

ORDINANCE NO. 07 127 BILL NO. 113  
 (DRAFT 3)

AN ORDINANCE AMENDING ORDINANCE NO. [~~05-157~~] 05-157, WHICH AMENDED ORDINANCE NO. [~~95-51~~] 95-51, WHICH AMENDED ORDINANCE NO. 90-160, AND WHICH RECLASSIFIED LANDS FROM AGRICULTURAL 5-ACRE (FORMERLY UNPLANNED) AND MULTIPLE FAMILY RESIDENTIAL 1,500 SQUARE FEET (RM-1.5) TO RESIDENTIAL AND AGRICULTURAL 1 ACRE (RA-1a) AND OPEN (O) DISTRICTS AT WAIKOLOA, SOUTH KOHALA, HAWAI‘I, COVERED BY TAX MAP KEY: 6-8-002:PORTION 016 AND 6-8-003:PORTION 032.

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

**SECTION 1.** Ordinance No. [~~05-157~~] 05-157 is amended as follows:

“SECTION 3. [~~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 its assigns shall be responsible for complying with all of the stated conditions of approval;

B. Final Subdivision Approval [~~for not less than 175 lots~~] shall be secured within [~~ten (10)~~] five (5) years from the effective date of this new amendment. Plans for [~~infrastructural improvements, including~~] the off-site roadway improvements required in Condition C, shall be submitted [~~in conjunction with construction~~]

~~drawings for final subdivision approval for any portion of the subject property]~~ no later than six months [after a determination of the type of improvements (i.e., signalized or roundabout) is made by the Director of the Department of Public Works] from the effective date of this new amendment. The applicant shall install and dedicate the ~~[traffic signalization]~~ intersectional improvements required in Condition C prior to ~~[the]~~ receipt of Final Subdivision Approval ~~[for more than 350 lots of twenty acres or less,]~~ or sooner in the event the warrants for such installation are justified by the Director of Public Works. In lieu of actual construction of infrastructural improvements herein, ~~[except for Condition C,]~~ the applicant may enter into an agreement with the County to assure the County that the infrastructure improvements will be constructed together with the appropriate bond, surety, or other security deemed acceptable to the Planning Director and the Corporation Counsel. 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]~~ in lieu of the actual construction of required infrastructural improvements. No occupancy permit shall be issued until all of the infrastructure improvements covered by the bond or surety have been constructed and approved by the County;

- C. Access shall meet with the requirements of the Department of Public Works. Direct access to Waikoloa Road shall be limited to ~~[one roadway]~~ two roadways from the project site. These accesses shall be fully channelized with dedicated left and right turn deceleration and acceleration lanes on Waikoloa Road. Waikoloa Road-Pua Melia Street-Paniolo Avenue intersection shall be channelized and ~~[signalized or]~~ improved by a “roundabout” system meeting with the requirements of the Department of Public Works. ~~[These]~~ The first channelized intersection improvements on Waikoloa Road together with other improvements required by the Department of Public Works based upon a current Traffic Impact Analysis Report shall be provided in conjunction with final subdivision approval of the first increment, or as otherwise provided by Chapter 23 ~~[(Subdivision Control)]~~ (Subdivisions). The second channelized intersection

improvements on Waikoloa Road shall be provided prior to ~~and~~ or in conjunction with the opening and use of the project's second access;

- D. 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 ~~[County Housing Agency]~~ Administrator of the Office of Housing and Community Development prior to final subdivision approval;
- E. A drainage system shall be installed in accordance with the requirements of the Department of Public Works and other affected agencies;
- F. A Solid Waste Management Plan shall be submitted to the Department of Environmental management for review and approval prior to the issuance of final subdivision approval;
- G. A water system meeting with the approval of the Department of Water Supply shall be provided or bonded prior to issuance of final subdivision approval. At no cost to the county, the water system shall include the construction of on and off-site water reservoir(s), appropriate transmission system to and within the subject site, and other related appurtenances. Said system shall also include provision(s), such as a separate irrigation meter or system throughout the subdivision, to monitor and control excessive use of potable water for irrigation;
- ~~[F-]~~H. Comply with all applicable County, State and Federal laws, rules, regulations and requirements;
- ~~[G-]~~I. Restrictive covenants in the deeds of all proposed lots within the property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each 1-acre lot. This

restriction may be removed by amendment of this ordinance by the County Council. The owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances;

[H.]J. Before final subdivision approval, applicant must obtain reclassification of the RA-1a zoned area from the State Land Use Commission to the Rural or Urban district. Prior to the submittal of plans for a grading or any associated permit for a golf course to the County for review and approval, the applicant shall consult with the Waikoloa Village Association and the County Council relative to the timing and propriety of such use. This condition, except for the consultation requirement for any golf course, may be waived by the Planning Director, after consultation with Corporation Counsel, if an appellate judicial decision, or substantive change to Chapter 205, [Hawaii] Hawai'i Revised Statutes, clearly establishes the legality of this project in the Agricultural State Land Use district, including the residential uses of the lots;

[I.]K. 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 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 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 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 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 ~~[\$9,991.21]~~ \$10,368.57 per single-family residential unit. ~~[Based upon the applicant's representation of intent to develop a total of one hundred and seventy five (175) single-family residential units, the indicated total of fair share contribution is \$1,748,461.75 for the single-family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units according to the calculation and payment provisions set forth in this condition.]~~ The total amount shall be determined with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per single-family residential unit shall be allocated as follows:

- ~~[\$4,817.93]~~ \$4,999.91 per single-family residential unit ~~[for one hundred and seventy five (175) single-family residential units for an indicated total of \$843,137.75]~~ to the County to support park and recreational improvements and facilities;
- ~~[\$232.42]~~ \$241.20 per single-family residential unit ~~[for the one hundred and seventy five (175) single-family residential units for an indicated total of \$40,673.50]~~ to the County to support police facilities;
- ~~[\$459.06]~~ \$476.39 per single-family residential unit ~~[for one hundred and seventy five (175) single-family residential units for an indicated total of \$80,335.50]~~ to the County to support fire facilities;
- ~~[\$200.98]~~ \$208.57 per single-family residential unit ~~[for the one hundred and seventy five (175) single-family residential units for an indicated total of \$35,171.50]~~ to the County to support solid waste facilities;

- ~~[\$4,280.82]~~ \$4,442.50 per single-family residential unit ~~[for the one hundred and seventy five (175) single family residential units for an indicated total of \$749,143.50]~~ 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, which may include a multi-purpose community center, 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;

~~[J.]~~L. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exaction or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance;

~~[K.]~~M. An annual progress report shall be submitted to the Planning Director prior to the anniversary of the effective date of the change of zone. The report shall address 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;

~~[L.]~~N. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.”

**SECTION 2.** Material to be deleted is bracketed and stricken. New material 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:

  
COUNCIL MEMBER, COUNTY OF HAWAII

    Kona    , Hawai'i  
Date of Introduction: July 25, 2007  
Date of 1<sup>st</sup> Reading: July 25, 2007  
Date of 2<sup>nd</sup> Reading: September 6, 2007  
Date of 3<sup>rd</sup> Reading: N/A  
Effective Date: September 20, 2007

REFERENCE: Comm. 481.4

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

(Draft 2)

Introduced By: K. Angel Pilago  
Date Introduced: July 25, 2007  
First Reading: July 25, 2007  
Published: August 4, 2007

REMARKS: August 22, 2007 - Held  
over pursuant to Council Rule 25(e)

Second Reading: September 6, 2007  
To Mayor: September 14, 2007  
Returned: September 20, 2007  
Effective: September 20, 2007  
Published: September 28, 2007

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

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong	X			
Yoshimoto	X			
	9	0	0	0

(Draft 3)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford			X	
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong			X	
Yoshimoto	X			
	7	0	2	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:

*K. D. Selig*  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date 9/17/07

*[Signature]*  
COUNCIL CHAIRMAN  
*[Signature]*  
COUNTY CLERK

Approved/Disapproved this 20<sup>th</sup> day  
of September, 2007

*[Signature]*  
MAYOR, COUNTY OF HAWAII

Bill No.: 113 (Draft 3)  
Reference: C-481.4/PC-36  
Ord No.: 07 127



**Ordinances Numbered 07-127, 07-128, 07-129, 07-130, 07-131, 07-132, & 07-133**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on September 6, 2007, by vote, as listed below:

**Ordinance 07-127 (Bill 113, Draft 3):** An Ordinance Amending Ordinance No. ~~[05-157]~~ 05-157, Which Amended Ordinance No. ~~[95-51]~~ 95-51, Which Amended Ordinance No. 90-160, and Which Reclassified Lands from Agricultural 5-Acre (Formerly Unplanned) and Multiple Family Residential 1,500 Square Feet (RM-1.5) to Residential and Agricultural 1 Acre (RA-1a) and Open (O) Districts at Waikoloa, South Kohala, Hawai'i, Covered by Tax Map Key: 6-8-002:Portion 016 and 6-8-003:Portion 032. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

**Ordinance 07-128 (Bill 128):** An Ordinance to Amend Ordinance No. 07-82, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2008. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.


**Ordinance 07-129 (Bill 129):** An Ordinance to Amend Ordinance No. 07-82, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2008. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

**Ordinance 07-130 (Bill 130):** An Ordinance to Amend Ordinance No. 07-82, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2008. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

**Ordinance 07-131 (Bill 131):** An Ordinance Amending Chapter 2, Article 15, Subsection 2-91.1(c), Hawai'i County Code 1983 (2005 Edition), as Amended, Relating to the Disclosure of Financial Interests. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

**Ordinance 07-132 (Bill 132):** An Ordinance Amending Chapter 2, Article 15, Section 2-82, Hawai'i County Code 1983 (2005 Edition), as Amended, Relating to the Code of Ethics. AYES: Council Members Higa, Ikeda, Naeole, Yoshimoto, and Chair Hoffmann – 5; NOES: Council Members Jacobson and Pilago – 2; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

**Ordinance 07-133 (Bill 144):** An Ordinance Amending Ordinance No. 07-83, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2007 to June 30, 2008. AYES: Council Members Higa, Ikeda, Jacobson, Naeole, Pilago, Yoshimoto, and Chair Hoffmann – 7; NOES: None; ABSENT: Council Members Ford and Yagong – 2; EXCUSED: None.

  
Casey Jarman  
County Clerk

(Hawai'i Tribune-Herald – September 28, 2007)  
(West Hawai'i Today – September 28, 2007)

**Note:** The original Digest/Affidavit is attached to Ordinance No. 07-127.