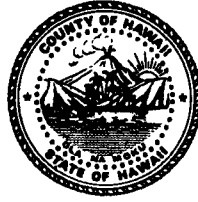


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 09 132 BILL NO. 137  
(Draft 2)

AN ORDINANCE AMENDING ORDINANCE NO. 06-105 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – 3 ACRES (A-3a) AND OPEN (O) TO PROJECT DISTRICT (PD) AT KA'Ū, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-2-005:001.

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

**SECTION 1.** Ordinance No. 06 105 is amended as follows:

“SECTION 1. Section 25-8-33, 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 areas situated at Ka'ū [Kau], North Kona, Hawai'i, shall be Project District (PD):

PARCEL “A”:

Beginning at the northwest corner of this parcel, being also along the east side of Queen Kaahumanu Highway (Project No.: 19 BC-01-71), the coordinates of said point of beginning referred to Government Survey Triangulation Station “AKAHIPUU”, being 9,071.21 feet North and 23,751.69 feet West and thence running by azimuths measured clockwise from true South:

1. 291° 46' 30" 5726.03 feet along the Kukio-Ooma Government Tracts;
2. 17° 56' 2314.09 feet;
3. 115° 03' 36" 5449.47 feet along the Government Lands of Makaula;

4. 189° 19' 55" 2044.65 feet along the east side of Queen Kaahumanu Highway (Project No.: 19 BC-01-71) to the point of beginning and containing an area of 274.861 Acres.

PARCEL "B":

Beginning at the northwest corner of this parcel, being also along the south side of Kukio-Ooma Government Tracts, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU", being 6,947.06 feet North and 18,434.23 feet West and thence running by azimuths measured clockwise from true South:

1. 291° 46' 30" 784.96 feet along the Kukio-Ooma Government Tracts;
2. 280° 28' 22" 2806.44 feet along the Kukio-Ooma Government Tracts;
3. 290° 55' 24" 3323.43 feet along the Kukio-Ooma Government Tracts;
4. 17° 14' 2844.54 feet along Lots 36, 37, 38, 44, 15, 14, 13, 12, 11, 10 and 9 of Makalai Estates – Phase 2 (File Plan 2294);
5. 100° 15' 30" 1838.50 feet along the Government Lands of Makaula;
6. 115° 03' 36" 5137.19 feet along the Government Lands of Makaula;
7. 197° 56' 2314.09 feet to the point of beginning and containing an area of 450.343 Acres.

Less the following described area:

Beginning at a point, being the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU", being 109.49 feet South and 18,804.22 feet West, and running by azimuths measured from true South:

1.	291° 46' 30"	1149.40	<u>feet along Kukio – Ooma Government Tracts;</u>
2.	9° 19' 55"	282.64	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
3.	279° 19' 55"	9.06	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
			<u>Thence along a curve to the right with a radius of 239.00 feet, the chord azimuth and distance being:</u>
4.	324° 19' 55"	338.00	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
5.	9° 19' 55"	446.09	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
6.	279° 19' 55"	485.02	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
7.	9° 32' 52"	500.00	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
8.	99° 19' 55"	421.14	<u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
9.	189° 19' 55"	301.00	<u>feet along the remainder of Royal</u>

Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

10.     99° 19' 55"     62.00     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the right with a radius of 20.00 feet, the chord and distance being:

11.     54° 19' 55"     28.28     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

12.     99° 19' 55"     197.96     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the left with a radius of 301.00 feet, the chord azimuth and distance being:

13.     75° 03' 55"     247.41     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

14.     50° 47' 55"     103.47     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;

Thence along a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:

15.     95° 47' 55"     28.28     feet along the remainder of Royal Patent 8265 and Mahele Award 13-B

to Paalua, Certificate of Boundaries  
191;

16. 140° 47' 55" 199.00 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

17. 230° 47' 55" 357.90 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

18. 140° 47' 55" 218.83 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

Thence along a curve to the right  
with a radius of 239.00 feet, the  
chord azimuth and distance being:

19. 240° 48' 29" 65.26 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

20. 158° 39' 19" 269.52 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

21. 190° 57' 06" 40.03 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

22. 103° 12' 19" 39.52 feet along the remainder of Royal  
Patent 8265 and Mahele Award 13-B  
to Paalua, Certificate of Boundaries  
191;

23.	102°	46'	39"	49.05	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
24.	116°	09'	35"	45.79	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
25.	112°	02'	29"	43.66	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
26.	189°	19'	55"	199.24	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
27.	99°	19'	55"	114.00	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
					<u>Thence along a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:</u>
28.	54°	19'	55"	28.28	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
29.	99°	19'	55"	62.00	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>
30.	189°	19'	55"	13.00	feet along the remainder of <u>Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>

- |     |              |        |   |
|-----|--------------|--------|---|
| 31. | 99° 19' 55"  | 297.97 | <u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paalua, Certificate of Boundaries 191;</u>  |
| 32. | 189° 19' 55" | 537.31 | <u>feet along the remainder of Royal Patent 8265 and Mahele Award 13-B to Paulua, Certificate of Boundaries 191 to the point of beginning, containing an area of 29.92 acres, more or less.</u> |

for a net area for Parcels "A" and "B" of 695.282 acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. 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 shall be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A03-744) dated May 19, 2005.

- C. The applicant shall comply with the conditions as set forth in the Water Agreement between K-W Kau, LLC and the Water Commission of the County of Hawai'i dated June 15, 1999.
- D. The project shall consist of a maximum of [~~725.2~~] 695.282 acres for single-family and multi-family residential, commercial uses, hotel, university and public school facilities, dry forest preserve, archaeological and cave preserve areas, active and passive parks, a trail system and supporting infrastructure.
- E. The maximum number of residential units allowed shall be 1,116 units, including the on-site affordable housing units.
- F. The maximum number of hotel rooms shall be 120.
- G. Commercial spaces for medical, office, retail, classrooms and health related uses and hotel shall be limited to [~~102~~] 72.08 acres.
- H. Active and passive parks (Open, Park and Preservation) shall be developed on a minimum of 177.8 acres. A "Constraints Area" which includes the approximately 55-acre dry forest preserve, archaeological sites/cave and park areas, shall be set aside in the project area.
- I. The uses allowed in the Project District shall be all permitted uses allowed by right in the RS, RM, CN and CV zoned districts, and a golf course and related facilities. Uses allowed by Use Permit in the CV district may be allowed.
- J. A detailed Master Plan of the Project District, which includes the location and number of residential lots and units, hotel, commercial uses, parking, golf course, open space and recreational areas and other related improvements on the property,



shall be submitted to the Planning Director within two (2) years from the effective date of the Project District Ordinance or prior to submission of plans for plan approval or subdivision approval, whichever occurs first.

K. Substantial construction of the proposed development shall commence within five (5) years from the effective date of the Project District Ordinance. “Substantial construction” means the actual start of construction of project infrastructure under a bona fide contract of not less than ten million dollars (\$10,000,000.00). Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai‘i County Code. Plans shall identify proposed structures, fire protection measures, paved accesses and parking stall, and other improvements associated with the proposed uses.

L. The following design standards shall apply:

1. Landscaping for the development shall comply with the Planning Department’s Rule No. 17, Landscaping Requirements. Landscaping rules, such as the screening of single-family residential from commercial areas, shall be applied according the actual uses.
2. The height limit for structures within the project area shall not exceed the following:
  - a. Single-family residential development: 35 feet
  - b. Multiple-family residential and hotel developments: 45 feet
  - c. Office and retail commercial development: 45 feet.
3. The minimum off-street parking and loading space requirements of Chapter 25, Hawai‘i County Code shall be complied with, including compliance with the American Disabilities Act (ADA) requirements.

M. The variances from Chapters 23 (Subdivision) and 25 (Zoning), Hawai'i County Code, as presented in Planning Department Exhibit 2 (Applicant's November 21, 2005 letter with attached Tables pages 1 to 6 related to Variance Requested from Sections in Subdivision and Zoning Codes, and Applicant's Figure 2 - Conceptual Character of Town Center/Residential Village Center, Figure 3a - Residential Village Center Alternative: 4,000 SF Lot, Figure 3b - Residential Village Center Alternatives: 6,000 SF Lot, Figure 4a - Conceptual Plan: Roadway Concepts - Dedicable, Figure 4b - Conceptual Plan: Roadway Concepts - Nondedicable, and Figure 5 - Residential Village Center Alternatives: Zone Lot Line Concepts) shall be allowed under the Project District. The applicant shall submit detailed plans to the Planning Director showing street designs and cross-sections, and adjacent building designs, with the Master Plan. The Planning Director may require modifications to the street sections to provide sufficient on-street parking where the plans do not provide adequate off-street parking (such as the 4,000-square foot lots with a one-car garage and insufficient setbacks to allow parking in driveways), and may require further changes necessary for public safety and convenience. All roads built with the variances allowed under this condition will be non-dedicable. With regard to the requested zero line building setbacks, the applicant shall conform to the current Hawai'i County Building Code requirements. As part of the Master Plan, the applicant shall submit plans for pedestrian movement through the project district, which shall identify areas where sidewalks will be included to permit safe pedestrian access to the Town Center and other important points in the development.

~~[N. To ensure that the project is developed according to its stated goal of creating a mixed-use residential community, the project must include residential development. The project shall have at least one residential unit for every 600 square feet of nonresidential development (under roof). Space used by the University shall not be included in the calculation of nonresidential space. There~~

~~is no minimum requirement for the nonresidential development.]~~

- ~~[~~N. The permitted hotel, designated as the “University Inn and Conference Center,” shall function as a business hotel and in conjunction with University operations. It shall not be operated under a time-share plan or other arrangement that provides for shared ownership of individual units on the basis of time intervals, or club membership allowing periodic use.
- ~~[~~O. Occupancy of the hotel shall not be granted until the construction of the Queen Ka‘ahumanu Highway, Phase II widening improvements to four lanes from Kealakehe Parkway to the Kona International Airport at Keahole has been secured by the State entering into a construction contract for the improvements, or until improvements construction has commenced on the 20,000 square foot University building, or the building’s completion has been assured by bond or other security acceptable to the Planning, Director, whichever comes first..
- ~~[~~Q. ~~No retail commercial structures may be located closer than 1,500 feet from the Queen Kaahumanu Highway right-of-way.]~~
- P. To ensure that the commercial development corresponds with the applicant’s representations regarding neighborhood-scale commercial development, no single retail establishment shall have more than 45,000 square feet of developed area under roof.
- Q. Total retail space (not including restaurants) shall not exceed 75,000 square feet under roof until the construction of the Queen Ka‘ahumanu Highway, Phase II widening improvements to four lanes from Kealakehe Parkway to the Kona International Airport at Keahole has been secured by the state entering

into a construction contract for the improvements. The square footage of improvements leased to the University of Hawai'i shall not count against this limit.

[~~F.~~] R. The applicant shall set aside a "Constraints Area" including the approximately 55-acre dry forest preserve, archaeological sites/cave and park areas on the project site.

[~~U.~~] S. The Applicant shall develop one 20-acre park site prior to [~~occupancy of the first residential unit on the property.~~] the issuance of the building permit for the 101<sup>st</sup> single-family or multi-family residence within the Project. The 20-acre active park site shall include: [~~two playing fields which may be one baseball field and one soccer field or two baseball fields or two soccer fields, parking lot and restrooms, with the specific requirements to be determined in consultation with the Department of Parks and Recreation.~~]

- (1) One Pony Plus League baseball-softball field including:
  - (a) A regulation backstop;
  - (b) A regulation dugout for each side of the field;
  - (c) Portable bleachers to seat a minimum of 50 persons in each bleacher - one bleacher for each of the sidelines;
  - (d) Appropriate fencing to protect the spectators;
  - (e) Appropriate fencing to protect the teams;
  - (f) Fencing for the perimeter of the baseball field;
  - (g) ADA accessible pathways to reach the baseball-softball field from the parking area;
  - (h) Placement of grass for appropriate areas of the field;  
and
  - (i) An irrigation system installed for the playing field.

- (2) One Little League baseball-softball field including:
- (a) A regulation backstop;
  - (b) A regulation dugout for each side of the field;
  - (c) Portable bleachers to seat a minimum of 50 persons in each bleacher - one bleacher for each of the sidelines;
  - (d) Appropriate fencing to protect the spectators;
  - (e) Appropriate fencing to protect the teams;
  - (f) Fencing for the perimeter of the baseball field;
  - (g) ADA accessible pathways to reach the baseball-softball field from the parking area;
  - (h) Placement of grass for appropriate areas of the field;  
and
  - (i) An irrigation system installed for the playing field.
- (3) One regulation adult/high school soccer field that shall include:
- (a) Portable bleachers to seat a minimum of 50 persons in each bleacher - one bleacher for each of the sidelines;
  - (b) ADA accessible pathways to reach the soccer field from the parking area;
  - (c) Placement of grass for appropriate areas of the field;  
and
  - (d) An irrigation system installed for the soccer field.
- (4) One standard size dog park.
- (5) One comfort station, 30 x 60 feet with lighting, water, and ADA compliant restroom facilities and ADA accessible pathways from the parking area, constructed to specifications and placed in locations to be determined by

the department of parks and recreation;

- (6) One paved parking lot with 56 full size parking stalls and 4 van-accessible ADA parking stalls for a total of 60 paved parking stalls connected by ADA accessible pathways to all activity areas of the park, hardened with fencing and a gate so that unauthorized vehicles cannot access the park after hours.

The 20-acre active park shall be constructed to county-dedicable standards with the specific requirements to be determined in consultation with the Department of Parks and Recreation, and the county shall accept dedication.

~~[V.]~~ T. There shall be an 800-foot setback from the Queen Ka‘ahumanu Highway. No structures, other than those allowed under Condition No. 7 of the Land Use Commission’s Decision and Order, shall be allowed within the 800-foot setback area. A copy of the metes and bounds description for this open space area, and proposed covenant(s) shall be submitted to the Planning Director for review and approval prior to receipt of Final Plan Approval or land alteration activities, whichever occurs first. The approved covenant(s) shall be recorded in the Bureau of Conveyances prior to the issuance of Final Plan Approval, or land alteration activities, whichever occurs first. A copy of the recorded covenant(s) shall be provided to the Planning Department.

~~[W.]~~ U. All project utilities shall be underground.

~~[X.]~~ V. ~~[The applicant shall construct the following roads to access other properties and the regional road system:~~

- ~~1. Project access road from the Queen Kaahumanu Highway to the eastern boundary of the project. (Road “1” on attached map Exhibit “B”):~~

~~Road "1" shall intersect with the Queen Ka'ahumanu Highway at a location approved by the State Department of Transportation, and shall connect with Makalei Drive at the eastern (mauka) end. The road shall be constructed on an 88-foot wide right-of-way, as a two-lane road, to county-dedicable standards as a collector road, from the Queen Ka'ahumanu Highway to the intersection with Road "3". From Road "3" to the intersection with Makalei Drive, Road "1" shall be constructed to county-dedicable standards as a minor street, except that design standards shall be varied to permit the connection with Makalei Drive without encroaching into the lowland Dry Forest Preserve. The connection with Makalei Drive shall be designed to not encroach into the Lowland Dry Forest Preserve. The grade shall not exceed 10%, except near the connection with Makalei Drive. At the Queen Ka'ahumanu Highway, the intersection shall be improved in accordance with one of the following two options:~~

- ~~(a) — If a grade-separated interchange is available to connect Road "1" to Queen Ka'ahumanu Highway when Applicant is ready to construct Road "1", Applicant will connect Road "1" to such interchange and in such case, Applicant will contribute \$1,500,000 to the Department of Transportation.~~
- ~~(b) — If a grade-separated interchange is not available to connect Road "1" to Queen Ka'ahumanu Highway when Applicant is ready to make the connection, Applicant shall improve the intersection at its expense as required by the Department of Transportation, but shall include, at a minimum, a deceleration and an acceleration lane on Queen Ka'ahumanu Highway, a left-turn lane on Queen Ka'ahumanu Highway, a refuge lane for vehicles turning left into Queen Ka'ahumanu Highway, and a dedicated~~

~~right turn and left turn lane from Road "1" to Queen Ka'ahumanu Highway. If warranted, at the request of Department of Transportation, the applicant shall install traffic signals and a second left turn lane from the main project access road to the Queen Ka'ahumanu Highway.~~

- ~~2. "Mid-Level Road" from Road "1" to Kaiminani Drive (Road "2" on Exhibit "B"): The applicant shall construct the mauka half-section of a 120-foot wide right-of-way to county-dedicable standards as a collector road. The applicant shall construct the intersection at Kaiminani Drive meeting with the approval of the Department of Public Works, but the intersection shall include a left turn lane on Kaiminani Drive.~~
- ~~3. A north-south collector road at approximately the 600-foot elevation (Road "3" on Exhibit "B"): The north-south collector road shall be designed to function as a portion of a future collector road (Road "4") connecting Highway 190 with Road "1" and the Queen Ka'ahumanu Highway. Road "3" shall be constructed to county-dedicable standards as a collector road with an 88-foot wide right-of-way. The applicant shall construct the intersection between Road "3" and Road "1" meeting with the approval of the Department of Public Works.~~
- ~~4. New Connector Road to Māmalahoa Highway Project (Road "4" on Exhibit "B"). Applicant shall construct Road "4", at its sole expense, as a two-lane 60-foot wide county-dedicable collector road, including shoulders and swales, within an 88-foot right-of-way. The final design and maximum grade of Road "4" shall be determined by the Director of Public Works after consultation with the Planning Director. Applicant shall be not required to install streetlights, except at the intersection with Highway 190, or utilities. If another private developer is required to participate in building Road "4", as a~~



condition of land use approvals, Applicant's share shall be limited to the portion of Road "4" on Applicant's property and on State land. The County shall obtain the necessary right-of-way outside of Applicant's property.

5. ~~A road to connect south to the future extension of Holoholo Street—Nana Street (Road "5" on Exhibit "B"): The applicant shall build Road "5" within the project area to county-dedicable standards as a minor street, and it shall intersect with Road "1".~~
6. ~~The Planning Director may require other local streets within the project to provide local connections to the adjoining property to the north and south as a condition of subdivision approval or plan approval.~~
7. ~~At the western (makai) end of Makalei Drive, the applicant shall provide safety improvements necessary to make a safe transition to Road "1", which may include, but are not limited to, rumble strips and establishing superelevation for the curve, as required by the Department of Public Works.~~
8. ~~The following road improvements shall be completed before a certificate of occupancy is issued for any portion of the subject property, or completion of any single-family homes, whichever comes first:
  - (a) ~~Road "1", at least from the Queen Ka'ahumanu Highway to the intersection with the Mid-Level Road (Road "2");~~
  - (b) ~~the intersection of the main project access road with the Queen Ka'ahumanu Highway; and~~
  - (c) ~~the Mid-Level Road (Road "2") from the main project access road to Kaiminani Drive, and the Kaiminani Drive intersection.~~~~
9. ~~The following road improvements shall be secured by bond or other surety meeting with the approval of the Planning Director to guarantee that the improvements will be completed within two (2) years after the~~

~~issuance of a certificate of occupancy for any portion of the subject property, or completion of any single-family homes, whichever comes first:~~

- ~~(a) the remaining portion of Road "1", including any necessary improvements to the lower portion of Makalei Drive;~~
- ~~(b) Road "3", and~~
- ~~(c) Road "5"~~

~~10. Applicant shall complete Road "4" no later than six (6) years after the effective date of this ordinance, except as may be allowed under Condition "UU". Applicant shall assure the completion of Road "4" by bond or other security accepted by the Planning Director no later than the issuance of a certificate of occupancy for any building, other than the University or the State Department of Education (DOE) building, or final subdivision approval for any subdivision creating single-family residential lots. Certificate of occupancy for any building, other than the University or DOE building shall not be issued, and final subdivision approval for any subdivision creating single-family residential lots shall not be granted, until the necessary right-of-way for Road "4" has been obtained from any other private landowner.~~

~~11. Makalei Drive is a "minor road" and will not be open to the public until the collector Road 4 is open for public use.]~~

The applicant shall construct the following roads and improvements within and outside of its property as identified in the Hawai'i County General Plan and the Kona Community Development Plan (CDP) Official Concurrency Map, Figure 4-3, adopted as Ordinance No. 08 131 effective September 25, 2008:

1. University Drive (Road 2 - Kona CDP Map, Figure 4-3) within the property from the Queen Ka'ahumanu Highway to Makalei Drive:
  - a. From the Queen Ka'ahumanu Highway intersection to the proposed Ane Keohokalole Highway (Road 6A - Kona CDP Map, Figure 4-3), University Drive (2) shall consist of an 88-foot right-of-way with two lanes constructed to County-dedicable standards. This roadway shall be dedicated to the County upon its completion. The section of this roadway from the Queen Ka'ahumanu Highway to approximately 800 feet mauka of Kamanu Street (Road 3A - Kona CDP) intersection with University Drive shall be completed simultaneous to the opening of the first building constructed on the State land for the University of Hawai'i or before July 31, 2012, whichever occurs first. The remaining section of this roadway from the Kamanu Street (3A) to Makalei Drive shall be constructed and dedicated to the County upon its completion.
  - b. From the proposed Ane Keohokalole Highway (6A) to Makalei Drive, the road shall be constructed to County-dedicable standards as a minor street, except that design standards shall be varied to permit the connection with Makalei Drive without encroaching into the lowland Dry Forest Preserve. The connection with Makalei Drive shall be designed to not encroach into the Lowland Dry Forest Preserve. The grade shall not exceed ten (10) percent, except near the connection with Makalei Drive.
  - c. At the Queen Ka'ahumanu Highway, the intersection shall be improved in accordance with one of the following two options:

- 1) If a grade separated interchange is available to connect to Queen Ka‘ahumanu Highway when the applicant is read to construct the lower section of University Drive (2), the applicant will connect to such interchange and in such case, applicant will contribute \$1,500,000 to the Department of Transportation.
- 2) If a grade separated interchange is not available to connect University Drive (2) to Queen Ka‘ahumanu Highway when the applicant is ready to make the connection, applicant shall improve the intersection at its expense as required by the Department of Transportation, but shall include, at a minimum, a deceleration and an acceleration lane on Queen Ka‘ahumanu Highway, a left-turn lane on Queen Ka‘ahumanu Highway, and a dedicated right-turn and left-turn lane from University Drive (2) to Queen Kaahumanu Highway. If warranted, at the request of the Department of Transportation, the applicant shall install traffic signals and a second left-turn lane from University Drive (2) to the Queen Ka‘ahumanu Highway.
- 3) The intersection improvements with the Queen Ka‘ahumanu Highway shall be completed prior to the opening of the first building constructed on the State land for the University of Hawai‘i or before a Certificate of Occupancy is issued for any portion of the subject property or the completion of any single-family residential homes, whichever occurs first.

2. Kamanu Street (Road 3A - Kona CDP) from University Drive (2) to Kaiminani Drive:

The applicant shall construct the mauka half-section of a 120-foot wide right-of-way to County-dedicable standards as a two-lane road. The applicant shall construct the intersection at Kaiminani Drive meeting with the approval of the Department of Public Works. The intersection shall include a left-turn lane on Kaiminani Drive. The intersections at the northern and southern end of this road shall have illumination. This road shall also be provided with a utility trench suitable for installation of future street lights by the Department of Public Works or the State Department of Transportation when such illumination is determined to be necessary. The construction of this roadway shall be completed simultaneous to the opening of the first building on the State land for the University of Hawai'i or before July 31, 2012, whichever occurs first.

3. Ane Keohokalole Highway (Road 6A - Kona CDP):

The portion of Ane Keohokalole Highway (6) within the property shall have a right-of-way width of 120 feet. The applicant shall construct a half-section, two-lane road, within this 120-foot right-of-way to County-dedicable standards. This roadway shall be designed to function as a portion of a future road (Road 1 - Kona CDP) connecting Highway 190 with University Drive and the Queen Ka'ahumanu Highway. The applicant shall construct the intersection of University Drive and the Ane Keohokalole Highway meeting with the approval of the Department of Public Works. This roadway shall be dedicated to the County when the County requires it to connect with Road 1 (Kona

CDP). Ane Keohokalole Highway (6A), which is dead-ended for future connections, shall have preliminary engineering for technical feasibility and environmentally cleared for construction, a minimum of 500 feet from the subject property boundary into the adjacent properties.

4. New Connector Road (Road 1 - Kona CDP):

The right-of-way width of Road 1 within the State lands shall be 120 feet. The section of Road 1 from the State property to Highway 190 within the private properties shall have a right-of-way width of 88 feet. Applicant shall construct Road 1, at its sole expense as a two-lane County-dedicable collector road, including shoulders and swales. The final design and maximum grade of Road 1 shall be determined by the Director of Public Works after consultation with the Planning Director. The applicant shall continue preparatory work for the design of Road 1, including working with the County of Hawaii to secure the right-of-way for Road 1 across State of Hawai'i lands and providing information necessary for the County of Hawai'i to arrange the right-of-way over privately owned lands. Applicant shall not be required to install utilities or streetlights, except that streetlights shall be installed by the applicant at the intersection with Highway 190. The County shall obtain the necessary right-of-way outside of applicant's property. Completion of Road 1 will be secured by bond or other security meeting the approval of the Planning Director to guarantee that improvements will be completed by the deadline specified in this condition. The bond or other security shall be provided prior to the granting of final subdivision approval on the property containing single family lots.

The applicant shall complete Road 1 no later than six (6) years after the entire right-of-way is acquired.

The time extension provisions of Condition RR shall also apply to Road 1.

5. Kealakaa Street Extension (Road 7 on Kona CDP):

The applicant shall reserve an 88-foot right-of-way for the Kealakaa Street Extension within its property for future use as a County road. The applicant shall construct the road to County-dedicable standards as a minor collector road at its sole expense and dedicate it to the County of Hawai'i when a connection at the southerly boundary of the project is opened. Kealakaa Street (7), which is dead-ended for future connections, shall have preliminary engineering for technical feasibility and environmentally cleared for construction, a minimum of 500 feet from the subject property boundary into the adjacent property.

6. At the western (makai) end of Makalei Drive, the applicant shall provide safety improvements necessary to make a safe transition to University Drive (2), which may include, but not limited to, rumble strips and establishing super-elevation for the curve, as required by the Department of Public Works.

Makalei Drive is a "minor road" and will not be open to the public as a through street until Road 1 is opened for public use.

~~[X.]~~ W. There shall be no direct access from individual lots to collector streets.

~~[Z.]~~ X. Construction vehicles shall not utilize the existing section of [Makalei] Mākālei Drive for ingress from Highway 190 to the applicant's Project District or egress from the applicant's Project District to Highway 190, except for construction work within Mākālei Estates on the water system (wells, mains, and tanks).

~~[AA.]~~ Y. ~~[No vehicular security gate shall be installed within sixty (60) feet of any proposed county road and a turnaround gate shall be provided within the private road or property on the county road side of the gate.]~~  
The Kona Community Development Plan discourages gated communities and cul de sacs. Gates will be prohibited across new roadways identified to service the local transportation network. Roads shall be designed to connect to adjoining properties unless construction of a through street is found to be impracticable. Where cul de sacs or dead end streets are allowed, they shall meet the prevailing standards in the Chapter 23 Subdivision Code.

~~[BB.]~~ Z. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of any construction permit. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to issuance of a certificate of occupancy for any buildings, or final subdivision approval for any subdivision creating single-family residential lots.

~~[CC.]~~ AA. Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Environmental Management prior to submitting plans for Plan Approval review. Approved recommendations and mitigation measures shall be implemented in a manner meeting with the approval of the Department of Environmental Management.



~~[DD.]~~ BB. A wastewater treatment system shall be constructed, meeting the approval of the State Department of Health and/or Department of Environmental Management, whichever is applicable. All wastewater shall be treated at an approved wastewater treatment plant, to a minimum of secondary treatment, with R-1 effluent, unless a greater level of treatment is required by the Department of Health. Wastewater shall be used for irrigation of landscaping or other beneficial reuse to the maximum extent feasible. Applicant shall comply with HAR 11-62-27, recycled water systems, in its entirety, and specifically, with HAR 11-62-27(i), as amended or replaced.

~~[EE.]~~ CC. University of Hawai'i Condition. Applicant shall provide the following to relocate the University of Hawai'i operations:

1. ~~[Connectivity with]~~ Provide connection of roads and all utilities into the University of Hawai'i 500-acre site for connection to the first University building. Applicant shall allow the University of Hawai'i to connect with its wastewater and water supply systems. Applicant shall also allow the University of Hawai'i to connect electrical and telecommunication systems to facilities installed within the project. These connectivity sites shall be to the University's satisfaction and located along its northern boundary on ~~[Road "1"]~~ University Drive (Road section 2A – Kona CDP).
2. Build Applicant's wastewater treatment system to handle the wastewater from the initial University of Hawai'i building and design the wastewater treatment system to accommodate future expansion for wastewater from future expansion of the University of Hawai'i operations.
3. Design and construct an initial classroom and administration

building of 20,000 square feet, with associated parking, at Applicant's expense. If the University of Hawai'i design results in the cost of design and construction of the building and associated parking exceeding \$5,000,000, Applicant shall be responsible for the first \$5,000,000 and the University shall be responsible for the balance.

- (a) The building shall be constructed on the State land designated for University use.
- (b) Construction ~~[on]~~ of the building shall commence as soon as the University has the required ~~[the]~~ necessary consents and approvals. If the necessary consents and approvals cannot be obtained by the State, the University shall have the right to lease from Applicant appropriate space to house University of Hawai'i at West Hawai'i until the necessary consent and approvals are obtained at comparable lease rates now being paid by the University of Hawai'i until the 20,000 square foot building can be constructed on the State land at Applicant's expense.
- (c) Applicant shall commence construction of the building, or assure its construction by a bond or other security accepted by the Planning Director and the Chancellor of Hawai'i Community College, before the issuance of a certificate of occupancy for any building, other than the DOE building, or final subdivision approval for any subdivision creating single-family residential lots.
- (d) Applicant shall complete construction of the University building no later than two (2) years after the issuance of a certificate of occupancy for any building, other than the DOE building, or November 1, 2012, or final subdivision

approval for any subdivision creating single-family residential lots, whichever occurs first. The location and design of the building (interior and exterior) and related improvements will be on terms determined by the University of Hawai'i. The University of Hawai'i shall consult on design of said building with Applicant.

4. Immediately upon completion of the University of Hawai'i conditions CC. (1), (2), and (3) above, all improvements shall become the property of the University of Hawai'i.

[FF.] DD. Applicant shall enter into an agreement with the DOE, in accordance with the terms of the State Land Use Decision and Order (Docket No. A03-744) dated May 19, 2005. If Applicant's agreement with the DOE is later amended, Applicant shall file a copy of such amendment with the Planning Department and shall comply with the terms of the amended agreement. Applicant shall contribute to the DOE an 8,000 square foot building within the project site to use for a period of twenty (20) years, subject to the following conditions:

1. No rent or common area maintenance fees will be charged to the DOE.
2. The building will be used as instructional and office space for the school complexes located in west Hawai'i.
3. The building will meet DOE facility standards, with finished classrooms, workshops and offices.
4. Applicant will collaborate with the DOE on the requirements of the building in order to develop building plan subject to DOE approval.
5. The finished building will be available to the DOE within two (2) years of the issuance of a certificate of occupancy for any

multifamily residential building, or within two (2) years from the completion of any single-family residential building within the development, whichever comes first.

6. Following the initial twenty (20) year period when the building will be made available to the DOE, the building will be made available to the DOE for additional years, at the prevailing rental rates.
7. If the DOE and Applicant determine that despite good efforts, a building cannot be provided, or the DOE no longer needs the facility and its design has not been completed, Applicant will make an equivalent school fair-share cash contribution in an amount to be determined by the DOE. This cash contribution shall be expressly reserved for use within the Kealakehe complex of schools.
8. The value of the building and its use is meant to be credited against any DOE requirements under the State Land Use Decision and Order.

~~[GG.]~~ EE. An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval, prior to the issuance of a certificate of occupancy.

~~[HH.]~~ FF. 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, 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 receipt of Final Plan Approval and/or Final Subdivision Approval for any subdivision creating single-family residential lots, whichever

occurs first. The reduction in minimum lot sizes and the increase in density permitted by Section 11-8, Hawai‘i County Code, for affordable housing built on-site shall not apply to this project district because the reduction in minimum lot sizes has already been incorporated into the conditions of this project district zoning, and the limit on residential units stated is meant to include affordable units built on-site. Applicant shall satisfy its affordable housing requirements by on-site construction of units, and not utilize any affordable housing credits generated off-site.

~~[H.]~~ GG. 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 Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it is found that sufficient mitigation measures have been taken.

~~[J.]~~ HH. The applicant shall implement the Integrated Natural Cultural Resource Management Plan (INCRMP) dated May 19, 2005, for the Lowland Dry Forest Preserve (Exhibit “D” and “F” to the INCRMP). Preservation actions, with fire control as a priority, shall begin no later than six months after the effective date of this ordinance.

~~[K.]~~ II. The applicant shall protect all uhiuhi and ‘aiea trees, and shall use best efforts to preserve the major stands of wiliwili trees.

~~[L.]~~ JJ. The applicant shall implement the INCRMP for the cave areas (Exhibit “E” to the INCRMP).

~~[MM.]~~ KK. The applicant shall implement the Archaeological Preservation Plan (Exhibit “C” to the INCRMP), along with any amendments and modifications thereto as approved by the State Historic Preservation Division.

~~[NN.]~~ LL. The Planning Director may approve modifications to the INCRMP conforming to the general purposes of the INCRMP, after consultation with the DLNR-DOFAW.

~~[OO.]~~ MM. To ensure that the property will be developed as an integrated project, the applicant shall establish covenants to all deeds to any parcels, except parcels to be conveyed to individual residents, that require a master association to administer the development of the project district in accordance with the conditions of land use approvals. The covenants shall give notice that the various parcels are subject to an overall zoning that requires coordinated development. Until the master association is formed, the applicant shall be responsible for ongoing duties such as the management of the Dry Forest Preserve Area and other stewardship duties, and for contingent project responsibilities. After the formation of the master association, those responsibilities, except for offsite infrastructure requirements, shall be transferred to the master association.

~~[PP.]~~ NN. 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 on the sale or lease of residential units subject to such contribution. The fair share contribution shall have a maximum combined value of [~~\$6,411.25~~] \$7,383.36 per multiple family residential unit (~~[\$9,991.20]~~ \$11,506.13 per single family

residential unit). 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 multiple family residential unit (single family residential units) shall be allocated as follows:

1. [~~\$3,162.49~~] \$3,642.00 per multiple family residential unit (~~[\$4,817.93]~~ \$5,548.46 per single family residential unit) to the County to support park and recreational improvements and facilities;
2. [~~\$99.95~~] \$115.11 per multiple family residential unit (~~[\$232.42]~~ \$267.66 per single family residential unit) to the County to support police facilities;
3. [~~\$307.46~~] \$354.08 per multiple family residential unit (~~[\$459.06]~~ \$528.66 per single family residential unit) to the County to support fire facilities;
4. [~~\$137.04~~] \$157.81 per multiple family residential unit (~~[\$200.98]~~ \$231.45 per single family residential unit) to the County to support solid waste facilities; and
5. [~~\$2,704.31~~] \$3,114.36 per multiple family residential unit (~~[\$4,280.82]~~ \$4,929.90 per single family residential unit) to the County to support road and traffic improvements.

The fair share contribution shall be waived for the affordable housing units. In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to fire, police, and solid waste disposal facilities 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. With respect to the fair share contribution for parks and recreation, that contribution for all residential units will be satisfied when Applicant completes and offers for dedication all of the land facilities for the active use park described in Condition [~~“U”~~] “S” above. The fair share contribution for roads will be satisfied upon completion of the [Mid Level Road (Road “2”), Road “3, Road “5” and Road “4”] University Drive (Road sections 2A, 2B, and 2C), Kamanu Street Extension (Road 3A), Ane Keohokālole Highway (Road 6A), Kealaka‘a Street Extension (Road 7), and Road 1 and their associated intersections.

[~~QQ~~] OO. 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.

[~~RR~~] PP. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.

[~~SS~~] QQ. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this Project District Ordinance. The report shall include, but not be limited to, the status of the development, [ and ] the bond status including the premium payments, 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 approved by the appropriate departments and the Director acknowledges that further reports are not required.



~~[TT.]~~ RR. An initial extension of time for the performance of conditions within the ordinance, ~~[except for the six-year time limit in condition X.10,]~~ 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 Project District.
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).
5. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the County Council for appropriate action.

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

~~[UU.] The Planning Director may permit an extension of the six-year time limit to complete Road "4" in Condition X.10, provided that the requirements of Condition "TT" are met, and, in addition, the new deadline for the completion of Road "4" is not more than two (2) years after the completion of any building, including single family residential buildings, other than the University building or~~

the DOE building.]”

**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:

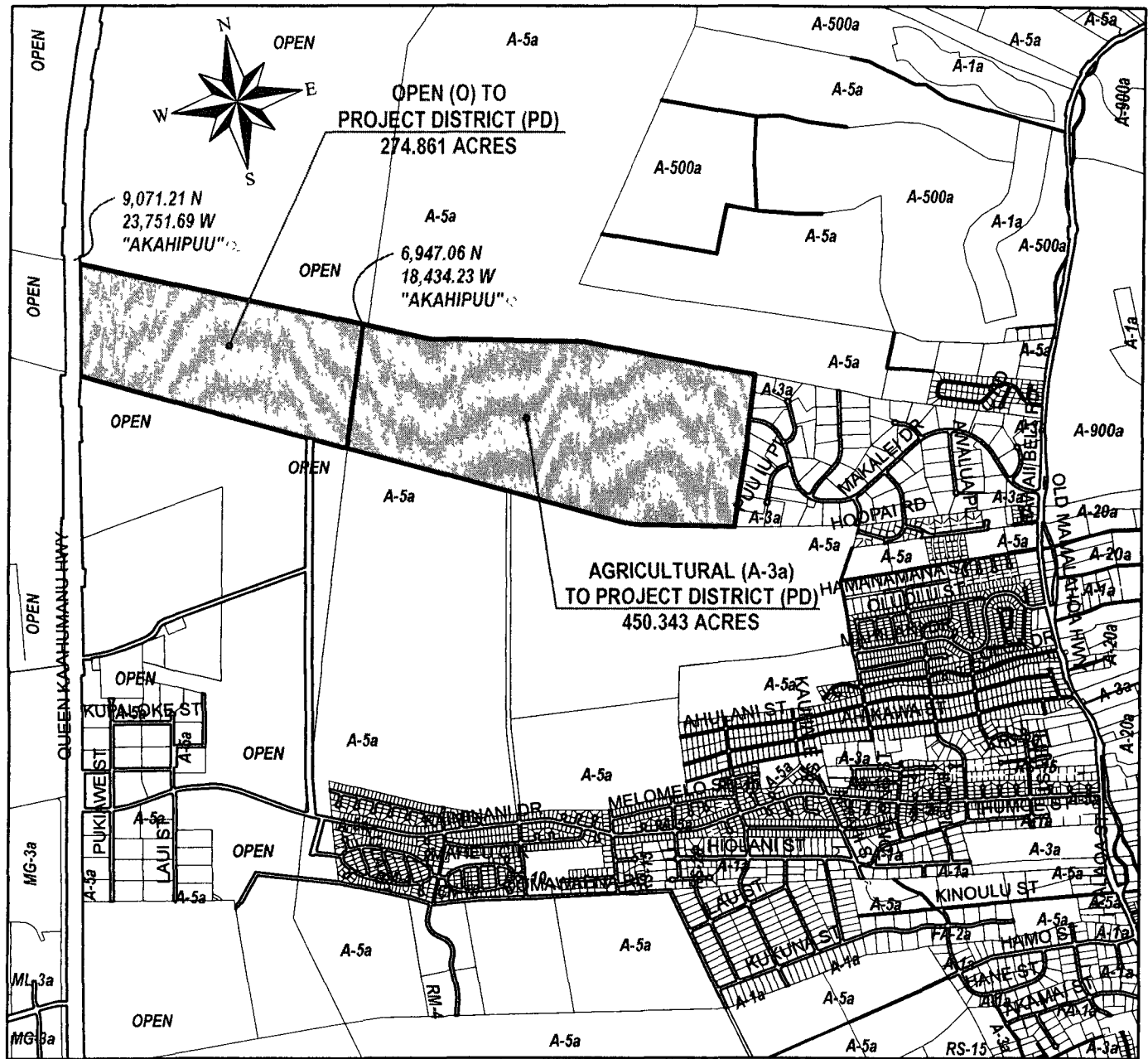


\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: September 16, 2009  
Date of 1st Reading: October 7, 2009  
Date of 2nd Reading: October 21, 2009  
Effective Date: November 4, 2009

REFERENCE: ~~Comm~~ 495.13



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)  
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE  
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION  
 FROM AGRICULTURAL (A-3a) AND OPEN (O)  
 TO PROJECT DISTRICT (PD)  
 AT KAU, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT  
 COUNTY OF HAWAII

FOR REFERENCE ONLY

Date November 30, 2005

TMK 7-2-005 001

EXHIBIT "A"

(HILUHILU DEVELOPMENT, LLC 1168)

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

RECEIVED

(Draft 2)

Introduced By Brenda Ford  
Date Introduced September 16, 2009  
First Reading October 7, 2009  
Published October 16, 2009

REMARKS \_\_\_\_\_  
September 16, 2009 - Postponed


Second Reading October 21, 2009  
To Mayor October 29, 2009  
Returned November 4, 2009  
Effective November 4, 2009  
Published November 12, 2009


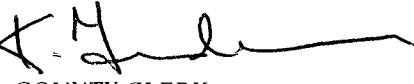
REMARKS \_\_\_\_\_

2009 ROLL CALL VOTE 08				
	AYES	NOES	ABS	EX
Enriques				
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			
	6	2	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 - 2 2009

  
COUNCIL CHAIRMAN  
  
COUNTY CLERK

Bill No 137 (Draft 2)  
Reference C-495.13/PC-45  
Ord No 09 132

Approved/Disapproved this 4th day  
of November, 2009  
  
MAYOR, COUNTY OF HAWAII