

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 113

(Draft 3)

ORDINANCE NO. 93 109

AN ORDINANCE AMENDING SECTION 25-95A (NORTH AND SOUTH KOHALA DISTRICTS ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM UNPLANNED (U) TO AGRICULTURAL (A-1a), RESORT-HOTEL (V-2.0) AND OPEN (O) AT KOU, KAMANO, MAHUKONA 1ST AND 2ND, HIHIU AND KAOMA, NORTH KOHALA, HAWAII, COVERED BY TAX MAP KEY 5-7-03:PORTIONS OF 2 AND 10.

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

SECTION 1. Section 25-95A, Article 3, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of properties described hereinafter as follows:

The district classification of the following area situated at Kou and Kamano, North Kohala, Hawaii, shall be Agricultural (A-1a):

PARCEL A:

Beginning at the Northeast corner of this parcel of land, said point of beginning referred to Government Survey Triangulation Station "PUU O NALE" being 2,735.52 feet South and 18,458.82 feet West, and thence running by azimuths measured clockwise from true South:

1. Along remainders of Grant 3405 to Trustees of the Estate of James Woods and L.C.Aw. 7715, Ap. 7 to Lota Kamehameha (Certificate of Boundaries No. 145), on a curve to the left with a radius of 1,110.00 feet, the direct azimuth and distance being:
00° 43' 31" 182.88 feet;

481,129 square feet or
11.045 Acres. (Refer to
Parcel E as shown on
Exhibit "A".)

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

SECTION 2. These changes in district classification are conditioned upon the following: (A) the applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval; (B) the effective date of the change of zone shall be (1) when the applicant provides assurance satisfactory to the Departments of Water Supply and Planning, 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 has/have been established within two years from the enactment of this ordinance; provided that a maximum one-year extension may be granted by the Planning Director with reasonable and sufficient justification; and (2) an agreement together with the appropriate bond, surety or other security deemed acceptable by the Planning Director, is executed between the applicant and the County through its Departments of Water Supply and Planning for the actual development of a proven source and its water transmission and distribution system within one year from the official date of compliance with condition B(1); provided that a one-year extension may be granted by the Planning Director with reasonable and sufficient

justification; (C) construction of the hotel and all interior roads providing access to the parking areas for the Public Shoreline Access Areas shall be completed within five years from the effective date of the change of zone. Appropriate plans to be submitted for subdivision of the proposed lots, including plans to be submitted for Final Plan Approval of the proposed hotel complex shall be consistent with all applicable conditions of approval as required by the change of zone. Open space buffer areas or easements in addition to that proposed on the current project plan shall be provided, as determined by the Planning Director, between the following features:

- (1) Maumalei Heiau and the proposed swimming pool,
- (2) Ko'aholomoana Heiau (Ko'a Heiau) and the golf course,
- (3) the Mahukona Park and Harbor Access Road Public Access Parking area and the golf course, (4) a minimum of one hundred forty (140) feet from the certified shoreline to the proposed hotel structure(s) at Nishimura Bay, and (5) the boundaries of the project and Kapaa Park and Mahukona Park. Plans shall identify improvements, structures, landscaping, and parking stalls associated with the proposed development;

(D) a detailed historic sites mitigation plan which must be approved by the Planning Director and the State Historic Preservation Division prior to its implementation shall be submitted for the treatment of the significant historic sites. The Plan shall consist of two subplans: (1) an archaeological data recovery

plan (scope of work) for the sites to undergo data recovery and (2) a detailed preservation plan for the sites to undergo preservation, to include buffer zones, interim protection measures, and long-range preservation concerns. These offices must also verify in writing that the plan is successfully executed. No land alteration can occur in the project area until at least the data recovery fieldwork and interim protection measures or approved phases thereof are verified to be successfully executed; (E) should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walks 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; (F) an analysis of the flood/drainage problems at the existing drainage structures along Akoni Pule Highway shall be completed. A drainage system shall be installed meeting with the approval of the Department of Public Works and Department of Transportation, Highways Division; (G) 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 Department to formulate a housing plan for the development, which shall be consistent with the interim

affordable housing policy of the County as contained in the Hawaii County Housing Agency Resolution No. 65 or subsequently adopted policies. This housing plan shall be approved by the County Housing Agency prior to Final Plan Approval of any portion of the Resort zoned area; Provided that the applicant shall notify the County Housing Agency of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the property prior to visible commencement of construction on the property; provided further that the applicant may transfer ownership in the property to an affiliate or in a manner consistent with prior representations to the County Housing Agency. In the event the applicant conveys an ownership, leasehold, or controlling development interest in the Resort zoned area prior to the approval of the housing plan by the Hawaii County Housing Agency, a pro rata portion of the affordable housing requirement, based upon unit density of the land affected by such sale, lease or conveyance, shall be satisfied by either an in-lieu payment, land, or any combination thereof by the applicant upon such conveyance of ownership, leasehold or controlling development interest of the Resort-zoned area. The in-lieu payment, land, or any combination thereof for the Resort zoned area shall be based on a maximum of density for the Resort zoned area, as determined by the applicant with the concurrence of the Planning Director. The amount and method of satisfying this requirement

shall be determined by the County Housing Agency; (H) a job training program for the operating phase of the hotel shall be developed and submitted to the Planning Director for review and approval prior to receipt of Final Plan Approval for the hotel; (I) the applicant shall design the project lighting to minimize the impact on educational opportunities at the celestial navigational heiau identified as "Ko'aholomoana" (Ko'a Heiau), and in addition to the requirements of Ordinance No. 88-122, relating to outdoor lighting; (J) to ensure that the goals and policies of the Recreational Element of the General Plan are implemented, the applicant shall design and construct improvements for offsite public park and recreational purposes to be implemented at Kapaa Beach Park and Mahukona Beach Park as follows: (1) Kapaa Beach Park shall provide for public camping and other passive recreational uses and shall be developed in two phases. The Kapaa Beach Park Phase I improvements shall be completed and available for public use prior to the official opening of the resort golf course, and shall include provisions for a potable water system, electrical service to the existing pavilion and restroom/pavilion facility improvements commensurate with the level of park activity. The Kapaa Beach Park Phase II improvements shall be completed and available for public use upon occupancy of the hotel, and shall include provisions for a minimum of twenty-two additional grassed and irrigated campsites, one new restroom building with

facilities for wastewater treatment and a paved parking area with a minimum of twenty-five stalls; (2) Mahukona Park shall provide for active recreational uses and shall be developed in two phases. Mahukona Park Phase I improvements shall be completed and available for public use prior to the official opening of the resort golf course, and shall include provisions for a potable water system, electrical service to the existing pavilion and restroom/pavilion facility improvements commensurate with the level of park activity. The Mahukona Park Phase II improvements shall be completed and available for public use upon occupancy of the hotel, and shall include resurfacing improvements to Mahukona Park and Harbor Access Road from its intersection with Akoni Pule Highway to Mahukona Park, a paved parking area with a minimum of thirty-two stalls, a minimum of two acres of graded, irrigated and landscaped lawn area, and one new restroom building with facilities for wastewater treatment; (3) the applicant shall, in consultation with the Department of Parks and Recreation, conduct the appropriate site assessment studies and submit the proposed Phase I and Phase II improvement plans for both parks to the Planning Director for review and approval in conjunction with the submittal for Final Plan Approval for the golf course and Final Plan Approval for the hotel, respectively; (4) the applicant shall fund the studies, design and construction of the Phase I and Phase II park improvements, and the County of

Hawaii shall be responsible for obtaining all permits and approvals necessary to implement the Phase I and Phase II park improvements; (5) if for any reason the County is unable to secure any of the permits and approvals necessary to implement either the Phase I park improvements, the Phase II park improvements, or any portion thereof for either park, the applicant may nevertheless obtain approval for operation and use of the golf course and occupancy of the hotel by posting a bond, surety, letter of credit or other security acceptable to the County in a sum equal to the cost of the work required to be done by the applicant for that phase as estimated by the Planning Department in consultation with the Departments of Public Works, Parks and Recreation, and Water Supply. The County may also determine that the equivalent amount of improvements be reallocated to other offsite parks and recreational purposes within the North Kohala region; and (6) the cost of any improvements, expenses or programs contributed by the applicant pursuant to this condition shall be credited to satisfy the requirement to construct public access and roadway improvements as contained in Condition O of this ordinance, Conditions 3 and 6 of SMA Use Permit No. 341, and Condition 5 of Use Permit No. 111; (K) the applicant shall provide its fair share contribution to address regional impacts of the project with respect to fire, police, solid waste disposal facilities and roads. The fair share contribution

shall be initially based on the representations contained in the change of zone application and may be increased or reduced proportionally if dwelling units or hotel units are adjusted. A pro rata portion of the contribution, based upon the unit density and resort area of the land affected shall become due and/or payable, at the discretion of the County in the event the applicant conveys full controlling ownership, leasehold, or development interest in the affected land prior to receiving its initial subdivision or final Plan Approval of the proposed development. Otherwise, said contribution shall be satisfied in conjunction with the receipt of final subdivision or Plan Approval, as the case may be, of the proposed development. The fair share contribution for each residential unit or hotel unit shall be based on the maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contributions in a form of cash, land, facilities, or any combination thereof shall have the following maximum value: (a) \$44,350 for fire protective services and \$9,280 for police protective services; (b) \$1,911,750 to support state and county road and traffic improvements within the North Kohala region. Appropriate credits shall be given for any of the applicant's land contribution associated with the Akoni Pule Highway improvements; (c) \$20,750 to support county solid waste disposal functions. The applicant is encouraged to provide land for a landfill or solid waste

transfer station site as a means to satisfy this requirement. Any contributions required by this ordinance that exceed the fair share requirement of this project shall, at the applicant's request, be credited towards any of the applicant's future developments that require infrastructural impact contributions; (L) prior to the commencement of construction of any portion of the proposed development, a monitoring plan on potential pollution to the groundwater and coastal waters shall be submitted to the Planning Director for approval in consultation with the Department of Health; (M) a landscaping easement along both the mauka and makai sides of the property's frontage along Akoni Pule Highway shall be set aside and delineated on all plans, including Subdivision plans. The width of the landscaping easement shall not exceed 150 feet, measured from the existing right-of-way along both the mauka and makai sides of Akoni Pule Highway. The landscaping plan for the easement area and the width of the landscape easement shall be submitted to the Planning Director for review and approval prior to issuance of final subdivision approval for any portion of the easement area, or Final Plan Approval for the golf course, whichever occurs first. Said plan shall depict the landscaping, which may include golf course fairways, tees and greens, identifying the plant species to be utilized along with related accessory improvements such as irrigation facilities, maintenance roads/paths, and other required

drainage, access or utility corridors, and the program for ongoing maintenance; (N) underground telephone, water, electrical and cable television utility lines shall be utilized throughout the project site and no overhead utility lines shall be permitted; (O) the applicant shall develop and submit a comprehensive public access plan for the properties affected by this rezoning and the portion of the Kapaanui property (TMK: (3) 5-7-2:11) zoned Agricultural-one acre (A-1a) for the review and approval by the Planning Director in consultation with the Department of Land and Natural Resources along with plans for subdivision approval, plan approval, or any land alteration activity, whichever comes first. The public access plan shall include mauka-makai and lateral shoreline accesses, a minimum of ten (10) parking stalls for each of the four parking areas for users of the shoreline area, signage, restrictions on use (if any), provisions for public access through the project roadways to the parking areas adjacent to the public shoreline access area for night fishing, and resurfacing improvements to the Mahukona Park and Harbor Access Road from its intersection with Akoni Pule Highway down to Mahukona Park subject to the approval of the Department of Public Works, provision of toilet facilities at appropriate locations, and related improvements. The plan shall also integrate where appropriate, any public accessway(s) or trail system(s) approved in conjunction with the detailed mitigation plan for the Historic Interpretive

Park; (P) the areas of the applicant's property that are not included in the project which are within the State Land Use Conservation District shall be set aside as public shoreline access areas in a manner consistent with the approved comprehensive public access plan for the properties covered by this rezoning via an agreement which shall be recorded with the Bureau of Conveyances prior to the issuance of Final Plan approval for the hotel or final subdivision approval for any phase of the proposed lots, whichever occurs first. The agreement shall be made by and between the applicant and the County of Hawaii, in consultation with the Department of Land and Natural Resources, and shall detail the rights, obligations and privileges of the public, the County of Hawaii, and the applicant, its successors or assigns with respect to the ownership, use, liability and maintenance issues for the public shoreline access area. This agreement shall be an encumbrance running with the land and shall be binding on all parties and persons claiming under them; (Q) the applicant shall participate with the Department of Transportation, Highways Division on regional highway improvements on a pro rata basis, which shall include at a minimum; (1) improvements to the intersections of Akoni Pule Highway within the North Kohala region; (2) channelization and street lighting of the project access to Akoni Pule Highway; (3) dedication of additional right-of-way to the State along Akoni Pule Highway fronting the

project site; (4) guardrails, where needed, along the highway right-of-way to protect lower lots from highway traffic; (5) non-structural protection of highway traffic from errant golf balls for all golf links bordering the highway; and (6) closing of all unused access points to Akoni Pule Highway fronting the project area. The improvements to the intersections of Akoni Pule Highway within the North Kohala region and the fair market value of the applicant's land dedicated to the State for widening of Akoni Pule Highway along the project site's frontage shall be credited towards the applicant's fair share contribution for state and county road and traffic improvements as required under Condition K; (R) all residential, commercial and hotel units and uses shall be connected to a sewage treatment plant, public or private, meeting with the approval of the appropriate governmental agencies. The sewage treatment plant shall have a stand by generator to operate the plant in the event of an electrical power outage; (S) as agreed to by the applicant, restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of a second dwelling unit on each lot. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Department for review and approval prior to final subdivision approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the county and recorded with the Bureau of


Conveyances likewise prior to final subdivision approval; (T) the applicant shall comply with all applicable laws, rules, regulations and requirements, including those of the Department of Health, Fire Department and the Department of Water Supply; (U) an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the change of zone. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. 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; (V) 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; (W) an extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances; (a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant and its successors or assigns, and that are not the result of their fault or negligence; (b) granting of the time extension would not be contrary to the general plan or zoning code; (c) granting of the time extension would not be contrary to the original reasons for the granting

of the change of zone; (d) 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 (e) 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; and, (X) should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate rezoning of the area to its original or more appropriate designation.

SECTION 3. In the event that any portion of the 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 HAWAII

Hilo, Hawaii

Date of Introduction: October 13, 1993
Date of 1st Reading: October 13, 1993
Date of 2nd Reading: November 3, 1993
Effective Date: November 8, 1993

APPROVED AS TO FORM AND LEGALITY:


CORPORATION COUNSEL

DATED: NOV. - 4 1993