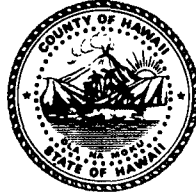


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 12 29 BILL NO. 21  
(DRAFT 3)

AN ORDINANCE AMENDING ORDINANCE NO. 07 127 WHICH AMENDED ORDINANCE NO. 05-157, WHICH AMENDED ORDINANCE NO. 95-51, WHICH AMENDED ORDINANCE NO. 90-160, WHICH RECLASSIFIED LANDS FROM AGRICULTURAL 5-ACRE (A-5a) (FORMERLY UNPLANNED) AND MULTIPLE FAMILY RESIDENTIAL – 1,500 SQUARE FEET (RM-1.5) TO RESIDENTIAL – AGRICULTURAL 1 ACRE (RA-1a) AND OPEN (O) DISTRICTS AT WAIKOLOA, SOUTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 6-8-002:PORTION OF 016.

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

**SECTION 1.** Ordinance No. 07 127 is amended as follows.

“SECTION 3. In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), the County Council finds the following conditions are:

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

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

B. ~~[Final Subdivision Approval shall be secured within five (5) years from the effective date of this new amendment. Plans for the off-site roadway improvements required in Condition C, shall be submitted no later than six months from the effective date of this new amendment. The applicant shall install and dedicate the intersectional improvements required in Condition C prior to receipt of Final Subdivision Approval or sooner in the event the warrants for such installation are justified by the Director of Public Works. In lieu of actual construction of infrastructural improvements herein, the applicant may enter into an agreement with the County to assure the County that the infrastructure improvements will be constructed together with the appropriate bond, surety, or other security deemed acceptable to the Planning Director and the Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted in lieu of the actual construction of required infrastructural improvements. No occupancy permit shall be issued until all of the infrastructure improvements covered by the bond or surety have been constructed and approved by the County;]~~ Final Subdivision Approval for not less than 50 lots shall be secured within five (5) years of this new amendment, provided, however, that Final Subdivision Approval for the entire project shall be secured within ten (10) years of the effective date of this new amendment.

C. Access shall meet with the requirements of the Department of Public Works. Direct vehicular access to Waikoloa Road shall be limited to two roadways from the project site. These accesses shall be fully channelized with dedicated left and right turn deceleration and acceleration lanes on Waikoloa Road. The location of the westernmost (makai) access shall take into consideration the existing access easement located on a property identified by TMK: 6-8-002: 021 and situated on the north side of Waikoloa road and, to the extent feasible, adjusted so that both accesses utilize the same channelized intersection. Waikoloa Road-Pua Melia

Street-Paniolo Avenue intersection shall be channelized and improved by a “roundabout” system meeting with the requirements of the Department of Public Works. This roundabout system, and the[The] first channelized intersection improvements on Waikoloa Road together with other improvements required by the Department of Public Works based upon a current Traffic Impact Analysis Report shall be provided in conjunction with final subdivision approval of the first increment of no less than fifty (50) lots, or as otherwise provided by Chapter 23 (Subdivisions). The second channelized intersection improvements on Waikoloa Road shall be provided prior to or in conjunction with the opening and use of the project’s second access required for Phase II. Any necessary additional right-of-way for the intersection improvements shall be dedicated to the County, at no cost to the County, prior to Final Subdivision Approval, creating any single-family residential lots. The applicant shall also provide a 10-foot wide future road widening and grading setback along the Waikoloa Road frontage of the subject property. Additionally, future road lots to adjoining properties to the east and south shall be provided meeting with the approval of the Planning Director;

D. As recommended by the South Kohala Community Development Plan, roads within the project site, although not developed with the standard curb, gutter, and sidewalk section, shall incorporate pedestrian and bike paths within their existing rights-of-way meeting with the approval of the Department of Public Works. Additionally, a pedestrian trail system, portions of which shall serve as an exercise or fitness course, shall be incorporated within the planned open space area and shall be implemented in conjunction with the adjoining and corresponding phases or increments of the proposed subdivision, including the first increment of no less than fifty (50) lots. The pedestrian trail system shall be situated in a manner that facilitates access by foot between the subdivision and existing and zoned commercial and/or public areas. While not necessarily paved, the pedestrian trail system shall be at least four (4) feet wide and easily

traversable. Access easements or lots of at least six (6) feet in width shall be located between the pedestrian trail system and public roadways within the project site shall also be provided at selected areas throughout the project. Plans for the pedestrian trail system and access easements or lots shall be designed in conjunction with the South Kohala Community Development Plan Action Committee and shall be subject to approval by the Planning Director in conjunction with the subdivision approval process;

~~[D.]~~ E. 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;

~~[E.]~~ F. A drainage system shall be installed in accordance with the requirements of the Department of Public Works and other affected agencies;

~~[F.]~~ G. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of final subdivision approval;

~~[G.]~~ H. A water system meeting with the Department of Water Supply shall be provided or bonded prior to issuance of final subdivision approval. At no cost to the county, the water system shall include the construction of on and off-site water reservoir(s), appropriate transmission system to and within the subject site, and other related appurtenances. Said system shall also include provision(s), such as a separate irrigation meter or system throughout the subdivision, to monitor and control excessive use of potable water for irrigation.

[H.] I. Comply with all applicable County, State and Federal laws, rules, regulations and requirements;

[H.] J. Restrictive covenants in the deeds of all proposed lots within the property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each 1-acre lot. This restriction may be removed by amendment of this ordinance by the County Council. The owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances;

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

The area formerly planned for a golf course shall be utilized for open space and recreational purposes as noted herein. Two (2) areas consisting of at least five (5) acres each and outside of any floodway shall be set aside for

future park sites and dedicated to the County; and three (3) 1-acre lots adjacent to the rural-residential lots and outside of any floodway shall be set aside for tot lots, portions of which may also include a bus shelter, and shall be kept under private ownership. These park site areas shall be designated on a revised preliminary subdivision map as approved by the Planning Director. The first 5-acre park site to be dedicated shall be subdivided in conjunction with the receipt of final subdivision approval of the project's first subdivision increment. The required land-dedication documents for the 5-acre park sites shall be submitted to the Planning Department for processing prior to receipt of final subdivision approval of the rural-residential lots adjacent to the proposed park site. These 5-acre park sites shall be selected with the approval of the Parks and Recreation Director. The tot lots shall be created in conjunction with receipt of final subdivision approval of the rural-residential lots. The value of the land for the two (2) 5-acre park sites and any other land that is available to the public, including the value of any improvements, shall be applied to the park and recreational fair share requirement prescribed in Condition L;

[~~K~~] L. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the lot counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval or within five years from the effective date of this amended change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be

determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of the amendment to the ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of ~~[\$10,368.57]~~ \$12,772.64 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:

- ~~[\$4,999.91]~~ \$6,159.19 per single-family residential unit to the County to support park and recreational improvements and facilities;
- ~~[\$241.20]~~ \$297.12 per single-family residential unit to the County to support police facilities;
- ~~[\$476.39]~~ \$586.85 per single-family residential unit to the County to support fire facilities;
- ~~[\$208.57]~~ \$256.93 per single-family residential unit to the County to support solid waste facilities;
- ~~[\$4,442.50]~~ \$5472.55 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, which may include a multi-purpose community center, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council[<sup>5</sup>].

The value of the land and any improvements thereon as prescribed in Condition K shall be applied to the park and recreational fair share requirements contained herein;

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

~~[M.]~~N. An annual progress report shall be submitted to the Planning Director prior to the anniversary of the effective date of the change of zone. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required;

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

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

**SECTION 3.** In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

**SECTION 4.** This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i  
Date of Introduction: February 6, 2013  
Date of 1st Reading: February 6, 2013  
Date of 2nd Reading: February 20, 2013  
Effective Date: March 13, 2013



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

11:11 2:57

Introduced By: Zendo Kern  
 Date Introduced: February 6, 2013  
 First Reading: February 6, 2013  
 Published: February 16, 2013

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

Second Reading: February 20, 2013  
 To Mayor: February 28, 2013  
 Returned: March 14, 2013  
 Effective: March 13, 2013  
 Published: March 21, 2013

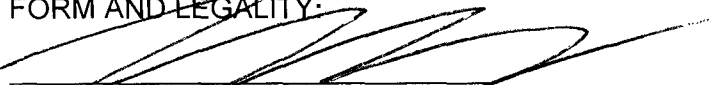
REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
	9	0	0	0

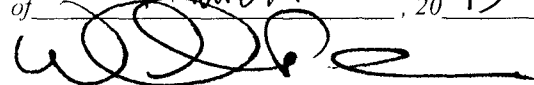
(Draft 3)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
	9	0	0	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 MAR 11 2013

Approved/Disapproved this 13<sup>th</sup> day  
 of March, 2013  
  
 MAYOR, COUNTY OF HAWAII

  
 COUNCIL CHAIRPERSON  
  
 COUNTY CLERK

Bill No.: 21 (Draft 3)  
 Reference: C-67.5/PC-12  
 Ord No.: 13 29