1141, Standard for Fire Protection in Planned Building Groups, supports an interpretation that the term

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<sup>5</sup>See, Section 7-2.1, National Fire Protection Association 1998 Edition of NFPA 141, Standard for Fire Protection in Planned Building Groups.

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"subdivisions", as used therein, is not a reference to the approval of a subdivision qualifying as a family subdivision under Section 18.20.280, MCC.

V. CONCLUSION

Based on the foregoing, and assuming satisfactory compliance with the requirements of Section 18.20.280, MCC, the Director of Public Works and Environmental Management may grant subdivision approval for the William Goo Estate Family Subdivision pursuant to Section 18.20.280, MCC.

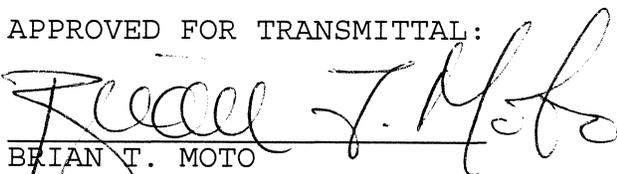
Should you have any further questions, please do not hesitate to contact this office.

CYY:ko

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APPROVED FOR TRANSMITTAL:



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