

COUNTY OF HAWAII STATE OF HAWAII



BILL NO. 232

ORDINANCE NO. 98 63

AN ORDINANCE AMENDING ORDINANCE NO. 95-70, WHICH RECLASSIFIED LANDS FROM AN AGRICULTURAL (A-20a) TO AGRICULTURAL (A-1a, A-3a, A-200a, A-255a AND A-8000a) AT KEALAKEKUA, KILOA, WAIPUNLA, KALAMA, KUMU, AND KALAMAKOWALI, SOUTH KONA, HAWAII, COVERED BY TAX MAP KEY 8-2-12:12 AND A PORTION OF 1.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Ordinance No. 95-70, is amended as follows:

"SECTION 2. These changes in district classification are conditioned upon the following:

(A) The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval;

(B) The effective date of the change of zone shall be:

[(1)] when the applicant provides assurance satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health and the Department of Land and Natural Resources, that a water source(s) of sufficient quality and quantity has/have been established within [two] five years from the enactment of this [ordinance] amendment; provided that a maximum one year extension may be granted by the Planning Director with reasonable and sufficient justification.]; and

(2) an agreement together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, is executed between the applicant and the County through its Departments of Water Supply and Planning for the actual development of proven source and its water transmission and distribution system to County Dedicable Standards within one year from the official date of compliance with condition B(1);

provided that a one year extension may be granted by the Planning Director with reasonable and sufficient justification. Such] ~~The~~ water system ~~that will be developed~~ shall be in accordance with the requirements of the Rules and Regulations and the Water System Standards of the Department of Water Supply and shall provide sufficient water capacity and pressure for:

- (i) domestic purposes for approximately 70 lots makai (west) of the subject property and located within current Tax Map Key Plat 8-2-001; and
- (ii) fire protection purposes with fire hydrants along Koa Road and Greenwell Mountain Road meeting with the approval of the fire department.

- "(C) Upon compliance with Condition B[(1) and B(2)], the subject property shall be developed in two increments. The first increment shall be comprised of a maximum of 300 lots zoned A-1a and A-3a. The second increment shall be comprised of the remaining maximum balance of 202 lots. The plans for the proposed subdivision of the first increment shall be submitted to the Planning Director within [three (3)] ~~five (5)~~ years from the effective date of the rezoning as determined in Condition B. Subdivision plans for the second increment may be submitted to the Planning Director only after a South Kona Mamalahoa Highway Bypass road has been fully constructed in its entirety between the approximate vicinity of Keauhou and Captain Cook.
- (D) After Final Subdivision Approval is granted for the last phase of the subdivision of the subject property, the Planning Director shall initiate an amendment to the zoning of the golf course area into a more appropriate zoning classification to insure that the golf course area is not subdivided.
- (E) The applicant shall reserve in perpetuity a 200-foot wide easement along the subject property's western boundary and the parcels designated by TMK Nos.: 8-2-01: 42-47 and 98-101, comprising of a 150-foot wide structural

setback and a 50-foot wide landscape buffer. Such easement and the right-of-way acquisition documents for the proposed Koa Road access corridor shall be delineated on plans submitted for subdivision review of the first increment. The Koa Road corridor alignment shall be generally located south of the Kealakekua Shopping Center at its connection with Mamalahoa Highway, as represented by the applicant.

- (F) A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.
- (G) A detailed drainage study of the entire project area shall be prepared by the applicant for review and approval by the Department of Public Works prior to submittal of plans for subdivision review for any portion of the project site or prior to any land alteration whichever comes first. Drainage improvements, including any flooding mitigation measures as required by the chief engineer, shall be constructed and/or installed in a manner meeting with the approval of the Department of Public Works. The drainage study may include a program for the sequenced installment of the drainage system improvements.
- (H) An archaeological mitigation plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division and Hawaiian community organizations, prior to submitting plans for subdivision review. The Plan shall consist of two subplans:
  - (1) an archaeological data recovery plan for the sites to undergo data recovery; and
  - (2) a detailed interim protection preservation plan for the sites to undergo preservation. Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations within the project area.The Plan shall also include a detailed map of known lava tube/cave systems

located within the project area and mitigative measures to ensure that the golf course and related drainage systems do not impact these cave systems.

- (I) Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when the Director finds that sufficient mitigative measures have been taken.
- (J) A solid waste management plan shall be prepared meeting with the approval of the Department of Public Works prior to submitting plans for the first increment of the subject property for final subdivision approval review. The Plan shall include, but not be limited to, the management of construction solid waste as well as operating and domestic solid waste generated by the proposed development. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works.
- (K) Roadway improvements and access(s) to the subject property, including all plans and construction, shall meet with the approval of the Department of Public Works and/or the State Department of Transportation. Prior to the issuance of final subdivision approval for any portion of the first increment of the subject property or the issuance for a certificate of occupancy for any portion of the golf course, whichever occurs first, such improvements shall include but not be limited to the following, subject to final determination by the planning director in consultation with the chief engineer:
  - 1. Construct the intersection improvements at the Mamalahoa Highway-Koa Road intersection, including signalization and channelization meeting with the approval of the State Department of Transportation and the Department of Public Works;

2. Construct shoulder, road widening, overlay and restriping improvements to establish a two-way left turn lane along Mamalahoa Highway from Kamigaki Market to KeeKee Street;
  3. Construct shoulder, drainage, road widening, overlay and restriping improvements to provide a south bound left-turn pocket at Haukapila Street (Kona Hospital intersection); a two-way left turn lane between Halekii Street and Haukapila Street; and signalization at the Mamalahoa Highway-Haukapila Street intersection; and
  4. Widen shoulder areas to provide a minimum of five southbound and five northbound bus pullouts along Mamalahoa Highway between Koa Road and Kuakini Highway.
- (L) Subdivision plans for the subject property shall include road stub outs to its north and south boundaries below the 3,500 foot elevation and shall be approved by the Department of Public Works and the Planning Department.
- (M) The applicant shall participate in a program to construct the South Kona Mamalahoa Bypass road and shall participate in the funding and construction of any regional roadway improvements as may be required by the State Department of Transportation, provided that any costs borne by the applicant shall be credited and limited to the amount of its fair share contribution for regional impacts, as required in Conditions K and P.
- (N) To ensure that the Goals and Policies of the Recreation Element of the General Plan are implemented, the applicant shall:
1. Designate and provide camping sites and related equestrian and nature-interpretive trail systems within the subject property meeting with the approval of the planning director in consultation with the director of parks and recreation. The camping sites may be limited to members and guests of non-profit organizations, primarily those serving resident youth of Hawaii County, registered with the Department of Commerce and consumer Affairs of the State of Hawaii for non-commercialized

recreational or educational purposes. The applicant shall prepare and submit a recreational and maintenance plan for the camping sites meeting with the approval with the planning director in consultation with the director of parks and recreation, which shall include but not be limited to:

- i. the number, location and design of the camping sites and accessways;
- ii. availability on a daily year-round basis except during maintenance and repairs which shall be at the applicant's expense;
- iii. a maintenance and user fee program comparable to county and state park fees to offset maintenance cost; and
- iv. Rules and regulations to include but not be limited to access, use of camping sites and related trails, to provide for the health and safety and welfare of the users and property owners alike.

2. Construct improvements to Greenwell Park as approved by the planning director in consultation with the director of parks and recreation.

(O) In lieu of actual construction of infrastructural improvements as required under Conditions F, G, J, K, L, M and N, the applicant may enter into an agreement with the County to assure the County that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, appropriate agencies or the County Council, whichever is applicable. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements.

(P) The Applicant shall pay its fair share contribution to address potential regional impacts of the project with respect to park, fire, police, solid waste disposal facilities, and roads. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be

increased or reduced proportionally if the lot counts are adjusted. The fair share contribution based on the total number of lots for the first increment shall become due and payable prior to final subdivision approval of any portion of the first increment of the subject property. The fair share contribution for the total number of lots of the second increment shall be due and payable prior to final subdivision approval for any portion of the second increment of the subject property. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities, or any combination thereof acceptable to the director, in consultation with the affected agencies shall have a maximum combined value of \$3,619,580.00. The fair share contribution described above shall be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may construct such facilities related to parks, fire, police, solid waste disposal facilities, and roads with the approval of the appropriate agency(ies). Any improvements constructed by the applicant to satisfy this condition shall be located within the region.

- (Q) Comply with all applicable laws, rules, regulations and requirements of the affected agencies.
- (R) Restrictive covenants in the deeds of all of the proposed lots within the subject property shall prohibit the construction of a second dwelling or an Ohana Dwelling unit. The construction of Farm Dwellings on each lot may be permitted provided approval is secured from the Planning Director. Restrictive covenants for all lots within the subject property shall require agricultural activity. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Department for review and approval prior to final subdivision approval for any portion of the first increment of the subject property. A copy of the approved covenants shall be

recited in an instrument executed by the applicant and the county and recorded with the Bureau of Conveyances likewise prior to final subdivision approval for any portion of the first increment of the subject property.

- (S) A forest management plan for the 8,100 acre site zoned A-8000a within the subject property, shall be prepared and submitted for review and approval by the Planning Director in consultation with the State Department of Land and Natural Resources, State Department of Health, State Department of Agriculture and U.S. Department of Natural Resources Conservation Service. The forest management plan shall require the following:
1. Include at a minimum the best forest and reforestation practices, program for implementation, public access, recreation consideration and any other applicable forestry management criteria, including those of the State Department of Land and Natural Resources (i.e. Forest Stewardship Program).
  2. The forest management plan shall be included in a restrictive covenant for the 8,100 acre parcel, which covenant shall be recorded in the State of Hawaii Bureau of Conveyances and/or Land Court. A copy of the covenant to be recorded shall be filed with the Planning Director prior to the issuance of final subdivision approval for any portion of the first increment of the subject property. A recorded copy of the covenant shall also be filed with the Planning Director as soon as practicable after final subdivision approval of the first increment.
  3. This forest management plan shall govern this 8,100 acre parcel for a period of forty (40) years and may be terminated upon the approval of the Board of Land and Natural Resources.
  4. Any termination of the said forest management plan after the 40-year period shall be considered an amendment to this ordinance, requiring County Council approval by ordinance.



- (T) Within the A-8000a zoned area, no infrastructure improvements shall be allowed except those improvements required for the maintenance of existing facilities, those improvements identified in the forest management plan, and those improvements within the designated camp sites.
- (U) Street lights within the project site shall be minimized to the best extent practicable and shall be installed only where required by the Department of Public Works for safety purposes.
- (V) An integrated pest management plan and noxious weed control plan shall be submitted for agricultural uses for review and approval by the Planning Director in consultation with the Department of Land and Natural Resources, Forestry and Wildlife Division.
- (W) Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- (X) An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this change of zone. The report shall address in detail the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
- (Y) An extension of time for the performance of conditions within the ordinance, with the exception of Condition [C]B, may be granted by the Planning Director upon the following circumstances:
  - (1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
  - (2) granting of the time extension would not be contrary to the General Plan or Zoning Code;

- (3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone;
  - (4) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year); and
  - (5) should the Applicant require an additional extension of time, the Planning Director shall submit the Applicant's request to the County Council for appropriate action.
- (Z) Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the area to its original designation."

**SECTION 2.** Material to be deleted is bracketed. New material is underscored.

**SECTION 3.** In the event that any portion of the ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

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


INTRODUCED BY:

  
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 COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: June 1, 1998  
 Date of 1st Reading: June 1, 1998  
 Date of 2nd Reading: June 16, 1998  
 Effective Date: July 2, 1998  
 REFERENCE Comm. 822

APPROVED AS TO FORM AND LEGALITY:

  
 \_\_\_\_\_  
 CORPORATION COUNSEL  
 DATE: \_\_\_\_\_

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

RECEIVED

'98 JUL 2 AM 10 50

Introduced By: Bobby Jean Leithead-Todd (B/R)  
 Date Introduced: June 1, 1998  
 First Reading: June 1, 1998  
 Published: June 8, 1998

REMARKS:

COUNTY COUNCIL ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

Second Reading: June 16, 1998  
 To Mayor: June 19, 1998  
 Returned: July 2, 1998  
 Effective: July 2, 1998  
 Published: July 10, 1998

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Leithead-Todd	X			
Ray	X			
Reynolds	X			
Santangelo	X			
Smith	X			
Tyler	X			
Yagong	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council and published as indicated above.

APPROVED AS TO  
 FORM AND LEGALITY:

Patricia K. O'Leary

DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date JUN 23 1998

Approved/Not approved this 2 day  
 of July, 19 98

Jack Yamada  
 MAYOR, COUNTY OF HAWAII

James A. ...  
 COUNCIL CHAIRMAN  
Donald ...  
 COUNTY CLERK

Bill No.: 232  
 Reference: C-822/PC-109  
 Ord. No.: 98 63