

COUNTY OF HAWAII STATE OF HAWAII



BILL NO. 152 (Draft 2)

ORDINANCE NO. 02 25

AN ORDINANCE AMENDING ORDINANCE NO. 96-117, WHICH AMENDED SECTION 25-95A (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP) AND SECTION 25-95E (LALAMILO-PUUKAPU ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, AND ORDINANCE NO. 92-65 BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-40a) AND (A-3a); SINGLE FAMILY RESIDENTIAL (RS-7.5), (RS-10), (RS-15) AND (RS-20); DOUBLE FAMILY RESIDENTIAL (RD-5); MULTIPLE FAMILY RESIDENTIAL (RM-2) AND (RM-3); VILLAGE COMMERCIAL (CV-7.5); AND LIMITED INDUSTRIAL (ML-20) TO AGRICULTURAL (A-40a), RESIDENTIAL AND AGRICULTURAL (RA-1a), SINGLE FAMILY RESIDENTIAL (RS-7.5) AND (RS-10); MULTIPLE FAMILY RESIDENTIAL (RM-5.0); VILLAGE COMMERCIAL (CV-7.5); AND LIMITED INDUSTRIAL (ML-20) AT OULI, LANIKEPU, LALAMILO, WAIKOLOA AND PUUKAPU, WAIMEA, SOUTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 6-2-01:9; 6-7-01:PORTION OF 25; 6-7-02:9, 48, AND PORTION OF 17; AND 6-8-01:PORTIONS OF 1 AND 8.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Ordinance No. 96-117 is amended as follows:

"SECTION 1. Section 25-95A, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, and Ordinance No. 92-65 are amended to change the district classification of properties described hereinafter as follows:

INDUSTRIAL PARK AREA

The district classification of the following area situated at Waikoloa, South Kohala, Hawaii, shall be Limited Industrial (ML-20):

PARCEL "A"/EXHIBIT "C":

Beginning at the Southeast corner of this parcel of land, on the Westerly side of Mamalahoa

Pages 2 through 34 contain legal descriptions
of the zoned parcels and are not included here

(B) within three years from the enactment of this ordinance the applicant shall provide assurance satisfactory to the Department of Water Supply and the Planning Director, upon consultation with the State Department of Health and the Department of Land and Natural Resources, that a water source(s) of sufficient quality and quantity can be established. The effective date of the changes in district classification(s) shall be the date on which the Planning Director has certified such assurances to be satisfactory. Such satisfactory assurance can be met by the actual drilling and testing of a well site of the water source or by the submittal of a hydrological study certifying that a water source(s) of sufficient quality and quantity can be established at the designated location(s). The actual development of the water source and its water transmission and distribution system shall be developed in conjunction with the subdivision approval process. Residential building permits shall not be issued until the approved water source is developed and its transmission and distribution system for such source to the subject property has been constructed. Residential building permits may be issued for model home complexes, provided that such model homes will not be occupied until the approved water source is developed.

(C) a historic preservation mitigation plan of each development area shall be prepared and submitted for approval by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to submitting plans for

preliminary subdivision or plan approval review of each development area. The plan shall consist of an archaeological data recovery plan and a preservation plan.

Approved mitigation measures shall be implemented prior to or in conjunction with any land alterations in the respective development area;

- (D) 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 Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken;

- (E) to ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall work with the Office of Housing and Community Development and the Planning Director to formulate a housing plan for the development. This housing plan shall be approved by the County Housing Agency prior to final subdivision approval of any portion of the residential zoned area. The housing plan shall allow satisfaction of the requirements in this condition by in-lieu payment, land, or any combination thereof and shall be based on a maximum density for the residential area, as determined by the applicant with the concurrence of the Planning Director. Full affordable housing credits shall be given for the 4.7± acres set aside by the applicant and dedicated to the

County for the 40-unit elderly housing site as well as any other future land or residential lots set aside for employees of the applicant who meet the prevailing income criterion for an affordable home.

(F) the applicant shall work with the State Department of Education and the Planning Department to provide its pro rata share for school facilities. In establishing the applicant's pro rata share, credit for contributions to public and private schools in the area shall be given to the applicant, subsequent to the adoption of Ordinance No. 92-65. The pro rata share determination and its implementation (i.e. dedication of land, construction of classrooms or funding) shall be approved by the Planning Department, in consultation with the Department of Education, in conjunction with final subdivision approval of any residential lot subdivision for any area of development;

(G) the applicant shall provide 30 ± acres of land for public park and recreational purposes outside of the geographical area covered by this ordinance, provided that the site(s) shall be situated south of the Waimea Airport and the Waimea Business Park, unless alternative locations are mutually agreed to by the applicant and the Planning Director, in consultation with the Department of Parks and Recreation. The applicant shall identify the proposed site (s) prior to the receipt of tentative subdivision approval of the first residential increment of the subject property. The Planning Director, in consultation with the Department of Parks and Recreation,

shall review and approve the location of the site(s) prior to final plan approval or final subdivision approval of the three hundredth (300th) residential unit/lot within the RS and/or RM zoned areas of the subject property. Furthermore, said site(s) shall be dedicated to the County upon its request. The value of dedicated land and any improvements provided on the said site(s) shall be credited against the applicant's fair share contribution of the parks and recreation assessment required in Condition H herein;

- (H) the applicant shall make its fair share contribution to mitigate the potential 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 units proposed to be developed by the amounts allocated hereinbelow for each unit, and shall become due and payable prior to final subdivision approval or final plan approval, as applicable, for any portion of the subject property or its increments. If the subject property is developed in two or more increments, the amount of the fair share contribution due and payable prior to final subdivision approval or final plan approval of each increment shall be a sum calculated in the same manner according to the number of proposed residential units in each such increment. The fair share contribution may be in a form of cash, land, facilities, or any combination thereof acceptable to the Planning Director in consultation with the affected agencies. The fair share contribution

shall have a maximum combined value of \$4,645.29 per multiple-family residential unit and \$7,239.16 per single-family residential unit. Based upon the applicant's representation of intent to develop up to 729 residential units, the indicated total fair share contribution for 256 multiple family residential units is \$1,189,194.20 and for 473 single family residential units is \$3,424,122.60 whichever is applicable. However, the total amount shall be increased or reduced in proportion with the actual number of lots/units according to the calculation and payment provisions set forth in this Condition H. The fair share contribution shall be allocated as follows:

1. \$2,291.39 per multiple-family residential unit for an indicated total of \$586,595.84 and \$3,490.85 per single-family residential unit for an indicated total of \$1,651,172.00 to the County to support park and recreational improvements and facilities;
2. \$72.42 per multiple-family residential unit for an indicated total of \$18,539.52 and \$168.40 per single-family residential unit for an indicated total of \$79,653.20 to the County to support police facilities;
3. \$222.77 per multiple-family residential unit for an indicated total of \$57,029.12 and \$332.61 per single-family residential unit for an indicated total of \$157,324.53 to the County to support fire facilities;

4. \$99.29 per multiple-family residential unit for an indicated total of \$25,418.24 and \$145.62 per single-family residential unit for an indicated total of \$68,878.26 to the County to support solid waste facilities;

5. \$1,959.42 per multiple-family residential unit for an indicated total of \$501,611.52 and \$3,101.68 per single-family residential unit for an indicated total of \$1,467,094.60 to the State or 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 land, 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 of the Planning Director. The cost of constructing the improvements and the fair market value of land contributed required in Condition G and M(1) shall be credited against the sum specified in Condition H(1) for parks and recreation and in Condition H(5) for road and traffic improvements. For purposes of administering Condition H, the fair market value of land contributed or the cost of any improvements required or made in lieu of

the fair share contribution shall be subject to the review and approval of the Planning Director, upon consultation with the appropriate agencies;

- (I) in lieu of actual construction of infrastructural improvements as required herein, the applicant may enter into an agreement with the Planning Director and the Department of Public Works and the Department of Water Supply, if applicable, to assure the County that the infrastructural improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable to the Planning Director and Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval and/or final plan approval, as applicable for the subject property or portions thereof, may be granted prior to the actual construction of required infrastructural improvements unless otherwise restricted herein;

- (J) 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;

- (K) an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this change of zone. The report shall address, in detail, the status of the development of each area (including number of lots

created, number of units constructed, developed and undeveloped commercial and industrial areas) and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required;

(L) an extension of time for the performance of conditions within each development area set forth in this 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); and
 - (5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions of the respective development areas not be met or substantially complied within a timely fashion, the Planning Director shall initiate rezoning of the applicable area to its original or more appropriate designation; and
- (M) the following specific conditions shall be applied to the individual district classification changes:

(1) WAIMEA TOWN CENTER AREA -

- (a) upon compliance with Condition B, the Waimea Town Center area shall be developed in two increments. The first development increment shall consist of a maximum of 579 residential units/lots and the commercial zoned areas. The second development increment shall consist of the remaining number of residential units/lots within the Single Family (RS) and Multiple Family (RM) zoned districts. Development of the second

increment shall occur only after there is fiscal assurance that the proposed connector road, consisting of a two-lane collector standard within an 80-foot wide right-of-way (to allow development of separate bike and pedestrian facilities) extending from the western intersection with Mamalahoa Highway in the vicinity of the Vacuum Cooling Plant to its northern intersection with either Kamamalu Street or Mamalahoa Highway in the vicinity of the Waimea Civic Center, (hereinafter referred to as the “connector road”) is completed in its entirety; provided further that occupancy of any units within the second development increment does not precede the completion of the proposed connector road described above;

- (b) the entire connector road and its intersection(s) shall be identified by the applicant with the approval of the Department of Public Works prior to final subdivision approval of any residential development within the RS and/or RM zoned areas within the subject property or prior to issuance of a certificate of occupancy for any portion of the commercial areas of the subject property, whichever comes first. In the event that federal, state or other governmental funding or financing acceptable to the applicant becomes available for the construction of the entire connector road including improvements to its intersection(s), the applicant shall utilize the funding or financing to construct the connector road in a single phase, which shall be completed within three years of receipt of said funding or

financing. In the event that the above federal, state or other governmental funding is not available or acceptable to the applicant, the connector road shall be constructed by the applicant in three phases. Phase 1 of the connector road shall be located between the extensions of Pu'ukalani Road and Kaomoloa Street, and shall be constructed in conjunction with the development of the immediately surrounding areas, provided further, that Phase 1 of the connector road shall be completed no later than the issuance of building permits for the single-family dwellings, or the issuance of final plan approval for the multiple family units, as applicable, for the three hundredth (300th) residential unit/lot within the RS and/or RM zoned areas. Phase 2 of the connector road shall be located between the Pu'ukalani Road extension and the northern intersection of the connector road with either Kamamalu Street or the Mamalahoa Highway in the vicinity of the Waimea Civic Center, and shall be constructed in conjunction with the development of the immediately surrounding areas, provided further, that Phase 2 of the connector road shall be completed no later than the issuance of the building permit for the single-family dwellings, or the issuance of final plan approval for the multiple family units, as applicable, for the four hundred fiftieth (450th) residential unit/lot within the RS and/or RM zoned areas. Phase 3 of the connector road shall be located between the extension of Kaomoloa Street and the western intersection of the connector road with Mamalahoa Highway in the

vicinity of the Vacuum Cooling Plant, and shall be constructed in conjunction with the development of the immediately surrounding areas, provided further, that Phase 3 of the connector road shall be completed no later than the issuance of the building permit for the single-family dwellings, or the issuance of final plan approval for the multiple family units, as applicable, for the five hundred seventy-ninth (579th) residential lot/unit in the first development increment of the Waimea Town Center. In the event that the connector road shall intersect at its northern end with Kamamalu Road, the applicant shall improve within the existing right-of-way, the portion of Kamamalu Road between its intersection with the connector road and Mamalahoa Highway, meeting with the requirements and approval of the Department of Public Works. The costs of such improvements shall be credited against the applicant's fair share contribution of the road assessment required in Condition H, herein. The entire connector road shall be constructed to the standards of the Department of Public Works; provided, however, that should it be determined by the Planning Director in consultation with the Department of Public Works that curbs, gutters and sidewalk improvements are needed, then, said improvements shall be installed along that portion of the road within the park, commercial and residential zoned lands at the time of development of any portion of those zoned lands. All lots shall gain access from interior roadways unless otherwise permitted by the

Department of Public Works. In lieu of actual construction of the connector road, the applicant may enter into an agreement with the Planning Director and the Chief Engineer to assure the County that the applicable portion(s) of the connector road will be constructed by way of a surety bond, certified check or other security deemed acceptable to the Corporation Counsel and the Planning Director. Upon final execution of such agreement and filing of the security with the County, subdivision plans and/or final plan approval plans for the next development phases may be submitted and approved prior to the actual construction of the applicable portion(s) of the connector road in the prior phase:

- (c) intersection improvements, which may include channelization and traffic signals, shall be provided at the proposed connector road at its western intersection with Mamalahoa Highway in the vicinity of the Vacuum Cooling Plant and its northern intersection with either Kamamalu Street or the Mamalahoa Highway in the vicinity of the Waimea Civic Center, as required by the Department of Public Works. These improvements shall be constructed and installed in conjunction with the construction of the immediate surrounding portion(s) of the connector road. Should the County require improvements at the intersection of Kaomoloa Street and Mamalahoa Highway, the costs of these additional off site road and/or intersection improvements shall be credited against the applicant's fair

share contribution of the road assessment required in Condition H herein;

- (d) Roadway and intersection improvements within Lindsey Road's existing right-of-way and its extension from its intersection with the Mamalahoa Highway to its intersection with the connector road shall be constructed meeting with the requirements and approval of the Department of Public Works. These roadway and intersection improvements, to be dedicated to the County, shall be constructed and installed concurrently with any commercial development of the immediately surrounding commercial zoned area of the subject property and shall be completed prior to issuance of a certificate of occupancy for that portion of the commercial development.
- (e) Lindsey Road extension from the connector road to the southeast boundary of the subject property's State Land Use Urban District, consisting of an 80-foot wide right-of-way with improvements meeting with the approval of the Department of Public Works, shall be constructed in conjunction with the completion of that portion of the State's Waimea Bypass Road located east of the subject property as required by the Department of Public Works and State Department of Transportation, and shall be dedicated to the County upon its completion. Upon the request of the Department of Public Works or the State Department of

Transportation, the applicant shall submit for dedication to the County or State, as applicable, the 80-foot wide right-of-way for that portion of the Lindsey Road extension between the southeast boundary of the subject property's State Land Use Urban District and its intersection with the State's Waimea Bypass Road, with the value of dedicated land and improvements credited against the applicant's fair share contribution of the road assessment required in Condition H herein;

- (f) prior to development of any portion of the Waimea Town Center Area, a comprehensive drainage study shall be conducted to determine the type of drainage improvements that would be required given the area's flooding history, geological composition and the amount of water to be generated by the proposed commercial and residential development. The study shall be reviewed and approved by the Department of Public Works and approved recommendations implemented as the development proceeds. Accordingly, a drainage system shall be installed meeting with the requirements of the Department of Public Works;

- (g) curb, gutter and sidewalk improvements shall be required within the commercial areas as development proceeds. The Planning Director, in consultation with the Department of Public Works, shall determine whether curb, gutter, and sidewalk improvements are needed within any or

all portions of the residential areas at the time of plan approval or preliminary subdivision review of that portion of the subject property being developed. Should it be determined that said improvements are required, then, they shall be provided in conjunction with the development of the affected area(s);

- (h) within the commercial zoned area, a minimum of ten acres of land shall be set aside for open space or park purposes for the general public. Said open space/park areas shall be in the general location of the heritage park as delineated in Exhibit "D" and shall be improved with a multi-purpose athletic field, meeting with the approval of the Planning Director in consultation with the Department of Parks and Recreation. The park and open space shall be available for use by the public in conjunction with the receipt of final subdivision or final plan approval for any development within the subject property. A document shall be duly recorded with the Bureau of Conveyances reserving said land in perpetuity as an open space/park easement, or similar legal encumbrance, in favor of the public prior to the opening of the open space/park area;

- (i) a sewage treatment plant shall be constructed to service the residential and commercial developments meeting with the approval of the Department of Health;

- (j) the applicant shall provide a minimum of 30 acres of land for public open space, park and recreational use within the Waimea Town Center, subject to conditions and limitations determined by the applicant meeting with the approval of the Planning Director in consultation with the Department of Parks and Recreation. The park or open space site set aside in Condition TOWN CENTER (h) for public use shall be included in the 30-acre calculation. A conceptual park, recreational and open space plan, including the location of the park, recreational and open space site(s), accompanying land area, configuration, phasing of park site development with residential uses, ownership, control and maintenance of the site(s), conditions and limitations regarding the terms of use and hours of operation of the site(s), and improvements, shall meet with the approval of the Planning Director in consultation with the Department of Parks and Recreation prior to receipt of final subdivision or final plan approval for any residential units within the RS and/or RM zoned areas of the subject property. The park, recreation and open space areas shall be developed and available for public use in accordance with the approved plan. The value of dedicated land and improvements contributed for park, open space and/or recreational use for the public within the Waimea Town Center development area shall be credited against the applicant's fair share contribution relative the parks and recreation, as noted in Condition H

herein. Prior to the opening of any of the park, recreational, or open space areas required herein for public use, the applicant shall record a covenant or similar legal encumbrance meeting with the approval of the Planning Director, in consultation with the Corporation Counsel and the Department of Parks and Recreation, which shall obligate the subdividers, purchasers, occupants, and/or association in the affected residential units or subdivision to maintain the park, recreational or open space areas in perpetuity;

- (k) as represented by the applicant, an equestrian trail shall be provided in conjunction with final subdivision approval or prior to issuance of a certificate of occupancy for any portion of the Waimea Town Center area residential or commercial development, respectively. An equestrian trail plan, which includes the trail alignment, physical improvements, connections, signage, ownership, control and maintenance, shall be approved by the Planning Director, in consultation with appropriate agencies, prior to submittal of any plans for subdivision or plan approval within the Waimea Town Center area;

(2) INDUSTRIAL PARK AREA -

- (a) Upon compliance with Conditions of OVERALL DEVELOPMENT B, subdivision plans for the industrial park or portions thereof, shall be submitted to the Planning Department within one year from the effective date of the rezoning as determined in Condition B and tentative subdivision approval shall be secured within one year thereafter. Final subdivision approval shall be secured within two years from the date of submitting final subdivision plans;
- (b) access onto Mamalahoa Highway shall meet with the approval of the Department of Public Works and the Department of Transportation-Highways Division. Intersection improvements (i.e., channelization) at Mamalahoa Highway and the industrial park access road, as required by the Department of Public Works, shall be completed in conjunction with final subdivision approval of any portion of the industrial development;
- (c) a drainage system shall be installed in accordance with the requirements of the Department of Public Works;
- (d) a master landscaping plan for the industrial park area shall be submitted for review and approval by the Planning Department prior to submitting plans for the subdivision. The master landscaping plan shall provide methods of landscaping (I) those areas that would be visible from areas of

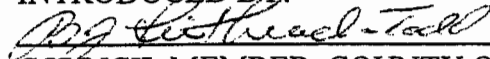
travel (Mamalahoa Highway) or would impact existing or future adjacent uses and (ii) interior lots within the development. Certain landscape buffers identified in Condition d(I) herein shall be established (planted) in conjunction with final subdivision approval of any portion of the industrial development. The guidelines set forth in the master landscaping plan for interior lots, shall be included in the covenants for each lot. During plan approval review of individual lot development, the guidelines shall be utilized to minimize adverse noise and visual impacts; and

- (e) the method of sewage disposal shall meet with the approval of the appropriate governmental agencies.

SECTION 5. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 6. This ordinance shall take effect upon its approval.”

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: February 6, 2002
Date of 1st Reading: February 6, 2002
Date of 2nd Reading: February 21, 2002
Effective Date: February 28, 2002

REFERENCE: Comm. 477.1
APPROVED AS TO FORM AND LEGALITY

DEPUTY



CORPORATION COUNSEL

DATED: 2-26-02

OFFICE OF THE COUNTY CLERK

County of Hawaii

Hilo, Hawaii

(DRAFT 2)

Introduced By: Bobby Jean Leithead-Todd
 Date Introduced: February 6, 2002
 First Reading: February 6, 2002
 Published: N/A

REMARKS: _____

Second Reading: February 21, 2002
 To Mayor: February 25, 2002
 Returned: February 28, 2002
 Effective: February 28, 2002
 Published: March 7, 2002

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik	X			
Tyler	X			
Yagong	X			
	8	0	1	0

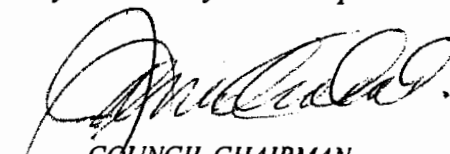

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Jacobson	X			
Leithead-Todd	X			
Pisicchio	X			
Safarik			X	
Tyler	X			
Yagong	X			
	7	0	2	

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

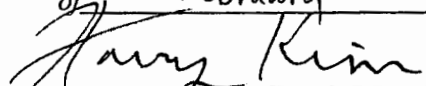
Date 2-26-02


 COUNCIL CHAIRMAN

 COUNTY CLERK

Bill No.: 152 (Draft 2)
 Reference: C-477.1/PC-56
 Ord No.: 02 25

Approved/Disapproved this 2/28/02 day

of February, 20 02


 MAYOR, COUNTY OF HAWAII