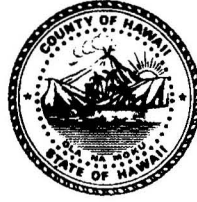


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 272

ORDINANCE NO. 10 99

AN ORDINANCE AMENDING SECTION 25-8-9 (HAWI-KAPA'AU ZONE MAP) AND SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICT ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – TWENTY ACRES (A-20a) TO FAMILY-AGRICULTURAL – TWO ACRES (FA-2a) AT KAPU'A AND PŪEHUEHU, HAWAI'I, COVERED BY TAX MAP KEY: 5-4-008:001.

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

SECTION 1. Section 25-8-9 and Section 25-8-7, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), are amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kapu'a and Pūehuehu, Hawai'i, shall be Family-Agricultural – Two Acres (FA-2a):

Beginning at the Northwest corner of this parcel of land, being also the Southwest corner of Lot 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O NAKE" being 13,988.99 feet North and 9,952.53 feet East and running by azimuths measured clockwise from true South:

1. 295° 41' 41.98 feet along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;  
thence along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau, on a curve to the left with a radius of 310.00 feet, the chord azimuth and distance being:
2. 273° 28' 234.43 feet;
3. 251° 15' 110.53 feet along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;

thence along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau, on a curve to the left with a radius of 360.00 feet, the chord azimuth and distance being:

4. 246° 31' 15" 59.36 feet;

5. 241° 47' 30" 163.16 feet along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;

thence along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau, on a curve to the right with a radius of 515.00 feet, the chord azimuth and distance being:

6. 245° 56' 15" 74.46 feet;

7. 250° 05' 100.88 feet along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;

thence along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau, on a curve to the right with a radius of 970.00 feet, the chord azimuth and distance being:

8. 253° 56' 7.5" 130.33 feet;

9. 16° 25' 30" 1,635.29 feet; along Kynnersley Road Tract 3, Block G (File Plan 660);

10. 115° 30' 30" 410.12 feet along Kynnersley Road Tract 1, Block B (File Plan 651);

11. 25° 30' 30" 5.74 feet along Kynnersley Road Tract 1, Block B (File Plan 651);

12. 115° 33' 20" 150.12 feet along Lots B-1 and A-1, along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;

13. 115° 28' 30" 225.00 feet along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;

14.	205° 03'	329.44 feet	along Lot A, along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;
15.	288° 25'	197.91 feet	along Lot A, along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;
16.	205° 03'	350.00 feet	along Lot A, along remainder of Grant 1544 to Makanoanoa, Maria and Kaneihalau;
17.	108° 25'	400.00 feet	along Lot A, along remainders of Grant 1544 to Makanoanoa, Maria and Kaneihalau and Grant 2956 to Poepoe;
18.	25° 03'	251.68 feet	along Lot A, along remainder of Grant 1956 to Poepoe;
19.	108° 25'	242.46 feet	along Lot B, along remainders of Grant 1956 to Poepoe and Royal Patent 7653, Land Commission Award 8741 to Kalua;
20.	101° 22'	222.68 feet	along Lot B, along remainder of Royal Patent 7653, Land Commission Award 8741 to Kalua;
21.	250° 00'	90.00 feet	along Kohala High and Grammar School Lot;
22.	195° 00'	150.00 feet	along Kohala High and Grammar School Lot;
23.	208° 30'	74.00 feet	along Kohala High and Grammar School Lot;
24.	245° 00'	90.00 feet	along Kohala High and Grammar School Lot;
25.	275° 53'	66.55 feet	along Kohala High and Grammar School Lot;
26.	288° 33'	339.07 feet	along Lot 2-B, along Grant 749 to Awiki;

27. 205° 41' 327.27 feet along Lot 2-B, along Grant 749 to Awiki, to the point of beginning and containing an area of 24.174 acres, more or less.

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:

Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or

- (1) 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, 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 Agricultural District.
  
- C. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one hundred and eighty (180) days from the effective date of this ordinance. The applicant shall construct necessary water system improvements including, but not limited to, water mains capable of delivering water at adequate pressure under peak-flow and fire-flow conditions; the minimum diameter of

which shall be six inches, the installation of service laterals to accommodate a 5/8-inch meter for each lot, and other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, and the relocation and adjustment of the Department's affected water system facilities, should they be necessary. The applicant shall remit any prevailing facilities charge, as determined by the Department of Water Supply, and convey the subdivision water system improvements and necessary easements to the County Water Board prior to Final Subdivision Approval.

- D. Final Subdivision Approval shall be secured from the Planning Director within five (5) years from the effective date of this change of zone ordinance.
- E. 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 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.
- F. The applicant shall improve Union Mill Road from Akoni Pule Highway to the subdivision access road (including TMK: 5-4-10:29) consisting of, but not limited to, pavement resurfacing to a 20-foot pavement width, installation of street lights, signs and markings, meeting with the approval of the Department of Public Works.

- G. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. If required, a drainage study shall be prepared and submitted to the Department of Public Works prior to submittal of plans for subdivision review. Any required drainage improvements shall be constructed, meeting the approval of the Department of Public Works, prior to Final Subdivision Approval.
- H. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
- I. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.
- J. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Final Subdivision Approval.
- K. The method of sewage disposal shall meet with the requirements of the Department of Health.
- L. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.

M. The applicant, successors or assigns shall make their fair share contribution to mitigate the potential regional impacts of the proposed subdivision with respect to parks and recreation, fire, police, solid waste disposal facilities and roads for the nine additional lots to be created. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval. The fair share contribution for the lots shall be based on the actual number of residential units developed. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a combined value of **\$12,059.55** 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 single family residential unit shall be allocated as follows:

1. **\$5,815.33** per single family residential unit to the County to support park and recreational improvements and facilities;
2. **\$280.53** per single family residential unit to the County to support police facilities;
3. **\$554.09** per single family residential unit to the County to support fire facilities;
4. **\$242.59** per single family residential unit to the County to support solid waste facilities; and

5. **\$5,167.02** per single family residential unit to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council. The of improvements made to Union Mill Road, required under Condition F, shall be credited toward the required roadway fair share contribution in this condition.

- N. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- O. 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 Final Subdivision Approval.
- P. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- Q. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:



1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or 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).
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 area to its original or more appropriate designation.

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

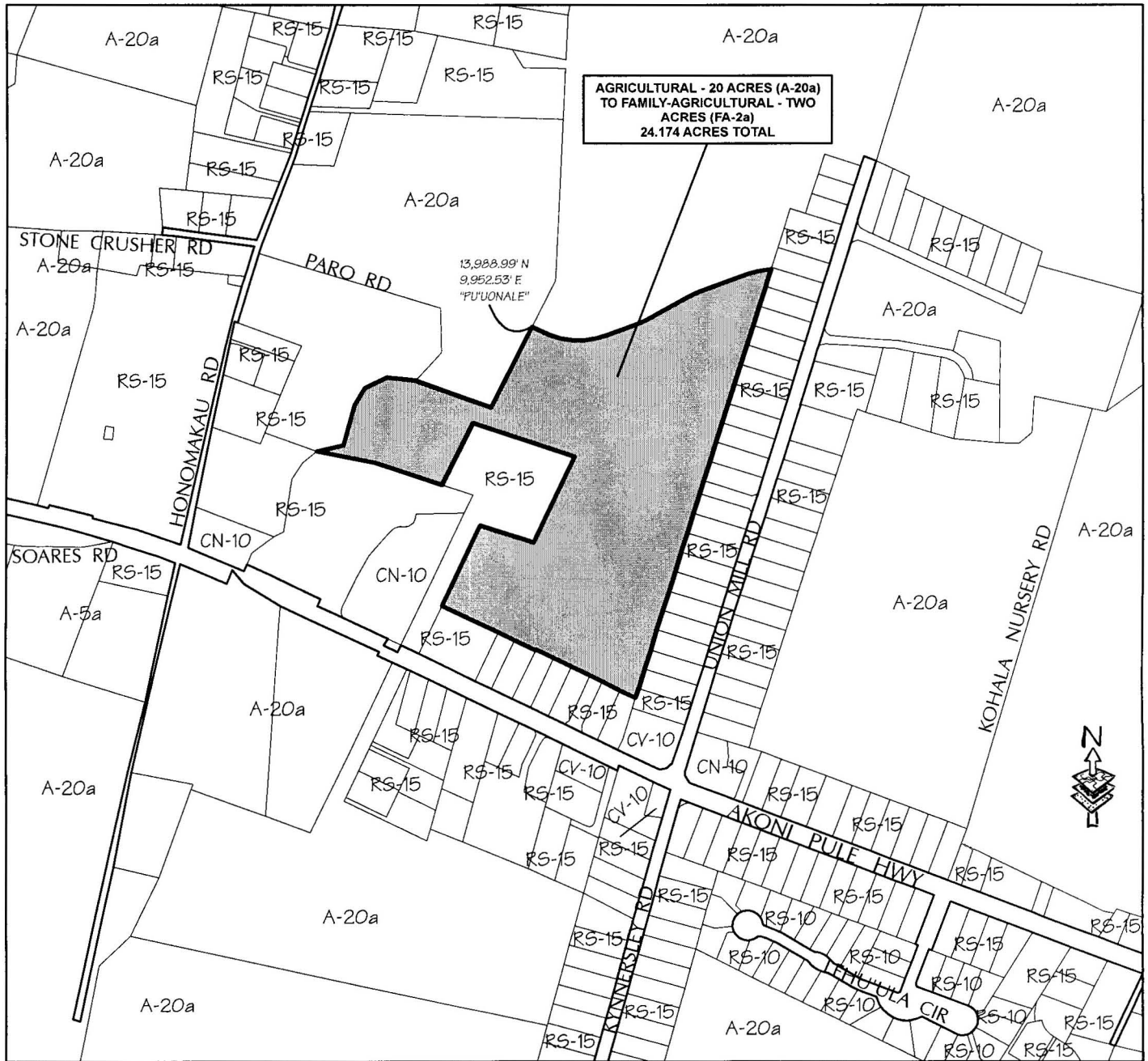
Date of Introduction: September 21, 2010

Date of 1st Reading: September 21, 2010

Date of 2nd Reading: October 6, 2010

Effective Date: October 22, 2010

REFERENCE: Comm: 887



# AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-9 (HAWI-KAPA'AU ZONE MAP) AND SECTION 25-8-7 (NORTH AND SOUTH KOHALA DISTRICT ZONE MAP) ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL - TWENTY ACRES (A-20a) TO FAMILY-AGRICULTURAL - TWO ACRES (FA-2a) AT KAPU'A AND PŪEHUEHU, HAWAII

MAP PREPARED BY:  
COUNTY OF HAWAII, PLANNING DEPARTMENT

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

RECEIVED

Introduced By: Donald Ikeda  
 Date Introduced: September 21, 2010  
 First Reading: September 21, 2010  
 Published: September 30, 2010

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

Second Reading: October 6, 2010  
 To Mayor: October 14, 2010  
 Returned: October 22, 2010  
 Effective: October 22, 2010  
 Published: November 1, 2010


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

2010 OCT 22 PM 7:08



ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	1	0	0

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

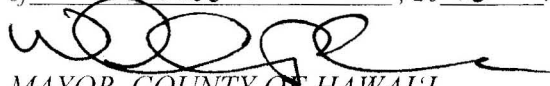
I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO  
 FORM AND LEGALITY:  
  
 DEPUTY CORPORATION COUNSEL  
 COUNTY OF HAWAII

Date OCT 20 2010

  
 COUNCIL CHAIRMAN  
  
 COUNTY CLERK

Bill No.: 272  
 Reference: C-887/PC-89  
 Ord No.: 10 99

Approved/Disapproved this 22nd day  
 of October, 2010  
  
 MAYOR, COUNTY OF HAWAII

**Ordinances Numbered 10-99, 10-100, 10-101, 10-102, & 10-103**

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on October 6, 2010, by vote, as listed below:

**Ordinance 10-99 (Bill 272):** An Ordinance Amending Section 25-8-9 (Hawi-Kapa'au Zone Map) and Section 25-8-7 (North and South Kohala District Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – Twenty Acres (A-20a) to Family-Agricultural – Two Acres (FA-2a) at Kapu'a and Pūehuehu, Hawai'i, Covered by Tax Map Key: 5-4-008:001. AYES: Council Members Enriques, Ford, Greenwell, Ikeda, Naeole-Beason, Onishi, and Chair Yoshimoto – 7; NOES: Council Member Hoffmann – 1; ABSENT: Council Member Yagong – 1; EXCUSED: None.

**Ordinance 10-100 (Bill 273):** An Ordinance Amending the State Land Use Boundaries Maps for the County of Hawai'i by Changing the District Classification From the Agricultural to the Urban District at Pahoa, North Kohala, Hawai'i, Covered by Tax Map Key: 5-5-019:025 and 027 (Portions). AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole-Beason, Onishi, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Yagong – 1; EXCUSED: None.

**Ordinance 10-101 (Bill 274):** An Ordinance Amending Section 25-8-7 (North and South Kohala Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – Twenty Acres (A-20a) and Single-Family Residential – 7,500 Square Feet (RS-7.5) to Single-Family Residential – 15,000 Square Feet (RS-15), Single-Family Residential – 10,000 Square Feet (RS-10), Single-Family Residential – 7,500 Square Feet (RS-7.5), and Open at Pahoa, North Kohala, Hawai'i, Covered by Tax Map Key: 5-5-019:025 and 027 (Portions). AYES: Council Members Enriques, Ford, Greenwell, Ikeda, Naeole-Beason, Onishi, and Chair Yoshimoto – 7; NOES: None; ABSENT: Council Members Hoffmann and Yagong – 2; EXCUSED: None.

**Ordinance 10-102 (Bill 284, Draft 2):** An Ordinance Amending Section 25-8-16 (Hāmākua District Homestead Area Zone Map), Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), by Changing the District Classification From Agricultural – Forty Acres (A-40a) to Agricultural – Ten Acres (A-10a) at Kawela, Hāmākua, Hawai'i, Covered by Tax Map Key: 4-6-011:039. AYES: Council Members Enriques, Ford, Hoffmann, Ikeda, Naeole-Beason, Onishi, and Chair Yoshimoto – 7; NOES: None; ABSENT: Council Members Greenwell and Yagong – 2; EXCUSED: None.

**Ordinance 10-103 (Bill 299):** An Ordinance to Amend Ordinance No. 10-59, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2011. AYES: Council Members Enriques, Ford, Greenwell, Hoffmann, Ikeda, Naeole-Beason, Onishi, and Chair Yoshimoto – 8; NOES: None; ABSENT: Council Member Yagong – 1; EXCUSED: None.

  
Kenneth G. Goodenow  
County Clerk

(Hawai'i Tribune-Herald – November 1, 2010)  
(West Hawai'i Today – November 1, 2010)

**Note:** The original Digest/Affidavit is attached to Ordinance 10-99.