

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

December 17, 2013

Mr. William R. Walter, President
W.H. Shipman, Ltd.
16-523 Kea'au-Pāhoa Road
Kea'au, HI 96749

Dear Mr. Walter:

Change of Zone Ordinance No. 89-32 (REZ No. 620)

Applicant: W.H. Shipman, Ltd.

Subject: Supplement to Development Agreement between W.H. Shipman, Limited and
Hawai'i Medical Services Association regarding Condition D of Ordinance 89-32

TMK: 1-6-002: 004, 006 & 007; Kea'au, Puna, Hawai'i

We are in receipt of the above-described agreement between W.H. Shipman, Limited and Hawai'i Medical Services Association (HMSA) executed on December 12, 2013 that defines the obligations between the two parties regarding the installation of curb, gutter and sidewalk (CGS) improvements as required by Condition D of Ordinance No. 89-32.

The agreement and attached map depicts the respective CGS segments that W.H. Shipman and HMSA will be responsible for installing and completion prior to the issuance of a certificate of occupancy for improvements within the respective parcels affected by the change of zone ordinance. We concur that this agreement will allow for the orderly implementation of CGS improvements fronting the subject parcels in a manner consistent with the requirements of Condition D.

Please note that Condition D states, in part, that CGS improvements "shall be provided within the CV-zoned area, including the area fronting the old Volcano Road, prior to the issuance of an occupancy permit for any new use established on the property lots, meeting with the approval of the Department of Public Works." There are other roadways fronting the area affected by this ordinance and its Condition D, including the Kea'au-Pāhoa Road and Milo Street, which can be discussed in the near future since there may be transition improvements required between existing and new sections of CGS improvements once engineering gets underway.

SUPPLEMENT TO DEVELOPMENT AGREEMENT
(SIDEWALK CONSTRUCTION)

THIS SIDEWALK CONSTRUCTION AGREEMENT is entered into on Dec 12, 2013, by and between W.H. SHIPMAN, LIMITED, a Hawaii corporation, whose mailing address is 16-523 Keaau-Pahoa Road, Keaau, HI 96749 (hereafter "Shipman") and HAWAII MEDICAL SERVICES ASSOCIATION, a Hawaii mutual benefit society, whose mailing address is P.O. Box 860, Honolulu, HI 96808 (hereinafter "HMSA").

WHEREAS, pursuant to the terms of a Development Agreement executed by the parties ("the Development Agreement"), HMSA purchased a 2.022 acre parcel located in Keaau Village, from Shipman, designated as TMK No. (3) 1-6-002:007 ("Parcel 7") and HMSA is currently designing and constructing a business office building on Parcel 7 and in conjunction therewith is also designing and constructing curb, gutter and sidewalk improvements along the frontage of Shipman Gym Road and portions of the Old Volcano Road, which portions are shaded in blue on the sketch attached hereto as Exhibit "1" attached hereto and by this reference incorporated herein ("HMSA Sidewalk Improvements"); and

WHEREAS, Shipman owns parcels of real property adjoining Parcel 7 and which front the Old Volcano Road, designated as TMK Nos. (3) -6-002:004 and 006 ("Parcels 4 and 6") and for which Shipman is also in the process of designing office and/or commercial buildings, and in conjunction therewith, will also design and construct curb, gutter and sidewalk improvements along portions of the frontage of Parcels 4 and 6 with Old Volcano Road, which portions are shaded in green on Exhibit "1" ("Shipman Sidewalk Improvements") which may occur at a different time frame; and

WHEREAS, the terms and conditions of Condition D of Ordinance No. 89-32 require that as a condition of the CV-10 zoning for Parcels 4, 6 and 7, curbs, gutters and sidewalks shall be provided prior to issuance of occupancy permits for the establishment of any new use on said parcels; and

WHEREAS, HMSA and Shipman desire to supplement the terms of the Development Agreement and to confirm their respective rights, duties and responsibilities as to their respective sidewalk improvements so as to assure that the intention of Ordinance No .89-32 are satisfied but which will allow the parties to obtain occupancy permits for their respective office or commercial buildings when they are completed.

NOW THEREFORE, in mutual consideration of the terms and conditions set forth below, HMSA and Shipman agree as follows:

1. In conjunction with the construction of its office building, HMSA understands and agrees that it will complete the construction of the HMSA Sidewalk Improvements at its sole cost and expense in accordance with plans and specifications approved by the County of

Hawaii, prior to receipt of its occupancy permit for the improvements it is constructing on Parcel 7.

2. In conjunction with the construction of its office/commercial buildings to be located on Parcels 4 and 6, Shipman understands and agrees that it will complete the construction of Shipman Sidewalk Improvements located at Parcels 4 and 6 fronting the Old Volcano Road in accordance with plans and specifications approved by the County of Hawaii at its sole cost and expense prior to obtaining its Certificate of Occupancy for improvements on either Parcel 4 or 6, at all other locations not required of HMSA.

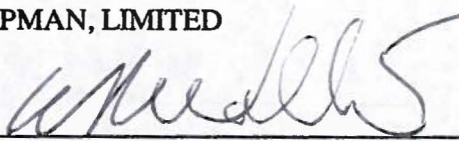
3. HMSA and Shipman agree to cooperate in the design and placement of utility lines and poles and other infrastructure which are related to the construction of the sidewalk improvements, provided that the cost of installing any utility lines and poles which are required to be installed for the purpose of servicing a party's improvements shall be the responsibility of that party whose improvements are being served by the required utility lines and poles, in a manner consistent with Paragraph 11 of the Development Agreement.

4. The terms of this Supplement to Development Agreement shall control in the event of any inconsistency between the terms of this Supplement and the terms of the Development Agreement. Except as otherwise amended or supplemented here, the terms of any terms and conditions of the Development Agreement yet to be performed or which apply to dispute resolution, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the dates set forth hereinabove.

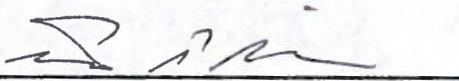
W.H. SHIPMAN, LIMITED

By



WILLIAM WALTER
Its President

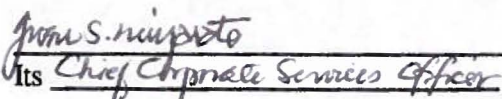
By



THOMAS T. ENGLISH
Its Treasurer

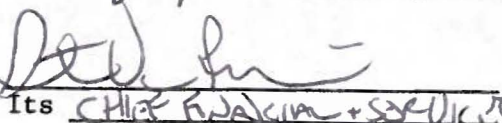
HAWAII MEDICAL SERVICE ASSOCIATION

By



Its Chief Corporate Services Officer

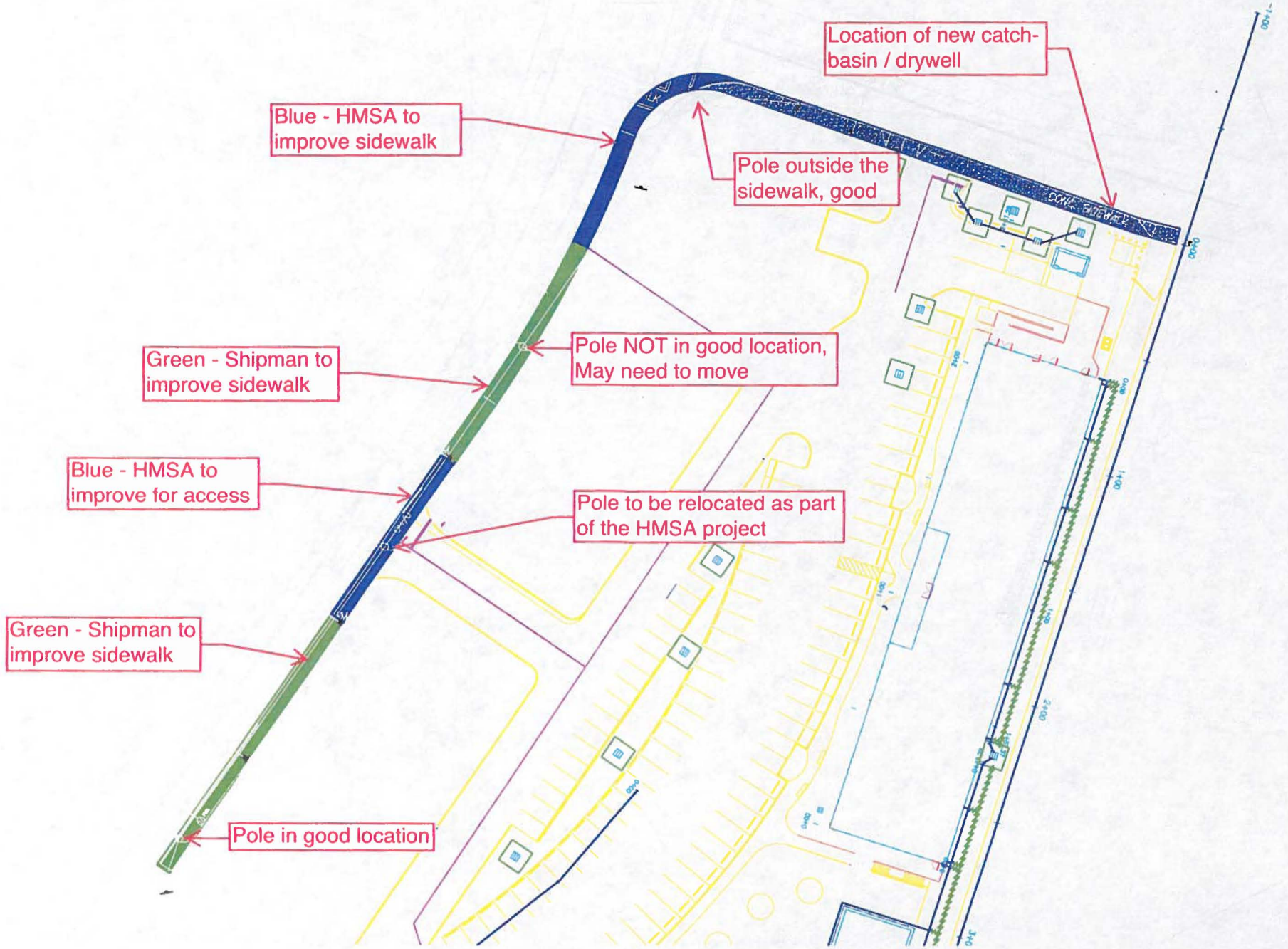
By



Its Chief Executive Officer

OFFICER AND TREASURER

EXHIBIT "1"



COUNTY OF HAWAII STATE OF HAWAII



Bill No. 2

ORDINANCE NO. 89 32

AN ORDINANCE AMENDING SECTION 25-106 (KEAAU ZONE MAP), ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-10) TO VILLAGE COMMERCIAL (CV-10) AND FROM LIMITED INDUSTRIAL (ML-20) TO SINGLE FAMILY RESIDENTIAL (RS-10) AT KEAAU, PUNA, HAWAII, COVERED BY TAX MAP KEY 1-6-02:2,3,4,6,7,24 & 84 AND 1-6-03:PORTION 11.

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

SECTION 1. Section 25-106, 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 Keaau, Puna, Hawaii, shall be Village Commercial (CV-10):

PARCEL 1:

Beginning at a point at the west corner of this parcel of land and on the easterly side of Exception 8-A, New Volcano Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 8,972.75 feet North and 5,913.41 feet East and running by azimuths measured clockwise from true South:

Thence along the easterly side of Exception 8-A, New Volcano Road along a curve to the left having a radius of 503.33 feet, the chord azimuth and distance being:

1. 188° 08' 08" 20.54 feet; thence along Road Lot 1148 along a curve to the right having a radius of 98.27 feet, the chord azimuth and distance being:
2. 217° 49' 100.78 feet;
3. 248° 40' 16.92 feet along the southeasterly side of Road Lot 1148;
4. 338° 40' 49.31 feet along Lot 1154;
5. 4° 27' 118.43 feet along Lot 1154 to a point at the northerly side of Road Lot 1146;
6. 109° 01' 30" 67.63 feet along the northerly side of Road Lot 1146;
7. 144° 50' 43.87 feet along the northeasterly side of Road Lot 1146 to the point of beginning and containing an area of 0.258 Acre. (Refer to parcel 1 as shown on Exhibit "A".)

The district classification of the following area situated at Keaau, Puna, Hawaii, shall be Village Commercial (CV-10):

PARCEL 2:

Beginning at a point at the southwesterly corner of this parcel of land and on the southeasterly side of Exception 8-A, New Volcano Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Olaa" being 8,396.20 feet North and 5,699.77 feet East and running by azimuths measured clockwise from true South:

1. 214° 20' 30" 234.92 feet along the southeasterly side of Exception 8-A, New Volcano Road; thence along the southeasterly side of Exception 8-A, New Volcano Road along a curve to the left having a radius of 503.33 feet, the chord azimuth and distance being:

2. 210° 05' 30" 74.60 feet; thence along the southeasterly side of Exception 8-A, New Volcano Road along a curve to the left having a radius of 503.33 feet, the chord azimuth and distance being:
3. 202° 59' 41" 50.00 feet;
4. 245° 02' 42.00 feet along the southeasterly side of Road Lot 1146;
5. 289° 01' 30" 177.67 feet along the southeasterly side of Road Lot 1146;
6. 283° 31' 19.92 feet along the southerly side of Road Lot 1146;
7. 17° 50' 356.04 feet along Lot A-25 A and Lot A-24;
8. 62° 53' 271.36 feet along Exception 9, Keaau School Lot to a point at the easterly side of Pahoa Government Road;
9. 156° 45' 78.95 feet along the easterly side of Pahoa Government Road;
10. 165° 44' 134.51 feet along the easterly side of Pahoa Government Road to the point of beginning and containing an area of 2.860 Acres. (Refer to Parcel 2 as shown on Exhibit "A".)

The district classification of the following area situated at Keaau, Puna, Hawaii, shall be Single Family Residential (RS-10):

PARCEL 3:

Beginning at a point at the north corner of this parcel of land and on the southeasterly side of the Old Volcano Road, (Exception 8-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "Olaa" being 6,775.96 feet North and 4,320.02 feet East and running by azimuths measured clockwise from true South:

1. 321° 28' 97.83 feet along Lot A-18-A-1, Land Court Application 1053;
2. 297° 54' 30" 376.01 feet along Lot A-18-A-1, Land Court Application 1053;
3. 214° 29' 137.30 feet along Lot A-18-A-1, Land Court Application 1053;
4. 293° 23' 68.10 feet along Lot A-18-A-1, Land Court Application 1053;
5. 43° 06' 915.88 feet along the remainder of Lot A-18-A-2-A, Land Court Application 1053;
6. 133° 06' 500.00 feet along the remainder of Lot A-18-A-2-A, Land Court Application 1053 to a point at the southeasterly side of the Old Volcano Road (Exception 8-A);
7. 223° 06' 600.00 feet along the southeasterly side of the Old Volcano Road (Exception 8-A);
8. 220° 35' 30" 72.93 feet along the southeasterly side of the Old Volcano Road (Exception 8-A) to the point of beginning and containing an area of 8.271 Acres. (Refer to Parcel 3 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, successors or assigns shall comply with all of the stated conditions of approval; (B) Consolidation/re-subdivision plans shall be submitted for the CV-10 zoned area within one year from the effective date of approval of the change of zone. Final


subdivision approval shall be secured within one year of the date of receipt of tentative subdivision approval; (C) Prior to establishment of any commercial uses on the CV-10 zoned area, plans shall be submitted to the Planning Department for plan approval review; (D) Curbs, gutters and sidewalks shall be provided within the CV-10 zoned area, including the area fronting the old Volcano Road, prior to issuance of an occupancy permit for any new use established on the proposed lots, meeting with the approval of the Department of Public Works; (E) No access shall be provided to the CV-10 zoned area from the Keaau-Pahoa Road; (F) Subdivision plans for the RS-10 zoned area shall be submitted within three years from the effective date of the change of zone. Final subdivision approval shall be secured within one year from the date of receipt of tentative subdivision approval; (G) Access to the proposed lots within the RS-10 zoned area from the old Volcano Road shall meet with the approval of the Department of Public Works; (H) Drainage systems shall be installed in accordance with the requirements of the Department of Public Works; (I) All other applicable laws, rules, regulations and requirements, including those of the Department of Water Supply, be complied with; (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 may, at the developer's election, be satisfied by performance in accordance with 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 effective date of the zone change. 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; and (L) 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 applicants, 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 contrary to the original reasons for the granting of the change of zone; and 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 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 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

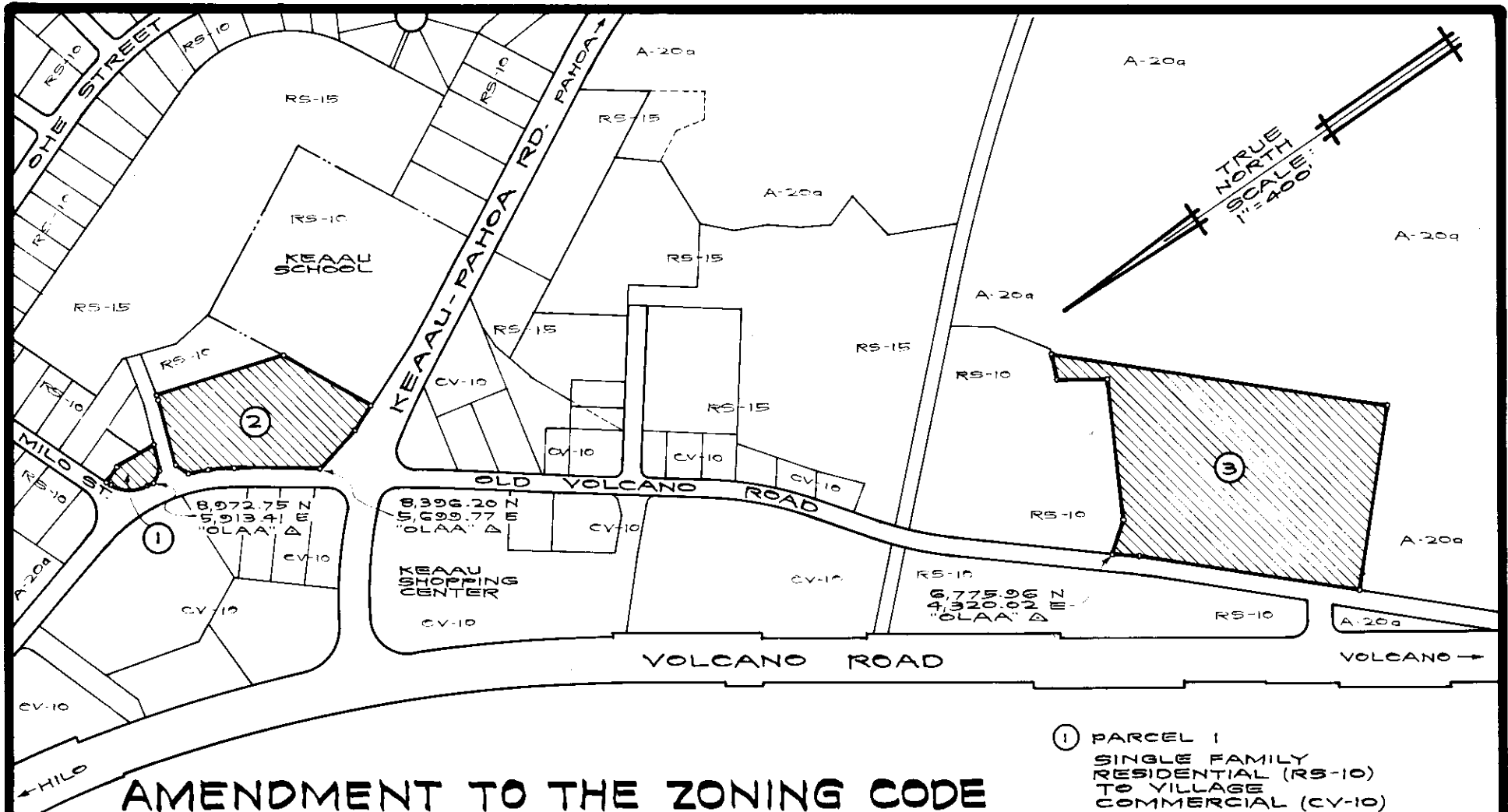
SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawaii

Date of Introduction: February 1, 1989
Date of 1st Reading: February 1, 1989
Date of 2nd Reading: February 15, 1989
Effective Date: February 23, 1989



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-106 (KEAAU ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-10) TO VILLAGE COMMERCIAL (CV-10) AND FROM LIMITED INDUSTRIAL (ML-20) TO SINGLE FAMILY RESIDENTIAL (RS-10) AT KEAAU, PUNA, HAWAII.

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

- ① PARCEL 1
SINGLE FAMILY
RESIDENTIAL (RS-10)
TO VILLAGE
COMMERCIAL (CV-10)
AREA = 0.258 ACRE
- ② PARCEL 2
SINGLE FAMILY
RESIDENTIAL (RS-10)
TO VILLAGE
COMMERCIAL (CV-10)
AREA = 2.860 ACRES
- ③ PARCEL 3
LIMITED INDUSTRIAL
(ML-20) TO SINGLE
FAMILY RESIDENTIAL (RS-10)
AREA = 8.271 ACRES

TMK: 1-6-02: 2,3,4,6,7,24 & 84 AND 1-6-03: 11 (PORTION)

NOV. 9, 1988

EXHIBIT "A"