

ORDINANCE NO. 09 103BILL NO. 101
(DRAFT 2)

AN ORDINANCE AMENDING ORDINANCE NO. 98 8 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – 5 ACRES (A-5a) TO RESIDENTIAL AND AGRICULTURAL - .5 ACRE (RA-.5a) AT HONOKOHAU 2ND, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-4-06:038.

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

SECTION 1. Ordinance No. 98 8 is amended as follows:

“SECTION 1. Section 25-8-3, Article 8 Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Honokohau 2nd, North Kona, Hawai'i, shall be Residential and Agricultural - .5 acre [~~(RA-.5)~~] (RA-.5a):

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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. The applicant[s], successors or assigns shall be responsible for complying with all requirements of Chapter 205, Hawai‘i Revised Statutes, relating to permissible uses within the State Land Use Rural District.
- C. The applicant shall submit estimated maximum daily water usage calculations, prepared by a professional engineer licensed in the State of Hawai‘i, for review and approval by the Department of Water Supply and [F]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)]one hundred eighty (180) days from the effective date of this amended ordinance.
- D. Final Subdivision Approval of the proposed subdivision within the subject property shall be secured from the Planning Director within [~~five (5)]three (3)~~ years from the effective date of [~~the Change of Zone]~~this amended ordinance.
- E. All interior subdivision roadways shall be constructed to [~~County-dedicable]~~ roadway standards meeting with the approval of the Department of Public Works.
- F. Access to the subject property from Palani Road shall meet with the requirements of the Department of Public Works. The entrance roadway sight distance shall meet the requirements of the Statewide Design Manual. All lots shall be accessed from one common access road.
- G. In conjunction with Final Subdivision Approval, provide paved shoulder along the entire subject property’s Palani Road frontage, meeting with the approval of the Department of Public Works. The roadway section fronting the subject property along Palani Road which shall provide for the future road widening of Palani Road to an 80-foot wide right-of-way, including roadway improvements

thereon, shall be subdivided and dedicated to the County of Hawai'i upon its completion.

- H. A Traffic Impact Analysis Report shall be submitted for review and approval by the Department of Public Works prior to ~~[the final subdivision approval]~~Final Subdivision Approval. Prior to the issuance of ~~[the]~~a certificate of occupancy for any portion of the subject property, the applicant shall be responsible for constructing and/or paying for its pro rata share of any traffic mitigation measures required by the Traffic Impact Analysis Report for the subject property.

- I. Restrictive covenant(s) in the deeds of all the proposed lots within the subject property shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenant(s) to be recorded with the 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 approved covenant shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval for any portion of the subject property. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

- J. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study of the project site, if required, shall be prepared by a licensed civil engineer for review and approval by the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.

K. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Subdivision Approval.

~~[K.]~~L. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall ~~[secure the concurrence of the Office of Housing and Community Development that the applicant's affordable housing requirements, if any, have been mutually agreed to prior to the Final Subdivision Approval for any portion of the subject property.]~~comply with the requirements of Chapter 11, Article 1, Hawai'i 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.

~~[L.]~~M. Should any ~~[unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls]~~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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient ~~[mitigative]~~mitigation measures have been taken.

~~[M.]~~N. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to parks and recreation, fire, police, solid waste disposal facilities, and roads. The amount of the fair share contribution shall be the sum which is the product of multiplying the number of residential lots proposed to be subdivided by the amounts allocated herein below for each such lot, and shall become due and payable prior to final subdivision approval for any portion of the subject property or its increments. If the subject property is subdivided in two or more increments, the amount of the fair share contribution due payable and prior to final subdivision approval of each increment

shall be the sum calculated in the same manner according the number of additional proposed residential lots in each such increment. The fair share contribution ~~[may be]~~ in a form of cash, land, facilities, or any combination thereof ~~[acceptable to the director in consultation with the affected agencies]~~ shall be determined by the County Council. The fair share contribution shall have a maximum combined value of ~~[\$7,239.16 per lot]~~ \$11,506.13 per single-family residential unit. ~~[Based upon the applicant's representations of intent to subdivide and develop up to ten (10) residential lots, the indicated total fair share contribution is \$72,391.60, however, the total amount shall be increased or reduced in proportion with the actual number of subdivided lots according to the calculation and payment provisions set forth in this Condition M. The fair share contribution shall be allocated as follows:]~~ 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:

1. ~~[\$3,490.85 per lot, for an indicated total of \$34,908.50]~~ \$5,548.46 per single-family residential unit to the County to support park and recreational improvements and facilities;
2. ~~[\$168.40 per lot, for an indicated total of \$1,684.00]~~ \$267.66 per single-family residential unit to the County to support police facilities;
3. ~~[\$332.61 per lot, for an indicated total of \$3,326.10]~~ \$528.66 per single-family residential unit to the County to support fire facilities;
4. ~~[\$145.62 per lot, for an indicated total of \$1,456.20]~~ \$231.45 per single-family residential unit to the County to support solid waste facilities;
5. ~~[\$3,101.68 per lot, for an indicated total of \$31,016.80]~~ \$4,929.90 per single-family residential unit to the County to support road and traffic improvements.

The fair share contributions described above shall be adjusted annually beginning three years after the effective date of the change of zone, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair

share contribution, the applicant may construct and contribute 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 ~~[approval]~~review and recommendation of the director, upon consultation with the appropriate agencies and approval of the County Council. The cost of providing and constructing the improvements required in Condition G and Condition H, shall be credited against the sum specified in Condition ~~[M(5)]~~N(5) for road and traffic improvements. For purposes of administering Condition ~~[M]~~N, the fair market value of land contributed for such roadway segment and the cost of constructing its improvements shall be subject to the review and ~~[approval]~~recommendation of the director, upon consultation with the appropriate agencies and approval of the County Council.

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

~~[O.]~~P. Comply with applicable laws, rules, regulations and requirements of other affected agencies for approval of the proposed development within the subject property.

~~[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 applicants, its 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).]~~

Q. If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission and County Council for appropriate action. 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 or more appropriate designation.

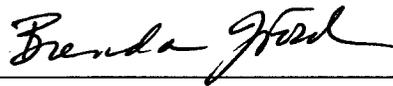
[Q.] R. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the subject area to its original or more appropriate designation.

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 HAWAI'I

Kona, Hawai'i
Date of Introduction: August 5, 2009
Date of 1st Reading: August 5, 2009
Date of 2nd Reading: September 2, 2009
Effective Date: September 23, 2009

REFERENCE: Comm: 408.3

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

Introduced By: Donald Ikeda
Date Introduced: August 5, 2009
First Reading: August 5, 2009
Published: August 14, 2009

REMARKS: July 22, 2009 - Deferred
August 19, 2009 - Amended to Draft 2
& held over pursuant to Council Rule
(25 (e))

Second Reading: September 2, 2009
To Mayor: September 11, 2009
Returned: September 23, 2009
Effective: September 23, 2009
Published: September 30, 2009

REMARKS: _____

2009 SEP 23
ROLLOFF NOTE 39

	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann			X	
Ikeda	X			
Naeole	X			
Onishi			X	
Yagong	X			
Yoshimoto	X			
	7	0	2	0

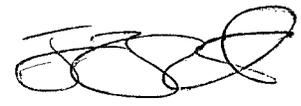
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole	X			
Onishi			X	
Yagong	X			
Yoshimoto	X			
	7	1	1	0

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

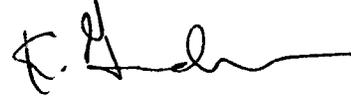
APPROVED AS TO
FORM AND LEGALITY:

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date SEP 21 2009



COUNCIL CHAIRMAN



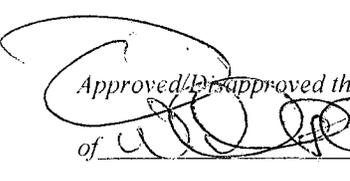
COUNTY CLERK

Bill No.: 101 (Draft 2)

Reference: C-408.3/PC-36, PC-36A

Ord No.: 09 103

Approved/Disapproved this 22nd day of September 2009



MAYOR, COUNTY OF HAWAII

**Ordinances Numbered 09-103, 09-104, 09-105, 09-106, 09-107, 09-108, 09-109,
09-110, 09-111, 09-112, 09-113, 09-114, 09-115, 09-116, & 09-117**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on September 2, 2009, by vote, as listed below:

Ordinance 09-103 (Bill 101, Draft 2): An Ordinance Amending Ordinance No. 98-8 Which Reclassified Lands from Agricultural – 5 Acres (A-5a) to Residential and Agricultural -.5 Acre (RA -.5a) at Honokohau 2nd, North Kona, Hawai‘i, Covered by Tax Map Key: 7-4-06:038. AYES: Council Members Enriquez, Ford, Greenwell, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 7; NOES: Council Member Hoffmann – 1; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-104 (Bill 105): An Ordinance Amending Section 25-8-33 (City of Hilo Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai‘i County Code 1983 (2005 Edition), by Changing the District Classification from Single Family Residential – 10,000 Square Feet (RS-10) to Industrial-Commercial Mixed – 20,000 Square Feet (MCX-20) at Waiākea Houselots, Waiākea, South Hilo, Hawai‘i, Covered by Tax Map Key: 2-2-035:017. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-105 (Bill 107): An Ordinance to Amend Chapter 2, Administration, Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to the Department of Human Resources. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-106 (Bill 108): An Ordinance to Amend Ordinance No. 09-64, as Amended, the Operating Budget for the County of Hawai‘i for the Fiscal Year Ending June 30, 2010. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-107 (Bill 109): An Ordinance Amending Ordinance No. 09-65, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2009 to June 30, 2010. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-108 (Bill 110): An Ordinance Amending Chapter 24 of the Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-109 (Bill 111): An Ordinance Amending Chapter 24 of the Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-110 (Bill 112): An Ordinance Amending Chapter 24 of the Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-111 (Bill 113): An Ordinance Amending Chapter 24 of the Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-112 (Bill 114): An Ordinance Amending Chapter 24 of the Hawai‘i County Code 1983 (2005 Edition, as Amended), Relating to Vehicles and Traffic. AYES: Council Members Enriquez, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

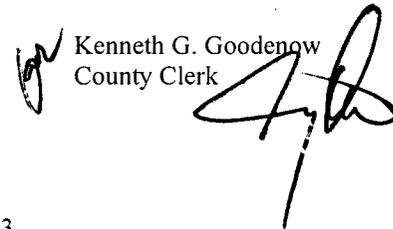
Ordinance 09-113 (Bill 115): An Ordinance Amending Chapter 15 of the Hawai'i County Code 1983 (2005 Edition, as Amended) by Adding a New Article Relating to Dog Parks. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-114 (Bill 117): An Ordinance Amending Ordinance No. 01-34 Which Reclassified Lands From Single Family Residential – 10,000 Square Feet (RS-10) to General Commercial – 10,000 Square Feet (CG-10) at Waiākea, South Hilo, Hawai'i, Covered by Tax Map Key: 2-2-020:007. AYES: Council Members Enriques, Ford, Greenwell, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 7; NOES: Council Member Hoffmann – 1; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-115 (Bill 129): An Ordinance Authorizing the Mayor of the County of Hawai'i to Enter Into an Intergovernmental Agreement for a State Water Pollution Control Revolving Fund Loan for Wastewater Public Improvement Projects; and Authorizing the Issuance of \$18,000,000 General Obligation Bonds of the County of Hawai'i for the Purpose of Financing Qualified Wastewater Public Improvements of the County of Hawai'i. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 7; NOES: Council Member Greenwell – 1; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-116 (Bill 130): An Ordinance Amending Ordinance No. 09-65, as Amended, Relating to Public Improvements and Financing Thereof for the Fiscal Year July 1, 2009 to June 30, 2010. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 7; NOES: Council Member Greenwell – 1; ABSENT: Council Member Onishi – 1; EXCUSED: None.

Ordinance 09-117 (Bill 321A) (2006-2008): An Ordinance Amending Section 25-8-33 (City of Hilo Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification from Single Family Residential – 10,000 Square Feet (RS-10) to General Commercial – 10,000 Square Feet (CG-10) at Waiākea South Hilo, Hawai'i, Covered by Tax Map Key: 2-2-025:011. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole, Yagong, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Onishi – 1; EXCUSED: None.


Kenneth G. Goodenow
County Clerk

(Hawai'i Tribune-Herald - September 30, 2009)
(West Hawai'i Today - September 30, 2009)

Note: The original Digest/Affidavit is attached to Ordinance 09-103.