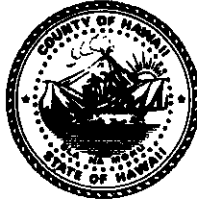


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 321  
(Draft 2)

ORDINANCE NO. 06 137

AN ORDINANCE AMENDING ORDINANCE NO. 95 118, WHICH AMENDED ORDINANCE NO. 92-36, WHICH RECLASSIFIED LANDS FROM UNPLANNED (U) AND DOUBLE-FAMILY RESIDENTIAL – 3,750 SQUARE FEET (RD-3.75) TO MULTIPLE FAMILY RESIDENTIAL – 2,500 SQUARE FEET (RM-2.5) AND VILLAGE COMMERCIAL – 7,500 SQUARE FEET (CV-7.5), RESPECTIVELY, AT HIENALOLI 4<sup>TH</sup> AND 5<sup>TH</sup>, NORTH KONA, HAWAII, TAX MAP KEY: 7-5-10:PORTION OF 13 (FORMERLY 7-5-23:63).

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

**SECTION 1.** Ordinance No. 95 118 is amended as follows:

~~“SECTION 2. [This change in district classification is conditioned upon the following:]~~

In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
- (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
  - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
  - (B) Fulfillment of the need for public service demands created by the proposed use.

~~[A. —The applicant, successors, or assigns be responsible for complying with all of the stated conditions of approval;~~

~~B. —The required water commitment payment shall be submitted to the Department of~~

~~Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety days from the date of approval of the change of zone;~~

- ~~C. Consolidation approval of the subject properties shall be secured from the Planning Department within one year from the effective date of approval of the Change of Zone request.~~
- ~~D. Final Plan Approval shall be secured from the Planning Department within one (1) year from the effective date of approval of the consolidation approval of the subject properties. Plans to be submitted for Final Plan Approval shall include all applicable conditions of consolidation approval. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured.~~
- ~~E. Construction shall commence within five (5) years from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.~~
- ~~F. A detailed archaeological mitigation plan shall be prepared and submitted for approval by the Planning Department, in consultation with the State Department of land and Natural Resources prior to submitting plans for plan approval review. The plan submitted shall have incorporated the recommendations of the detailed archaeological mitigation plan.~~
- ~~G. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks 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 it finds that sufficient mitigative measures have been taken.~~
- ~~H. The applicant shall install all recommended road improvements as required by the Department of Public Works, including a left turn lane, acceleration and deceleration lanes, curb, gutter and sidewalk improvements along the Hualalai Road frontage of the subject development. Plans for these improvements shall be~~

~~submitted simultaneously with plans for Final Plan Approval and shall be installed prior to issuance of a certificate of occupancy for any portion (commercial or residential) of the developments.~~

- ~~I. Prior to Final Plan Approval or Final Subdivision Approval for the project, should the County determine that additional improvements in the project area are required (i.e. roadways, parks, police, fire, etc.), the applicant and its successors or assigns shall pay or contribute its pro rata share of such additional improvements. Satisfaction of this condition may be by entering into a development agreement with the County when such a development agreement is authorized. Any pro rata share of improvements paid or contributed to the project area shall be credited to any future impact fees.~~
- ~~J. The applicant shall formulate a school facilities assessment plan, which shall be reviewed and approved by the Planning Department, in consultation with the Department of Education, prior to Final Plan Approval of the residential project. The approved assessment shall be submitted to the appropriate agency prior to the issuance of a certificate of occupancy for any portion of the residential development.~~
- ~~K. To ensure that the Goals and Policies of the Recreation Element of the General Plan are implemented, the applicant shall contribute a monetary fee or designate an area prior to tentative subdivision approval to the County of Hawaii, which shall be used for park purposes. The monetary fee or land area shall be calculated by methodology and procedure set forth in Sections 8-6, 8-7, and 8-8 of the Park Dedication Code of the Hawaii County Code and shall be acceptable to the Department of Parks and Recreation and the Planning Department. If the applicant designates a park area on site, the park area shall be improved by grading and grassing prior to issuance of a certificate of occupancy for the residential development meeting with the approval of the Planning Department, in consultation with the Department of Parks and Recreation. Further, a park maintenance and operational plan shall be submitted for review and approval by~~

~~the Planning Department, in consultation with the Department of Parks and Recreation, prior to issuance of a certificate of occupancy for the residential development.~~

- ~~L. To ensure that the Goals and Policies of the Housing Element of the General plan are implemented, the applicant shall work with the Office of Housing and Community Development and the Planning Department to formulate a housing plan for the development, which shall be consistent with the interim affordable housing policy of the County as contained in the Hawaii County Housing Agency Resolution No. 65. This housing plan shall be approved by the County Housing Agency prior to final plan approval of any portion of the residential-zoned area; provided that the applicant shall notify the County Housing Agency of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the property prior to visible commencement of construction on the property; provided further that the applicant may transfer ownership in the property to an affiliate or in a manner consistent with prior representations to the County Housing Agency comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to final subdivision approval or to final plan approval, whichever is applicable;~~
- ~~M. Comply with all applicable laws, requirements, rules, and regulations including those of the Fire Department, Department of Health, and the Department of Land and Natural Resources.~~
- ~~N. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this ordinance. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. 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.~~

~~O. 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 may, at the developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance; and~~

~~P. An initial extension of time for the performance of conditions within the ordinance 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 the 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.~~

~~Q. 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 or more appropriate designation.]~~

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

(B) The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this amendment.

- (C) Construction of the proposed development shall be completed within five (5) years from the effective date of this amendment. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the amended proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code within two (2) years from the effective date of this amendment. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
- (D) A future road widening strip along the Hualalai Road project frontage as determined by the Department of Public Works shall be subdivided and dedicated to the County within two years from the effective date of this amendment.
- (E) The applicant shall realign and provide collector street improvements to the entire project frontage along Hualalai Road consisting of, but not limited to, right-of-way and pavement reconstruction and widening with concrete curb, gutter and sidewalk, drainage improvements, streetlights, signs and markings and any relocation of utilities, meeting with the approval of the Department of Public Works. The widened and improved area shall provide for opposing left turn lanes along with any necessary pavement transitions. The applicant shall construct and dedicate to the County upon request by the Department of Public Works, the additional improved street right-of-way at no cost to the County, prior to receipt of a Certificate of Occupancy.

- (F) Access to Hualalai Road shall be limited to one approach, located as approved by the Department of Public Works. An additional gated access should be provided at the mauka end of the property to the existing County flood control access road for emergency access purposes and be gated. The applicant shall provide a left turn storage lane on Hualalai Road to the subject property prior to the issuance of a Certificate of Occupancy. All sight distances to the approach shall meet the requirements of the Hawaii Statewide Uniform Design Manual (AASHTO).
- (G) Any utility poles in the road right-of-way shall be installed as shown on DPW Standard Detail R-35 (Revised). The applicant shall provide any necessary easements for installation of such utilities.
- (H) Any vehicular security gate shall be located a minimum of 60 feet (exclusive of gate swing) from the proposed Hualalai Road right-of-way with a turnaround on the County road side of the gate. This 60-foot requirement shall not apply to the emergency access.
- (I) All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- (J) A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works. The recommended drainage system shall be constructed, meeting with the approval of the Department of Public Works, prior to the issuance of a Certificate of Occupancy.
- (K) A Solid Waste Management Plan shall be submitted to the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.

- (L) The project shall connect to the County sewer system, meeting with the approval of the Department of Environmental Management.
- (M) Applicant shall implement the approved archaeological mitigation plan and burial treatment plan. Should any remains of historic sites such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigation measures have been taken.
- (N) The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval or within five years from the effective date of this amended change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on the actual number of residential units developed. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of the amendment to the ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of \$6,653.40 per multiple family residential unit (\$10,368.57 per single family residential unit). The total amount shall be determined by the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple-family residential unit (single family residential unit) shall be allocated as follows:



1. \$3,281.93 per multiple family residential unit (\$4,999.91 per single family residential unit) to the County to support park and recreational improvements and facilities;
2. \$103.73 per multiple family residential unit (\$241.20 per single family residential unit) to the County to support police facilities;
3. \$319.07 per multiple family residential unit (\$476.39 per single family residential unit) to the County to support fire facilities;
4. \$142.21 per multiple family residential unit (\$208.57 per single family residential unit) to the County to support solid waste facilities;
5. \$2,806.46 per multiple family residential unit (\$4,442.50 per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council; provided however, that the cost of providing and constructing the improvements required in Conditions D and E may be credited against the sum specified in Condition N(5) for road and traffic improvements.

- (O) 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;

- (P) To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to Final Plan Approval.
- (Q) An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this amendment. The report shall address the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
- (R) Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- (S) Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

**SECTION 2.** Material to be deleted is bracketed and struck through, and material to be added is underscored.

**SECTION 3.** In the event that any portion of this 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:

 2/12

COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: October 16, 2006

Date of 1st Reading: October 16, 2006

Date of 2nd Reading: October 31, 2006

Effective Date: November 8, 2006

REFERENCE: Comm. 1004.1



PREPARED BY: PLANNING DEPARTMENT  
COUNTY OF HAWAII

SEPT. 19, 1991

(HUALALAI PROPERTIES, INC.)  
(SAMSON LLC)

OFFICE OF THE COUNTY CLERK  
County of Hawai'i  
Hilo, Hawai'i

(Draft 2)

FILED

Introduced By: K. Angel Pilago  
Date Introduced: October 16, 2006  
First Reading: October 16, 2006  
Published: October 27, 2006

REMARKS: \_\_\_\_\_

Second Reading: October 31, 2006  
To Mayor: November 2, 2006  
Returned: November 9, 2006  
Effective: November 8, 2006  
Published: November 21, 2006

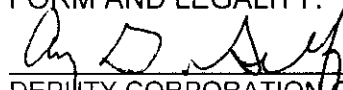
REMARKS: \_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann		X		
Holschuh	X			
Ikeda	X			
Isbell		X		
Jacobson		X		
Pilago		X		
Safarik	X			
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann			X	
Holschuh	X			
Ikeda	X			
Isbell		X		
Jacobson		X		
Pilago		X		
Safarik	X			
	5	3	1	0

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

APPROVED AS TO  
FORM AND LEGALITY:

  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

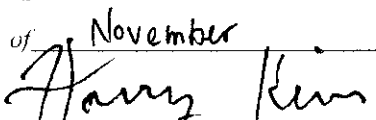
Date NOV 03 2006

  
COUNCIL CHAIRMAN

  
COUNTY CLERK

Bill No.: 321 (Draft 2)  
Reference: C-1004.1/PC-109  
Ord No.: 06 137

Approved/Disapproved this 8<sup>th</sup> day

of November, 2006  
  
MAYOR, COUNTY OF HAWAII